

**FEMALE GENITAL MUTILATION AND RIGHTS OF
WOMEN: A SOCIO LEGAL STUDY**

**A thesis submitted to the
University of Petroleum and Energy Studies**

**For the Award of
Doctor of Philosophy**

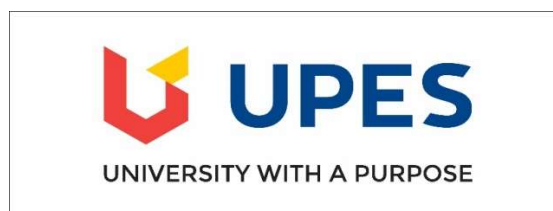
**In
Law**

by

Ms. Shambhavi Sinha

November 2019

**SUPERVISOR
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**School of Law
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Dehradun- 248007 Uttarakhand**

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DECLARATION

I declare that the thesis titled **Female Genital Mutilation and Rights of Women: A Socio Legal Study** has been prepared by me under the guidance of **Dr. Mamta Rana** Professor School of Law, University of Petroleum and Energy Studies. No part of this thesis has formed the basis for the award of any degree or fellowship previously.

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Date: 02. 12. 2019

CERTIFICATE

I certify that Ms. Shambhavi Sinha has prepared his thesis titled **Female Genital Mutilation and Rights of Women: A Socio Legal Study** for the award of PhD degree of the University of Petroleum & Energy Studies, under my guidance. He/she has carried out the work at School of Law, University of Petroleum & Energy Studies.



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ABSTRACT

The concept of justice is embedded in the very fibre of society and with time has grown with it. Social nature and coexistence of man gives rise to conflicting interests that needs to be balanced to achieve peace and harmony. Justice is the philosophical theory leading to administration of fairness that finds a pivotal place in all socio-political and legal systems around the globe. This became more prominent with the development of the State and stretched its roots to different spheres of human activities. Administration of justice entails the maintenance of peace and order, a concept in modern society that has evolved through several stages. In primitive stages of society private retribution and self were the only remedies available against the offender. The second stage of development where the State was in rudimentary form, the functions being only persuasive and not enforcing towards the wrong doer. In the third stage wrongs could be redressed by payment of compensation to the victim. With advent of time administration of justice became one of the essential functions of the State. The aim is to provide justice for all those accessing the legal system, to create an environment of social harmony. Justice is the ultimate end of law and goal of society, which the Judiciary has been pouring into law with new variants of justice in the form of contemporary values and need based rights like freedom, liberty, dignity, equality and social justice as enshrined in the constitution. The quintessence of legal justice lies in safeguarding uniformity and certainty of law and at the same time ensuring that rights and duties are duly valued by the people.

Administration of justice under the Indian Legal System can broadly be either with respect to civil law system or criminal law system. Blackstone¹ preferred to categorize them as “private wrongs and public wrongs” the former being the violation of civil or legal rights of individuals called civil injuries, while the latter are in violation of public rights and duties which affect community as a whole and are called as crimes or misdemeanours. The legal jurisprudence of the country has shown a paradigm shift in respect of offences against women and children, particularly sexual offences. The nature of crimes and criminals, constitutional and human rights perspective sociological, psychological and economic variables have shown a changed with the changing needs of society and development. Certain customary practices that were propagated and carried out behind closed doors in the name of religion have now slowly come out of the closet. Female Genital Mutilation is one such practice that has slowly been recognized by lawyers, social workers, the Legislature and Judiciary as a cruel practice that needs attention to protect the rights of the rights and interests of the female child and women.

The origin and history of Female Genital Mutilation is not known with certainty but the practice is estimated to be dated at least 2000 years back. There have been several anthropological and historical researches that help us to understand how the practice came into existence. The beliefs and theories surrounding the inception are varied. Gerry Mackie² has suggested that infibulation one type of Female Genital Mutilation may have originated in the Meroite civilization prior to the rise of Islam with the purpose to increase confidence in paternity. Some researchers have traced the practice to Egypt in the 5th century BC and was believed to be

¹ An English jurist, judge and politician noted for writing the Commentaries on the Laws of England.

² political scientist ; specialist in the study of harmful social practices, including female genital mutilation.

practised as a sign of distinction amongst the aristocracy. The geographical distribution suggests that the practice originated along the coasts of the Red Sea. Egyptian mummies show women infibulated. According to Mary Knight, the Spell 1117³ of the Ancient Egyptian Coffin Texts may refer in hieroglyphs to an uncircumcised girl. The Spell was found on the sarcophagus of Hedjhotep⁴. Several other historians have also linked practice of Female Genital Mutilation to have originated and flourished in Egypt. There appears to be a strong linkage between Female Genital Mutilation and slavery. In 1609, it was reported that a group located in the vicinity of Mogadishu, Somalia “had a custom to sew up their females, especially young slaves to make them unable for conception which makes them sell dearer, both for their chastity and for better confidence which their masters put in them”. It was reported by Browne in the year 1799 that Egyptians practiced female circumcision and infibulation to prevent pregnancy in women slaves. Some historians believe that the practice started during the slave trade when black slave women entered ancient Arab societies, others believe it to have originated with the inception of Islam in some parts of sub-Saharan Africa. The Romans performed a technique wherein rings were implanted through the labia majora of female slaves to prevent pregnancy and warrant virginity. With its widespread prevalence, a “multi-source origin” has also been proposed.

Female Genital Mutilation also referred to as Female Genital Circumcision, *Khatna* or *Khafd*, essentially includes the “removal of partial or total external female genitalia for non-medical purposes”⁵. The practice is carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and

³ Adrian B, Alan G, *The Egyptian Coffin Texts*; Volume 7, Chicago University Press, 1961, 448–450.

⁴⁴ Hedjhotep a minor ancient Egyptian deity; god of fabrics.

⁵ <http://www.who.int/mediacentre/>; (Factsheets/fs241).

increase in consequential complexities, in exceptional cases health professionals are also involved in the process. The practice can be categorically classified into four major categories, Clitoridectomy, Excision, Infibulation and Other harmful procedures.⁶

Female Genital Mutilation is practiced in 30 countries across the globe and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to New Zealand, Australia, Scandinavia, Europe, and North America. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Most of the Bohras in India live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana. Approximately “two hundred million women across thirty countries have undergone Female Genital Mutilation”⁷ as per research carried out by UNICEF.

The practice of Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The reasons for practice and propagation vary from region to region. The rationale behind the practice can be divided into two broad categories; religious and non-religious. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. The Quran does not specifically mention Female Genital Mutilation or even circumcision but the subject appears in the Sunnah where according to Annie Marie Schimmel a lesser known Hadith addresses the practice. This Hadith says that Muhammad suggests excision is allowed but must not be overdone. The multiple schools of Islamic jurisprudence have expressed divergent views Some Egyptian scholars also state that the practice and is not endorsed by

⁶ As defined by the World Health Organization, in WHO/UNICEF/UNFPA Joint Statement, 1997[[http://www.who.int/mediacentre](http://www.who.int/mediacentre;); (Factsheets/fs241)]

⁷<https://data.unicef.org/topic/child-protection/Female-Genital-Mutilation>.

Islamic jurisprudence. Christian religious authorities endorse that the practice has no mention in the Bible or other teaching. In spite of no mention women within Christian communities in Nigeria, Ethiopia, Sudan, Egypt, Kenya, and Tanzania do undergo the practice. The practice is not protected under what constitutes an essential part of a religion as in Article 25 of the Constitution⁸. Religions such as Islam or Christianity do not per se endorse the continuation of the practice. The Syedna i.e the spiritual leader of the Islamic community however is a staunch proponent of the tradition with followers who endorse the practice.

Non- religious reasons include cultural and other societal customs and acceptances. Different communities and cultures have different reasons for continuing with the practice. These reasons are often complex and can change over time; social acceptability being the most common. The social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong impetus to continue this practice. It is considered as a necessary part of raising a girl child and preparing her to play the role of a good woman in adulthood. There are multiple reasons that encourage this practice. Firstly, it is a strong belief that Female Genital Mutilation would ensure the virginity of a woman. The act is believed to curb the libido of the woman, hence ensuring both maintenance of chastity and prevention of infidelity on the institution of marriage. The practice is also believed to increase sexual pleasure for a man and increase chances of fertility hence fulfilling other demands of matrimony by way of procreation and keeping her husband happy; hence the touchstone of what is accepted sexual behavior of a woman pre and post her marriage in society. The practice would ensure the daughter is considered a better candidate or rather more worthy of being married to when looking for a groom. Apart from the social implications there are also significant economic aspects involved. The parents of such girls are burdened less with demands for dowry. Another vague belief was that such practice

⁸ The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt., test laid down says essential practices will be ascertained with reference to the tenets and doctrines of that religion itself

would prevent the clitoris from developing long like a male genital. The practice is encouraged in the name of cultural heritage and as essential to the stepping into womanhood.

In some countries the practice is a part of the “rite of passage” ritual that a girl goes through to be considered a woman. This usually involve ritual activities and teachings designed to strip individuals of their original roles and prepare them for new roles. Certain ceremonies that mark the transition period in the life of a person such as birth, puberty, marriage, having children and death essentially form these rituals. The female genitalia considered as unappealing to the eye and unclean. The practice claims to be beneficial in maintaining hygiene and aesthetic of the female genitalia. It promises to protect family honour, preserve pure familial lineage and provide economic security to the woman.

The pinch of skin reality is however different. The practice affects negatively the physical and mental health of women which may last throughout their lives sometimes even leading to death. The practice of Female Genital Mutilation has been a subject of intense debate based on above myths and realities with one group supporting its ban and the promoting the practice both at international and national levels. In 1997 WHO issued a joint statement against the practice of together with United Nations Population Fund and the United Nations Children’s Fund. With revised frameworks and increased support to ban the practice the numbers have but the practice still persists significantly. There are several organizations and significant activists across the globe that dedicatedly works towards the cause of Female Genital Mutilation.

Secondary data was data gathered from studies, surveys, or experiments conducted by sources other than the researcher. The predominant secondary data for this particular research work includes data collated by United Nations, Case Studies, Newspaper reports, documentaries and Interviews of victims and other stake holders related to the practice. Other secondary sources also include case laws and other national and

international legal instruments. Primary data is collected by a researcher from first-hand sources keeping in mind the core area and topic of research using methods like surveys, interviews, or experiments. Initiating research with secondary data allows time to formulate questions and develop an understanding of core issues of research. Primary data has been collected via Qualitative Research supported by the “Expert Interview Method” as a tool. Expert for the purpose of research includes major stake holders including activists and organizations working particularly towards the cause, victims, women and men from the communities following the practice, legal fraternity, education sector, students, working and non -working stakeholders.

To substantiate the research interviews were conducted several experts and stake holders like law students, lawyers, activists, academicians, judges and others either personally through phone or the expert through email. Analysis of Secondary interview, primary interviews, national and international legal instruments, selected case studies was carried out by theoretical critical study and responses were carried out.

In Islam, male circumcision is “common, but not compulsory”. The medical community recognizes that male circumcision does have certain potential health benefits. Whereas *per se* the act of circumcision is not mentioned in the Quran, the Muslim community do circumcise the male infants. While not enforced, circumcision is strongly recommended in Islamic practice. The incorrectly named "female circumcision," however, is not an Islam endorsed practice. Genital cosmetic surgery is a modern practice widely-accepted as lawful and undertaken, pre-dominantly by women, in order to improve the aesthetic appearance of the female genitalia. Western cosmetic surgery is the 'aesthetic improvement through surgical alterations of facial and bodily features. While cosmetic genital surgery is carried out on women who agree to the procedure, FGM is predominantly carried out on women who lack the capacity to consent.

The historical development of Gender Studies and Women Rights has shown an exponential change. The extension of the rights of human being to include women came about by a gradual process of change as women increasingly entered public life. To accomplish equality between women and men and to eliminate discrimination against women are fundamental human rights recommended by the United Nations. Philosophers across the world since ancient times have endorsed the rights of women and their natural rights as human rights.

The United Nations since its inception promotes equality of men and women as the fundamental guarantee of human rights. It sets out as one of its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. These rights are said to find their genesis in the classical concept of Natural Law. Documents such as the Magna Carta (1215), the English Bill of Rights (1689), the “French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights” (1791) are considered the written precursors most of the Human Rights law today. Modern day International Human Rights law and the establishment of the United Nations have a significant historical antecedence. The international development of Human Rights shows that since the concept of right and its exercise centred around and based on a number of values developed from ancient to modern times. The idea of human rights emerged after World War II. The extermination by Nazi Germany of millions of Jews, Sinti and Romani homosexuals, and persons with left the World in a state of shock. The aftermath followed by Trials in Nuremberg and Tokyo and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity." Post trials the governments then committed themselves to establishing the United Nations, with the primary goal of encouraging international peace and preventing conflict. Across the globe efforts were made to establish human rights standards to ensure protection of citizens from abuse forming a critical role in the drafting of the “United

Nations Charter” in 1945. The member States of the United Nations pledged to promote respect for the human rights hence leading to the establishment of a Commission on Human Rights under the leadership of Eleanor Roosevelt’s and charged it with the responsibility of drafting a document elucidating the meaning of fundamental rights and freedoms as proclaimed in the Charter. On December 10, 1948, the “Universal Declaration of Human Rights (UDHR)”; also referred to as the international “Magna Carta” was adopted by 56 members of the United Nations.

With the purpose of establishing an efficient enforcement mechanism the UN Commission on Human Rights proceeded to draft two treaties, the “International Covenant on Civil and Political Rights” (ICCPR) which focusses on issues such as the right to life, freedom of speech, religion, and voting and its “Optional Protocol and the International Covenant on Economic, Social and Cultural Rights” (ICESCR) emphasizing on food, education, health, and shelter. Together the three declarations constitute the earliest and most authoritative human rights instruments, the “International Bill of Human Rights”. In addition to the covenants the United Nations has adopted more than twenty principal treaties elaborating the scope of human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable groups, such as refugees “Convention Relating to the Status of Refugees, 1951, Convention on the Elimination of All Forms of Discrimination against Women, 1979, and children Convention on the Rights of the Child, 1989”⁹ providing strong legal support for the right of women and girls. These international treaties have been supplemented by regional treaties, like the “African Charter on Human and Peoples’ Rights (the Banjul Charter)”, declarations and resolutions adopted by inter-governmental international organizations, such as the “Declaration on the Elimination of Violence against Women”

⁹ Human Rights Instrument; <https://www.ohchr.org>

and documents adopted at international and regional conferences. Some non-governmental organizations (NGOs) have also played a critical role in focusing on international human rights issues.

Women Rights can be understood as the legal, political and social rights for women equal to those of men. Women's Rights Are Human Rights.¹⁰ Human Rights are those minimal rights that every individual must have against the state or other public authority by virtue of him being a member of the human family irrespective of any other consideration. Human Rights hence are basic rights that arise by birth irrespective of any differentiating or discriminatory factors like gender, class, colour, age, religion, economic or social status. Women Rights have been the key agenda in several international forums that have resulted in significant commitments to women human rights and equality. In September 1995, the “Beijing Declaration” and platform for action, adopted at the United Nations Fourth World Conference on women, confirmed women's rights as human rights and the human rights of women and the girl-child as an inalienable, integral and indivisible part of all human rights and fundamental rights. Legal Rights are those rights that exist within legal systems by virtue of authorized entities in furtherance of lawful claims or interests irrespective of whether the existence such rights is in public domain. Social rights are the rights that stem from the concept of social contract concerning legitimacy of authority of the State on an individual. Political Rights entails participation of adult individuals in the establishment or administration of a government. Cultural Rights are rights in relation to art and culture with the purpose to guarantee people and communities’ participation and access to culture and its components in sync with parameters of equality, human dignity and non-discrimination. The Universal Declaration on Human Rights 1948 recognizes numerous such rights. Adopted in 1948 it provides for equal entitlements of women and men to the rights contained in it. The use of

¹⁰ Excerpts, Remarks, 5 September 1995, Hillary Rodham Clinton

term “all human beings” and “everyone” universal categorically reflects the intention for everyone; the same for men and women. The spectrum of Human Rights includes several conventions and covenants. The “International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights guarantees 1966 and the Convention on the Elimination of All Forms of Discrimination against Women 1979”¹¹ being significant ones. The Convention on the Rights of the Child 1989”, the “Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006” are other instruments within the spectrum. In addition, certain regional human rights treaties also promote protection of Human Rights especially of women.

The impact of the “Universal Declaration of Human Rights, 1948” has been substantial and its principles have been incorporated into the Constitution of several legal systems. The declaration though legally non-binding in nature has achieved the status of Customary International Law for being a common standard of achievement for all nations. The provisions of Covenants, as well as other Human Rights instruments are legally binding on the states that ratify or accede to them. States that ratify these treaties periodically report to bodies of experts, which issue recommendations on the steps required to meet the obligations laid out in the treaties. These treaty-monitoring bodies also provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations.

Based on a study of International instruments and an understanding of the physiology and practice of Female Genital Mutilation, the following establish how the practice is a gross violation of Women Rights; Right to be free from Violence: Free from Torture, Cruel, Inhuman and Degrading

¹¹ Human Rights Instrument; <https://www.ohchr.org>

Treatment; Rights of a Child; Right to be Free from Discrimination; Right to Life and Integrity; Right to Health; Other Social Cultural and Economic rights

Female Genital Mutilation is an abhorrent and cruel practice and categorically a violation of Human Rights and an act of violence against women. All signatories to the instruments are bound to abide by them. Sweden was the first Western country to outlaw the practice of Female Genital Mutilation in 1982 with the Act Prohibiting the Genital Mutilation of women followed in 1985 by the United Kingdom. The legislation varies from country to country. The laws in some countries restrict the practice of in totality while some restrict the practice with exception in government health facilities and by medical practitioners. The penalties range from a minimum of three months to a maximum of life in prison. While some penalize the circumcisers only, others penalize the circumciser and those that seek for the procedure as an adult or for the minors and some even include anyone who knows that the procedure has been performed and fails to report it.

In Africa 18 countries, Benin, Ethiopia, Burkina Faso, Ghana Central African Republic, Chad, Djibouti, Egypt, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo have enacted laws criminalizing the practice of Female Genital Mutilation. Six countries; Mali, Chad, Mali, Liberia, Sierra Leone, and Sudan still do not criminalize the practice. Kenya and Uganda have efficient stringent laws on the same. The African Union adopted the Maputo Protocol promoting women's rights and calling for an end to the practice of Female Genital Mutilation and into force in November 2005. With increase in immigration from countries which practice FGM, has led to the introduction of FGM in European and North American countries. The practice is a crime in the United States of America under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and now a crime in Australia and some other countries as well. The Council of Europe Convention on

preventing and combating violence against women and domestic violence defines and criminalize the practice .Female Genital Mutilation was made a criminal offence by the “Prohibition of Female Circumcision Act 1985”, superseded by the Female Genital Mutilation Act 2003 and (in Scotland) by the “Prohibition of Female Genital Mutilation (Scotland) Act 2005”. States that do not have such laws may use other general statutes, such as assault, battery or child abuse The “Transport for Female Genital Mutilation Act” was passed in January 2013, and prohibits knowingly transporting a girl out of the U.S. for the purpose of undergoing FGM. In the Middle East and Asian countries thought the practice of Female Genital Mutilation is prevalent but there exists lesser or no specific legislations. There have been reports of prosecutions or arrests in cases in several African countries, including Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone. Twelve industrialized countries that receive immigrants from countries where Female Genital Mutilation is practiced i.e Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom and United States have passed laws criminalizing the practice. In Australia, six out of eight states have passed laws. In the United States, the federal government and 17 states have criminalized the practice. France has relied on existing criminal legislation to prosecute both practitioners and parents seeking the practice.

Female Genital Mutilation is an abhorrent crime and cruel practice that violates human rights and the Fundamental Rights as enshrined in the Constitution of India. India has ratified the “United Nations Universal Declaration of Human Rights, 1948 ,the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights”¹². The principles of the Declaration are elaborated in international treaties such as the “International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the

¹² supra

United Nations Convention on the Rights of the Child and the United Nations Convention Against Torture”¹³ also ratified by India. Hence the practice of Female Genital Mutilation being a cruel act of violence, discriminatory in nature and violative of rights of the child, hence a gross violation of Human Rights. The violation of human rights in India can be interpreted as the violations of democratic principles laid down in the Constitution of India as well as the violation of India’s commitment to humanitarian international law and international covenants. The practice violates the basic Fundamental Rights of the victims, Article 14, 21 of the constitution of India. The practice is discriminatory against women and the girl child and is a clear violation of right to a healthy life, the right to privacy the right to consent and the right to live a life of dignity. Female Genital Mutilation infringes the Right to Privacy, recognised as a Fundamental Right in *K. S. Puttaswamy v. Union of India*¹⁴ and amounts to a violation of Article 21 of the Constitution. The practice has been imposed not on men but only on the female gender making it a practice against her identity, dignity and autonomy.

Despite various press reports, news articles and interviews of the victim and documentaries shown in India as well as international forums showing the sufferings of lakhs of Bohra girls and women in India and also after sending on-line petitions to various responsible statutory authorities and ministries and to the lawmakers they have failed to take effective measures or steps due to which the wrongdoers and offenders are fearlessly continuing this illegal practice. Though there is no specific legislation the practice may considered as a crime under the general criminal laws of the country. The Union of India has failed to protect person and property of its citizens and the society from crimes done in the name of religious and customary practices envisaged in Article 39 of the Directive Principles of State Policy.

¹³ Ibid

¹⁴ (2014) 6 SCC 433

There is no specific legislation in India that caters specifically to the practice of Female Genital Mutilation. There is no blanket ban prohibition; however the general laws of the country do protect the victim and their rights. The practice is a violation of Human rights and Fundamental rights under the Indian legal regime hence protected under the Human Rights laws and regulated by the Protection of Human Rights Act in 1993 amended by the Protection of Human Rights (Amendment) Act, 2006. The practice being a violation of the fundamental rights is well protected under provision of constitutional remedies and by the Judiciary

Except for medical purposes any touching of the genitals of a woman is an offence. The same by can be considered as an offence by interpretation under the general criminal laws of the country i.e., the Indian Penal Code, 1860 and the “Protection of Children from Sexual Offences Act 2012” (POCSO Act). The practice of Female Genital Mutilation can be categorized as an offence under Section 3(b) of the POCSO Act 2012 with respect to insertion of tools required to carry out the procedure. The offence is punishable under Section 4 of the Act for a term not be less than seven years, but which may extend to imprisonment for life and liability to pay fine.

The practice is an offence under the “Indian Penal Code 1860” (IPC) (Section/s 320, 322, 334, 335, 336, 337, 338 and 340) read with “Criminal Procedure Code, 1973”. The Indian Penal Code, 1860 is intended to cover all substantive aspects of criminal law. The code is sub-divided into 23 chapters, comprises 511 sections. The Code starts with an introduction, provides explanations and exceptions used in it, and covers a wide range of offences. The National Human Rights Commission, the State Human Rights Commission in several States and Human Right Courts were constituted under the Act. The Act was enacted to establish the National and State Human Rights Commission and gives immense powers to the Commission for prevention of violation of human rights.

The Judiciary is an independent organ of state that enforces accountability and answerability of the other organ of the state. The recent years have witnessed the courts as a dynamic institution playing an active role in expanding the scope of individual and collective civil political, economic, social and cultural rights by passing orders, judgements and process of judicial review. By far most legal systems across the world and the Judiciary recognize the practice as abhorrent and a gross violation of human rights of women.

The Research Methodology followed has been predominantly Non Empirical (Doctrinal) and Empirical (Non Doctrinal) based on a combination of primary and secondary sources of law. Non Empirical research based on statutes, commentaries, articles, research papers, working papers, reports and judicial pronouncements. The Empirical research has been carried out by Qualitative Research supported by the “Expert Interview Method” as a tool carried out on random samples. Expert here means key stake holders related to the practice ranging from legal professionals’ laymen, social activists to women undergoing such practices.

Primary and secondary data was analysed by qualitative critical analysis based on which we can in conclusion state that the practice of Female Genital Mutilation exists today in reality across the globe. Female Genital Mutilation as the universally accepted meaning essentially includes procedures that include the partial or total removal of the external female genitalia for non-medical purposes with the WHO categorically recognizing it in four forms i.e Clitoridectomy, Infibulation, incision and other forms.¹⁵ The genesis is obscure and as it is estimated to have originated about 2000 years back having a multiple theory origin with several narratives attached to it. Research shows that the practice is not

¹⁵ supra

restricted to a specific community, religion or ethnicity and existed prior to the rise of Islam and Christianity. Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Europe, Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Also called as the Tayyabi Mustaili Ismaili sect under Islam the community is found in the western cities of India and also in Pakistan, East Africa and Yemen. In India, most of the Bohras live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana. Though carried out in secrecy, lesser reported cases and distorted data on prevalence the existence of the practice cannot be ignored. It is estimated that at Approximately two hundred million women across thirty countries today have globally undergone some form of this practice. The age at which FGM is performed varies: it could be done at any time between a few months old until puberty, on the first wedding night, or even during the delivery of the first baby. The practice is mostly carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence (around 15 years) and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and increase in consequential complexities, in exceptional cases health professionals are also involved in the process; the preference though in majority of cases being the traditional. There are several myths and realities associated with the practice, the pinch of skin reality however being different. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. The *Quran* does not specifically mention Female Genital Mutilation or even Circumcision but the subject appears in the *Sunnah* where according to Annie Marie Schimmel a lesser known *Hadith* addresses the practice. This *Hadith* says that *Muhammad* suggests excision is allowed but must not be overdone. A more limited cutting brings more radiance to the face and is better for

the husband. The practice is not protected under what constitutes an essential part of a religion as in Article 25 of the Constitution. In the international regime rather the rite of passage i.e ritual that a girl goes through to be considered a woman is considered as the primary reason. Non-religious reasons include cultural and other societal customs and acceptances. The social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong motivation to continue this practice. It is considered as a necessary part of raising a girl child and preparing her to play the role of a good woman in adulthood

Female genital mutilation has immediate short term and long term health consequences sometimes leading to death. The procedure has no proven health benefits for women; rather it interferes with the natural hormonal balances and physiology of a female body. Possible complications include bleeding, urine retention, urinary infection, genital swelling, bacterial vaginosis, dyspareunia, prolonged labor, cesarean section, dystocia, severe pain, shock, sepsis, death, unwanted welding of the labia, surgical interventions for reopening the vagina, chronic anemia due to repeated surgeries for the opening of the vagina, formation of keloid tissue that can lead to severe pain, dermoid cyst and abscess, painful menstruation due to the retention of menstrual blood, dysuria, urinary incontinence, weak urine stream, hematocolpos, genital ulcers, chronic pelvic and low back pain due to chronic infections, urinary and genital tract infection, abscess formation, septicemia, hepatitis and HIV infection. Factors such as bleeding during repair surgery, trauma during intercourse, anal intercourse because of inability for vaginal intercourse and opening the birth canal by non-sterile equipment can put women at risk of HIV infection. Uterine and ovarian infections may cause infertility. Fractures of the clavicle, femur or humerus can occur when the girl tries to defend herself. Pain, swelling, infection, injury, damage to the urethra and dysuria cause urinary problems in many girls and urinary retention leads to chronic urinary tract infection.” Removal of sensitive tissues such as clitoris, pain, scar tissue formation and the traumatic memories associated

with genital mutilation and can lead to sexual dysfunction. The impact is not alone restricted to the physical aspects, the consequences and also psychological and emotional in nature. Depression, anxiety, post-traumatic stress disorder and low self-esteem, are some common ailments. The victim suffers from several psychological disorders.

The practice of Female Genital Mutilation is a gross violation of Human Rights of women. The practice is discriminatory, an act of violence and an illegal and cruel act that violates Women Rights. Women Rights can be understood as legal, political, and social rights for women equal to those of men. Women Rights are Human Rights¹⁶. The Universal Declaration on Human Rights 1948 recognizes numerous such rights. The spectrum of Human Rights includes several conventions and covenants. The “International Covenant on Civil and Political Rights 1966 the International Covenant on Economic, Social and Cultural Rights guarantees 1966 and the Convention on the Elimination of All Forms of Discrimination against Women 1979 being significant ones. The Convention on the Rights of the Child 1989, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006”¹⁷ are other instruments within the spectrum. In addition, certain regional human rights treaties also promote protection of Human Rights especially of women. Legal Regimes across the world have different approaches towards the practice. Some legal systems have specific legislations on the prevention and protection against practice of Female Genital Mutilation including rehabilitation measures for the victims. Where legal systems do not have specific legislations the general legislations serve as the protective shield. Irrespective of these legislative measures sensitization and implementation has always been a major challenge and therefore the practice continues to exist today inspite of several initiatives been taken up by United Nations, NGO’s activist

¹⁶ Excerpts, Remarks, 5 September 1995, Hillary Rodham Clinton.

¹⁷ supra

movements, lawyers and others. The Judicial responses in both international and national legal systems look down upon the practice as violative of the Women Rights and in particular the right to life and dignity of a woman. There is a need to ban the practice of Female Genital Mutilation.

Female Genital Mutilation is a practice that violates the basic human rights of a woman and there is an imperative need to regulate and protect these rights. Hence Hypothesis proved.

Summary Suggestions: Based on detailed study and analysis the following are the suggestions made by the scholar:

- A. Policy Measures: Preventive and Redressal**
- B. Legislative and Regulatory Measures**
- C. Proposed Draft Legislative Suggestions for Elimination of Practice of Female Genital Mutilation**

A. Policy Measures: Preventive and Redressal

- Need for multi-sectorial community led and sustained approach where the different law making and implementing agencies work hand in hand to ban the practice of Female Genital Mutilation capacity is critical and can holistically developed by a multisectoral sustained model of prevention, protection, punishment, and rehabilitation.
- Comprehensive gender-sensitive, non -discriminatory approach to be incorporated that involves constitutional, civil, criminal and administrative law. Gender mainstreaming or integration to be used to assess the impact of different laws, policies and programmes on groups of men and women. Initiatives must be taken to adopt adequate reforms to promote equality of the sexes

- The State should make endeavours to dissuade the practice from being justified on the grounds of customs or traditions. With changing times, the very nature of customary law has shown change. Customs are no longer unchangeable and have been questioned on numerous occasions in recent times. What was supposedly the need of society and relevant many years ago may not be significant rather be redundant today. Every custom is not good law. Some customs are opposed to public policy or violative of individual rights must be discouraged.
- The government as custodian of society must take action against the practice of Female Genital Mutilation. This duty of the government has its foundation in the provisions of international human rights treaties. The prevalent legal standard for assessment of government action or inaction is exercise of due diligence in preventing, investigating, and punishing violations of human rights by both government actors and private persons. Action is needed to repeal laws that explicitly discriminate against women; extending the rule of law to protect women rights and lives also in the private domain.
- The State should encourage and direct systematic research around coordinated collection of data on the prevalence, causes and consequences of the practice. This would help in efficient combatting and monitoring mechanisms
- The government must take appropriate measures for education and empowerment of the girl child. This would make women aware of their individual rights and self-sufficient to survive and fight the practice. Women representation in the Parliament and Judiciary would help in advancement of women rights.
- Awareness must be created against the practice by raising campaigns, outreach programs and sensitization to promote the safety of women.

Measures must be taken to increase access of women access to courts and other institutions providing help.

- There must be mandatory sensitization and training of law enforcement officials, including police, prosecutors, defence attorneys, and family law attorneys, the judiciary, health care providers, social service providers, teachers, and religious, customary, community, and tribal leaders, on Human Rights Instruments particularly women rights including domestic laws, policies, and programmes.
- The judiciary in particular should be focused on balanced, well-informed and unbiased judicial decision making with systematic tracking. Strengthening the rule of law by government investing in justice initiative for women. This would repose faith of survivors in system of justice.
- Professional organizations such as medical associations and nursing councils including traditional circumcisers should promote awareness and incorporate ethical guidelines in medical training and practice. The duty to ensure health care and access to health is critical and Health education is a crucial for eliminating the practice.
- Child emergency phone outreach mechanism should be created. There should be a mechanism with a helpline number and other rehabilitation services including foster homes. The people engaged should be sensitized and trained to provide suitable advice and guidance to the survivor.
- National and International Non-Governmental Organizations dedicated to working towards the cause play key actors in designing and implementing programmes for abandonment of the practice. Through established networks and support from the government they can help support elimination of the practice. Women legal organizations are engaged in making justice systems work for women through their advice, counselling

and support transforming the jurisprudence of women rights nationally, regionally and internationally.

B. Legislative and Regulatory Measures

- The general laws of the legal system must be implemented effectively to protect women from this practice. Ratification and implementation of Human Rights instruments is fundamental to fight the practice of Female Genital Mutilation both in national and international legal systems. All existing domestic legislation including the constitution should be compatible with the ratified treaty. Future legislation changes must also be reviewed to determine its compatibility with human right instruments.
- Need for specific legislative changes in the form of amendment to general law or new specific legislation to ban the practice of Female Genital Mutilation. The legislative changes must be specific, well defined and based on principles of human rights with effective implementation mechanism.

C. Proposed Draft Legislative Suggestions for Elimination of Practice of Female Genital Mutilation

1. Definition of Female Genital Mutilation as a Practice

Female Genital Mutilation also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafdis* as universally accepted essentially includes procedures that involve the partial or total removal of the external female genitalia for non-medical purposes. Most legal systems that have that have regulatory and legislative mechanism aimed to eradicate the practice lack of a well- structured definition and understanding of the term itself. This results in multiple interpretations to what exactly constitutes the practice. Some legal systems have however, adopted specific definitions.

It is proposed that any definition of Female Genital Mutilation including the universally adopted definition by WHO should be categorically inclusive covering all forms of mutilation. It must also include exceptions explicitly excluding any necessary surgical or post-partum procedure carried out by a registered medical practitioner significant for physical and mental health of the women.

2. Protection and Regulatory Mechanism: Criminalization of Practice

Some legal systems have legislation that criminalize the practice of Female Genital Mutilation either as part of the general legislation or through specific legislation on the practice. When making the decision to apply criminal sanctions the government should can either enacting a law specifically prohibiting the practice or applying an existing criminal law the larger purpose to characterize the practice as a criminal offense.

It is proposed that the legislative change must lay expressly down: (i) classify the practice as a criminal offence (ii) parties who can be punished (ii) quantum of punishment. The legislative change must categorically define the ingredients of the practice classifying it as a criminal offence.

Those whose perform or engage in the practice either directly or indirectly must be held guilty of the offence of committing Female Genital Mutilation. In most legal systems both performing and participating or attempting parties to carry out the practice are subject to be penalized.

Strict punishments and penalties should be provided and quantum specified. The proposed punishment is punishment up to 5 years imprisonment and penalty upto INR 2 Lakhs depending on severity of practice subject to exception of surgical medical operation necessary for the women carried out by a registered medical practitioner. Specific amendments may be made in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation making any medical practitioner engaging in the practice Female Genital Mutilation accountable and subject to disciplinary proceedings.

3. Rehabilitation and Support Mechanism for victims

The primary objective of having a legal frame work whether as a specific legislation/ amendment or chapter is to prevent the commission of the act of Female Genital Mutilation. In addition to criminal sanction there must also be enough support, rehabilitation and monitoring mechanism for effective implementation based on a multi sectorial community and state led approach. Some following are some key propositions:

- (a) Reporting of Practice: There must be present a mechanism to enable informants to bonafide provide information regarding propaganda, planning, abeting and actual commission of the practice without any fear victimization or social outcast. The same mechanism should also be available to the victim with reasonable stipulated time upto 3 years from commission or knowledge about the commission of the act to file a complaint so that the informant has enough time to get over any initial apprehensions.
- (b) Enforcement: There should a systematic structured investigation, and monitoring mechanism where a protection officer or any other designated official on receiving information takes necessary steps. The officer must have the powers to have FGM Protection Order issued as a means of protecting actual or potential victims under civil law the breach of which could be made an offence. The officer should be accountable for unheard or information not properly catered to. All reported cases should be properly recorded which would help monitor and as repository for research.
- (c) Concept of one-stop rehabilitation support shops and specialized services for counselling and support to victim without creating secondary victimization.

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This study is dedicated to my maternal grandfather Shri. Ambika Prasad Singh for being my inspiration and constantly pushing me to achieve great heights.

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- The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt, 1954 AIR 282.
- State of Haryana v Darshana Devi, AIR 1979 SC 885
- Fornah v. Secretary of State For The Home Department, House of Lords, [2006] UKHL 46
- Vm (Fgm - Risks - Mungiki - Kikuyu/Gikuyu) Kenya v. Secretary of State For The Home Department, CG [2008] UKAIT 00049, United Kingdom.
- Fm (Fgm) Sudan v. Secretary of State for the Home Department, CG [2007] KAIT00060, United Kingdom.
- Sk (Fgm - Ethnic Groups) Liberia v. Secretary of State for The Home Department, CG [2007] UKAIT 00001, United Kingdom.

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- Ba v. Ja (Female Genital Mutilation Protection Orders: Immigration Appeals), [2018] EWHC 1754
- A Local Authority v. M,[2018] EWHC 870 (Fam)
- M v. F Family Division [2017] EWHC 3566 (Fam)
- Khalid Adem Case Georgia, United States, 686 S.E.2d 339 (2009)
- Deeqa Dahir Nuur case Somalia (sub judice)

LIST OF LEGAL INSTRUMENTS

- African Charter on Human and Peoples' Rights (Banjul Charter)
- American Convention on Human Rights (Pact of San José)
- Constitution of India
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- Criminal Procedure Code, 1973, No. 2, Acts of Parliament, 1974
- Evidence Act, 1872, No. 1, Acts of Parliament, 1872
- European Convention on Human Rights.
- Female Genital Mutilation Act 2003
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996

- Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860
- International Convention on the Elimination of All Forms of Racial Discrimination ,1965
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Prohibition of Female Circumcision Act 1985,
- Prohibition of Female Genital Mutilation (Scotland) Act 2005
- Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012
- Protection of Human Rights Act in 1993 No. 32, Acts of Parliament, 2012
- Statute of the International Court of Justice
- Universal Declaration of Human Rights,1948

ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women CERD
CESCR	Committee on Economic, Social and Cultural Rights
CNLPE	National Committee to Fight the Practice of Excision
CRC	Convention on the Rights of the Child CRPD Convention on the Rights of Persons with Disabilities
DHS	Demographic and Health Survey FGM Female genital mutilation
FGM	Female genital mutilation
FGC	Female genital cutting
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
OHCHR	Office of the High Commissioner for Human Rights
POCSO	Protection of Children from Sexual Offences Act, 2012
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
WHO	World Health Organization

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Chapter Outline

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1.1. Background

In the words of Winston Churchill, “all the great things are simple, and many can be expressed in a single word: freedom, justice, honour, duty, mercy, hope”. The concept of justice is embedded in the very fibre of society since its inception and with time has organically grown with it. It can be said to be as old as civilization itself. The first requisite of civilization is that of justice¹⁸. The social nature and existence of human beings demands peaceful co-existence. Living in society gives rise to conflicting interests that needs to be balanced to achieve peace, harmony and stability.

Justice is the philosophical theory leading to administration of fairness that finds a pivotal place in all socio-political and legal systems around the globe. The concept of justice became more conspicuous with the growth of State and expanded its roots to different spheres of human activities. Living together in society gives rise to conflicting interests that needs to be balanced to achieve this peace, harmony and stability. Justice is the philosophical theory leading to administration of fairness that finds a pivotal place in all socio-political and legal systems around the globe. The concept of justice became more conspicuous with the

¹⁸ Sigmund Freud: father of psychoanalysis, and recognized as one of the most influential and authoritative thinkers of the 20th century.

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growth of State and expanded its roots to different spheres of human activities. Justice is the ultimate end of law and goal of society. Administration of justice implies the maintenance of peace and order within a political community by means of physical force of the State. This concept in modern society has evolved through several stages. The administration of justice under the Indian Legal System can broadly be either with respect to Civil Law System or Criminal Law system. Blackstone preferred to categorize them as “private wrongs and public wrongs”, the former being the violation of civil or legal rights of individuals called civil injuries, while the latter being the violation of public rights and duties which affect the community as a whole and are called as crimes or misdemeanours. Thus crime is a wrong against the community as a whole and is punishable by the State. Administration of justice aims to provide justice for all those accessing the legal system to create an environment of social harmony.

The Judiciary has been pouring into law with new variants of justice in the form of contemporary values and need based rights like freedom, liberty, dignity, equality and social justice as enshrined in the constitution. The essence of legal justice lies in ensuring uniformity and certainty of law and at the same time ensuring that rights and duties are duly respected by the people. In words of Justice Krishna Iyer “Access to justice to people is the foundation of the Constitution”¹⁹. Lord Bryce once observed that “there can be no better test of the excellence of a Government than the efficiency of its judicial administration”.

¹⁹ State of Haryana v Darshana Devi; AIR 1979 SC 885 (India).

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Jurisprudence across the globe has shown a paradigm shift, significantly in respect of offences against women and children. In the descent and evolution of man and woman there has been a significant shift in gender roles and perceptions. Ancient society was essentially patriarchal in nature. With the advent of time and dynamic changes in law and society women found individual status, capable of taking decisions in every sphere of life. Certain customary practices that were propagated and carried out in the name of religion have now been identified as acts violating the dignity and privacy of an individual, being illegal and in violation of Human Rights. Female Genital Mutilation is one such practice that has slowly been recognized by lawyers, social workers, the Legislature and Judiciary as a cruel practice that needs attention to protect the rights and interests of the female child and women. Across the globe Legislative and Judicial trends reflect endeavours to protect the rights and lives especially of women and have opened doors to the questioning of such illegal practices.

Female Genital Mutilation can be understood as the customary intentional removal of partial or complete external female genitalia for non-medical reasons. The practice is also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafd*. Locally, *pagsunna*, *pag-islam* or *turi* are the common terms used to refer to the practice. Traditional circumcisers also called as midwives carry out the procedure on young girls between infancy to adolescence²⁰; sometimes on adult women, usually with a razor or a scissor as tool. The genesis of the

²⁰ Infancy to age 15 years ideally 7 years.

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practice of Female Genital Mutilation is obscure however it is estimated to have originated about 2000 years back. There have been several anthropological and historical studies carried out that help us to understand the practice. The beliefs and theories surrounding the inception are varied; however with no substantial and conclusive evidence to substantiate. This multiple origin theory suggests the spread of the practice from “original cores” by merging with the pre-existing initiation rituals for men and women²¹. Despite the perplexity surrounding its origin, the practice of FGM endears across the globe, serving several theoretical purposes for the communities that propagate its practice.²² Research shows that the practice is not restricted to a specific community, religion or ethnicity and existed prior to the rise of Islam and Christianity

Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern and north-eastern regions of Africa, in some countries in Middle East and Asia, including the migrants to these areas. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims also called as Tayyabi Mustaili Ismaili sect under Islam found in western cities of India and also in Pakistan, East Africa and Yemen. The practice

²¹<https://med.virginia.edu/family-medicine>

²² Andro LescliM. *Female genital mutilation.-Overview and current knowledge. Population*,71(2), 215-296 (2016).

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of Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The reasons for practice and propagation vary from region to region. The pinch of skin reality is however different. The practice affects negatively the physical and mental health of women which may last throughout their lives sometimes even leading to death. Female Genital Mutilation is an abhorrent and cruel and violates the human rights of a woman. It is an act of violence, discriminatory in violation of the right to life and dignity, hence amounting to cruelty and an illegal practice. Hence the imperative need to regulate and protect the Women Rights of those subjected to this practice across the globe.

1.2 Need for Research

Female Genital Mutilation is a subject of global concern and a threat to women rights across the globe. The practice is abhorrent and cruel and violates the basic human rights of a woman. The aftermath is disastrous affecting the life of the women physically, emotionally and psychologically which may last for their entire lives, sometimes even result in death. Hence the imperative need to regulate and protect these rights. Female Genital Mutilation is in violation of Human Rights Instruments Universal Declaration of Human Rights, UN Declaration on the Elimination of Violence against Women, United Nations Convention on the Rights of the Child and other Human Rights Instruments that has been justified in the name of essential religious and cultural practices. It is an act of violence, discriminatory in violation of the right to life and dignity, hence amounting to cruelty and an illegal practice. Few of the countries in which it is prevalent have banned the practice, predominantly as under the International Human Rights Law and within their general criminal laws. In the Indian legal system, in addition to violation of the

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Human Rights, the practice in violates the Fundamental Rights enshrined in the Constitution of India– Article 14, 21. The State has failed to protect its citizens and ensure that their rights, under Article 39 of the Directive Principles of State Policy. The practice is an offence under the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act, 2012. There have been several reports, articles and interviews of the victim and documentaries shown in India as well as in the international forums showing the sufferings of the women who are subjected to this practice. Irrespective the illegal practice continues to affect the rights and lives of women across the world. In light of above, considering the heinous nature of the practice and the irreparable damage on physical and mental health of the women; it is imperative that this illegal practice demands immediate attention. There is need for extensive research and effective laws and implementation machinery to safeguard the rights and interests of women across the globe.

1.3 Scope and Objective of Research

The scope and objective of the research is two-fold; the social perspective and the legal perspective on Female Genital Mutilation (a) Social perspective: To study and analyze the practice of Female Genital Mutilation, the myths and realities associated with it and the impact that is has on women and in turn on society.(b) Legal perspective: To study and analyze how the practice of Female Genital Mutilation is in violation of Women Rights and the effectiveness of the existing International and National legal regime to protect these rights.

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1.4 Research Methodology

1.4.1. Theoretical Framework, Procedure and Sources of Research

The Research Methodology followed has predominantly Non Empirical (Doctrinal) and Empirical (Non Doctrinal) based on a combination of primary and secondary sources of law. Non Empirical research based on statutes, commentaries, articles, research papers, working papers, reports and judicial pronouncements. The Empirical research has been carried out by Qualitative Research supported by the “Expert Interview Method” as a tool carried out on random samples. Expert here means key stake holders related to the practice ranging from legal professionals’ laymen, social activists to women undergoing such practices. Sample interview question format attached as (exhibit) Figure 1.1.

1.4.2 Research Questions

1. Whether the practice of Female Genital Mutilation is a form of violence and abuse against women and the girl child?
2. Whether Female Genital Mutilation is a positive socio-cultural practice or an abusive practice in the garb of customs?
3. Whether the practice of Female Genital Mutilation is in violation of basic Human Rights?
4. Whether the practice of Female Genital Mutilation can be construed as an illegal and punishable offence?
5. Whether there is a need of drafting and codification of laws in relation to Female Genital Mutilation?

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1.4.3. Hypothesis

Female Genital Mutilation is an abhorrent and cruel practice that violates the basic human rights of a woman and there is an imperative need to regulate and protect these rights.

2.5.2 Literature Review

Social Dynamics of Abandonment of Harmful Practices: A New Look at the Theory²³

This working paper explains the evolution, historical and anthropological perspective and varied theories on the practice of Female Genital Mutilation. The understanding on how and why the practice persists confront two central questions: (1) how can families who love their daughters perpetuate a tradition that threatens their child's immediate health, puts them at risk for significant long term health problems and violates their right to develop to full potential? (2) How can the practice persist even in areas where attitudes have turned against it? The paper summarizes how social convention theory has been applied to the practice in the past and broadens the application of the theory to provide a better understanding of the social dynamics that leads to the abandonment of Female Genital Mutilation and other harmful social practices. It examines the role of social and moral norms, the powerful force of local rewards and punishments, and their importance of human rights deliberation in bringing about transformative processes.

²³ Gerry Mackie, John LeJeune, *Innocenti Working Paper No. Xxx. Florence*, UNICEF INNOCENTI RESEARCH CENTRE.(2008).

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Female Genital Mutilation²⁴

The article addresses the need for health care professionals to be aware of the reasons and numerous health issues associated with Female Genital Mutilation. The purpose of this study was to outline the significance of the health professionals' role while dealing with excised women. These women due to their traumatic experience require special care that has to be offered through a non- judgmental approach with an emphasis on psychological support. The attitude of the health professionals is significant as they need to be thoughtful, noncritical and intensely knowledgeable of the profound consequences of the practice. There is need of education for the affected women and their families in order to diminish this harmful practice.

Female Genital Mutilation: The Place of Culture and the Debilitating Effects on the Dignity of the Female Gender.²⁵

Female genital mutilation has four major types which arise from the degree to which the external genitalia of the female are affected. The origin is shrouded with mysteries but historical evidences point to Egypt as the source country before its spread through countries in sub-Saharan

²⁴ Maria Kontoyannis Christos K, *Health Science Journal* 31 PP:31-36 E-ISSN:1791-809X VOLUME 4, ISSUE 1 (2010).

²⁵ M Onomerhievurhoyen, Ndidi Mercy, *European Scientific Journal* VOL.11, NO.14 ISSN: 1857 – 7881 (2015).

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Africa, Asia, the Middle East, as well as some migrants in Europe, United States and Australia. The reasons for carrying out the practice range from ethnic and tribal cultures, family relations, tribal connections, class, economic and social circumstances; and education. The impact on the affected young girls and women may be short term or long term. Different legal systems have enacted one law or the other at a point in time in their history to curb this degrading menace but the prevalence data shows that the practice is still prevalent. The discourse brings forth the implications of the practice on the dignity of the female gender and proposes its annihilation.

Female Genital Mutilation: A Violation of Human Rights²⁶

Female Genital Mutilation is a term used to describe a wide range of traditional practices that involves partial or total removal of external female genital for cultural, religious and social reasons. This cultural practice is a violation of human rights of child and women. This article is, therefore, aims at argue against the practice of Female Genital Mutilation. The paper divided into three parts. The first part covers the concept, origin, types and rationales of the practice and highlights the practice from the Ethiopian experience. The second part examines the tension between the Universalist and cultural relativist approach with respect to the practice. The third part analyses the human rights of child and women being violated by the practice of Female Genital Mutilation.

²⁶ Fisaha KG, *Female Genital Mutilation: A Violation of Human Rights* J POL SCI PUB AFF 4: 198(2016).

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Karhu Rose Kerubo, Thesis, autumn, “Female Genital Mutilation- Effects on Women and Young Girls”²⁷

Female genital mutilation is a term used to describe various traditional practices that involve the partial or total removal of the external female genitalia for cultural and traditional reasons in many African societies. This research addresses the concept of this practice by looking at the different beliefs that support its continuation. The study focuses on the experiences of women, who know more about the practice, by looking at their flashbacks, the procedure, consequences involved before and after the mutilation, cultural beliefs, religious views on the practice, and the human rights that were violated by the practice of female genital mutilation. The research result indicated that female genital mutilation is not only a practice experienced by African communities anymore. Female genital mutilation has spread to other parts of the world and it has become a global issue through the increased rates of immigration and search for better living standards. The study also found out that the practice performed on the girls and women due to cultural beliefs that the practice is used to signify a rite of passage from childhood to adulthood. Other female genital mutilation consequences, which were revealed by the research, include the physical consequences, psychological consequences and social consequences, which occurred before and after the mutilation procedure. In conclusion, female genital mutilation is a criminal offence according to legislation because it causes pain, violates the human rights and makes the women and girls vulnerable to health risks. Empowering people in the community with

²⁷ Karhu R Kerubo, *Female Genital Mutilation and its effects on women and young girls*, Thesis Diaconia, University of Applied Sciences (2010).

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knowledge on the subject and providing the necessary resources will help eliminating the practice.

Gender equality and human rights approaches to female genital mutilation: a review of international human rights norms and standards²⁸

The paper elucidates that about two hundred million girls and women are estimated to have undergone female genital mutilation a traditional practice that involves the partial or total removal of the external genitalia. The practice is a dire violation of human rights particularly women and children's rights and results in severe health complications. Although the practice is not sanctioned by any religion and is illegal in many countries, it is prevalent across the globe. International efforts to address the practice have thus far focused primarily on preventing the practice, with less attention to treating associated health complications, caring for survivors, and engaging health care providers as key stakeholders who can help in the abandonment of the practice. This led the World Health Organization to develop a set of guidelines for health providers to care for women living with the practice. This paper was commissioned as part of the development of these guidelines to ensure that health providers understand international policy and the human rights basis for upholding women and children's human rights especially their duty to never perform the procedure, to refuse requests to re-perform the procedure after childbirth, to prevent it from continuing, and to safeguard the rights of women.

²⁸ Rajat Khosla ,Joya Banerjee, Doris Chou, Lale Say and Susana T,Khosla et al. *Reproductive Health* (2017).

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Female Genital Mutilation: Health Consequences and Complications²⁹

Female genital mutilation is a procedure performed on women in developing countries and is underreported; it involves cutting or altering the female genitalia. The study reports the societal importance, ramifications, classifications, cultural significance, prevalence, complications, implications, and treatment.

1.5 Significance of Research

The practice of Female Genital Mutilation is a global threat and has several myths and realities associated with it. While some legal systems where the practice exists have specified legislation to combat the practice the others condemn it in their general laws and under national and International Human Right instruments. In the Indian context there is no specific legislation. The socio- legal study analyzes the practice of the myths and realities associate with the practice and the impact that is has on women and in turn on the society. The research studies the effectiveness of the existing International and National legal regime to protect these rights. The study creates sensitization and awareness on the very existence of this practice, an issue debatable both at national and international forums. This research in the end provides certain recommendations and proposes a draft legislation specifically for prevention, protection and rehabilitation of women subject to the practice.

²⁹ Elliot K, Elizabeth H, Michelle S, Stephan K, and Tamar A. Smith- Norowitz; *Female Genital Mutilation: Health Consequences and Complications –A short Literature* (2018).

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1.6 Limitations of Research

The practice of Female Genital Mutilation is carried out on girls mostly at the age of 7 in extreme secrecy wherein the persons who takes the child for carrying out the procedure are usually the mother or the grandmother. The prima facie challenge in research is the very secretive nature of the practice that leads to people not coming out and lot many cases go unreported. The women sometimes have faint or harsh memories; there is innate fear in talking about or going against the practice. The data available is not reflective of the exact numbers and details on the practice. In addition, there are several distorted versions on the origin and procedure.

1.7 Future Research

The study provides certain recommendations and proposes a draft legislation for preventing, protection and rehabilitation for the women subject to the practice of Female Genital Mutilation. The study could serve as an aid to law making agencies, law commission, women commission and other forums for the protection of women rights. It could help serve break myths around the practice especially the role of religion to promote the practice.

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1.8 Chapter Plan

(a) Scheme of Chapters

Chapter 1	Introduction
Chapter 2	Evolution and Practice of Female Genital Mutilation
Chapter 3	International Legal Regime and Rights of Women
Chapter 4	National Legal Regime and Rights of Women
Chapter 5	International and National Judicial Response on Female Genital Mutilation
Chapter 6	Conclusion and Suggestions

1.9 Summary of Chapters

Chapter 1: Introduction

The introductory chapter lays down the background and outline on the practice of Female Genital Mutilation giving a brief overview of the research topic. The concept of justice since inception has been embedded in the very fibre of society and has grown with it. The social nature of man in society demands peaceful co- existence. Living together in society gives rise to conflicting interests that needs to be balanced to achieve this peace, harmony and stability.

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With growth of State it has expanded its roots to different spheres of human activities. Administration of justice implies the maintenance of peace and order within a political community by the State. The concept in modern society has evolved through several stages and has become one of the essential functions of the State. Administration of justice aims to provide justice for all those accessing the legal system, to create an environment of social harmony. The administration of justice under the Indian Legal System can broadly be either with respect to Civil Law System or Criminal Law system. Blackstone preferred them to categorize them as “private wrongs and public wrongs”, the former being the violation of civil or legal rights of individuals called civil injuries, while the latter are in violation of public rights and duties which affect community as a whole and are called as crimes or misdemeanours. The legal jurisprudence of the country has shown a paradigm shift, respect of offences against women and children, particularly sexual offences. The nature of crimes and criminals, constitutional and human rights perspective sociological, psychological and economic variables have shown a changed with the changing needs of society and development. Certain customary practices that were propagated and carried out behind closed doors in the name of religion have now slowly come out of the close. These as acts are recognized as a criminal offence as violative of Human Rights. Female Genital Mutilation is one such practice that has slowly been recognized by lawyers, social workers, the Legislature and Judiciary as a cruel practice that needs attention to protect the rights of the rights and interests of the female child and women

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Chapter 2: Evolution and Practice of Female Genital Mutilation

The chapter traces the genesis and evolution of the practice Female Genital Mutilation elucidating the meaning, physiology, geographical extent and prevalence. The chapter also discusses the myths and realities associated with the practice emphasizing on the impact of the practice on the physical and mental health of the women. Towards the end the chapter analyzes primary and secondary data used for research. compares the practice to Male Circumcision, Cosmetic Circumcision and other allied surgeries. The origin and history of Female Genital Mutilation is not known with certainty but the practice is estimated to be dated back at least 2000 years back and has several anthropological and historical researches with multiple beliefs that help us to understand how the practice came into existence. Female Genital Mutilation essentially includes the removal of partial or total external female genitalia for non-medical purposes. The practice is mostly carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence (around 15 years) and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and increase in consequential complexities, in exceptional cases health professionals are also involved in the process. Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Most of the Bohras in India live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana.

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Approximately two hundred million women across thirty countries today have undergone Female Genital Mutilation³⁰. The practice of Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The reasons for practice and propagation vary from region to region. The rationale behind the practice can be divided into two broad categories; religious and non-religious. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. Different communities and cultures have different reasons that are often complex and can change over time; social acceptability being the most common. The social pressure to adhere to norms followed by peer groups and the fear of rejection serve as a strong motivation to continue this practice. The pinch of skin reality is however different. The practice affects negatively the physical and mental health of women which may last throughout their lives sometimes even leading to death. The practice of Female Genital Mutilation has been a subject of intense debate based on above myths and realities with one group supporting its ban and the promoting the practice both at international and national levels. With revised frameworks and increased support to ban the practice the numbers have but the practice still persists significantly. There are several organizations and significant activists across the globe that dedicatedly works towards the cause of Female Genital Mutilation. The chapter analyses secondary and primary data on the subject.

³⁰ <https://data.unicef.org/topic/child-protection/female-genital-mutilation>

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The predominant secondary data for this particular research work includes data collated by United Nations, Case Studies, Newspaper reports, documentaries and Interviews of victims and other stake holders related to the practice. Other secondary sources also include case laws and other national and international legal instruments. Primary data has been collected via Qualitative Research supported by the “Expert Interview Method” as a tool. Expert for the purpose of research includes major stake holders including activists and organizations working particularly towards the cause, victims, women and men from the communities following the practice, legal fraternity, education sector, students, working and non - working stakeholders. To substantiate the research interviews were conducted several experts and stake holders like law students, lawyers, activists, academicians, judges and others either personally through phone or the expert through email. Analysis of Secondary interview, primary interviews, national and international legal instruments, selected case studies was carried out by theoretical critical study and responses were carried out. The chapter towards the end compares the practice to, Male Circumcision, Cosmetic Circumcision and other allied surgeries viz a viz Female Genital Mutilation.

Chapter 3: International Legal Regime and Rights of Women

The historical development of Gender Studies and Women Rights has shown an exponential change. The extension of the rights of human being to include women came about by a gradual process of change as women increasingly entered public life. The Charter of the United Nations adopted in 1945, sets out as one of its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. These rights are said to find

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their genesis in the classical concept of Natural Law. Women Rights can be understood as the legal, political and social rights for women equal to those of men. Women's Rights Are Human Rights.³¹ Women Rights have been the key agenda in several international forums that have resulted in significant commitments to women human rights and equality. The Universal Declaration on Human Rights 1948 recognizes numerous such rights. The “Universal Declaration of Human Rights” adopted in 1948 provides for equal entitlements of women and men to the rights contained in it. The use of term “all human beings” and “everyone” universal categorically reflects the intention for everyone; the same for men and women. The spectrum of Human Rights includes several conventions and covenants.

The “International Covenant on Civil and Political Rights 1966³², the International Covenant on Economic, Social and Cultural Rights guarantees 1966³³ and the Convention on the Elimination of All Forms of Discrimination against Women 1979³⁴ being significant ones. The “Convention on the Rights of the Child 1989, the Convention on the

³¹ Excerpts, Remarks, 5 September 1995, Hillary Rodham Clinton.

³² guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups' rights to their culture, religion and language.

³³ for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

³⁴ The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.

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Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006” are other instruments within the spectrum. Female Genital Mutilation is an abhorrent and cruel practice and categorically a violation of Human Rights and an act of violence against women. All signatories to the instruments are bound to abide by them. There are several countries that prohibit and punish the practice either by the general laws of the land or by specific legislation on the practice.

Chapter 4: National Legal Regime and Rights of Women

Female Genital Mutilation is an abhorrent crime and cruel practice that violates human rights and the Fundamental Rights as enshrined in the Constitution of India. India has ratified the United Nations Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child and the United Nations Convention Against Torture also ratified by India. Hence the practice of Female Genital Mutilation being a cruel act of violence, discriminatory in nature and violative of rights of the child, hence a gross violation of Human Rights. The violation of human rights in India can be interpreted as the violations of democratic principles laid down in the Constitution of India as well as the violation of India’s commitment to humanitarian international law and international covenants. The practice

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violates the basic Fundamental Rights of the victims, Article 14, 21³⁵ of the constitution of India. The practice is discriminatory against women and the girl child and is a clear violation of right to a healthy life, the right to privacy the right to consent and the right to live a life of dignity. Female Genital Mutilation infringes the Right to Privacy, recognised as a Fundamental Right in *K. S. Puttaswamy v. Union of India*³⁶ and amounts to a violation of Article 21 of the Constitution. The practice has been imposed not on men but only on the female gender making it a practice against her identity, dignity and autonomy.

Despite various press reports, news articles and interviews of the victim and documentaries shown in India as well as international forums showing the sufferings of lakhs of Bohra girls and women in India and also after sending on-line petitions to various responsible statutory authorities and ministries and to the lawmakers they have failed to take effective measures or steps due to which the wrongdoers and offenders are fearlessly continuing this illegal practice. The Union of India has failed to protect person and property of its citizens and the society from crimes done in the name of religious and customary practices envisaged in Article 39 of the Directive Principles of State Policy.

³⁵ Article 14: Equality before 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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

³⁶ (2014) 6 SCC 433

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There is no specific legislation in India that caters specifically to the practice of Female Genital Mutilation. There is no blanket ban prohibition; however the general laws of the country do protect the victim and their rights. The practice is a violation of Human rights and Fundamental rights under the Indian legal Regime hence protected under the Human Rights laws and regulated by the Protection of Human Rights Act in 1993 amended by the Protection of Human Rights (Amendment) Act, 2006. The practice being a violation of the fundamental rights is well protected under provision of constitutional remedies and by the Judiciary. The National Human Rights Commission, the State Human Rights Commission in several States and Human Right Courts were constituted under the Act. Except for medical purposes any touching of the genitals of a woman is an offence. The same by can be considered as an offence by interpretation under the general criminal laws of the country i.e., the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act 2012(POCSO Act). The practice is an offence under the Indian Penal Code, 1860 (Section/s 320, 322, 334, 335, 336, 337, 338 and 340) read with Criminal Procedure Code, 1973).

Chapter 5: International and National Judicial Response on Female Genital Mutilation

The judiciary is an independent organ of state that enforces accountability and answerability of the other organ of the state. The recent years have witnessed the courts as a dynamic institution playing an active role in expanding the

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scope of individual and collective civil political, economic, social and cultural rights by passing orders, judgements and process of judicial review. By far most legal systems across the world and the Judiciary recognize the practice as abhorrent and a gross violation of human rights of women. This Chapter discusses judicial trends in both international and national legal systems.

Chapter 6: Conclusion and Suggestions

The chapter in conclusion outlines at the end of research conclusion based on research and makes relevant suggestions. The practice of Female Genital Mutilation exists today in reality across the globe. Female Genital Mutilation as the universally accepted meaning essentially includes procedures that include the partial or total removal of the external female genitalia for non-medical purposes³⁷. The practice is also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafd*. Locally, *pagsunna*, *pag-islam* or *turi* are the common terms used to refer to the practice. The WHO classifies FGM into four types Clitoridectomy, Excision, Infibulation and other kinds -all other harmful procedures to the female genitalia for non-medical purposes, for e.g.; pricking, piercing, incising, scraping and cauterizing the genital area. The genesis is obscure and is it is estimated to have originated about 2000 years back having a multiple theory origin with several narratives attached to it.

³⁷ <http://www.who.int/mediacentre/factsheets/fs241>

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Research shows that the practice is not restricted to a specific community, religion or ethnicity and existed prior to the rise of Islam and Christianity. Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. It is estimated that at a minimum of two hundred million women alive today have globally undergone some form of this practice. The age at which FGM is performed varies. There are several myths and realities associated with the practice, the pinch of skin reality however being different. Unlike popular belief it is not a practice that finds its roots in religion or a religious duty, rather cultural and customary practices.

Female genital mutilation has immediate short term and long term health consequences sometimes leading to death. The procedure has no proven health benefits for women. The practice of Female Genital Mutilation is a gross violation of Human Rights of women. The practice is discriminatory, an act of violence and an illegal and cruel act that violates Women Rights. Women Rights can be understood as legal, political, and social rights for women equal to those of men. Women Rights are Human Rights. n Rights especially of women. Legal Regimes across the world have different approaches towards the practice. Some legal systems have specific legislations on the prevention and protection against practice of Female Genital Mutilation including rehabilitation measures for the

victims. Where legal systems do not have specific legislations the general legislations serve as the protective shield. Female Genital Mutilation is a practice that violates the basic human rights of a woman and there is an imperative need to regulate and protect these rights. Hence Hypothesis proved. Based on detailed study certain suggestion have been made under these three heads: A. Policy Measures: Preventive and Redressal B. Legislative and Regulatory Measures and C Proposed Draft Legislative Suggestions for Elimination of Practice of Female Genital Mutilation.

Chapter 2
Evolution, Physiology and Practice of
Female Genital Mutilation

**CHAPTER 2: EVOLUTION, PHYSIOLOGY AND
PRACTICE OF FEMALE GENITAL MUTILATION**

Chapter Outline

2.0	Chapter Summary
2.1	Origin and Evolution of the practice of Female Genital Mutilation
2.2	Physiology and Medical Jurisprudence 2.2.1 Meaning and Physiology of Female Genital Mutilation 2.2.2 Impact of the practice of Female Genital Mutilation on Health and role of Health Professionals
2.3	Geographical Extent and Prevalence of Female Genital Mutilation
2.4	Rationale for Female Genital Mutilation: Myths and Realities; the support group and the protesters
2.5	Practice of Female Genital Mutilation: Compendium and Analysis 2.5.1. Secondary data 2.5.2 Primary data 2.5.3. Analysis of Data
2.6	Comparative Study of Female Genital Mutilation viz a viz : (a) Male Circumcision (b) Cosmetic Circumcision and other allied surgeries

CHAPTER 2: EVOLUTION, PHYSIOLOGY AND PRACTICE OF FEMALE GENITAL MUTILATION

2.0 Chapter Summary

“It was much easier to explain the veil than to answer questions about the wounds.” — Pawan Mishra, Coinman: An Untold Conspiracy

The chapter traces the genesis and evolution of the practice Female Genital Mutilation elucidating the meaning, physiology, geographical extent and prevalence. The chapter also discusses the myths and realities associated with the practice emphasizing on the impact of the practice on the physical and mental health of the women. Towards the end the chapter analyzes primary and secondary data used for research. compares the practice to Male Circumcision, Cosmetic Circumcision and other allied surgeries. The origin and history of Female Genital Mutilation is not known with certainty but the practice is estimated to be dated back at least 2000 years back and has several anthropological and historical researches with multiple beliefs that help us to understand how the practice came into existence. Female Genital Mutilation essentially includes the removal of partial or total external female genitalia for non-medical purposes. The practice is mostly carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence (around 15 years) and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and increase in consequential complexities, in exceptional cases health professionals are also involved in the process. Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia.

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Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Most of the Bohras in India live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana. Approximately two hundred million women across thirty countries today have undergone Female Genital Mutilation³⁸

The practice of Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The reasons for practice and propagation vary from region to region. The rationale behind the practice can be divided into two broad categories; religious and non-religious. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. Different communities and cultures have different reasons that are often complex and can change over time; social acceptability being the most common. The social pressure to adhere to norms followed by peer groups and the fear of rejection serve as a strong motivation to continue this practice. The pinch of skin reality is however different. The practice affects negatively the physical and mental health of women which may last throughout their lives sometimes even leading to death.

³⁸ <https://data.unicef.org/topic/child-protection/female-genital-mutilation>.

CHAPTER 2: EVOLUTION, PHYSIOLOGY AND PRACTICE OF FEMALE GENITAL MUTILATION

The practice of Female Genital Mutilation has been a subject of intense debate based on above myths and realities with one group supporting its ban and the promoting the practice both at international and national levels. With revised frameworks and increased support to ban the practice the numbers have but the practice still persists significantly. There are several organizations and significant activists across the globe that dedicatedly works towards the cause of Female Genital Mutilation. The chapter analyses secondary and primary data on the subject. The predominant secondary data for this particular research work includes data collated by United Nations, Case Studies, Newspaper reports, documentaries and Interviews of victims and other stake holders related to the practice. Other secondary sources also include case laws and other national and international legal instruments. Primary data has been collected via Qualitative Research supported by the “Expert Interview Method” as a tool. Expert for the purpose of research includes major stake holders including activists and organizations working particularly towards the cause, victims, women and men from the communities following the practice, legal fraternity, education sector, students, working and non - working stakeholders. To substantiate the research interviews were conducted several experts and stake holders like law students, lawyers, activists, academicians, judges and others either personally through phone or the expert through email.

CHAPTER 2: EVOLUTION, PHYSIOLOGY AND PRACTICE OF FEMALE GENITAL MUTILATION

Analysis of Secondary interview, primary interviews, national and international legal instruments, selected case studies was carried out by theoretical critical study and responses were carried out. The chapter towards the end compares the practice to, Male Circumcision, Cosmetic Circumcision and other allied surgeries viz a viz Female Genital Mutilation.

2.1 Origin and Evolution of the practice of Female Genital Mutilation

The genesis of the practice of Female Genital Mutilation is obscure however it is estimated to have originated about 2000 years back. There have been several anthropological and historical studies carried out that help us to understand the practice. The beliefs and theories surrounding the inception are varied; however with no substantial and conclusive evidence to substantiate. This multiple origin theory suggests the spread of the practice from “original cores” by merging with the pre-existing initiation rituals for men and women.

Despite the perplexity surrounding its origin, the practice endears across the globe, serving several theoretical purposes for the communities that

CHAPTER 2: EVOLUTION, PHYSIOLOGY AND PRACTICE OF FEMALE GENITAL MUTILATION

propagate its practice.³⁹ David Gollaher⁴⁰ states “There's no way of knowing the origins of FGM, it appears in many different cultures, from Australian aboriginal tribes to different African societies”⁴¹. The evolution of Female Genital Mutilation has shown significant transformation since its inception. Through the course of its evolution came up with multiple facets and spread across cultures and geographic regions with various manifestations, meanings and narratives being attached to it. Tracing its origins, thus, not only helps in understanding its nuances but also minimises the tendency towards its homogenisation”.⁴²

Research shows that the practice is not restricted to a specific community, religion or ethnicity and existed prior to the rise of Islam and Christianity. The earliest record and first mention of male and female circumcision appears in the writings of the Greek geographer Strabo, who visited Egypt around 25th B.C.

³⁹ Andro L, Female genital mutilation. Overview and current knowledge. *Population.*,71(2):215-296. (2016).

Ross,S P, Ericksen K, Lindenfors P, Mulder M. The Origins and maintenance of female genital modification across Africa. *Human Nature*, (2016).

⁴⁰ president and CEO of the California Healthcare Institute

⁴¹ medical historian and the author of "Circumcision," , Discovery News

⁴²<https://sahiyo.com/2018/07/21/tracing-the-origins-of-female-genital-cutting-how-it-all-started>.

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In his 17-volume work “Geographica” he wrote “One of the customs most zealously observed among the Egyptians is this, that they rear every child that is born, and circumcise the males, and excise the females” The predominant school of thought advocates that Female Genital Mutilation originated in ancient Egypt as a sign of distinction amongst the aristocracy in the 5th century B.C. and eventually spread to East Africa.

Gerry Mackie⁴³ has suggested that infibulation; one type of Female Genital Mutilation may have originated in the Meroite civilization, prior to the rise of *Islam* with the purpose to increase confidence in paternity. In his book “Ending Foot binding and Infibulation: A Convention Account” he directly relates the practice to Chinese Foot binding. The earliest documented evidence of the practice according to him reports infibulation in the Nubian region (contemporary Egypt and Sudan). According to Mackie cutting was a custom pioneered by slave traders to increase the value and worthiness of female slaves. With strong slave roots, eventually the practice spread out of Nubia through Sub-Saharan Africa, East to the West. One theory in 1609 by dos Santos reported that for a group near Mogadishu, Somalia the practice spread to Somalia

⁴³ political scientist, specialist in the study of harmful social practices, including female genital mutilation

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where a group had ‘a custom to sew up their females, specially their slaves being young to make them unable for conception, which makes these slaves sell dearer’

Gerry Mackie in his work quoted several researchers reflecting on the origin of Female Genital Mutilation. Agatharchides of Cnidus reporting on the tribes residing on the Western coast of the Red Sea, wrote that one group excised their women in the manner of the Egyptians, and that another group cut off in infancy with razors the whole portion that others circumcise. Another group of anthropologists suggest that the practice was an outgrowth of human sacrificial practices practised among the Equatorial African herders to protect young female herders from being raped. Ancient Rome civilization has been estimated to be founded as early as 10th century BC, technically predating the Nubian evidence and suggesting a different form of infibulation. It is believed that in ancient Rome female slaves had metal rings passed through the labia minora to prevent procreation of children. Possibility exists though that practice may have spread along slave trade routes to Rome from Africa or vice versa. Slave practice diffused into common society and became a prerequisite for marriage.

Some research⁴⁴ suggests that several restrictive practices harmful to women in recent times originated in circumstances of extreme resource inequality, polygyny, and hypergyny. Women to escape poverty married

⁴⁴ The Virgin and the State,” reprinted in Ortner 1996; Betzig 1986; Dickemann 1979, 1981

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men of affluent and deemed higher social strata. These rich and influential men demanded multiple female consorts, concubines and sometimes ranked marriages. They demanded fidelity of their consorts guarding them with eunuchs and imposed other additional fidelity-control practices. Varying from one civilization to another in China: Foot binding; in Southwest Asia: seclusion of women and very modest dress; in Africa clitoridectomy and infibulation in the Roman Mediterranean: a strong female honour and modesty code.

In his work⁴⁵ Gerry Mackie hypothesizes and compares the origin of FGM to that of Foot binding. Like the latter the former may have originated and evolved in the context of massive female slavery in a categorically stratified empire, where the emperor and selected elite nobles practised fidelity -control over their multiple female consorts. The higher the rank of the male the greater was the resource support that he could offer hence attracting more number of consorts. This in turn gave him greater control over the fidelity of his consorts leading to more females and families thus the greater the competition among families to guarantee the fidelity of their daughters.

When an emperor desired fidelity-control practice as a condition prerequisite to marriage or concubinage, the families of females in second and lower strata adopted the fidelity-control practice in order to move their

⁴⁵ Ending Footbinding and Infibulation,

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daughters into the emperor's palace. Women moving up to the first stratum created vacancies in the second, who in turn were filled from third and next lower strata whose families also adopted the fidelity-control practice. These practices were eventually adopted by families in progressively lower strata of society in order to enable their daughters to marry into higher strata, and became exaggerated over time by parents wishing to maximize the comparative value of their daughter. It was not enough to satisfy an efficient absolute standard; instead each family's women must be more chaste and faithful than the rest. Once the practice achieved a high concentration at each social stratum, in all but the poorest groups in society, competitive marriage markets compelled each family to subscribe to the exaggerated practice in order to marry even within one's own stratum. The practice became a conventional prerequisite for marriage.

Attitudes towards chastity and fidelity vary across groups that practice FGM. Some groups adhere to a strong female honour and modesty code, which might include infibulation, very modest dress, and honour killings; others have practical concerns of unmarried girls like avoiding pregnancy and spouses staying faithful; still others are concerned only with keeping up appearances.

In Northeast Africa, FGM tends to be found together with a strong female honour and modesty code. Among practicing communities elsewhere, the strong code is found in some, more often a weaker code linking the practice to chastity and fidelity is found, and, more rarely, the practice is

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simply a requirement for marriage ability having little to do with the values of chastity and fidelity. As soon as women believed that men would not marry an uncut woman, and that men believed that an uncut woman would not be a faithful wife, the marriage ability convention was locked in place. Given the widely endorsed desire for marriage and having one's own children, women would choose to be cut in order to be married and have their own children, and men would choose women who are cut for the same reasons. ⁴⁶

There certainly appears to be a link between FGM and slavery. Browne reported in 1799 that Egyptians practiced female circumcision and infibulation to prevent pregnancy in women and slaves. Egyptians raided and traded the Black south for slaves from dynastic to Byzantine times and Sudanese slaves were exported through the Red Sea to the Persian Gulf before the rise of *Islam*.⁴⁷ Other anthropologists believe that Female Genital Mutilation was practiced among Equatorial African herders to protect young female herders from being raped, or an “an outgrowth of human sacrificial practices, or some early attempt at population control”. Female Genital Mutilation is an entrenched practice today that occurs in the “African Sudanic belt” between the Tropic of Cancer and the Equator,

⁴⁶ Gerry Mackie, John LeJeune (2008), ‘Social Dynamics of Abandonment of Harmful Practices: A New Look at the Theory’, Innocenti Working Paper No. XXX. Florence, UNICEF Innocenti Research Centre.

⁴⁷ Ann-M Wilson, “How methods used to eliminate foot binding in China can be employed to eradicate female genital mutilation”, (Journal of Gender Studies (May 2012)

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from the West Atlantic Coast across to Egypt down to Kenya and Tanzania in East Africa. The practice is spread across wide cultures and it is suggested that the practice may have arisen independently among different groups. In some societies when new groups move into areas where the local population, they incorporate this practice in their lives.⁴⁸

Other scholars theorize that the practice spread across the routes of the slave trade, extending from the western shore of the Red Sea to the southern, western African regions, or spread from the Middle East to Africa via Arab traders. The practice was also implemented on female slaves in Ancient Rome, deterring recipients from coitus and subsequent pregnancy.

Some believe it started during the slave trade when black slave women entered ancient Arab societies. Some believe FGM began with the arrival of Islam in some parts of sub-Saharan Africa. Some believe the practice developed independently among certain ethnic groups in sub-Saharan Africa as part of puberty rites. Overall, in the history, it was believed that FGM would ensure women's virginity and reduction in the female desire. Many commentators believe that the practice evolved from earliest times in primitive communities that wished to establish control over the sexual behaviour of women. The Romans performed a technique involving slipping of rings through the labia majora of female slaves to prevent them

⁴⁸ Mackie, G, Ending "*Footbinding and infibulation: a convention account*", (American Sociological Review, 61 (6), 999-1017 (1996).

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from becoming pregnant and the *Scoptsi* sect in Russia performed FGM to ensure virginity. Philo of Alexandria made reference the practice stating "the Egyptians by the custom of their country circumcise the marriageable youth and maid in the fourteenth (year) of their age, when the male begins to get seed, and the female to have a menstrual flow."⁴⁹ Also mentioned briefly in a work of a Greek physician Galen wrote; "When the clitoris sticks out to a great extent in their young women, Egyptians consider it appropriate to cut it out". Another Greek physician, Aetius of Amida wrote a more detailed⁵⁰ description "the procedure was performed in case the clitoris, or nymphê, grew too large or triggered sexual desire when rubbing against clothing". On this account, it seemed proper to the Egyptians to remove it before it became greatly enlarged," Aetius wrote, "especially at that time when the girls were about to be marry.

Rosemarie Skaine mentions that there are archival documentations indicating a Greek papyrus to have recorded women to get circumcised while receiving dowries around approximately 163 BC. In fact, there are several Greek scholars mentioning its prevalence before the advent of Christianity. A Greek papyrus dated 163 B.C. mentioned the operation being performed on girls in Memphis, Egypt, at the age when they received their dowries, supporting theories that FGM originated as a form of initiation of young women.

Broadly, the practice is believed to have originated in Egypt where circumcised and infibulated mummies were found according to Frank P.

⁴⁹ *ibid*

⁵⁰ Account in book 16 of his Sixteen Books on Medicine, (The Gynecology and Obstetrics of the Sixth Century) citing the physician Philomenes.

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Hosken. Gradually, it spread around the contiguous areas of the Red Sea coast among the tribes through the Arabian traders. In Hanny Lightfoot-Klein's opinion, though the practice is believed to first have spread in the form of infibulation, clitoridectomy increasingly became the more acceptable form of FGC. During the Pharaonic era, the Egyptians believed in gods having bisexual features. Elizabeth Boyle recounts that these features were believed to reflect upon the mortals, with women's clitoris representing the masculine soul and men's prepuce that of the feminine soul. Thus, circumcision was considered to be a marker of womanhood and a way to detach from her masculine soul. As it became a socio-cultural norm, FGC became the utmost criteria for women's marriage, inheritance of property and social acceptance in ancient Egypt.

Lightfoot-Klein also suggests that population control was also one of the driving forces behind the practice as by controlling a woman's sexuality, it kept the woman's desires in check and made her sexually modest. Due to the narrowing of the vaginal orifice through infibulation, women would experience excruciating pain during sexual intercourse and thus, it becomes an effective measure to hinder premarital sex among women and ensure their fidelity. Boyle suggests the Egyptian practice of FGC and slavery can be correlated for providing an explanation of its origin. Before the advent of Islam, Egyptian rulers expanded their kingdom towards the southern region in search for slaves. As a result, Sudanic slaves were taken to Egypt and the areas nearby. Incidentally, slavery became commonplace with its aim to deliver servants and concubines to the Arabic world. As a result, women with stitched vaginas were in high

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demand due to the lessening possibilities that they would become impregnated. But after the arrival of Islam in the region, a strict prohibition towards enslaving, other Muslims allowed the practice to get extended to other parts of Africa when the slave traders introduced infibulation among the non-Muslims to raise women's value as slaves. This not only explains the introduction of FGC among North-African communities, but also explicates the coincidence of its spread in Africa simultaneous to the rise of Islam. In some cases, the practice has also sought its validation through Islamic scriptures. Scholars have also indicated the income-generating facet of the practice in the face of unavailability of alternative livelihoods for the individual circumcisers.

Egyptian mummies show women infibulated and this is supported by a Greek papyrus in the British Museum dated 163 BC. A Greek historian and geographer in the second-century BC reported that a group along the eastern coast of the Red Sea cut their women in "Egyptian style" and that another group "cut off in infancy with razors the whole portion that others circumcise". Curiously, today Female Genital Mutilation is referred to as "Pharaonic circumcisions" (i.e. Egyptian) in Sudan and "Sudanese circumcision" in Egypt. The geographical distribution suggests that the practice originated along the coasts of the Red Sea. Egyptian mummies show women infibulated⁵¹.

⁵¹ supported by a Greek papyrus in the British Museum dated 163 BC.

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According Mary Knight, the Spell 1117⁵² of the Ancient Egyptian Coffin Texts suggests reference in hieroglyphs to an uncircumcised girl. The Spell⁵³ was found on the sarcophagus of Hedjhotep,⁵⁴ Based on studies by Grafton Elliot Smith⁵⁵, it is suggested that the genital area may resemble Type III Female Genital Mutilation.⁵⁶Citing the Australian pathologist

⁵² (c. 1991–1786 BCE); Spell 1117 ; But if a man wants to know how to live, he should recite it [a magical spell] every day, after his flesh has been rubbed with the b3d [unknown substance] of an uncircumcised girl [‘m’t] and the flakes of skin [šnft] of an uncircumcised bald man — Inscription on Egyptian sarcophagus.

53 Adriaan Buck and Alan H. Gardiner, *The Egyptian Coffin Texts*, Volume 7, Chicago: Chicago University Press, 1961, 448–450.

C. G. Seligman, "Aspects of the Hamitic problems in the Anglo-Egyptian Sudan", *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 1913, 40(3) (593–705), 639–646. JSTOR 2843546

Esther K. Hicks, *Infibulation: Female Mutilation in Islamic Northeastern Africa*, Transaction Publishers, 1996, 19ff.

A Contribution to the Study of Mummification in Egypt, Cairo: L’Institut Egyptien, 1906, 30, and Marc Armand Ruffer, *Studies in the Paleopathology of Egypt*, Chicago: University of Chicago Press, 1921, 171.

⁵⁴ Hedjhotep was a minor ancient Egyptian deity, a god of fabrics and clothes

⁵⁵ an Australian-British anatomist, he traced the origins of many cultural and traditional practices across the world. An expert on brain anatomy, he was the first to study Egyptian mummies using radiological techniques

⁵⁶ *ibid*

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Grafton Elliot Smith, who examined hundreds of mummies in the early 20th century, Knight writes that the genital area may resemble Type III because during mummification the skin of the outer labia was pulled toward the anus to cover the pudendal cleft, possibly to prevent sexual violation. It was similarly not possible to determine whether Types I or II had been performed, because soft tissues had deteriorated or been removed by the embalmers.⁵⁷

While the term infibulation has its roots in ancient Rome, where female slaves had fibulae (broochs) pierced through their labia to prevent them from getting pregnant, a widespread assumption places the origins of female genital cutting in pharaonic Egypt. This would be supported by the contemporary term "pharaonic circumcision. Salima Ikram, professor of Egyptology at the American University in Cairo, has a different view: The definition, however, might be misleading. While there's evidence of male circumcision in Old Kingdom Egypt, there is none for female. This was not common practice in ancient Egypt. There is no physical evidence in mummies; abstract neither there is anything in the art or literature. It probably originated in sub-saharan Africa, and was adopted here later on.

Though immigration due to slave exportation and other reasons is considered to be one of the predominant forces behind the spread of FGC in the West, L. Amede Obiora claims it was also reportedly performed on western women, especially in the United States, even in

⁵⁷ Knight 2001, 331, citing G. Elliot Smith, *A Contribution to the Study of Mummification in Egypt*, , 1906, 30, and Marc Armand Ruffer, *Studies in the Paleopathology of Egypt*, Chicago: University of Chicago Press, 1921, 171.

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the 1950s as a cure to ‘unnatural female sexual behaviour’ that ranges from homosexuality, female masturbation to depression.

Many centuries later, 19th century gynaecologists in England and the United States would perform clitoridectomies to treat various psychological symptom as well as masturbation and nymphomania. The surgeries seen in Victorian England and America were generally based on a now discarded theory called reflex neurosis held that many disorders like depression and neurasthenia originated in genital inflammation. According to Gollaher the same theory was behind the medicalization of male circumcision in the late 19th century.

References to ‘genital altercations’ in the Western countries are also not unfamiliar. In fact, Obiora also mentions that there are accounts of an English gynaecologist Isaac Baker Brown expressing his clear endorsement of such altercations in the early 1800s. It is only relatively recently that FGM has been recognized internationally as a violation of the human rights of girls and women.

Some pictorial representations found in history are depicted as Figure 2.1, Figure 2.2, and Figure 2.3 as exhibits in Appendix 1

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2.2 Physiology and Medical Jurisprudence

2.2.1 Meaning and Physiology of Female Genital Mutilation

The Female Reproductive system is made up of internal organs and external structures. The anatomy includes parts inside and outside the body. The function of the external female reproductive structures or genitalia is twofold; one to enable sperm to enter the body and second to protect the internal genital organs from infections. The main external structures of the female reproductive system include (1) *Labia majora*: The labia majora encloses and protect the other external reproductive organs. The labia majora contain sweat and oil-secreting glands. (2) *Labia minora*: the labia minora can be very small or up to 2 inches wide. They lie just inside the labia majora, and surround the openings to the vagina and urethra (3) Bartholin glands: These glands are located beside the vaginal opening and produce a fluid (mucus) secretion. (4) Clitoris: The two labia minora meet at the clitoris, a small, sensitive protrusion covered by a fold of skin, called the prepuce. The internal reproductive organs in the female include: (1) Vagina: a canal that joins the cervix (the lower part of uterus) to the outside of the body. It also is known as the birth canal. (2) Uterus (womb): a hollow, pear-shaped organ that is the home to a developing fetus. The uterus is divided into two parts: the cervix, which is the lower part that opens into the vagina, and the main body of the uterus, called the corpus. A channel through the cervix allows sperm to enter and menstrual blood to exit. (3) Ovaries: small, oval-shaped glands located on either side of the uterus. The ovaries produce eggs and

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hormones. (4) Fallopian tubes: These are narrow tubes that are attached to the upper part of the uterus and serve as tunnels for the ova (egg cells) to travel from the ovaries to the uterus. Conception, the fertilization of an egg by a sperm, normally occurs in the fallopian tubes. Basic Anatomy depicted as exhibit Figure 2.2.1.1 in Appendix 1.

Female Genital Mutilation as the universally accepted meaning essentially includes procedures that include the partial or total removal of the external female genitalia for non-medical purposes⁵⁸. The Harvard Law Review provides a substantially similar definition of female circumcision which it describes as a “genital operation that entails incision removal of part of or all the female externa; genitalia.

The practice is also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafd*. Locally, *pagsunna*, *pag-islam* or *turi* are the common terms used to refer to the practice. Though interchangeable, *generally pertains to the* “circumcision” of women whereas *pag-islam* refers to the circumcision of men. In Arabic countries, it is called *tahur* or *tahara* which *translates* to purification.

Why the term "mutilation? By medical standards, that by removal of a healthy, normal organ from a human body when there is no medical or aesthetic reason to do so is a mutilation. The terminology applied to this procedure has

⁵⁸ [http://www.who.int/mediacentre](http://www.who.int/mediacentre;); (Factsheets/fs241)

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undergone a series of evolutions. When the practice first came to be known outside the conventional societies in which it was traditionally carried out, it was generally referred to as “female circumcision”. This term, however, draws a direct parallel with male circumcision and, as a result, creates confusion between these two distinct practices.

The expression “Female Genital Mutilation” gained growing support in the late 1970s. The word “mutilation” not only establishes a clear linguistic distinction with male circumcision, but also, due to its strong negative connotations, emphasizes the gravity of the act. In 1990, this term was adopted at the third conference of the Inter African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) in Addis Ababa. ⁵⁹In 1991, WHO recommended that the United Nations adopt this terminology and subsequently, it has been widely used in UN documents. The use of the word “mutilation” reinforces the idea that this practice is a violation of girls’ and women’s human rights, and thereby helps promote national and international advocacy towards its abandonment. Local languages generally use the less judgmental “cutting” to describe the practice; parents understandably resent the suggestion that they are “mutilating” their daughters.

⁵⁹ Cook, Rebecca J.; Bernard M. Dickens, Mahmoud F. Fathalla (2003). *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law*. Oxford University Press. p. 262.

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In this spirit, in 1999, the UN Special Rapporteur on Traditional Practices called for tact and patience regarding activities in this area and drew attention to the risk of “demonizing” certain cultures, religions and communities.⁶⁰As a result, the term “cutting” has increasingly come to be used to avoid alienating communities.

What should the practice be called and what does it include? Kymlicka discusses the practice of “clitoridectomy”. Parekh prefers “female circumcision”. Meanwhile Cook et al opt for female genital cutting (FGC), claiming that the prior two options are too narrow to be true definitions and that FGM carries such judgmental and negative connotations as to be highly offensive to the women who have undergone the procedure. This inability to provide a precise name for the practice is indicative of the perplexity which surrounds it and in part arises from the range of practices that are covered by this broad term.⁶¹

Different terms are used to describe female genital surgery. The procedures were commonly referred to as female circumcision, but the terms female genital mutilation (FGM) and female genital cutting (FGC) are now dominant throughout the international community. Opponents of the practice often use the term female genital mutilation, whereas groups that oppose the stigma of the word “mutilation” prefer to use the term female genital cutting. A few organizations have started using the combined term female genital mutilation/cutting (FGM/C).Several

⁶⁰ *ibid*

⁶¹ Sarah Long, *Multiculturalism and Female Genital Mutilation*, 2004 UCL Jurisprudence Rev. 169 (2004).

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dictionaries, including medical dictionaries, define the word circumcision as applicable to procedures performed on females. Morison et al. state that female circumcision is a commonly used term for the procedures.⁶² Cook states that historically, the term female circumcision was used, but that “this procedure in whatever form it is practiced is not at all analogous to male circumcision. ”Shell-Duncan states that the term female circumcision is a euphemism for a variety of procedures for altering the female genitalia.⁶³

Toubia argues that the term female circumcision “implies a fallacious analogy to non-mutilating male circumcision”.⁶⁴

⁶² Morison, Linda *The long-term reproductive health consequences of female genital cutting in rural Gambia: a community-based survey*, *Tropical Medicine and International Health*, 6(8),643-653, (2001).

⁶³ Shell-Duncan, Bettina “*The medicalization of female circumcision harm reduction or promotion of a dangerous practice*”, *Social Science; Medicine* 52 (7): 1013–1028. (April 2001).

⁶⁴ Toubia, N “Female Genital Mutilation”. in Peters, J; Wolper, A. *Women’s Rights, Human Rights: International Feminist Perspectives*. New York: Routledge. p. 226, (1995).

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FGM, as defined by the World Health Organization (WHO) pertains to a whole gamut of procedures which remove, partially or completely the external female genitalia or which cause any other injury to the same for “cultural or other non –therapeutic reason”⁶⁵.The WHO classifies FGM into four types and they are as follows⁶⁶:

- (1) Clitoridectomy - partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and in very rare cases only or the prepuce (the fold of skin surrounding the clitoris)⁶⁷

- (2) Excision- partial or total of the clitoris and the labia minora with or without excision of the labia majora (the labia are “the lips” that surround the vagina)

- (3) Infibulation- narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner or outer with or without removal of the clitoris.

- (4) Other kinds -all other harmful procedures to the female genitalia for non-medical purposes, for e.g.; pricking, piercing, incising, scraping and cauterizing the genital area.

Process depicted as exhibit Figure 2.2.1.2, Tools depicted as Figure 2.2.1.3 Appendix 1

⁶⁵ Supra

⁶⁶ As defined by the World Health Organization, in WHO/UNICEF/UNFPA Joint Statement, 1997; <http://www.who.int/mediacentre/>; (Factsheets/fs241)

⁶⁷ bid

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The age at which FGM is performed varies: it could be done at any time between a few months old until puberty, on the first wedding night, or even during the delivery of the first baby. The practice is mostly carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence (around 15 years) and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and increase in consequential complexities, in exceptional cases health professionals are also involved in the process; the preference though in majority of cases being the traditional circumcisers. “Early in the morning in a spot that faces the *kibla* or sunrise, a pubertal girl is accompanied by a female guardian, usually her mother to a *Kah Dayang* a person performing female circumcision, usually a community elder. The *Kah Dayang* will pour water onto the girl’s head and simultaneously whisper a *tawal* or prayer to the girl’s ear.⁶⁸ Later, the *Kah Dayang* and the girl will enter the *luku* or a white curtain to keep what is about to place out of sight. With a knife, the *Kah Dayang* will repeatedly scrape the girl’s labia majora. As soon as the labia majora reddens, a wad of cotton will be placed on the scraped area. The *Kah Dayang* will utter another *tawal* or prayer. The female guardian will then fold the *luku* very neatly as how well it is folded and will determine the kind of life the girl will have in the future. The girl will then blow a candle to drive away the bad spirits, while the female guardian will give a *sadaqqa* or alm to the *Kah Dayang*. After two hours the *Kah Dayang* will ask the female guardian to remove the wad of cotton and keep it. Another *tawal* or prayer will be uttered to mark the end of the ceremony”.⁶⁹

⁶⁸supra

⁶⁹ supra

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In the Bohra community, khatna is equivalent to Type 1 or Type 4 FGM as classified by the World Health Organization. The actual practice, as described in the Bohra religious texts, is the removal of the prepuce tissue from the clitoris. This piece of tissue is sometimes termed “haram ki boti”, meaning “immoral lump of flesh”. The prepuce tissue is a covering that protects the clitoris from abrasion so its removal can render the woman oversensitive during intercourse.

2.2.2 Impact of the practice of of Female Genital Mutilation on Health and role of Health Professionals

The practice of FGM results in multiple short and long term complications.⁷⁰ The health consequences of FGM can be considerable and serious. Statistical material regarding the medical complications is quite scarce. Among the reasons for this is the fact that only a relatively small amount of medical research is carried out generally in the countries where FGM predominates. The medical statistics and patient registers are practically non-existent in the countries concerned. This makes research on the matter difficult⁷¹

Cutner (1985)⁷² estimates that only 15-20% of complications ever come to the attention of trained medical personnel. The reasons for this may be that health care facilities are not available, that circumcisers try to handle

⁷⁰ Female genital mutilation. Maria Kontoyannis and Christos Katsetos; Health Science Journal Volume 4 issue 1 (2010).

⁷¹ Kirsten Lee, Female Genital Mutilation - Medical Aspects and the Rights of Children, 2 Int'l J. Child. Rts. 35 1994).

⁷² supra

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complications of their work themselves, as well as ignorance. Precise figures do not exist as studies by and large are retrospective questionnaire studies or hospital based studies. El Dareer (1983) points out that women may be unwilling to admit to having had complications and not accustomed to discussing their sexuality. The possible complications are dependent on several factors like type of circumcision performed, the expertise of the circumciser, the hygiene conditions under which the operation was conducted and the health of the child circumcised at the time of the operation. The practice is carried out secretly and in most cases takes place on a floor, table, bed or the ground.

Hence hygiene of the place is of paramount importance and a significant factor leading to complications. The experience of the midwife and the tools used for circumcision also play a significant role. The cutting is often done with glass, razor blades or knives and thread is used for sewing. The tools may not be sterilized between cuttings resulting in severe infections leading to complications that may sometimes result in loss of life. The overall health of the girl circumcised is of paramount importance. Girls with lower immunity, lower hemoglobin levels, infirmity, hormonal issues may develop greater complications.

In rural parts of Africa the operation takes place in poor conditions with poor lighting, using the same instrument from girl to girl, increasing the concern for the possible spread of HIV. The instrument could be a broken neck of a bottle or a kitchen knife, which might not work effectively so

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the operator would have to repeat the cut times again ⁷³ On most occasions the procedure is carried out by use of unsterilized crude tools by traditional circumcisers with no specialized knowledge.

The procedure has no proven health benefits for women; rather it interferes with the natural hormonal balances and physiology of a female body. The immediate complications include severe pain, excessive bleeding genital tissue sometimes as severe as causing death.

Female genital mutilation has immediate short term, long term and sometimes deadly health consequences. Complications of FGM depend on its degree, higher degrees of FGM present more severe are the complication. Studies have reported multiple physical complications for the circumcised women. Possible complications include bleeding, urine retention, urinary infection, genital swelling, bacterial vaginosis, dyspareunia, prolonged labor, cesarean section, dystocia, severe pain, shock, sepsis, death, unwanted welding of the labia, surgical interventions for reopening the vagina, chronic anemia due to repeated surgeries for the opening of the vagina, formation of keloid tissue that can lead to severe pain, dermoid cyst and abscess, painful menstruation due to the retention of menstrual blood, dysuria, urinary incontinence, weak urine stream, hematocolpos, genital ulcers, chronic pelvic and low back pain due to chronic infections, urinary and genital tract infection, abscess formation, septicemia, hepatitis and HIV infection. Factors such as bleeding during

⁷³ Momoh C. Attitudes to female genital mutilation. *British Journal of Midwifery*, Vol 12. Iss 10. p.p 631-635 (2004).

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repair surgery, trauma during intercourse, anal intercourse because of inability for vaginal intercourse and opening the birth canal by non-sterile equipment can put women at risk of HIV infection. Uterine and ovarian infections may cause infertility. Fractures of the clavicle, femur or humerus can occur when the girl tries to defend herself. Pain, swelling, infection, injury, damage to the urethra and dysuria cause urinary problems in many girls and urinary retention leads to chronic urinary tract infection.”⁷⁴. Removal of sensitive tissues such as clitoris, pain, scar tissue formation and the traumatic memories associated with genital mutilation and can lead to sexual dysfunction. FGM and intimate partner violence, domestic violence in circumcised women is 2.7 times more than other women. A study conducted by the World Health Organization on 28000 circumcised women in six African countries showed that obstetric complications, post-partum hemorrhage and cesarean rates were higher in women undergone genital mutilation, also death rates among babies during and immediately after birth were higher for those born to mothers who had undergone genital mutilation compared to those who had not. The maternal mortality rate is high in Somalia and Djibouti where female genital mutilation is more prevalent

⁷⁴ supra

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The mortality rate is not properly assessed but according to WHO, it is estimated to be 10% of the affected population. According to associated myths and supernatural beliefs, if a girl dies during the operation it would be because she has done something wrong in the past and she is being punished⁷⁵. A study in Sudan on 225 circumcised girls aged 4 – 9 years revealed that the girls with the narrowed vulvar opening were more likely to have urinary tract infection, especially those who were under the age of 7 years, but only 7% of girls who had infection reported urinary symptoms, 73% of circumcised girls stated that they had been hospitalized after circumcision for 1 week.

The impact is not alone restricted to the physical aspects, the consequences are also psychological and emotional in nature. Depression, anxiety, post-traumatic stress disorder and low self-esteem, are some common ailments. The victim suffers from several psychological disorders. According to the World Health Organization the immediate psychological trauma may stem from the pain, shock and the use of physical force by those performing the process. In the long term, post-traumatic stress disorder (PTSD), anxiety, depression and memory loss may occur along with depressed mood, reduced social functioning, worthlessness, guilt, and even suicidal ideation.

The psychological trauma that women experience often stays with them for the rest of their lives. Women and girls may experience cognitive

⁷⁵ Archives of Iranian Medicine , Volume 19, Number 11, November 2016 808 Socioeconomic and Reproductive Health Outcomes of FGM

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dissonance. The women who have undergone Female Genital Mutilation are more likely to experience painful intercourse, reduced sexual satisfaction and reduced sexual desire. Some survivors experience a sense of betrayal by someone emotionally close to them. In the long term, there may be behavioral disturbances as a result of the childhood trauma and possible loss of trust and confidence.

The mental health consequences are not diminished by the practice being culturally embedded.⁷⁶ Complications which cause the death of the young girls are considered to be a common occurrence especially in rural areas where health services do not exist (Dirie and Lindmark 1992). Precise figures are non-existent.

Studies in Africa show that one out of six circumcised women suffer from post-traumatic stress disorder. Another study in Senegal showed that 90% of circumcised women described the practice as a traumatic experience, and 80% of them experienced intense fear or emotional disorders after FGM.⁷⁷

⁷⁶ Female Genital Mutilation: A practical guide for health visitors and school nurses;(BETSY ALLEN MSc, Dip HV, RGN, on behalf of the School and Public Health Nurses Association on behalf of the Community Practitioners and Health Visitors Association)

⁷⁷ Refaei , Aghababaei , Pourreza , Masoumi . Socioeconomic and reproductive health outcomes of female genital mutilation. Arch Iran Med.; 19(11): 805 – 81 (2016)

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For the health professionals dealing with these women it is important⁷⁸ to consider the effects during pregnancy and childbirth. The excision scars could lead to obstructed labour that could result in brain damage or death of the baby. In cases of infibulation unassisted childbirth is impossible. It is understandable that not all women who undergo FGM suffer the same problems. Some may be affected more than others. It is important to have a full understanding of the emotional and physical state of the woman during pregnancy, childbirth and postnatal period. This is a difficult task as not all women are open about their experience and especially to a stranger. Pregnancy is a developmental crisis in a woman's life. Her psychological status is based on several factors, including her past, the way she views herself and her ability to cope with stress. Some women might seek little or no prenatal care while

others will be keen in seeking support and advice. For women who have undergone FGM, birth can recall or re-enact previous violations of her body because the anatomy involved in childbirth is the same anatomy involved in the procedure of FGM⁷⁹.

⁷⁸ Female genital mutilation Maria Kontoyanni 4, ISSUE 1 WWW.HSJ.GR – HEALTH SCIENCE JOURNAL; pp:31-36 (2010);

⁷⁹ *ibid*

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2.3 Geographical Extent and Prevalence of Female Genital Mutilation

Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Also called as the Tayyabi Mustaili Ismaili sect under Islam the community is found in the western cities of India and also in Pakistan, East Africa and Yemen. In India, most of the Bohras live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana. That the Dawoodi Bohras are a sect amongst shia muslims and are also referred as Tayyabi Mustaili Ismaili sect under the islam. They are traders and a business community reputed to be wealthy, progressive and closely knit and mainly reside in the western cities of India and also in Pakistan, East Africa and Yemen. The main language of the community is 'Lisanud - Dawar', a dialect of Gujarati with inclusions from Arabic, urdu and other languages and the script they use is Persian Arabic.

The Bohras are a small close-knit sect of Shia Ismaili Muslims based primarily in Gujarat, India with a diaspora community in many countries, such as the US, Canada, Australia and in countries in Europe and Africa. The Bohra population has been estimated to be about 1.5 million total worldwide.

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There are several types of Bohra: Dawoodi, Suleimani and Alvi, with the Dawoodi Bohras being the largest group.

Approximately two hundred million women across thirty countries have undergone Female Genital Mutilation⁸⁰. There are an estimated 3 million girls at risk of undergoing female genital mutilation every year. The majority of girls are cut before they turn 15.

The prevalence of female genital mutilation has been estimated from large-scale, national surveys asking women aged 15–49 years if they have themselves or their daughters have been cut. Considerable variations have been found between the countries, with prevalence rates over 80% in eight countries. Moreover, the prevalence varies among regions within countries, with ethnicity being the most influential factor⁸¹.

⁸⁰ <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

⁸¹ United Nations Children's Fund, *Female Genital Mutilation/Cutting: A global concern*, UNICEF, New York, 2016.

United Nations Children's Fund, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change*, UNICEF, New York, 2013

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The prevalence of FGC varies from nation to nation, and even within a nation some areas may have never heard of FGC, whereas in other areas FGC is performed on 90% of girls (Figure 2). Type I is practiced mostly in Ethiopia, Eritrea, and Kenya. Type II is performed in parts of West Africa, such as Benin, Sierra Leone, Gambia, and Guinea. Somali, Northern Sudanese, and Djibouti women undergo type III FGC.⁴ The Northern Nigerians perform type

IV by introducing corrosive material in the vagina (known as *gishiri*) or scraping the vaginal orifice (known as *angurya*).⁸²

While the exact number of girls and women across the world who have undergone the practice remains unknown, Approximately two hundred million women across thirty countries have been cut in 30 countries with representative data on prevalence as below (categorically the percentage being different in different countries). Geographical distribution depicted as Figure 2.3.1, Appendix 1

Though carried out in secrecy, lesser reported cases and distorted data on prevalence the existence of the practice cannot be ignored.

⁸² supra

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Certain data⁸³ available on the prevalence are as below:

(a) “Percentage of girls who have undergone FGM(as reported by their mothers, by place of residence and household wealth quintile⁸⁴ (Figure 2.3.2, Appendix 3)

(b) Percentage of girls and women aged 15-49 years who have undergone FGM by place of residence and household wealth quintile (Figure 2.3.3, Appendix 3)

(c) (c) Percentage of girls and women aged 15 to 49 who have undergone FGM⁸⁵(Figure 2.3.4, Appendix 3)

Percentage of girls aged 15 to 19 who have undergone FGM in 30 countries with nationally representative prevalence data ⁸⁶(Figure 2.3.5, Appendix 3)

(d) (e) Percentage of girls and women aged 15 to 49 who have heard about FGM and think the practice should end⁸⁷(Figure 2.3.6, Appendix 3)”⁸⁸

⁸³ <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

⁸⁴ ibid

⁸⁵ ibid

⁸⁶ ibid

⁸⁸ ibid

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The Nationally representative data on FGM/C as indicated above are mainly available from two sources “(i) Demographic and Health Surveys (DHS) and (ii) Multiple Indicator Cluster Surveys (MICS). In some countries where the practice exists data has been collected through other nationally representative household surveys. A module on FGM/C was developed for the first time for the 1989–1990 DHS conducted in the northern part of what was then known as Sudan. Further modified and included in DHS for 23 countries. The first module on FGM/C was included in the 2000 MICS in the Central African Republic, Chad and Sudan. The third and fourth rounds of MICS (mainly conducted in 2005–2006 and in 2009–2011) generated updated FGM/C data from 16 countries, including 7 with no prior data (Djibouti, the Gambia, Guinea-Bissau, Iraq, Sierra Leone, Somalia and Togo). Over the last years UNICEF and ICF International have worked closely to standardize survey questions on FGM/C used in DHS and MICS.”⁸⁹

The first indicator for measuring FGM/C prevalence is the percentage of girls and women of reproductive age (15 to 49) who have experienced any form of the practice. This is derived from self-reports. Typically, girls and women are also asked about the type of FGM/C performed, at what age they were cut and by whom. Most surveys include additional questions

⁸⁹ <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

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related to attitude of women and in some cases men regarding the practice. In most surveys, eligible respondents are all girls and women aged 15 to 49. Exceptions include Egypt (DHS in 1995, 2000, 2003 and 2005), Sudan (DHS 1989–1990) and Yemen (DHS 1997), where the sample of respondents includes only girls and women aged 15 to 49 who have ever been married.⁹⁰

The second indicator used to report on the practice measures the extent of cutting among daughters of girls and women of reproductive age (15 to 49). In surveys up to 1999, female respondents who had at least one living daughter were asked about their eldest daughter: whether she was cut, the age at which FGM/C was performed, the type of FGM/C carried out and the person who did it. If the eldest daughter was reportedly not cut, respondents were asked if they intended to have their daughter cut. Starting in 1999, rather than asking about the eldest daughter, DHS and MICS began asking respondents whether any of their daughters had undergone FGM/C and, if so, how many of their daughters had been cut. This was followed by questions about the procedure (type, age at cutting and practitioner) for the daughter most recently cut.

⁹⁰ Ibid

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Survey data on the FGM/C status of only one daughter cannot be used to estimate the prevalence of FGM/C among girls under age 15. To address this limitation, MICS and DHS in 2010 introduced changes in the standard methodology used to collect information on FGM/C among daughters. The new module asks all girls and women aged 15 to 49 about the FGM/C status of all of their daughters under age 15. As a result, prevalence estimates can be obtained for girls aged 0 to 14. A key point to be kept in mind is that the prevalence data for girls aged 0 to 14 reflect their current, but not final,

FGM/C status, since some girls who have not been cut may still be at risk of experiencing the practice once they reach the customary age. Therefore, the data on prevalence for girls under age 15 is actually an underestimation of the true extent of the practice. Since age at cutting varies among settings, the amount of underestimation also varies. This should be kept in mind when interpreting all FGM/C prevalence data for this age group. Prevalence data on girls aged 0 to 14 can be used to assess the impact of recent efforts to end FGM/C since this is the age group most recently cut or at imminent risk of being cut.

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2.4 Rationale for Female Genital Mutilation: Myths and Realities; the support group and the protesters

The practice of Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The reasons for practice and propagation vary from region to region. The rationale behind the practice can be divided into two broad categories; religious and non-religious. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. The *Quran* does not specifically mention Female Genital Mutilation or even Circumcision but the subject appears in the *Sunnah* where according to Annie Marie Schimmel a lesser known *Hadith* addresses the practice. This *Hadith* says that *Muhammad* suggests excision is allowed but must not be overdone. A more limited cutting brings more radiance to the face and is better for the husband. The hadith from the *Sunan Abu Dawood* collection states: "A woman used to perform circumcision in *Medina*. The *Prophet* said to her: Do not cut severely as that is better for a woman and more desirable for a husband." According to scholars⁹¹ not all *Hadith* are considered reliable. They describe this hadith as poor in authenticity, obscure and as a result of distorted chain of transmission. The practice is praised in a few *da'if*⁹² hadith as noble but not required⁹³

⁹¹ Ahmad Bayhaqi, Ibn Hajar al-Asqalani,, Doriane. L.Coleman

⁹² Ibn al-Salah said, "A *hadith*, according to its specialists, is divided into *ṣaḥīḥ* ("authentic"), *ḥasan* and *ḍa'if* (weak)

⁹³ Asmani, Ibrahim Lethome; Abdi, Maryam Sheikh, *De-linking Female Genital Mutilation/Cutting from Islam. Frontiers in Reproductive Health, United States Agency for International Development (USAID)*. pp. (1–28), 6–13. (2008).

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The various schools of Islamic jurisprudence have expressed divergent views. The *Maliki*, *Hanafi* and *Hanbali* schools of *Islamic* jurisprudence categorize the practice as *Makrama*⁹⁴ for women while the *Shafi* school as *Wajib*⁹⁵. Some Egyptian scholars also state that the practice is not endorsed by Islamic jurisprudence.⁹⁶ Christian religious authorities endorse that the practice has no mention in the Bible or other teaching. The Kenya Missionary Council called it as "sexual mutilation of women". In spite of no mention within Christian communities in Ethiopian, Egypt, Kenya, Nigeria, Sudan and Tanzania do undergo the practice.

The practice is not protected under what constitutes an essential part of a religion as in Article 25 of the Constitution.⁹⁷ Article 25 of the Constitution of India provides that subject to public order, health, and morality and other provisions of fundamental rights, every person has the freedom of conscience and right to freely profess, practice and propagate religion.

⁹⁴ noble", as opposed to obligatory

⁹⁵ *ibid*

⁹⁶ Mohammed Emara and Mohammad Salim Al-Awa

⁹⁷ *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt.*, test laid down says essential practices will be ascertained with reference to the tenets and doctrines of that religion itself

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However there are two exceptions to this generality, first being that the State can regulate any secular activity which is associated with such religious practice and secondly, that State can take measures to throw open Hindu religious institutions of public character to all classes and sections of Hindus, which are to include Buddhists, Sikhs and Jains. What constitutes essential religious practice is a question that arises in case there is a conflict of Article 25 with other fundamental rights or existing laws. The test means that any religious practice which forms the basis or is so essential to that religion that it will fall within the purview of protection under Article 25 and 26 and should be protected as such and any other activity will be covered in exceptions to the right to religion. There are certain exceptions which are given in the Constitution itself like economic, political, and financial. However, certain other can or cannot fall in other secular activities. An essential practice for the religion would be any practice without which the substratum of the religion would fail, any other activity will not be essential religious practice. The subject of women and the family in Islam is debatable and difficult, fraught with stereotypes and misconceptions fostered by the existence of certain practices depicting women in an inferior role. A search for the causes shows that such a situation reflects neither the original spirit nor content of the Qur'an "Many of the social and legal practices perpetuating women's low status actually developed through the influence of social Once these customs infiltrated' Islamic culture and then became accepted as norms, they were naturally identified with Islam. And once identified with Islam, they were viewed as unchanging if not sacrosanct social standards."⁹⁸

⁹⁸ Women Rights in Islam, <https://www.jstor.org/stable/20846947>

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Religions such as Islam or Christianity do not per se endorse the continuation of the practice. Women are told that the practice has religious justification and therefore they had to do it if they wanted to be good Muslim women. The traditions and beliefs have continued to be stronger in most African regions and many have become strict followers of their cultures, which is one of the reasons why the practice is still practiced. Many girls are mutilated in the rural areas compared to those in urban areas; the main reason identified being their illiteracy, lack of awareness and the desire to please elders and God. For instance in some parts of the world where the Islamic believers are, the leaders are arguing that FGM should not be practiced because it is altering Gods creation, while in some parts they are supporting the practice according to the interpretation of various leaders from the Koran. Christians have also spoken about the practice both in the churches and in seminars organized for both women and young girls to teach them about the negative effects of female genital mutilation. However, with some Christians, the practice has remained part of the tradition that they feel should be continued. According to the participants, those who are from Islamic religion had different perception about the practice compared to Christians.⁹⁹

Non- religious reasons include cultural and other societal customs and acceptances Different communities and cultures have different reasons for practicing FGM/C. These reasons are often complex and can change over time; social acceptability being the most common.

⁹⁹ Karhu Rose Kerubo. *Female Genital Mutilation and its effects on women and young girls*. Järvepää Autumn 2010.

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The social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong motivation to continue this practice. It is considered as a necessary part of raising a girl child and preparing her to play the role of a good woman in adulthood. There are multiple reasons that encourage this practice. Firstly it is believed that Female Genital Mutilation would ensure the virginity of the woman.¹⁰⁰ The act is believed to curb a woman's libido¹⁰¹, hence ensuring both maintenance of chastity and prevention of infidelity on the institution of marriage. The practice is also believed to increase sexual pleasure for a man and increase chances of fertility hence fulfilling other demands of matrimony by way of procreation and keeping her husband happy; hence the touchstone of what is accepted sexual behavior of a woman pre and post her marriage in society. The practice would ensure the daughter is considered a better candidate or rather more worthy of being married to when looking for a groom. Apart from the social implications there are also significant economic aspects involved. The parents of such girls are burdened less with demands for dowry. Another vague belief was that such practice would prevent the clitoris from growing long like a male genital. The practice is encouraged in the name of cultural heritage and as essential to the stepping into womanhood.

¹⁰⁰ Virginity is the state of a person who has never engaged in sexual intercourse

¹⁰¹ Sexual urges

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In some countries, FGM/C is a part of the rite of passage ritual that a girl goes through to be considered a woman.¹⁰² Rites of passage usually involve ritual activities and teachings designed to strip individuals of their original roles and prepare them for new roles. Certain ceremonies that mark the transition period in the life of a person such as birth, puberty, marriage, having children and death essentially form these rituals. Alternative Rites of Passage (ARP) are touted by NGOs and international donors as an alternative to female initiation into womanhood, but without female genital mutilation/cutting (FGM/FGC). They are becoming increasingly popular in Kenya, and with donors funding global campaigns against FGM. More than 10,000 girls have gone through an Alternative Rite of Passage ceremony since the first one in 2009.¹⁰³ ARP may be understood as a newly-invented ritual that aims to replicate aspects of traditional initiation. The process incorporates pick-and-mix notions of the past, culture, social transformation and tradition as being incorporated into a hybrid ritual that depicts development and modernity, essentially a safe alternative.

¹⁰² Robin M. Maher, *Female Genital Mutilation*, 1 *Best ABA Sec.: Gen. Prac., Solo & Small Firm Sec. 32* (1997)

¹⁰³ *Ibid*

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The female genitalia considered as unappealing to the eye and unclean. The practice claims to be beneficial in maintaining hygiene and aesthetic of the female genitalia. It promises to protect family honour, preserve pure familial lineage and provide economic security to the woman.

Some authors cited below that explain some reasons that the practice has existed and continues to thrive even today. “According to Lewis D culture can be defined as particular people’s beliefs that are value orientation and value system, which give meaning, logic and significance to their existence and experience in relation to both the universe and other human beings. Momoh points out that in societies that practice female genital mutilation, cultural elements such as behavioral norms, religious and particular beliefs are present. The women when asked, why female genital mutilation was practiced in their community cited reasons that include faithfulness to one future husband. It is believed in those communities that that cutting the hood of the clitoris of a woman can diminish the sexual needs of the woman. Womanhood, once a girl undergoes female genital mutilation she is considered moving from childhood to adulthood and being able to bear children and have a husband. Men are allowed to visit the family of the girl who has undergone mutilation in the hopes of marriage while in the case of those who are not mutilated is vice-versa. Young girls chose to be mutilated to avoid social pressure from their peers, rejection from the community, name-calling and receiving presents from their parents. “Cleanliness” and “beautiful” were mentioned as cultural beliefs that support the continuation of FGM. Removal of the clitoris was considered as maintaining feminine by taking away the clitoris that many believe will grow and resemble the penis if it is not cut. Total removal of the clitoris and making it smooth is beautiful with some

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women. Birth reasons, the researcher found out that the girls believed what they were told with their elders that if a girl is not mutilated, when she gives birth and the baby's head touches the clitoris it would die, and so they chose to be mutilated out of fear. Maintenance of tradition, the enhancement of fertility, fulfilment of religious requirements, promotion of social and political cohesion, prevention of promiscuity, promotion of female hygiene and the preservation of virginity, are the main reasons given by the proponents of the practice by (Hosken 1982)."¹⁰⁴It was used in Victorian England to treat psychological disorders and to prevent masturbation¹⁰⁵

"It was once an initiation into adulthood, but now performed even at a younger age younger age and has little to do with initiation rites. The role and status of women is the issue at the heart of the practice. In the present day it is an essential social passport for those women who undergo genital mutilation. Their only support is from their own community. Female practice genital mutilation confers full social acceptability upon the females and integration into the community. It is a prerequisite to being accepted as a member of their ethnic group. Wilson (1993) argues that this leaves the girls in an unjust position of having to jeopardize either their right to health and bodily integrity or the esteemed privilege of social acceptance."¹⁰⁶

¹⁰⁴ supra

¹⁰⁵ supra

¹⁰⁶ ibid

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The operation ensures virginity before marriage and fidelity by suppressing the women's sexuality; a non-excised girl has no chance of marriage and may be seen as promiscuous. Other beliefs are that female genitalia are unclean, and that the clitoris is a 'male' organ and must be excised to make the child wholly female. Although these reasons may be easily argued against, the custom continues to be perpetuated, explained by Dorkenoo & Hedley (1992) to be due male dominance, financial gain for the practitioners, female spite, poor health education and suspicion of Western influences.

Black & Debelle ¹⁰⁷ contend that the operation is: 'an exercise in male supremacy and the oppression of women'. The strongest proponents of the practice are its victims, including the older women who continue to perpetrate the practice. These women have been labelled the 'token torturers' who assist in maintaining the patriarchal culture (Daly 1991). Men remove themselves from the issue by not taking part in the operation, but it is the attitude of men that serves to maintain the practice, necessitating circumcision for social acceptance.

“Religion Female circumcision is not required by any formal religious doctrine; therefore religious texts such as the bible cannot be cited in verification of this claim.

¹⁰⁷ supra

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The Koran is often given as justification, although Islamic theology has no evidence that the practice is based on religious doctrine and the practice predates Islam (Brooks 1995). It may be concluded that female genital mutilation is therefore a form of social control of girls and women (El Saadawi 1980)¹⁰⁸. The pinch of skin reality is however different. The practice affects negatively the physical and mental health of women which may last throughout their lives sometimes even leading to death. The practice of Female Genital Mutilation has been a subject of intense debate based on above myths and realities with one group supporting its ban and the promoting the practice both at international and national levels.

In 1997 WHO issued a joint statement against the practice of together with the United Nations Population Fund and the United Nations Children's Fund. With revised frameworks and increased support to ban the practice the numbers have but the practice still persists significantly. In 2007 a Joint Programme on Female Genital Mutilation/Cutting was initiated to fight the practice. In 2008 WHO and 9 other United Nations partners, issued a statement called: "Eliminating female genital mutilation: an interagency statement" providing evidence of the existence of the practice over the past decade. In 2010 WHO published a global strategy to stop health care providers from carrying out the practice. In December 2012, the UN General Assembly adopted a resolution on the elimination of female genital mutilation. Building on a previous report from 2013, in 2016 UNICEF launched an updated report documenting the prevalence of FGM in 30 countries, as well as beliefs, attitudes, trends, and programmatic and policy responses to the practice

¹⁰⁸ Susan Hopkins, *A discussion of the legal aspects of female genital mutilation*, *Journal of Advanced Nursing*, 30(4), 926-933, (1999).

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globally. In May 2016 WHO with UNFPA-UNICEF joint programme launched the first evidence-based guidelines on the management of health complication arising because of the practice. There are several organizations across the globe that dedicatedly works towards the cause of Female Genital Mutilation. Too Many a charity in England and Wales was established in 2010 by Dr Ann-Marie Wilson to undertake research and provide knowledge and tools to those working to end the practice in the countries of Africa. The charity effects change by collating and interpreting data guiding influencers and equipping local organizations and communities. The United Nations and European Union Spotlight initiative responds to all forms of violence against women with focus on sexual and gender-based violence and harmful practices. Daughters of Eve another organization aims is to support, advise, advocate and empower young people who have or may not have experienced the practice of to end all gender-based violence, particularly FGM. The End FGM European network (END FGM) is a European umbrella network of 19 organizations working to ensure sustainable European action to end the practice. FGM.net is an Austrian initiative of over 30 national and international founding organizations to advocate against all types of FGM. Similar group FGM National Clinical Group is a UK-based registered charity conceived in 2007, working with women who have been affected by the practice. Global Alliance Against FGM is a specialized consulting organization based in St. Jeanne de Gonville, France and Geneva, Switzerland and is accredited by the United Nations. They use music, culture and arts to advocate and support educational project training and research. FORWARD works in the UK, Europe and Africa through direct community engagement, advocacy and strategic partnerships to safeguard women against the practice of Female Genital

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Mutilation. The objective of GAMS Belgium is to contribute to the abandonment of female genital mutilation in Belgium and worldwide. Desert Flower Foundation was founded by former supermodel Waris Dirie committed to ending FGM. Waris Dirie was subjected to FGM herself at the age of 5. The Foundation seeks to raise awareness of FGM by providing educational workshops, organizing fundraising events and supporting victims. Some significant activists that work toward the cause are Dr Ann-Marie Wilson¹⁰⁹, Leyla Hussein¹¹⁰, Mariya Karimjee¹¹¹, Hibo Wardere¹¹², Sheikh Ibrahim Lethome¹¹³.

¹⁰⁹ The organisation is a UK based, anti-FGM charity working across 28 countries in Africa, but it also focuses on working with diaspora in the UK.

¹¹⁰ Leyla Hussein is one of the world's most active campaigners against FGM. An FGM survivor herself, Leyla uses her own experience to formulate social and political strategies for eradicating the practice.

¹¹¹ Mariya Karimjee brought the underreported issue of FGM in Pakistan into the public realm, and has been sharing her experience of sexual pleasure as a survivor. Her activism is important, as she broaches the taboo topics of sex and FGM.

¹¹² Hibo Wardere is a Somali-born campaigner against FGM, and author of the informative biography *Cut: One Woman's Fight Against FGM in Britain Today*. Through her frank account of her own experience of FGM she has emphasized the fear and control girls are put through at a young age in practicing communities

¹¹³ Sheikh Ibrahim Lethome has worked tirelessly to delink FGM from Islam. Dedicating a major part of his life to studying relevant scriptures, he has published a number of works which open religious discussions about FGM and provide strategies to organisations for delinking the practice from Islam.

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“Sahiyo”¹¹⁴ and “WeSpeakOut” are organizations dedicated to empowering Dawoodi Bohra and other Asian communities to end the practice of Female Genital Mutilation. We Speak Out conducted a study the first time in India and found that 75% of the Bohra community follow this practice. Sahiyo began in early 2015 as a conversation between five women who felt strongly about the practice. The group includes a social worker, a researcher, two filmmakers, and a journalist already making individual contribution in the area. Sahiyo is the Bohra Gujarati word for ‘saheliyo’, or friends, and reflects their organization’s mission to empower Asian communities to end the practice and creating positive social change.

In 2012, Sahiyo co-founder Priya Goswami made a documentry called as A Pinch of Skin on the practice of among the Dawoodi Bohra community in India.¹¹⁵ In 2016, another documentary, “A Small Nick or Cut, they say” was produced by Love Matters India in 2016 and directed by Priya Goswami , featuring voices of resistance on ‘Khatna’ or Type 1 Female Genital Cutting prevalent in the Dawoodi Bohra community of India. Sahiyo partnered with Women in Film and Television International India in 2018 to organise “Storytelling with Sahiyo”, which featured four critically-acclaimed Indian film actors.

¹¹⁴ <https://sahiyo.com/sahiyo-resources/>.

¹¹⁵ <https://www.youtube.com/watch?v=eouLHP3cx8E&feature=youtu.be>

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They performed narrative readings of the personal stories of four Female Genital Cutting highlighting the impact of the practice on women. The Syedna, the community's spiritual leader, is a staunch proponent of the tradition. “But for some Khatna supporters, it is not as simple as following the words of the religious leader alone. Circumcision is a long-standing tradition in Islam dating back thousands of years to the time when the Prophet Abraham accepted the commandments of God and was asked to purify himself. “This purification required him to cut his hair and his nails and to be circumcised”, explained Fatima, a member of Dawoodi Bohra Women for Religious Freedom (DBWRF), a group of pro-khatna women who asked that her real name not be used for fear of reprisal in her community. “Since then, circumcision for men has become obligatory in both the Jewish and Muslim faiths. However, “in some traditions, like ours, we believe this is applicable to both sexes,” Fatima said. “If you do khatna for males, then you do *khafs* [female circumcision] for females, because both of you have equal right to purity.” There is a growing movement of anti-khatna activists who would also support ending male circumcision and feel that boys too should not be cut without consent.

In 2012 several activists circulated a petition calling for the Indian government to ban khatna, the issue began to appear in headlines, Later when two Dawoodi Bohra doctors were arrested for practicing FGM on 7-year-old girls in Detroit, Michigan, in early 2017, the issue started receiving attention from international media. Taking advantage of the sudden spotlight, anti-khatna activists began speaking out and calling for dialogue with the clergy and religious leaders. But speaking out the

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effect of this sudden attention in the media was felt immediately, with a strong backlash against those who dared to speak out. The questioning of the practice is regarded as questioning the Syedna, but the entire faith itself. The negative consequences of not following the norm also create fear of social boycott.

An apparently authenticated audio clip of Syedna Muffadal Saifuddin's speech as reported at a mosque in Mumbai, transcript states "The act must be done. It needs to be done discreetly when it is a woman, but it needs to be done". When a group of Dawoodi Bohra women started a campaign against the practice there was no reaction from their clergy. The only response was from the smaller breakaway group headed by Syedna Taher Fakhruddin, the son of the claimant to the community's spiritual leadership. He contended that the surgery improves the conjugal relationship between man and woman, and while the practice should be banned, women should on reaching adulthood be allowed to take the decision whether they want to undergo the procedure. He called it as "sensitive and complicated; there is a matter of religious practice and sanctity of faith". As his rival tries to win followers by taking a more liberal view on the issue, the head of the main faction, Syedna Mufaddal

Saifuddin, finally spoke on the issue. Mufaddal said that circumcision – for men and women – is a religious rite practiced since the beginnings of their faith, but supported the decision of the trusts to end the custom in countries where it is a criminal offence.

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2.5 Practice of Female Genital Mutilation: Compendium and Analysis

2.5.1 Secondary data

Secondary data is data gathered from studies, surveys, or experiments conducted by sources other than the researcher. Common sources of secondary data for nature of research as carried out includes censuses, information collected by government departments, organizational records and data that was originally collected for other research purposes. The predominant secondary data for this particular research work includes data collated by United Nations, Case Studies, Newspaper reports, documentaries and Interviews of victims and other stake holders related to the practice. Other secondary sources also include case laws and other national and international legal instruments.

While the exact number of girls and women across the world who have undergone the practice remains unknown, approximately two hundred million women across thirty countries today have been cut in 30 countries with representative data on prevalence as below (categorically the percentage being different in different countries).

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Though carried out in secrecy, lesser reported cases and distorted data on prevalence the existence of the practice cannot be ignored. Certain data¹¹⁶ available on the prevalence are as below

(a) “Percentage of girls who have undergone FGM(as reported by their mothers, by place of residence and household wealth quintile¹¹⁷ - Appendix 3

(b) Percentage of girls and women aged 15-49 years who have undergone FGM by place of residence and household wealth quintile Appendix 3

(c) Percentage of girls and women aged 15 to 49 who have undergone FGM¹¹⁸ Appendix 3

(d) Percentage of girls aged 15 to 19 who have undergone FGM in 30 countries with nationally representative prevalence data ¹¹⁹ Appendix 3

¹¹⁶ <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

¹¹⁷ Ibid

¹¹⁸ ibid

¹¹⁹ ibid

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(e) Percentage of girls and women aged 15 to 49 who have heard about FGM and think the practice should end^{1,120}- Appendix 3

Nationally representative data on FGM/C are mainly available from two sources: Demographic and Health Surveys (DHS) and Multiple Indicator Cluster Surveys (MICS). In some countries, data have been collected through other nationally representative household surveys. A module on FGM/C was developed for the first time for the 1989–1990 DHS conducted in the northern part of what was then known as Sudan. After a few years, the module was modified and has been included in DHS for 23 countries to date. The first module on FGM/C was included in the 2000 MICS in the Central African Republic, Chad and Sudan. The third and fourth rounds of MICS (mainly conducted in 2005–2006 and in 2009–2011) generated updated FGM/C data from 16 countries, including 7 with no prior data (Djibouti, the Gambia, Guinea-Bissau, Iraq, Sierra Leone, Somalia and

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Togo). Over the last 10 years, UNICEF and ICF International have worked closely to standardize survey questions on FGM/C used in DHS and MICS. The first indicator for measuring FGM/C prevalence is the percentage of girls and women of reproductive age (15 to 49) who have experienced any form of the practice. This is derived from self-reports. Typically, girls and women are also asked about the type of FGM/C performed, at what age they were cut and by whom. Most surveys include additional questions related to women's – and in some cases men's – attitudes surrounding FGM/C. In most surveys, eligible respondents are all girls and women aged 15 to 49. Exceptions include Egypt (DHS in 1995, 2000, 2003 and 2005), Sudan (DHS 1989–1990) and Yemen (DHS 1997), where the sample of respondents includes only girls and women aged 15 to 49 who have ever been married. The second indicator used to report on the practice measures the extent of cutting among daughters of girls and women of reproductive age (15 to 49). In surveys up to 1999, female respondents who had at least one living daughter were asked about their eldest daughter: whether she was cut, the age at which FGM/C was performed, the type of FGM/C carried out and the person who did it. If the eldest daughter was reportedly not cut, respondents were asked if they intended to have their daughter cut. Starting in 1999, rather than asking about the eldest daughter, DHS and MICS began asking respondents whether any of their daughters had undergone FGM/C and, if so, how many of their daughters had been cut. This was followed by questions about the procedure (type, age at cutting and practitioner) for the daughter most recently cut.

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Survey data on the FGM/C status of only one daughter cannot be used to estimate the prevalence of FGM/C among girls under age 15. To address this limitation, MICS and DHS in 2010 introduced changes in the standard methodology used to collect information on FGM/C among daughters. The new module asks all girls and women aged 15 to 49 about the FGM/C status of all of their daughters under age 15. As a result, prevalence estimates can be obtained for girls aged 0 to 14. A key point to be kept in mind is that the prevalence data for girls aged 0 to 14 reflect their current, but not final, FGM/C status, since some girls who have not been cut may still be at risk of experiencing the practice once they reach the customary age. Therefore, the data on prevalence for girls under age 15 is actually an underestimation of the true extent of the practice. Since age at cutting varies among settings, the amount of underestimation also varies. This should be kept in mind when interpreting all FGM/C prevalence data for this age group. Prevalence data on girls aged 0 to 14 can be used to assess the impact of recent efforts to end FGM/C since this is the age group most recently cut or at imminent risk of being cut.

WeSpeakOut, the largest survivor-led movement to end Female Genital Mutilation/Cutting amongst Bohras in collaboration with Nari Samata Manch, a trust for gender equality released a new report on FGM/C in India titled, “The Clitoral Hood A Contested Site: Khafd or Female Genital Mutilation/Cutting (FGM/C) in India,” timed to coincide with the UN’s International Day of Zero Tolerance for FGM.

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The report has revealed startling statistics and unnerving trends regarding the practice of FGM/C in India. This new year-long qualitative study on FGM/C or Khafd as it is locally known, is the largest field research study of its kind undertaken in India. In depth one-on-one interviews were conducted with 94 individuals (83 women and 11 men). The study covered 12 sites in four Indian states: Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, which have a high concentration of Bohras. The 12 sites were: Ahmedabad, Baroda, Bhavnagar, Dahod, Godhra, Indore, Mumbai, Pune, Ratlam, Selana, Surat, and Udaipur. Kerala, where a few Sunni Muslim sects are known to practice FGM/C was added later. Additionally Bohra expats from Canada, UAE, and USA also participated. Rich with narratives from survivors, the reports contradicts the statement in the Hon'ble that "there is no official data which supports the existence of FGM. Dr. Sujaat Vali, Ob-Gyn, who observed FGM in 20 female Bohra patients also confirmed that Type 1 FGM/C is the predominant practice in India. The clitoris of most of his subjects was smaller than the usual size.

Some key findings of the report are as follows:

- 75% of all daughters of the study sample were subjected to FGM/C, which means it continues to be practiced on little girls.
- 97% of women who remembered their FGM/C experience from childhood recalled it as painful. While most women said they suffered immediate pain from the procedure only 2 women said they did not have any immediate or long-term impact from FGM/C.

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- Despite sex being a taboo topic, approximately 33% of women subjected to FGM/C in the study believe it has negatively impacted their sexual life. Low sex drive, inability to feel sexual pleasure, difficulty trusting sexual partners, and over sensitivity in the clitoral area were some of the problems identified by several women.
- Close to 10% of the women who had undergone the procedure in the current study specifically mentioned urinary problems, recurring UTIs, burning and incontinence. In addition, one of the study participants reported bleeding of the clitoral hood area due to irritation.¹²¹

¹²¹ New Groundbreaking National Research on Female Genital Mutilation/Cutting (FGM/C) in India marks International Day of Zero Tolerance for FGM ,by Lakshmi Anantnarayan, Shabana Diler and Natasha Menon dated February 6, 2018

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Selected Case Studies and some interviews published ¹²² as published as part of documentaries research carried out by several organizations can be read as referenced. National and international legal instruments, Case Laws as discussed and analysed further in 3 and 4

2.5.2 Primary data

Primary data is collected by a researcher from first-hand sources keeping in mind the core area and topic of research using methods like surveys, interviews, or experiments. Initiating research with secondary data allows time to formulate questions and develop an understanding of core issues of research. Primary data has been collected via Qualitative Research supported by the “Expert Interview Method” as a tool. Expert for the purpose of research includes major stake holders including activists and organizations working particularly towards the cause, victims, women and men from the communities following the practice, legal fraternity, education sector, students, working and non -working stakeholders.

¹²² <http://www.wespeakout.org/>

<https://www.thehindu.com/society/it-was-a-memory-i-had-blocked-out-masooma-ranalvi/article19895413.ece>

<https://blogs.economictimes.indiatimes.com/author/masoomaranalvi/>

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To substantiate the research interviews were conducted several experts and stake holders like law students, lawyers, activists, academicians, judges and others either personally through phone or the expert through email. Below are selected excerpts (Appendix 3)

- Ms. Masooma Ranalvi - Publisher, lawyer and social activist is at the forefront of the campaign to end female genital mutilation in India, has presented before the UNHRC She is one of the many Dawoodi Bohra women who was mutilated at the age of 7 and started #EndFGM petitions on Change.org. She is committed to spreading awareness on the issue of FGM in her community. Founder of “wespeakout.org” : Annexure 4
- Sahiyo (Representative-Ms. Chandini Shiyal) -Sahiyo began in 2015 as a conversation between five women who felt strongly about the ritual of female genital cutting (khatna) in the Bohra community. Sahiyo is dedicated to empowering Asian communities to end female genital cutting (FGC) and create positive social change: Annexure 5
- Mrs. Fouzia Mirza- Advocate : Annexure 6
- Ms. Zoha Khan - From the Bohra Community; Student (Non Law): Annexure 7
- Ms. Fareha Afzaal Rizwi- Advocate : Annexure 8
- Ms. Zeb Hasan- Law Student : Annexure 9
- Mr. Azhar Ahmed -Non Law Student : Annexure 10
- Mr. Gautam Kumar- Law Student: Annexure 11.

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2.5.3 Analysis of Data

Primary and Secondary Data on the practice of Female Genital Mutilation must be analyzed in light of the sensitive nature of the topic. The secondary data as analyzed by UNICEF “*Prevalence can be compared from surveys in the same country from two (or more) points and a trend analysis can examine FGM/C prevalence at one point in time across five-year age cohorts for girls and women aged 15 to 49. Finally, current prevalence among girls and women aged 15 to 19 and ‘adjusted’ prevalence among girls aged 10 to 14 can be analysed. Several important factors should be considered when examining trends in the practice:*

- *Variations in the number of years between consecutive surveys. This can range from 1 to up to 20, depending on the country.*
- *The number of data points available for each country. Patterns of change are more evident when several surveys are available, as opposed to two data sources.*
- *The retrospective periods involved (that is, time lags). For instance, in the case of a country where girls are cut before 1 year of age, most girls in the youngest cohort (15 to 19 years of age) are generally reporting on an event that took place 14 to 18 years previously. Any change that occurred after this period will therefore not be reflected in the data.*
- *The magnitude of change. Change can be gauged by looking either at the absolute difference (change in percentage points) between estimates*

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drawn or at the percentage change between estimates. Conclusions should be drawn on the basis of both measures."¹²³

- *Survey design and implementation.* This could include, for example, changes in sampling frames, questionnaire content and structure, and language used to refer to the practice."¹²⁴

Analysis of Secondary interview, primary interviews, national and international legal instruments, selected case studies was carried out by theoretical critical study and responses were analysed.

With increased availability of nationally representative data on the practice including repeat surveys in several countries, trends in the prevalence and attitudes towards the practice can be analysed. However, there are considerable challenges and limitations which arise when examining. The practice of Female Genital Mutilation is carried out on girls at a tender age in early childhood mostly at the age of 7 in extreme secrecy. The persons who takes the child for carrying out the procedure are usually the mother or the grandmother who may be reluctant to disclose the actual details on the procedure.

¹²³ Data Analysis as on www.unicef.data.org

¹²⁴ *supra*

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The prima facie challenge in research is the very secretive nature of the practice that leads to people not coming out and lot many cases go unreported. Self-reported data to be treated with caution for several reasons. First, women may be unwilling to disclose having undergone the procedure because of the sensitivity of the topic or the illegal status of the practice in their country. In addition, women may be unaware that they have been cut or of the extent of the cutting, The women sometimes have faint or harsh memories; there is innate fear in talking about or going against the practice. The data available is not reflective of the exact numbers and details on the practice. In addition there are several distorted versions on the origin and procedure.

2.6 Comparative Study Female Genital Mutilation viz a viz :

(a) Male Circumcision

In Islam circumcision is also known as *tahara*, meaning purification. Muslims consider it a matter of hygiene and cleanliness (*tahara*) and believe that it prevents the build-up of urine or other excrements that may gather under the foreskin and cause disease. It is also considered to be a tradition of the children of Abraham (Ibrahim) or previous prophets. Circumcision is mentioned in the hadith as indications that someone is *fitrah*, following the innate natural inclination of humans—along with the clipping of nails, removal of hair in the armpits and genitals, and trimming of the mustache. , Muhammad stated that circumcision was a "law for men." Khitan is the term for male circumcision. There are differing opinions about the compulsion of circumcision in Sharia (Islamic law).

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Islamic sources do not fix a particular time for circumcision. It depends on family, region and country on the seventh day after birth and as late as at the commencement of puberty.

Male circumcision is an ancient practice dating back to several thousand years CE. Although there is no mention of it in the Quran, it was commonly done among early Muslims during the lifetime of the Prophet Muhammad. Circumcision is a process by which the foreskin of a male's penis is partially or fully removed. In some cultures and religions—including the Abrahamic religions of Islam, Judaism, and Christianity—it is a common practice. Islamic law cites certain health benefits to circumcision, such as reducing the risk of urinary tract infections and preventing penile cancer and HIV transmission. In Islam, male circumcision is common, but not compulsory. The medical community acknowledges that male circumcision does carry some potential health benefits. While the act of circumcision itself is not mentioned in the Quran, Muslims do circumcise their baby boys. While not enforced, circumcision is strongly recommended in Islamic practice. The incorrectly named "female circumcision," however, is not an Islamic practice. An adult man who converts to Islam does not need to undergo circumcision in order to be "accepted" into Islam, although it is recommended for health and hygiene reasons. A man may choose to undergo the procedure in consultation with his doctor as long as it does not pose a risk to his health.¹²⁵

¹²⁵ <https://www.thoughtco.com/circumcision-in-islam-2004105>

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(b) Cosmetic Circumcision and other allied surgeries in Men and Women

Genital cosmetic surgery is a modern practice widely-accepted as lawful and undertaken, pre-dominantly by women, in order to improve the appearance of their genitalia. Western cosmetic surgery is the 'aesthetic improvement through surgical alterations of facial and bodily features. The level of surgical interference with the body varies from procedure to procedure; surgery (FGCS) is an umbrella term that includes procedures such as hymenoplasty, vaginal tightening, clitoral hood reduction and labiaplasty.

“According to the Royal College of Obstetricians and Gynaecologists (RCOG), female genital cosmetic surgery (FGCS) “refers to non-medically indicated cosmetic surgical procedures which change the structure and appearance of healthy external genitalia of women, or internally in the case of vaginal tightening.” FGCS includes the most common procedure labiaplasty (surgical reduction of the labia minora), as well as hymenoplasty (reconstruction of the hymen) and vaginoplasty (tightening of the vagina) ;it is prohibited under the FGM Act anytime it involves the excision, infibulation, or other mutilation of the labia majora, labia minora, or clitoris. Accordingly, labiaplasty done for cosmetic reasons is in fact prohibited under the FGM Act because it involves the excision, or “cutting away,” of the labia minora. Similarly, the legal status of hymenoplasty and vaginoplasty would depend on whether the particular procedure performed involved excision, infibulation, or “other mutilation.” Essentially this means that all such procedures currently

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being carried out in the UK, which involve excision or other mutilation, are in fact unlawful under the FGM Act. There are two likely explanations for why so many FGCS procedures are occurring in the UK without being subjected to prosecution under the FGM Act.

First, enforcement efforts are focused on targeting cultural groups known to practice FGM, so the widespread practice of FGCS is flying under the radar. Second, NHS collects data on genital surgery using Hospital Episode Statistics codes that do not distinguish between labiaplasty procedures performed for medical versus nonmedical reasons. Attention here must be drawn to the relationship between FGM and so-called “designer vagina” surgeries, addressing the double standard whereby FGM is prohibited by law while designer vagina surgery has been allowed to flourish”¹²⁶ At a basic level, FGM and cosmetic female genital surgery are similar because they both involve modification to female genitalia and neither of them are performed for medically justifiable reasons although in rare cases there are medical reasons for genital modification Any surgery or excision to the body comes with risks. These risks are higher in case of Female Genital Mutilation where crude tools and unprofessional mid wives carry out procedure as opposed to professional doctors. primary difference between the procedures is consent. While cosmetic genital surgery is carried out on women who agree to the procedure, FGM is largely carried out on young girls who do not have the capacity to consent. ¹²⁷

¹²⁶ Supra

¹²⁷ Johnsdotter, S and Essén, B. 2010: “Genitals and ethnicity: the politics of genital modifications.”*Reproductive Health Matters* 2010; 18 (35) 29-37. ; Plowman, T. “The Perfect Vagina.”*Reproductive Health Matters* 2010; 18(35) 111-114.

Chapter 3: International Legal Regime and Rights of Women

CHAPTER 3: INTERNATIONAL LEGAL REGIME AND RIGHTS OF WOMEN

Chapter Outline

3.0	Chapter Summary
3.1	Gender and International Women Rights (a) Meaning: Gender, Gender Studies, Gender Equality and Women Rights (b) Concept and Constitution of International Women Rights (i) Historical Development of International Women Rights (ii) Human Rights as Women Rights: Meaning of Rights, Women Rights and Sources (c) Enforcement and Monitoring of Women Rights
3.2	Practice of Female Genital Mutilation and the Violation of International Women Rights
3.3	International Legal Regime on the Practice of Female Genital Mutilation (a) History of war against the practice of Female Genital Mutilation (b) International Legislation on Female Genital Mutilation

CHAPTER 3: INTERNATIONAL LEGAL REGIME AND RIGHTS OF WOMEN

3.0 Chapter Summary

For a nation to become resilient, the citizens have to be empowered irrespective of their gender. We should all be part of the solution to end gender-based violence.” — Ifeoluwa Egbetade

The historical development of Gender Studies and Women Rights has shown an exponential change. The extension of the rights of human being to include women came about by a gradual process of change as women increasingly entered public life. The Charter of the United Nations adopted in 1945, sets out as one of its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. These rights are said to find their genesis in the classical concept of Natural Law. Women Rights can be understood as the legal, political and social rights for women equal to those of men. Women's Rights Are Human Rights.¹²⁸ Women Rights have been the key agenda in several international forums that have resulted in significant commitments to women human rights and equality. The “Universal Declaration on Human Rights 1948” recognizes numerous such rights. The Universal Declaration of Human Rights adopted in 1948 provides for equal entitlements of women and men to the rights contained in it. The use of term “all human beings” and “everyone” universal categorically reflects the intention for everyone; the same for men and women.

¹²⁸ Excerpts, Remarks, 5 September 1995, Hillary Rodham Clinton.

CHAPTER 3: INTERNATIONAL LEGAL REGIME AND RIGHTS OF WOMEN

The spectrum of Human Rights includes several conventions and covenants. The “International Covenant on Civil and Political Rights 1966¹²⁹, the International Covenant on Economic, Social and Cultural Rights guarantees 1966”¹³⁰ and the Convention on the Elimination of All Forms of Discrimination against Women 1979¹³¹ being significant ones. The Convention on the Rights of the Child 1989, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006 are other instruments within the spectrum. Female Genital Mutilation is an abhorrent and cruel practice and categorically a violation of Human Rights and an act of violence against women. All signatories to the instruments are bound to abide by them. There are several countries that prohibit and punish the practice either by the general laws of the land or by specific legislation on the practice.

¹²⁹ guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups’ rights to their culture, religion and language.

¹³⁰ for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

¹³¹ The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.

CHAPTER 3: INTERNATIONAL LEGAL REGIME AND RIGHTS OF WOMEN

3.1 Gender and International Women Rights

(a) Meaning: Gender, Gender Studies, Gender Equality and Women Rights

Gender can be defined as the socially constructed characteristics of women and men such as norms, roles and relationships of and between groups of women and men. Gender constructions are dynamic and fluid and vary from one society to another. It can be understood as the range of characteristics pertaining to and differentiating between masculinity and femininity. Depending on the context, these characteristics may include biological sex (the state of being male, female, or an intersex variation) sex-based social structures or gender identity.¹³²The appropriate norms and behaviours including interpersonal behaviour, beliefs, values and attitude taken up and exhibited by individual genders are in synergy with agreeable norms of the society. Personal opinions are not taken into consideration of assignment of gender and imposition of gender roles as per the assigned gender. When individuals or groups do not fit into the conventional binary male or female gender norms they are often subjected

¹³² Haig David *The Inexorable Rise of Gender and the Decline of Sex: Social Change in Academic Titles*, ARCHIVES OF SEXUAL BEHAVIOR 1945–2001 (2004).

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to stigma, discrimination and social exclusion. In its social, historical and cultural manifestations gender is often understood as a function of power relationship between man and woman based on the premise that men are superior to women. There are often misconceptions about terms related to gender. The term gender is a man-made concept often used interchangeably with the term “sex”. While gender is a socio-cultural term emphasizing socially defined roles and behaviours assigned to ‘males’ and ‘females’ in a given society, the term ‘sex’ is the natural or biological characteristics of human beings, the physiological phenomenon that defines man and woman. The other term often misunderstood as synonymous is “Gender Identity. The concept reflects a self-experienced sense of one’s own gender, which may or may not conform to the biological sex assigned to the individual at birth. It is categorically distinct from “sexual orientation” that refers to the sex that one is attracted to. The term gender is not interchangeable with women. The social and cultural meaning for these biological differences results in hierarchical relationships distribution of power and rights between men and women, often affected by political, economic, cultural, social, religious, ideological and environmental factors.

Gender Studies is a discipline enabling a discourse among all social sciences which view their work from a gendered perspective arising as a natural corollary to women's emancipation. Gender as a social category enabling one to interpret the differences between man and woman as generated socially, may become an adequate approach to social and

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theoretical discussion about the life and situation of women and men in society.¹³³ Gender studies belong to the complex of social and human sciences as a method of obtaining knowledge and a direction of research. Once integrated among humanities and social disciplines, gender studies can influence the transformation of research, education and the way of life of the society and relationships between men and women. Gender Studies is accepted in western societies and has become a subject of academic and public debate. In the countries where transformation towards democratic societies is still in process human identity is only beginning to be understood as man's and woman's identity. Gender studies form a natural follow-up to women's emancipation and feminist movements. However, the current trends in this discipline are more directed towards a real critical as well as constructive analysis of the different gender experiences, knowledge and perspectives.

There are several theories around Gender Studies. Conventionally most biologists that explain the Biological theory¹³⁴ do not use the word gender but sex dimorphism. This theory varies according to species. However the basic premise is that sex dimorphism in behaviour is controlled by hormones predominantly sex hormones. All mammals have similar sex hormones. These hormones guide the development of sex dimorphic body structures and control sex dimorphic reproductive behaviour which lies at heart of gender. According to social scientists the

¹³³ Centre For Gender Studies Author(s): Veronika Divišová Source: Czech Sociological Review, Vol. 7, No. 2, The Position of Czech Women in the Society of the 1990s in the Spectrum of Research (FALL 1999), pp. 253-254

¹³⁴ *The nature of Gender* J Richard Udry *Demography* vol31 no 4 November 1994

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first principle of all social science theories of gender is that gender is explained by differences in social experiences. Differences between sexes in behaviour are explained by the differences in social experience of male and females. The social science explanations of gender depend is based on three concepts; gender role, socialization and opportunity structures. A gender role is a range of acceptable behaviour is a range of acceptable behaviour that differs by sex in a particular behavioural domain and is supported by gendered norms. The boundaries of acceptable behaviour differ according to sex, violating these boundaries is accompanied by punishment.

There are several questions on the 135 future of women and gender studies. Feminism has undergone a critical re-examination as women studies bringing renewed attention to the necessary role of transdisciplinary approach in women and gender studies.

With increasing institutionalization, women and gender studies has moved from the marginal position in the academic field to construction of new research perspectives. The increasing institutionalization carries with it the threat of a loss of critical potential especially the capacity to reflect upon its own modes of knowledge production. New types of inequality and social divisions have resulted in the phenomenon of feminization of social groups, activities, and life-styles which do not necessarily obey to traditional gender lines. With modification the hierarchy driven construct

¹³⁵ She Who Speaks Shadow Speaks Truth: Transdisciplinarity in Women's and Gender Studies
Author(s): Irene Dölling and Sabine Hark Source: Signs, Vol. 25, No. 4, Feminisms at a Millennium (Summer, 2000), pp. 1195-1198

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of a two-gender system could continue to be useful in naming and signifying these new boundaries. Here it is imperative to have an understanding of certain widely used concepts like Gender equality and Gender equity. The former means equality between men and women, a treatment based on fairness for both, and that the rights, responsibilities and opportunities are not dependent on whether they are born a male or female. Gender Equality requires that all human beings are free to develop and make choices without any prejudice, stereotype or other limitations. Gender equity as a concept “is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities.” Imbibed in the principle of equality of men and women, the concept implies that all human beings, irrespective of sex, are free to develop their personal abilities, pursue their professional choices and make choices without any limitations, stereotypes or prejudice. These are the rights of women to be treated equally to men in all areas of society. They differ from broader notions of human rights through claims of an inherent historical and traditional bias against the exercise of rights by women and girls, in favour of men and boys.

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The evolution of role of women and the liberation movement have gradually become only one element of gender studies. The current trend is however directed towards a more prudent and constructive analysis of different gender experiences and knowledge as compared to traditional perceptions of gender roles.¹³⁶In contemporary society gender studies are showing a paradigm shift on the premise of universal principles of equal rights and humanity. Emerging law and trends on Human Rights corroborate this trend. The analysis of international law and international human rights law from a gender perspective is significant as gender analysis helps understand the different ways in which women and men experience human right violations subject to different parameters such as age, class, religion, culture and location, exploring hierarchical and unequal relations and roles. Women rights have not been defined categorically and include the rights and entitlements claimed for women universally and same as that for a man, broadly Human Rights. In some legal systems these rights are institutionalized and supported by law and society while in others they are suppressed on several grounds.

¹³⁶ Veronika Divišová *The Position of Czech Women in the Society of the 1990s* in the Spectrum of Research, CZECH SOCIOLOGICAL REVIEW 7, 2 (1999)

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(b) Concept and Constitution of International Women Rights?

(i) Historical Development of International Women Rights

We hold these truths to be self-evident that all men and women are created equal¹³⁷. Women co-exist with men in the world population with no legal system that can claim that women enjoy complete equality with men. The historical development of gender studies and women rights has shown an exponential change. The extension of the rights of human being to include women came about by a gradual process of change as women increasingly entered public life. To accomplish equality between women and men and to eliminate discrimination against women are fundamental human rights recommended by the United Nations. Women around the world suffer violations of their human rights throughout their lives and recognition and realization of these rights have lacked priority.

Philosophers across the world since ancient times have talked about the rights of women and their natural rights. *Plato* was the first Greek political philosopher who tried to emancipate women from their household duties of child bearing and rearing, so that they can contribute equally in the state affairs¹³⁸. The regime on human rights had been traditionally male dominated. Men struggled to assert their dignity and common humanity against the domineering state machinery. The eighteenth century saw attempts to define a body of civil and political rights organised and predominantly designed for men. Plato was the first Greek political

¹³⁷ Elizabeth Cady Stanton.

¹³⁸ WOMEN'S RIGHTS : A HISTORICAL PERSPECTIVE Author(s): Sukhpal Kaur Source: The Indian Journal of Political Science, Vol. 70, No. 1 (JAN. - MAR., 2009), pp. 121-130

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philosopher who tried to liberate women from their household duties of child bearing and rearing to contribute as equals in the state affairs. Therefore, he gave the theory of communism of wives for the guardian class. Likewise Ancient Greek philosophers followed the universalism of law by equality in various aspects of life, "equal respect for all citizens (isotimia), equality before law (isonomia), equality in political power (isokratia) and suffrage (isopsephia), and equality of civil rights (isopoliteia)."¹³⁹ Women played an insignificant role in the determination of political, legal and institutional structures.

Historical research suggests a longer gestation period dated to early 15th century to the work of Christine de Pizan; "The Book of the City of Ladies"¹⁴⁰ which stimulated what French feminists call the *Querelle des Femmes* meaning the debate about women. Political freedoms and rights were promoted by Jean Jacques Rousseau though he demeaned his contemporaries who advocated women rights.

In 1790, Gouges issued the Declaration of the Rights of Women to criticise the sexist approach of the French Declaration of the Rights of Man and Citizens. The pioneer contributors to human rights of women were those who believed women should explore the world outside their homes. Mary Wollstoncraft¹⁴¹ states that the practice vindicate the rights of women, where pleas were made to allow them to come out of their

¹³⁹ Zehra F. Kabaskal Arat,,*Human Rights World Wide, Contemporary World Issues*, 4 ABC - CI LO, ENGLAND,(2006).

¹⁴⁰ of *Le livre de la cite des dames*

¹⁴¹ English writer, philosopher, and advocate of women's rights.

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conventional domestic roles and to enter more fully in into society. Jean Jacqus Rousseau promoted political freedom and rights, though he belittled the advocacy of women's rights by his contemporaries. “The idea of women's human rights is often cited as beginning in 1792 with Mary Wollstone Craft's book “Vindication of the Rights of Women”, published in response to the promulgation of the natural rights of man theory. Wollstone Craft argued that women are like men, rational individuals and that, as such, they should have equal rights to education, employment, property and the vote.”¹⁴²

James Mill, in his work “History of British Indian” argued that the status of women could be used as an indicator of society's advancement. He explained that as societies advanced the condition of the weaker sex eventually improved to finally associate with the men on equal terms." John Stuart Mill introduced the question of women's suffrage to the House of Commons and gave detailed analysis on women's situation and the advantages to society of giving them full legal and political equality with men.¹⁴³ He defined the essential components of liberty as the freedom, expression, association, and living according to one's taste and advocated on political equality and rights of women.

¹⁴² Sukhpal Kaur, *Women's Rights: A Historical Perspective*, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 70, 121-130(2009).

¹⁴³ He defined the essential components of liberty as the freedom, expression, association, and living according to one's taste; Advocated women's rights and political equality.

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The Marxist theory based on works of Marx, Engels and Lenin connects rights of the woman to class struggle of the working class for revolutionary transformations and socialism. By following the principle of social equality of all people¹⁴⁴women become emancipated and capable in participating in all spheres of life at par with the men.

In the Indian context, there are several theories and misconceptions regarding the true status of women in Indian society the details of which have been discussed in detail in Chapter 4 of the study. Irrespective of tremendous progress made in the area of women rights in theory and policy formation, they continue to face violation of their social, political and economic rights in the family and community.

Rochona Majumdar's essay, 'History of Women's Rights: A Non-Historicist Reading' raised a very significant issue where reading accounts of feminist struggles she stated that inactiveness among women towards change and equality has been one of the fundamental hindrances to their liberation and empowerment. Femininity according to her was a gender in conflict with itself, struggling to conjure up an identity across economic and social barriers¹⁴⁵.

144 both de jure and de facto

¹⁴⁵ History of Women's Rights Author(s): Pratima Arora Source: Economic and Political Weekly, Vol. 38, No. 29 (Jul. 19-25, 2003), p. 3099 Published by: Economic and Political Weekly Stable URL: <https://www.jstor.org/stable/4413813>

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The United Nations since its inception promotes equality of men and women as the fundamental guarantee of human rights. The Charter of the United Nations adopted in 1945, sets out as one of its goals “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women”. These rights are said to find their genesis in the classical concept of Natural Law. Documents such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are considered the written precursors most of the Human Rights law today.

Modern day International Human Rights law and the establishment of the United Nations have a significant historical antecedence. The principle of equal rights for men and women is one of the primary tenets of the United Nations Charter. The Charter was the first international treaty to categorically laydown the principle of equality in specific terms. Among the purposes of the UN declared in Article 1 of its Charter is “To achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” The preamble contains a reaffirmation of faith in equal rights which the Charter lists as among the purposes and principles of the United Nations.

The member states pledge to observe promote and encourage respect for human rights and fundamental freedoms. The goal of achieving equality between the sexes is reflected in several other Charter provisions. Similar provisions are also embodied in the Universal Declaration of Human

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Rights and the International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights, which together make up the International Bill of Human Rights, the fundamental international instrument in the field of human rights¹⁴⁶

Within the first year, the Economic and Social Council established its Commission on the Status of Women, as the principal global policy-making body dedicated exclusively to gender equality and advancement of women.

The international development of Human Rights shows that since the concept of right and its exercise centred around and based on a number of values developed from ancient to modern times. The idea of human rights emerged after World War II. The extermination by Nazi Germany of millions of Jews, Sinti and Romani homosexuals, and persons with left the World in a state of shock. The aftermath followed by Trials in Nuremberg and Tokyo and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity." Post trials the governments then committed themselves to establishing the United Nations, with the primary goal of encouraging international peace and preventing conflict. Across the

¹⁴⁶ The full text of these and other international instruments mentioned in this paper is contained in United Nations, Human Rights - A Compilation of International Instruments (New York: United Nations, 1978) Sales no. 78.X

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globe efforts were made to establish human rights standards to ensure protection of citizens from abuse forming a critical role in the drafting of the United Nations Charter in 1945. The member States of the United Nations pledged to promote respect for the human rights hence leading to the establishment of a Commission on Human Rights under the leadership of Eleanor Roosevelt's and charged it with the responsibility of drafting a document elucidating the meaning of fundamental rights and freedoms as proclaimed in the Charter.

The Universal Declaration of Human Rights adopted by 56 members of the United Nations on December 10, 1948 significantly used gender neutral language in the draft. It reaffirmed that "All human beings are born free and equal in dignity and rights" and that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, birth or other status."

In the 1970s when the international feminist movement began to gain momentum the General Assembly declared 1975 as the International Women's Year and organized the first World Conference on Women, in Mexico. Post the Conference, the years 1976-1985 was declared as the UN Decade for Women, and a Voluntary Fund for Decade was established.

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In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Also known as an International Bill of Rights for Women in its 30 articles it unambiguously defined discrimination against women and outlined an agenda for national action to end discrimination. Also the first human rights treaty to affirm the reproductive rights of women.

With the purpose of establishing an efficient enforcement mechanism the UN Commission on Human Rights proceeded to draft two treaties: the “International Covenant on Civil and Political Rights” (ICCPR) which focusses on issues such as the right to life, freedom of speech, religion, and voting and its “Optional Protocol and the International Covenant on Economic, Social and Cultural Rights” (ICESCR) emphasizing on food, education, health, and shelter. Together the three declarations constitute the earliest and most authoritative human rights instruments, the International Bill of Human Rights. In addition to the covenants the United Nations has adopted more than 20 principal treaties elaborating the scope of human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable groups, such as” refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights of the Child, 1989)” providing strong legal support for the right of women and girls. These international treaties have been supplemented by regional treaties, like the African Charter on Human and Peoples’ Rights (the Banjul Charter), declarations and

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resolutions adopted by inter-governmental international organizations, such as the Declaration on the Elimination of Violence against Women and documents adopted at international and regional conferences. Some non-governmental organizations (NGOs) have also played a critical role in focusing on international human rights issues.

In 1980, five years after the Mexico conference, a Second World Conference on Women was held in Copenhagen resulting in Programme of Action for stronger national measures to ensure women's ownership and control of property, as well as improvements in women's rights with respect to inheritance, child custody and loss of nationality.

In 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, often described as “the birth of global feminism” was held in Nairobi where 15,000 representatives of non-governmental organizations (NGOs) participated in a parallel NGO Forum.

The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. It first met at Lake Success, New York, in February 1947 soon after the founding of the United Nations wherein all 15 government representatives were women.

The Commission was from its inception supported by a unit of the United Nations that later became the Division for the Advancement of Women (DAW) in the UN Secretariat. From 1947 to 1962, the

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Commission focused on setting standards and formulating international conventions to change discriminatory legislation and foster global awareness on women issues. In contributing to the drafting of the Universal Declaration of Human Rights, it argued against references to “men” as a synonym for humanity, and succeeded a more inclusive language.

The Commission lead to a global assessment of the status of women. Backed by extensive research supported by data and analysis, the commission produced detailed, country-by-country picture of the political and legal standing of women which later became the basis for drafting human rights instruments. The Commission drafted the early international conventions on women rights, such as the 1953 Convention on the Political Rights of Women, being the first international law instrument to recognize and protect the political rights of women; the first international agreements on women’s rights in marriage, i.e the 1957 Convention on the Nationality of Married Women, and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

The Commission also contributed to the work of UN offices, such as the International Labour Organization’s 1951 Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,

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In 1963, efforts to consolidate standards on women's rights led the UN General Assembly to request the Commission to draft a Declaration on the Elimination of Discrimination against Women, which the Assembly ultimately adopted in 1967. The legally binding Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also drafted by the Commission, followed in 1979.

In 1999, the Optional Protocol to the Convention introduced the right of petition for women victims of discrimination. The Commission encouraged the UN machinery to expand its technical assistance to further the advancement of women particularly in developing countries.

In 1972, to mark its 25th anniversary, the Commission recommended that 1975 be designated International Women's Year an idea endorsed by the General Assembly to draw attention to women's equality with men and to their contributions to development and peace. The year was marked by holding the First World Conference on Women in Mexico City followed by conferences in Copenhagen and Nairobi. New UN offices dedicated to women were established, in particular the UN Development Fund for Women (UNIFEM) and the International Research and Training Institute for the Advancement of Women (INSTRAW).

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The Fourth World Conference on Women, held in Beijing in 1995, went a step further than the Nairobi Conference and asserted women's rights as human rights committed to specific actions towards those rights.

The United Nations General Assembly on 2 July 2010, unanimously voted to create a single UN body tasked with accelerating progress in achieving gender equality and women's empowerment. In 2011, the four parts of the UN system mentioned on this page—DAW, INSTRAW, OSAGI and UNIFEM—merged to become UN Women, now the Secretariat of the Commission on the Status of Women, the new UN Entity for Gender Equality and the Empowerment of Women or UN Women. The United Nations in its global development work developed 17 Sustainable Development Goals (SDGs) with women having a critical role and targets recognizing women equality and empowerment

In 1993 the General Assembly Declaration on the Elimination of Violence against Women contained a comprehensive definition of violence against women and a clear statement of the rights to be applied in all its forms. It reflected a commitment by the States and by the international community towards their responsibilities to the elimination of violence against women. With the objective of eliminating all forms of violence against women and girls in September 2017 the European Union and the United Nations together launched the global, multi-year Spotlight Initiative.

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Some days are categorically dedicated to women rights. International Women's Day observed annually on 8 March on which women are recognized for their achievements irrespective of national, ethnic, linguistic, cultural, economic or political differences. The International Day for the Elimination of Violence against Women is observed on 25th November. In addition to these days on February 6th, the International Day of Zero Tolerance to Female Genital Mutilation is observed, February 11th, International Day of Women and Girls in Science, June 19th, the International Day for the Elimination of Sexual Violence in Conflict, June 23rd, International Widows' Day, October 11th, International Day of the Girl Child and October 11th International Day of Rural Women.

Some landmark events that hold significance towards the history and development of women rights are as follows.¹⁴⁷

- 1792: Mary Wollstonecraft's *A Vindication of the Rights of Woman*¹⁴⁸
The writer and philosopher penned an essay in which she argued that women are not naturally inferior to men, but lack education. She suggested that women should have equal access to co-educational schooling and their participation in society is significant for the growth of nation.

¹⁴⁷ <https://www.cfr.org/blog/aspiration-action-achieving-gender-equality-economy>

¹⁴⁸ <https://www.cfr.org/blog/landmarks-global-movement-womens-rights-timeline>

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- July 19, 1848, Seneca Falls Convention : A group of abolitionist activists, led by Elizabeth Cady Stanton and Lucretia Mott, gathered in Seneca Falls, New York, to press for women rights or inalienable rights that like life, liberty, and the pursuit of happiness.
- March 19, 1911, First celebration of International Women's Day: International Women's Day was marked for the first time in Austria, Denmark, Germany, and Switzerland in March of 1911. More than one million women and men attended rallies in support of women rights.
- April 28, 1915, International Congress of Women: More than one thousand women delegates from the U.S. and eleven European nations gathered in Hague for the first International Congress of Women, that later became known as the Women's International League for Peace and Freedom.
- December 10, 1948, United Nations Declaration of Human Rights: The United Nations adopted the Universal Declaration of Human Rights, as the first international document to assert the dignity and worth of the human person and equal rights of men and women.
- UN First World Conference on Women in Mexico City: Coinciding with International Women's Year, the UN General Assembly and Commission on the Status of Women called on representatives from 133 member states to gather in Mexico City for the First World Conference on Women.

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- December 18, 1979, CEDAW: International Bill of Rights for Women: Adopted by the UN General Assembly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly defined discrimination against women and established legal obligations for state parties to end discrimination in the public and private spheres making it the second most ratified UN human rights treaty.
- September 4-15, 1995 UN Fourth World Conference on Women in Beijing: This conference brought an unprecedented 17,000 official participants and 30,000 activists to Beijing, China, and addressed issues of human rights, poverty, economic inclusion, and gender-based violence.
- January 21, 2017 Women's March on Washington DC: The largest international demonstration accompanied by training sessions in support of women rights. Affiliated marches with several hundred thousand people were held in towns and cities around the world, including Accra, Bangkok, Paris, Nairobi, Belgrade, Buenos Aires, Krakow and Antarctica.

The year 2018 was the year of several powerful movements dedicated to shaping policies and practices towards women rights. In the words of Zainah Anwar¹⁴⁹“Don't expect applause and recognition. You do this work because you believe in it”. Women human rights defenders continued to work for justice finding collective spaces for celebrating

¹⁴⁹ women human rights defender, Malaysia

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successes, reflection, and action. There continued to be work on changing policies social norms and public opinion and recognition to women leadership. Feminist philanthropy was brought to the mainstage, holding perpetrators accountable for violence against women in midst of continued resistance.

With the objective to achieve gender equality the theme for International Women's Day 8 March in 2019 is "Think Equal, Build Smart, Innovate for Change" placing innovation by women as core. A gender-equal world requires an integration of social innovations and technology that works for both women and men and building smart solutions beyond acknowledging the gender gaps¹⁵⁰

(ii) Human Rights as Women Rights: Meaning of Rights, Women Rights and Sources

Rights are fundamental normative rules of freedom essential to civilization enforced by the state and significant for realization of best self of an individual. Rights can be described as an entitlement or justified claim and range from being liberties of action to avoidances of injury or the receipt of services. Rights are powers necessary for the fulfilment of man's vocation as a moral being,¹⁵¹ social conditions which are necessary or favorable to the development of personality¹⁵² and essential for their development as human beings.

¹⁵⁰ <http://www.unwomen.org/en/news/in-focus/international-womens-day>

¹⁵¹ T. H. Green

¹⁵² Beni Prasad

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Salmond defines right as “an interest and it is protected by the law. To be interesting, it should not be merely recognized but it should be accepted by law”. Rudolf Von Jhering defines rights as “legally protected interests”. According to Laski, “Rights are those conditions of social life without which no man can seek in general, to be himself at his best.” According to Austin, “a party has a right when another or others are bound or obliged by law to do or forbear towards or in regard to him”.

There are several theories on rights given by multiple jurists. According to the Utilitarianism theory based on the utility principle, just action is that which relative to all other possible actions maximises utility or the good. Rights are limited by the utility principle and justice or injustice of an action is determined exclusively by the consequences it brings about.

According to Kantianism the essence of morality is captured by what has been called the Categorical Imperative. The Categorical Imperative is a rule for testing rules of conduct and excludes as immoral any rule of conduct that implies that one person may do something but another in relevantly similar circumstances, may not. In other words consistency and universal nature is imperative. According to Laski’s Theory¹⁵³ rights are those conditions of social life without which no man can seek, in general, to be himself at his best”. Laski calls rights as conditions of social life the essentiality of which is established by the fact that individuals claim them for the development of their best self.

¹⁵³ Harold Laski, influential creative writer of political science and has propounded the theory of rights

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Barker's theory of right states that the main purpose of the state is to see that the personality of the individual gets ample scope for development and to secure conditions essential for that purpose. These secured and guaranteed conditions are called rights. The development of personality requires favourable conditions which are to be guaranteed by the state through the enactment of law. The theory also discusses the moral aspect of rights.

Rights have certain essential features

- Rights exist only in society and are the products of social living;
- Rights are claims of individuals for development in society;
- Rights are recognized by the society as common claims of all the people;
- Rights are rational and moral claims that people make on their society and cannot be exercised against it;
- Rights are equally available to all the people.;
- Rights are not absolute and are dynamic in nature.;
- Rights are inseparably related to duties. ;
- Rights are protected and enforced by the laws of the State.

Over the years rights have been divided into several categories. Natural Rights are inherited from nature and considered to be part of human nature and reason. Derived from Natural law wherein forms of law exist by themselves. In contemporary times, human rights are said to be an offspring of natural law. Moral Rights are based on human consciousness, a sense of goodness and justice supported by moral force of human mind.

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A contractual right finds its roots in the practice of promise-keeping and ascends from specific acts of contract making. Applies to particular individuals to whom contractual promises have been made. Legal Rights are those rights that exist within legal systems by virtue of authorized entities in furtherance of lawful claims or interests irrespective of whether the existence such rights is in public domain. Legal rights are enforced by the state and any detraction is punished by the law. As defined by Holland is the “capacity residing in one man of controlling, with the assent and assistance of the state and the actions of others”. Legal Rights are of three types, Civil Rights Political Rights and Economic Rights. Civil rights are those rights which provide opportunity to each person to lead a civilized social life and fulfil basic needs of human life in society. Political rights are those rights which allow taking active part in the political processes. Economic rights provide economic security and empower all citizens to make proper use of their civil and political rights. Social rights are the rights that stem from the concept of social contract concerning legitimacy of authority of the State on an individual. Political Rights entails participation of adult individuals in the establishment or administration of a government. Cultural Rights are rights in relation to art and culture with the purpose to guarantee people and communities’ participation and access to culture and its components in sync with parameters of equality, human dignity and non-discrimination.

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To summarize, rights are regarded as central to civilization, being observed as established pillars of society and culture. Traditionally, rights are moral laws specifying what a person should be free to do, and they come from God. In other way, rights are political laws specifying what a person is free to do, and they are created by governments. Third category describe that rights are moral laws specifying what a person should be free to do, and they are inherent in man's nature. The concept of human right is described as rights are moral principles or norms, which describe certain standards of human behaviour and are regularly protected as legal rights in municipal and international law. These are moral claims which are unchallengeable and inherent in all human beings by virtue of the member of the humanity alone. Today these claims are articulated and formulated and called as human rights. It can be supposed that human rights reproduce the minimum standards essential for people to live with self-respect. Human rights give people the freedom to choose how they live, how they express themselves, and what kind of government they want to support, among many other things. Human rights also assure people the means necessary to satisfy their basic needs, such as food, housing, and education

Women Rights can be understood as the legal, political and social rights for women equal to those of men.¹⁵⁴ Women's Rights Are Human Rights.¹⁵⁵

¹⁵⁴ As defined in the Merriam Webster.

¹⁵⁵ Excerpts, Remarks, 5 September 1995, Hillary Rodham Clinton

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Human Rights are those minimal rights that every individual must have against the state or other public authority by virtue of him being a member of the human family irrespective of any other consideration.¹⁵⁶ Human Rights hence are basic rights that arise by birth irrespective of any differentiating or discriminatory factors like gender, class, colour, age, religion, economic or social status. “We need to understand that there is no formula for how women should lead their lives. That is why we must respect the choices that each woman makes for herself and her family. Every woman deserves the chance to realize her God-given potential. We also must recognize that women will never gain full dignity until their human rights are respected. These rights include the right to social, economic, medical, and political self-determination and to equal treatment under the law.”¹⁵⁷ Women Rights have been the key agenda in several international forums that have resulted in significant commitments to women human rights and equality. In September 1995, the Beijing Declaration and platform for action, adopted at the United Nations Fourth World Conference on women, confirmed women's rights as human rights and the human rights of women and the girl-child as an inalienable, integral and indivisible part of all human rights and fundamental rights¹⁵⁸

¹⁵⁶ DURGA DAS BASU, HUMAN RIGHTS IN CONSTITUTIONAL LAW 8 (Lexis Nexis, Butterworths New Delhi 2008).

¹⁵⁷ Florence Howe, *Toward the Twenty-First Century of Women Women's Studies* 24 BEIJING AND BEYOND: QUARTERLY 98-101 (1996).

¹⁵⁸ Connors Jane, gender equality and the judiciary using international human rights standards to promote the human rights of women and the girl-child at the national level london commonwealth secretariat (2000).

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Human rights are commonly understood as inalienable fundamental legal guarantees to which a person is inherently entitled simply because she or he is a human being.¹⁵⁹ They are categorized as civil, political, economic, social and cultural rights. Human Rights have certain distinct characteristics. Human Rights are inalienable, irrevocable and inherent in all individuals by virtue of its very existence irrespective of their caste, creed, religion, sex and nationality. Human Rights are universal and dynamic in nature and essential for the fulfilment of purpose of life. Human rights can be grouped into several categories like Civil Human Rights, Political Human Rights Economic Human Rights, Social and Cultural Human Rights, Development Oriented Human Rights.

A fundamental issue is whether there is a separate category of women's rights warranting specific treatment through special machinery, instruments, and procedures. Now the term human rights of women are used to emphasize the indivisibility of all human rights, and their applicability to women as human beings. However, the creation of specialized machinery and procedures is necessary in order to ensure that the human rights are codified interpreted and applied effectively for women. On the other side the adoption of separate instruments and the establishment of specialized machinery to deal with specific women's rights has resulted in a narrowing of the global human rights perspective.

Human rights necessitate both rights and obligations that are reflected in several treaties that are binding and in multiple non-binding documents,

¹⁵⁹ M. Sepúlveda, T. van Banning, G.D. Gudmundsdóttir, C. Chamoun and W.J.M. van Genugten, 'Human Rights Reference Handbook', University for Peace, 2004, p. 3.

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such as resolutions, recommendations, guidelines, declarations and principles under international law. International law or Law of Nations is the body of rules which regulates the conduct of sovereign states in their relations with one another. Source of law means from where the law emanates or originates. It denotes causes of law or what law is composed of; from where law derives its force and validity. Sources of international law include treaties, international customs, general principles of law as recognized by civilized nations, the decisions of national and lower courts, and scholarly writings.

Article 38(1) of the Statute of the International Court of Justice¹⁶⁰ lists the sources that the ICJ uses to resolve disputes as : “ *The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law*”.¹⁶¹

The major relevant sources with respect to the practice of Female Genital Mutilation include International treaties supplemented by regional treaties

¹⁶⁰ The Charter of the United Nations is the establishing document for the International Court of Justice (ICJ) as the principal judicial organ of the UN.

¹⁶¹ *ibid*

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and other declarations. Synonymously known as (international) agreement, protocol, covenant, convention, pact, or exchange of letters, among others, a treaty is an agreement under international law entered by sovereign states and international organizations. Treaties are legally binding upon member States. When a State accepts a treaty through ratification, accession or succession, it assumes obligations and duties under international law to respect, protect and fulfil the rights set out in the treaty. The spectrum of Human Rights includes several sources; the Universal Declaration of Human Rights (UDHR) being one such revolutionary document.

The first international agreement on the basic principles of human right on 10th December 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights in Paris, as a collective and universal standard of achievements for all peoples and all nations for the protection of fundamental human rights. Universality, interdependence indivisibility, equality and non-discrimination are some fundamental tenets of the declaration and also human rights law in general. The declaration provides for equal entitlement for women and men to the rights contained in it categorically reflected in use of terms like “all human beings” and “everyone.

The regime of Human Rights and its protection up to the World War II was exclusively a matter for national constitutions with minimal existence at international level. As an aftermath of war the allies were willing to create conditions for free and peaceful co-existence of all humans without fear. The UN Charter of 1945 explicitly directed the community of states

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to encourage the realisation of human and basic rights. After two years in December 1948 with the newly founded UN Human Rights Commission under the chairmanship of American Eleanor Roosevelt, the general explanation of the concept of human rights for all was adopted by the UN General Assembly wherein 48 states voted in favour and 8 abstained leading to several breakthroughs in the arena of social rights. Inspired by the Declaration of the Rights of Man and of the Citizen, 1789 the Universal Declaration of Human

Rights consists of thirty articles that provide for protection of person, procedural law and classical freedom rights such as freedom of expression, economic, social and cultural rights. Article 1 expounds the right to equality¹⁶², the right to be free and equal, that all human beings are born free with equal rights and dignity. Article 2 explains freedom from discrimination without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 expounds the right to life, liberty and personal security. Article 4 provides for freedom from slavery in all forms.

Article 5 explains freedom from torture, cruel, inhuman and degrading treatment; Article 6, the right to recognition and Article 7 right to equality before law. Article 8 explains the right to an effective remedy by the competent national tribunals for violation of fundamental rights, Article 9

¹⁶² <https://www.standup4humanrights.org/en/article.html>

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provides for freedom from arbitrary arrest, detention or exile and Article 10, the right to an impartial and independent fair public hearing.

Article 11 further expounds the presumption of innocence, Article 12 the right to privacy and Article 13 the freedom of movement, Article 14, the right to asylum and Article 15 the right to nationality. Article 16 provides for the right to marriage and to found a family and Article 17 the right to own property. Article 18 the freedom of belief and religion, Article 19 the freedom of expression, Article 20, the freedom of assembly, Article 21, the right to partake in public affairs and Article 22 the right to social security. Article 23 states that everyone has the right to work in just and favourable conditions. Article 24 explains the right to rest and leisure and Article 25 the right to adequate standard of living. Article 26 provides for right to education, Article 27, the right to take part in cultural, artistic and scientific life and Article 28 the right to a free and fair world. The concluding article 29 highlights the duty to community essential to free and full development and Article 30 the inalienable nature of rights.

The International Covenant on Civil and Political Rights 1966¹⁶³, the International Covenant on Economic, Social and Cultural Rights

¹⁶³ guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups' rights to their culture, religion and language.

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guarantees 1966¹⁶⁴ and the Convention on the Elimination of All Forms of Discrimination against Women 1979¹⁶⁵ being significant ones.

The International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty was adopted by the United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and came into force from 23rd March 1976. In accordance with the principles of the Charter of the United Nations, the recognition of inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. This can be achieved when conditions are created universally for the enjoyment of economic, social and cultural rights of an individual. Individuals in return also have duties towards other individuals and the community to strive for the promotion and observance of such rights.

These rights are fundamental and enable individuals to enjoy a broad plethora of human rights.

The “International Covenant on Civil and Political Rights” (ICCPR) finds its genesis in the same process that led to the Universal Declaration of Human Rights. In 1945, a Declaration on the Essential Rights of Man had

¹⁶⁴ for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.

¹⁶⁵ The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.

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been proposed at San Francisco Conference which led to the founding of the United Nations.

During the early process, the document was split into a declaration outlining the general principles of human rights, and a covenant containing the binding obligations. The former evolved into the UDHR. Although drafting continued on the convention there continued to be significant differences among the members on the relative importance of Civil and Political viz a viz positive Economic, Social and Cultural rights, eventually leading to a split into two separate covenants, one to contain civil and political rights and the other to contain economic, social and cultural rights. The two covenants were drafted containing similar provisions and were opened for signature simultaneously. The first document became the International Covenant on Civil and Political Rights and the second the International Covenant on Economic, Social and Cultural Rights. And were presented to the UN General Assembly for discussion in 1954 and eventually adopted in 1966. As a result of diplomatic negotiations the International Covenant on Economic, Social and Cultural Rights was adopted shortly before the International Covenant on Civil and Political Rights. UDHR and the two Covenants together constitute the foundation of human rights. The Covenant consists of a preamble and fifty-three articles, divided into six parts.

Part 1 (Article 1) recognizes the right to self-determination of an individual, including the right to freely determine the political status and pursue their economic, social and cultural goals. Part 2 (Articles 2 – 5) obliges parties to give effect to the rights recognised in the Covenant, and

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provide an effective legal remedy without any distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Part 3 (Articles 6 – 27) lists the rights like physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8); liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9 – 11); procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16); individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24); prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20); political participation, including the right to the right to vote (Article 25); Non-discrimination, minority rights and equality before the law (Articles 26 and 27).Part 4 (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and the reporting, implementation and monitoring of the Covenant. Part 5 (Articles 46 – 47) entails the inherent right of individuals to enjoy and utilize fully and freely their natural wealth and resources. Lastly Part 6 (Articles 48 – 53) governs ratification, entry into force, and amendment of the Covenant.

The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) Rights is a multilateral treaty adopted on 16th December 1966 through the United Nations General Assembly Resolution 2200A

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(XXI) and came into force from 3rd January 1976. The ICESCR and its Optional Protocol is part of the International Bill of Human Rights and pledges towards granting economic, social, and cultural rights to the Non-Self-Governing and Trust Territories and individuals. These include labour rights, right to health, right to education, and the right to an adequate standard of living.

The Covenant follows a structure similar to UDHR and the ICCPR with a preamble and thirty-one articles, divided into five parts. Part 1 (Article 1) recognises the right to self-determination, including the right to freely determine political status and pursue economic, social and cultural goals. Part 2 (Articles 2–5) establishes the principle of progressive realisation without discrimination. Part 3 (Articles 6–15) lists these rights. Part 4 (Articles 16–25) governs reporting and monitoring and implementation of the Covenant and Part 5 (Articles 26–31) governs ratification, implementation and amendment.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), described as an international bill of rights for women is an international treaty adopted on 18th December 1979 by the United Nations General Assembly. The convention consists of a preamble and 30 articles and entails agenda for national action to end discrimination against women. The Convention defines discrimination against women¹⁶⁶

¹⁶⁶ as “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.”

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where the States accepting the Convention, commit themselves undertake measures to end discrimination against women in all forms.

The spirit of the Convention finds its genesis in the goals set out by the United Nations i.e to reaffirm faith in fundamental human rights dignity and worth of the human with equal rights of men and women. The Convention is instrumental in bringing to the forefront the focus on women rights. It provides the basis for realizing equality between women and men through equal access and opportunities in political and public life. The parties agree to take all appropriate measures to ensure complete enjoyment and implementation of fundamental human rights and freedom of women.

The preamble explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. The 1960s saw the emergence of conscious efforts to prevent and fight discrimination against women

In 1972 the possibility of preparing a binding treaty that would give normative force to the provisions of the Declaration was worked on. A working group was appointed to consider the elaboration of such a convention. In 1974, at its twenty-fifth session it was decided in principle, to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women keeping into consideration the spirit of the United Nations. The text of the Convention on the Elimination of All Forms of Discrimination against Women was prepared by working groups within the Commission during 1976 and extensive deliberations

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by a working group of the Third Committee of the General Assembly from 1977 to 1979.

The Convention is structured in 6 parts consisting of 30 articles. Part I (Articles 1-6) focuses on non-discrimination, sex stereotypes, and sex trafficking. Part I I (Articles 7-9) outlines women's rights in the public sphere with an emphasis on political life, representation, and rights to nationality.

Part III (Articles 10-14) describes the economic and social rights of women, including special protections for rural women. Part IV (Article 15 and 16) outlines women's right to equality in marriage and family. Part V (Articles 17-22) establishes the Committee on the Elimination of Discrimination against Women and Part VI (Articles 23-30) describes the impact of the Convention on other treaties and the administration of the Convention.

The Convention on the Rights of the Child 1989, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006 are other instruments within the spectrum.

The United Nations Convention on the Rights of the Child (CRC/UNCRC), adopted on 20 November 1989 by the United Nations General Assembly entails the civil, political, economic, social, health and cultural rights of children spread across 54 articles Two optional protocols were adopted on 25 May 2000, the first restricts the involvement of

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children in military conflicts, and the second prohibits the sale of children, child prostitution and child pornography. A third optional protocol relating to communication of complaints was later adopted in December 2011. The Convention deals with the child-specific needs and rights. It defines a child as a human under the age of eighteen, unless the age of majority is attained earlier as per law of the land. It requires that the nations that ratify this convention are bound by it to protect the best interests and basic rights of a child.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families signed on 18th December 1990 is a United Nations multilateral treaty governing the protection of migrant workers and families without any discrimination. The primary objective of the Convention is to foster respect for human rights of migrants. The Convention does not create new rights for migrants but aims to provide for equality of treatment, and same working conditions for migrants and nationals. This Convention is recalled by the Convention on the Rights of Persons with Disabilities. The Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly on 13th December 2006 is an international human rights treaty intended to protect the rights and dignity of people with disabilities and to promote, protect, and ensure the full enjoyment of their human rights.

The Convention consists of a preamble and 50 articles. Article 1 defines the purpose of the Convention. Articles 2 and 3 provide definitions and general principles. Articles 4 to 32 define the rights of persons with disabilities and the obligations of the parties towards them. Articles 33 to

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39 govern reporting and monitoring and Articles 40 to 50 ratification, implementation and amendment of the Convention.

These international treaties have been supplemented by regional treaties. Regional human rights regimes are relatively independently coherent human rights sub-regimes nested within the larger frame work of International human rights practice. Three principal regional human rights instruments are the African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights.

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.

The African Charter on Human and People's Rights includes a preamble, 3 parts, 4 chapters, and 63 articles. The Charter creates a regional human rights system for Africa. The American Convention on Human Rights, also known as the Pact of San José, was adopted by many countries in the Western Hemisphere in San José, Costa Rica. The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international convention to protect human rights and political freedoms in Europe and has several protocols, which amend the convention framework.

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(c) Enforcement and Monitoring of Women Rights

The impact of the Universal Declaration of Human Rights 1948 has been substantial and its principles have been incorporated into the Constitution of several legal systems. The declaration though legally non-binding in nature has achieved the status of Customary International Law for being a common standard of achievement for all nations. The provisions of Covenants, as well as other Human Rights instruments are legally binding on the states that ratify or accede to them. The enforcement of international human rights law can occur at either a domestic or an international level. When domestic law fails to provide a remedy for human rights abuses, injured parties may be able to resort to international mechanisms for remedy.

States that ratify these treaties periodically report to bodies of experts, which issue recommendations on the steps required to meet the obligations laid out in the treaties. International human rights law prescribes obligations which states are bound to respect. Through ratification of international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and to respect and protect human rights. In order to monitor the compliance of states with their obligations, the United Nations system has created mechanisms that examine state parties' compliance with the specific treaty obligations. These mechanisms include the Human Rights Council and bodies created under the international human rights treaties that consist of independent experts. The majority of these bodies receive secretariat support from the Office of the High Commissioner for Human Rights (OHCHR). It collaborates with

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governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals. The Universal Periodic Review (UPR) created through united international and regional human rights framework provides for review of the human rights situations of all UN Member States.

The U.N. Commission on the Status of Women established in 1947 as a subsidiary body to the U.N. Economic and Social Council (ECOSOC) is the only international intergovernmental body responsible for preparing recommendations and reports in an effort to promote women's rights in political, social, civil, economic and cultural fields. The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights with the object of implementing the principle that men and women shall have equal rights and with the further object of developing proposals to give effect to those recommendations.¹⁶⁷

With developments in law, the Human Rights Council replaced the Commission on Human Rights as the main UN body charged with monitoring and evaluating conditions of human rights in countries around the world and identifying major areas of concern. The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights.

¹⁶⁷Galey, *International Enforcement of Women's Rights*," 273 HUMAN RIGHTS AGAINST WOMEN: THE U.N. COMMISSION ON THE STATUS OF WOMEN, (1979).

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The council follows a complaint procedure that allows individuals and organizations to bring forth to the council any violation of human rights. The Council provides the opportunity to each country to declare what actions need to be taken to improve fulfilment of human rights obligations. It also allows States to make recommendations to other States for fulfilment of such obligations. The special procedures of the Human Rights Council are independent human rights experts with mandates to monitor, examine, advise and publicly report on human rights situations in specific territories, known as country mandates or on major phenomena known as thematic mandates. The special procedures are either an individual (special/independent expert) or a working group.

Treaty monitoring bodies are committees of independent experts that monitor implementation of the substantive provisions of the core international human rights treaties. All treaty bodies except the Subcommittee on Prevention of Torture are mandated to receive and consider reports. Each State party is required to submit regular reports to the relevant treaty body on implementation of the rights. The treaty body examines the report and publishes its concerns and recommendations termed as concluding observations. The reporting system assesses what it has achieved and what more it needs to do to promote and protect human rights. These treaty-monitoring bodies also provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations.

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Some human rights treaty bodies are as follows:

- Committee on the Elimination of Racial Discrimination (CERD)
- Human Rights Committee
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Discrimination against Women
- Committee against Torture; Subcommittee on Prevention of Torture
- Committee on the Rights of the Child
- Committee on Migrant Workers
- Committee on Enforced Disappearances (CED)
- Committee on the Rights of Persons with Disabilities

Some of the treaty bodies may consider individual complaints. Such individual complaints can be brought only against a state that has recognized the competence of the committee established under the relevant treaty or when the state became a party to the relevant Optional Protocols. Some treaty bodies may initiate country inquiries if they receive credible information on grave violations. Additionally, some of the treaty bodies may also consider inter-state complaints. Treaty bodies publish interpretation of the content of the treaty provisions in the form of general comments or recommendations covering a wide range of subjects. One of the most important international mechanisms for defending and promoting ESCR is the Committee on Economic, Social, and Cultural Rights (CESCR) whose mandate is to specifically monitor state parties on their obligations under the International Covenant on Economic, Social and Cultural Rights. Articles 16 and 17 require states to prepare reports every five years on the situation of ESCR in their country, which are

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reviewed by the CESCR. The CESCR is an organ of the United Nations Economic and Social Council (ECOSOC). It has 18 members who are experts in the area of human rights and are elected by the ECOSOC. The Committee on the Elimination of Discrimination against Women monitors the progress of women's rights in those countries that are parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Members of CEDAW are obligated to submit reports every four years on the steps that they have taken to improve the condition of women in their territory. The Committee meets twice a year to review these reports and comments on them. Another important function of the Committee is to single out the problems that predominantly affect women, such as sexual harassment and domestic violence, and to make recommendations to members of CEDAW on how to tackle these issues. The Committee on the Rights of the Child monitors the implementation of the Convention on the Rights of the Child (CRC) by member states. The Committee meets in Geneva and holds three sessions a year. States parties to CRC are required to submit reports on the situation of children in their territory every five years. The Committee reviews these reports and makes recommendations to state parties. The Committee holds annual thematic discussions on issues that affect children.

3.2 Practice of Female Genital Mutilation and the Violation of International Women Rights

The practice of Female Genital Mutilation is an abhorrent and cruel practice and categorically a violation of Women rights. Based on a study of International instruments and an understanding of the physiology and

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practice of Female Genital Mutilation, the following points establish how the practice is a gross violation of Women Rights.

(a) **Right to be free from Violence: Free from Torture, Cruel, Inhuman and Degrading Treatment**

The UN Declaration on the Elimination of Violence against Women states that “violence against women is a manifestation of historically unequal power relations between men and women” and that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”¹⁶⁸. The practice of Female Genital Mutilation involves acts that by interpretation most certainly constitute acts that are cruel and inhuman and fall within the ambit of physical, mental, emotional and psychological violence. The UN Special Rapporteur on Violence against women has clearly stated that FGM amounts to torture. The report “views cultural practices that involve pain and suffering and violation of physical integrity” as amounting to torture under customary international law, attaching to such practices strict penal sanctions and maximum international scrutiny regardless of ratification of CEDAW or reservations made thereto (END FGM - European Campaign).

(b) **Rights of a Child**

Children are considered in law of being incapable of adequately protecting themselves and giving an informed consent. The international human rights law grants children special protections. The right of the child to these protections has been acknowledged in the United Nations

¹⁶⁸ UN Declaration on the Elimination of Violence against Women, 1979

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Convention on the Rights of the Child, 1989. Article 1 defines a “child” as a person below the age of 18 unless majority is attained earlier under the law applicable to the child. Article 3 confirms that “the best interests of the child shall be a primary consideration.” While this principle may be broadly interpreted to accommodate varying cultural views on what constitutes a child’s best interest, such interpretations should be consistent with the Convention’s other specific protections. The Children’s Rights Convention requires States parties to take “all suitable effective measures to abolish traditional practices that are prejudicial to the health of children.” Article 37 states that, “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Article 39 requiring measures to promote the recovery and reintegration of a child victim of neglect, exploitation, abuse, torture or armed conflict. Article 24 of the convention 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.” The Convention emphasises on the role of parents and the family in making decisions for children, but places the ultimate responsibility for protecting the rights of the child in the hands of the government (Article 5). The practice of Female Genital Mutilation is carried out in the age group between infancy to adolescence (around 15 years) and sometimes on adult women. The negative effects of the practice most certainly breach the best interest of the child physically, mentally emotionally and psychologically.

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(c) Right to be Free from 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 defines discrimination against women, as “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. The practice of Female Genital Mutilation practice primarily aims at controlling women’s sexuality and demarcating her subordinate role. She becomes a victim of discrimination based on gender which curtails her fundamental rights and liberties.

(d) Right to Life and Integrity

The right to life and integrity are recognized as core human rights. The right to life is protected by a number of international instruments, including the Civil and Political Rights Covenant. The Human Rights Committee interprets it as requiring governments to adopt “positive measures” to preserve life. The same is also reflected in Article 21 of the Constitution of India. The right to integrity, has a wide ambit including for example right to freedom from torture, the right to protect inherent dignity of the person, the right to liberty, right to security , the right to privacy etc. The practice of Female Genital Mutilation violates the very right to make independent decisions in matters regarding individual body. Sometimes resulting in death it violates the right to life. The violation of right to physical integrity and safety is evident as women are forcibly

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restrained during the procedure without their full and informed consent. The practice also results in psychological damage. The resultant disruptions in sexual function constitute a violation of a woman's right to physical integrity and mental health.

(e) Right to Health

Article 12 of the Economic, Social and Cultural Rights Covenant, states that individuals are entitled to enjoy "the highest attainable standard of physical and mental health. The procedure is on most occasions are carried out by use of unsterilized crude tools by traditional midwives with no specialized knowledge, hence resulting in distortion of the natural hormonal balances and physiology of the female body. The immediate complications include severe pain, excessive bleeding genital tissue swelling urinary tract and pelvic infections, vaginal discharges and infection, cysts, sexual dysfunctions, severe pregnancy complications and sexual problems. The impact also includes psychological and emotional ailments like depression, anxiety, post-traumatic stress disorder and low self-esteem. The complications associated with the practice of Female Genital Mutilation has severe consequences on a woman's physical and mental health with evidence that the practice results in sexual disability and maternal morbidities.

(f) Other Social Cultural and Economic rights

The basic social and economic conditions needed to live a life of dignity and freedom these rights are protected in international and regional human rights instruments The rationale behind the practice can be divided into two broad categories; religious and non-religious. Unlike popular belief it

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is not a practice which finds its roots in religion, rather cultural and customary practices. The social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong motivation to continue this practice. It is considered as a necessary part of raising a girl child and preparing her to play the role of a good woman in adulthood. The practice is encouraged in the name of cultural heritage and considered as essential to stepping into womanhood. The practice certifies the female as more worthy of being married and their parents are subject to lesser demands for dowry hence also having economic aspects. It promises to protect family honour, preserve pure familial lineage and provide economic security to the woman and hence a gross violation of Socio –Economic and Cultural rights of a women.

3.3 International Legal Regime on the Practice of Female Genital Mutilation

Female Genital Mutilation is an abhorrent and cruel practice and categorically a violation of Human Rights and an act of violence against women. All signatories to the instruments are bound to abide by them. Sweden was the first Western country to outlaw the practice of Female Genital Mutilation in in 1982 with the Act Prohibiting the Genital Mutilation of Women followed in 1985 by the United Kingdom. The legislation varies from country to country. The laws in some countries restrict the practice of in totality while some restrict the practice with exception in government health facilities and by medical practitioners. The penalties range from a minimum of three months to a maximum of life in prison. While some penalize the circumcisers only, others penalize

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the circumciser and those that seek for the procedure as an adult or for the minors and some even include anyone who knows that the procedure has been performed and fails to report it. In most African countries legislation involves all age groups while in some non-African countries like United States and Canada is only illegal among minors

In Africa 18 countries, Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Kenya, Mauritania, Niger, Senegal, South Africa, Tanzania, and Togo have enacted laws criminalizing the practice of Female Genital Mutilation. Six countries; Chad, Liberia, Mali, Sierra Leone, Somalia and Sudan still do not criminalize the practice. Kenya and Uganda have efficient stringent laws on the same. The African Union adopted the Maputo Protocol promoting women's rights and calling for an end to the practice of Female Genital Mutilation and into force in November 2005.

With increase in immigration from countries which practice FGM, has led to the introduction of FGM in European and North American countries. The practice is a crime in the United States of America under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and now a crime in Australia and some other countries as well. The Council of Europe Convention on preventing and fighting violence against women and domestic violence defines and criminalize the practice .Female Genital Mutilation was made a criminal offence by the Prohibition of Female Circumcision Act 1985, superseded by the Female Genital Mutilation Act 2003 and (in Scotland) by the Prohibition of Female Genital Mutilation (Scotland) Act 2005. The Female Genital Mutilation

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Act 2003 (c. 31) is an Act of the Parliament of the United Kingdom applying to England, Wales and Northern Ireland. It replaced the Prohibition of Female Circumcision Act 1985 but does not extend to Scotland: the corresponding legislation there is the Prohibition of Female Genital Mutilation (Scotland) Act 2005. U.S. states have specific laws against Female Genital Mutilation. States that do not have such laws may use other general statutes, such as assault, battery or child abuse. The Transport for Female Genital Mutilation Act was passed in January 2013, and prohibits knowingly transporting a girl out of the U.S. for the purpose of undergoing FGM. In the Middle East and Asian countries, though the practice of Female Genital Mutilation is prevalent, but there exists lesser or no specific legislations.

There have been reports of prosecutions or arrests in cases in several African countries, including Burkina Faso, Egypt, Ghana, Senegal, and Sierra Leone. Twelve industrialized countries that receive immigrants from countries where Female Genital Mutilation is practiced, i.e. Australia, Belgium, Canada, Cyprus, Denmark, Italy, New Zealand, Norway, Spain, Sweden, United Kingdom and United States have passed laws criminalizing the practice. In Australia, six out of eight states have passed laws. In the United States, the federal government and 17 states have criminalized the practice. France has relied on existing criminal legislation to prosecute both practitioners and parents seeking the practice. In a recent case in July, 2018 in Somalia, the Attorney General Ahmed Ali Dahir announced its first prosecution against Female Genital Mutilation, following the severe bleeding and death of a 10-year-old girl, Deeqa Dahir Nuur when her mother took her to a traditional cutter.

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Chapter Outline

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4.3	Practice of Female Genital Mutilation and the Violation of Women Rights in India
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4.0 Chapter Summary

“For a nation to become resilient, the citizens have to be empowered irrespective of their gender. We should all be part of the solution to end gender-based violence.” - Ifeoluwa Egbetade

Female Genital Mutilation is an abhorrent crime and cruel practice that violates human rights and the Fundamental Rights as enshrined in the Constitution of India. India has ratified the United Nations Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child and the United Nations Convention Against Torture also ratified by India. Hence the practice of Female Genital Mutilation being a cruel act of violence, discriminatory in nature and violative of rights of the child, hence a gross violation of Human Rights. The violation of human rights in India can be interpreted as the violations of democratic principles laid down in the Constitution of India as well as the violation of India's commitment to humanitarian international law and international covenants. The practice violates the basic Fundamental Rights of the victims, Article 14, 21¹⁶⁹ of the constitution of India.

¹⁶⁹ supra

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The practice is discriminatory against women and the girl child and is a clear violation of right to a healthy life, the right to privacy the right to consent and the right to live a life of dignity. Female Genital Mutilation infringes the Right to Privacy, recognised as a Fundamental Right in *K. S. Puttaswamy v. Union of India*¹⁷⁰ and amounts to a violation of Article 21 of the Constitution. The practice has been imposed not on men but only on the female gender making it a practice against her identity, dignity and autonomy.

Despite various press reports, news articles and interviews of the victim and documentaries shown in India as well as international forums showing the sufferings of lakhs of Bohra girls and women in India and also after sending on-line petitions to various responsible statutory authorities and ministries and to the lawmakers they have failed to take effective measures or steps due to which the wrongdoers and offenders are fearlessly continuing this illegal practice. The Union of India has failed to protect person and property of its citizens and the society from crimes done in the name of religious and customary practices envisaged in Article 39 of the Directive Principles of State Policy.

There is no specific legislation in India that caters specifically to the practice of Female Genital Mutilation. There is no blanket ban prohibition; however the general laws of the country do protect the victim and their rights. The practice is a violation of Human rights and Fundamental rights under the Indian legal Regime hence protected under

¹⁷⁰ (2014) 6 SCC 433

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the Human Rights laws and regulated by the “Protection of Human Rights Act” in 1993 amended by the “Protection of Human Rights (Amendment) Act, 2006”. The practice being a violation of the fundamental rights is well protected under provision of constitutional remedies and by the Judiciary. The National Human Rights Commission, the State Human Rights Commission in several States and Human Right Courts were constituted under the Act. Except for medical purposes any touching of the genitals of a woman is an offence. The same by can be considered as an offence by interpretation under the general criminal laws of the country i.e., the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act 2012(POCSO Act). The practice is an offence under the Indian Penal Code, 1860 (Section/s 320, 322, 334, 335, 336, 337, 338 and 340) read with Criminal Procedure Code, 1973).

4.1 Historical Development of Women Rights in India

Gender studies is an interdisciplinary study dedicated to gender, gender identity and gendered representation .This field includes Women Studies, Men Studies and LGBT Studies. Gender can be defined as the socially constructed characteristics of women and men such as norms, roles and relationships of and between groups of women and men¹⁷¹. It can be understood as the range of characteristics pertaining and differentiating between masculinity and femininity.

¹⁷¹ As defined by the World Health Organization

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Gender constructions are dynamic and vary from one society to another. Conventionally most legal systems recognize two distinct classes of gender roles, masculine and feminine corresponding to the biological sexes of male and female. In a landmark judgement in 2014, the Supreme Court of India recognized transgender as the third gender in India with same rights as the male and female gender.¹⁷² The role and status of women in India has been a subject of debate and study since ancient times. From ancient patriarchy traditional stereotypes and conventional role play to current modern times where women have equal rights and play equal roles the status of women in India has shown a paradigm shift. There are several constitutional and legislative provisions for women in India¹⁷³.

¹⁷² National Legal Services Authority v. Union of India; WP (Civil) No 604 of 2013; The Hon'ble Court held that "recognition of transgender as a third gender is not a social or medical issue but a human rights issue. The non-recognition of third gender in both criminal and civil statutes is discriminatory to the third gender.

¹⁷³ The Constitution of India guarantees to all Indian women equality before law- Article 14; No discrimination by the state on ground of only religion, race, caste, sex, place of birth or any of these - Article 15(1); Special provision to be made by the state in favour of women and children - Article 15(3); Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state - Article 16; State policy to be directed to securing for men and women equally, the right to an equitable means of livelihood - Article 39(a); Equal pay for equal work for both men and women - Article 39(d); Provisions to be made by the state for securing just and humane conditions of work and for maternity relief; To promote harmony and to renounce practices derogatory to the dignity of women - Article 51(A) (e); In addition, Article 243D(3), 243D(4), 243T(3), 243T(4) of the Constitution makes provisions for reserving not less than one third of the total seats for women in the direct elections of local bodies, viz. Panchayats and Municipalities. Some legislations, laws and acts have been formulated to protect the rights of women.

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Women Rights in the Indian legal system imply the basic human rights and other rights as per the law of the land. The concept of human rights is as old as human civilization. Since time memorial man has struggled for existence against nature and achieving basic liberty and freedom paving way to the development of the concept of human rights. The greatest challenge has been to categorically put forth a static definition of human rights. Classical natural theory some laws are fundamental to human nature and discoverable by human reason.

Ancient civilizations Babylonian laws, the Assyrian had mastered human rights through human civilization. The concept of *Vasudhaiva Kutumbakam* reflects the spirit of human civilization. Certain studies explain the relevance and influence of religious traditions in development of human rights. India being one of the oldest civilizations of the world has significant influence on the development of human rights and the genesis can be traced back from the Vedas. In ancient classical Sanskrit though there was no equivalent word for Human Rights the word *adhikara* was used. The Vedas explain human rights as based on the concept of equality. The Vedas state “No one is superior inferior all should strive for the interest of all. The *Rig Veda* particularly declares that “all human beings are equal and must respect the dignity of human rights”, duly endorsed by the *Atharva Veda*.

Concepts of *Dharma*, *Karma*, *Mokasha*, teachings of *Dharmasutras* all endorse the concept of human rights in some form or the other on the principle that one person’s right is another person’s duty.

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According to *Kautilya* the concept of welfare state suggests that the happiness of the state lies in the happiness of its subjects. This era also saw the formulation of civil and legal rights including certain economic rights by Manu. The society under Vedic period reveals well committed towards human rights supported by religious groups. Ashoka the great emperor inscribed in his edicts, “All men are my children and that they may enjoy every kind of prosperity and happiness in this world and in the next, as also as I desire the same for all men”¹⁷⁴, working continuously for the protection of human rights.

The medieval period particularly that ruled by Akbar took measures to protect the social, religious and political rights. Concepts of secularism and religious tolerance were reflected in his religious policies.¹⁷⁵ Religious movements like *Bhakti* and *Sufi* made significant contribution towards the emergence of human rights.

The modern period starts with the advent of the British Empire. The Regulating Act of 1773 suppressed the social, economic, political and religious rights. Indians were denied basic rights to life, livelihood, equality freedom and expression. The first fight for the rights appeared in the Constitution of India Bill 1895 that guaranteed to every Indian certain basic rights followed by a series of resolutions later passed between 1917 and 1919 demanding equality and rights. Another significant development was the Common wealth of 1925 drafted by Mrs. Besant. The Bill

¹⁷⁴ Ashoka edicts describe

¹⁷⁵ Din-E-Ilahi (divinereligion),

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contained seven fundamental rights¹⁷⁶ and came into effect in May 1928 under the chairmanship of Mr. Motilal Nehru. (Nehru Report). Another landmark was the Karachi resolution adopted by the congress session in 1931 and the Sapra Committee Report published at the end of 1945

The decade of 1940's marked by emergence of increased activities related to in by UN Assembly and post-independence, suggestions came from several committees to widen the scope of fundamental and human rights. With the development of international human rights instruments, India ratified the principal human rights declarations committing towards the effective implementation and protection of human rights laws in India which finds its reflection in the Constitution of India and other laws of the land.

4.2 Meaning of Women Rights in Indian Context

The status and rights of women in India has been subject to dynamic changes. Women Rights are Human Rights.¹⁷⁷ These are the rights and entitlements claimed for women across the globe. Women's rights include the constitutional rights and legal rights. These are envisaged under the Constitution of India and under various statutes governing the rights of

¹⁷⁶ – (i) Liberty of person. (ii) Freedom of conscience & free profession & practice of religion. (iii) Free expression of opinion. (iv) Free elementary education. (v) Use of roads, public places, courts of justice & the like. (vi) Equality before the Law, irrespective of consideration of nationality. (vii) Equality of the sexes.

¹⁷⁷ Hillary Clinton

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women¹⁷⁸. Human rights are based on the fundamental principles that should be respected for all men, women and children and should exist in some form across all societies.

According to Scott Davidson, “The concept of human rights is closely connected with the protection of individuals from the exercise of State, Government or authority in certain area of their lives, it is also directed towards creation of societal condition by the state in which individual are to develop their fullest potential”.

India has ratified the United Nations Universal Declaration of Human Rights, 1948 explicitly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" appearing in the United Nations Charter, binding on all member states. The Declaration has served as the foundation of two binding covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child and the United Nations Convention Against Torture. Having ratified the

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1. ¹⁷⁸ Parihar, Lalita Dhar (2011). *Women and law: from impoverishment to empowerment*. Lucknow: Eastern Book Company. ISBN 9789350280591??
 2. ^ Rao, Mamta (2008). *Law relating to women and children (3rd ed.)*. Lucknow: Eastern Book Co. ISBN 9788170121329. ...women and the protection provided under various criminal, personal and labour laws in India

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Human Rights Instruments it becomes binding on India as a member state to fulfill the terms. The International covenants relevant being the Universal Declaration of Human Rights.

Article 1 sums up the basic doctrine on which Human Rights are founded i.e. “all human beings are born free and equal in dignity and rights. The Declaration includes various civil and political rights that are enshrined in Part-III of the Constitution of India and socio –economic rights in Part-IV of the Constitution. Article 23 states “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work; everyone who has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.” Article 25 of the Declaration states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age.” Under Article 26, “Everyone has the right to education which shall be free, at least in the elementary and fundamental stages”. Article 8 speaks of “Access to justice for enforcement of these fundamental rights”. Many of these socio-economic rights found in the Universal Declaration like, the right to work, to education, to live, to nutrition, standard of living and all adequate means of livelihood are all found in our Constitution in the Directive Principles of State Policy which, in terms of Article 37 of the Constitution, as stated – “are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

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The essence of Human Rights in the Indian Constitution can be found in the Preamble of the Constitution of India. In addition to it, Part III- related to fundamental rights, Part IV-Directive Principles which together form the core of the human rights regime in India.

The Preamble to the Constitution of India pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizen, irrespective of race, religion, language, sex and culture. It entails basic human rights principles of sovereignty, socialism, secularism and democracy.

Fundamental Rights are included in Part III, Articles 12-35 of the Constitution and are judicially enforceable under Article 32. They are superior to ordinary laws and encompass all civil and political rights essential for the holistic development of human species and for promoting individual dignity and welfare. The Fundamental Rights are not absolute and can be subject to certain restrictions.

There are 6 fundamental rights enshrined in the Indian Constitution. Right to equality as envisaged in Articles 14, 15, 16, 17 and 18 is the fundamental basis of all other rights and liberties. In addition articles 19, 20, 21 and 22, provides the right to freedom of speech and expression and the right to life and personal liberty. Article 21 often considered as the core of cardinal rights has been widened in scope by multiple judicial pronouncements. The landmark decision *Maneka Gandhi v. Union of*

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India¹⁷⁹ widened the scope of Article 21 to make it more meaningful particularly with respect to the human rights approach. A coherent approach was suggested particularly in reference to Articles 14, 19 and 21. Article 23 and 24 guarantees the right against exploitation. Right to freedom of religion is envisaged in Articles 25, 26, 27 and 28. Articles 29 and 30 provide special measures to protect the rights of the minorities. Right to Constitutional Remedies as enshrined in Article 32 empowers the citizens to go to court of law in case of violation of fundamental rights.

The Directive Principles of State Policy (DPSP) enshrined in Part IV (Article 36–51) of the Constitution of India are the guidelines that must be applied when framing laws and policies in a just society. Dr. B R Ambedkar described these principles as ‘novel features’ that resemble the ‘Instrument of Instructions’ enumerated in the Government of India Act of 1935. The provisions inspired by the Constitution of Ireland are not enforceable by any court, considered as the duty of the State in the governance of the country. Directive Principles are broadly classified as economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments, peace and security. The Directive Principles embody the spirit and goal of a welfare state. These are moral precepts that must be considered when formulating policies and enacting laws. These principles lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order with social, economic and political justice forming the basis of national life.

¹⁷⁹ (1978) 2 S.C.R. 621

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Part IVA of the Constitution of India enshrines the Fundamental Duties. There are 11 Fundamental duties¹⁸⁰ inserted by the 42nd Constitutional Amendment. These are non-justifiable in case of violation or non-compliance. The judiciary is an independent organ of state that enforces accountability and answerability of the other organ of the state. The recent years have witnessed the courts as a dynamic institution playing an active role in expanding the scope of individual and collective civil political, economic, social and cultural rights by passing orders, judgements and process of judicial review.

¹⁸⁰ Article 51A: Fundamental duties

It shall be the duty of every citizen of India –

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be

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The Hon'ble Supreme Court in *Keshavananda Bharti v. State of Kerala*¹⁸¹ observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but shows how India understood the nature of human rights at the time the Constitution was adopted." In *Jolly George Varghese v. Bank of Cochin*¹⁸² Justice Krishna Iyer reiterated "dualism and asserted that the positive commitment of the State to Covenant on Civil and Political Rights ignites legislative action at home but does not automatically make the Covenant enforceable part of the Corpus Juris in India". The Indian judiciary has been instrumental providing a platform implementing and protecting the basic rights by innovative interpretations, applications, widening the scope of human rights jurisprudence.

In *Ajay Hasia v. Khalid*¹⁸³ emphasized that it was a special responsibility of the courts "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."

The primary contribution of the judiciary to the human rights has been firstly the substantive expansion of the concept of human rights under Article 21 of the Constitution secondly procedural innovation of Public Interest Litigation. Public interest litigation means litigation for the protection of the public interest, introduced in a court of law, not by the aggrieved party but either by the court itself or by any private party. In these cases the community at large has some pecuniary or legal interest

¹⁸¹ 1973 4 SCC 225)

¹⁸² 1980 AIR 470

¹⁸³ 1981 AIR 487

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and therefore is instrumental in fostering human rights compliance by enabling broader interests to be recognised and enforced through the judicial process. Public interest cases may arise from both public and private law matters and used to advance human rights jurisprudence.

Media as the 4th pillar of democracy is a powerful medium and agenda setter that disseminates information and influences public opinion. The role of media in reporting human rights violations is significant in creating public awareness and accountability without creating sensations. The range of human rights issues requiring media intervention are wide with marked social content and hence a regulated and appropriate role of the media is required in furthering the human rights jurisprudence.

The pre-requisite to effective implementation of Human rights in India is a well-regulated society. India enacted the Protection of Human Rights Act in 1993 amended by the Protection of Human Rights (Amendment) Act, 2006. The National Human Rights Commission, the State Human Rights Commission in several States and Human Right Courts were constituted under the Act. Human Rights have been defined under Section 2 (1) (d) as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.”

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4.3 Practice of Female Genital Mutilation and the Violation of Women Rights in India

Female Genital Mutilation is an abhorrent crime and cruel practice that violates human rights and the Fundamental Rights as enshrined in the Constitution of India. India has ratified the United Nations Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child and the United Nations Convention Against Torture also ratified by India. Hence the practice of Female Genital Mutilation being a cruel act of violence, discriminatory in nature and violative of rights of the child, hence a gross violation of Human Rights. The violation of human rights in India can be interpreted as the violations of democratic principles laid down in the Constitution of India as well as the violation of India's commitment to humanitarian international law and international covenants. The practice violates the basic Fundamental Rights of the victims, Article 14, 21¹⁸⁴ of the constitution of India. The practice is discriminatory against women and the girl child and is a clear violation of right to a healthy life, the right to privacy the right to consent and the right to live a life of dignity. Female Genital Mutilation infringes the Right to Privacy, recognised as a

¹⁸⁴ Equality before law, Right to Life

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Fundamental Right in *K. S. Puttaswamy v. Union of India*¹⁸⁵ and amounts to a violation of Article 21 of the Constitution. The practice has been imposed not on men but only on the female gender making it a practice against her identity, dignity and autonomy.

Despite various press reports, news articles and interviews of the victim and documentaries shown in India as well as international forums showing the sufferings of lakhs of Bohra girls and women in India and also after sending on-line petitions to various responsible statutory authorities and ministries and to the lawmakers they have failed to take effective measures or steps due to which the wrongdoers and offenders are fearlessly continuing this illegal practice. Though there is no specific legislation the practice may be considered as a crime under the general criminal laws of the country. The Union of India has failed to protect person and property of its citizens and the society from crimes done in the name of religious and customary practices envisaged in Article 39 of the Directive Principles of State Policy.¹⁸⁶

185 (2014) 6 SCC 433

186 Article 39-Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

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4.4 National Legal Regime on the Practice of Female Genital Mutilation

There is no specific legislation in India that caters specifically to the practice of Female Genital Mutilation. There is no blanket ban prohibition; however the general laws of the country do protect the victim and their rights. The practice is a violation of Human rights and Fundamental rights under the Indian legal Regime hence protected under the Human Rights laws and regulated by the Protection of Human Rights Act in 1993 amended by the Protection of Human Rights (Amendment) Act, 2006. The practice being a violation of the fundamental rights is well protected under provision of constitutional remedies and by the Judiciary

Except for medical purposes any touching of the genitals of a woman is an offence. The same by can be considered as an offence by interpretation under the general criminal laws of the country i.e., the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act 2012(POCSO Act).

The Protection of Children from Sexual Offences Act, 2012 was enacted to protect children from sexual abuse, sexual harassment and pornography

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

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and to provide a child-friendly system for the trial of such offences. The Act defines a child as any person below eighteen years of age and is based on the principle that welfare of the child is of paramount importance to ensure the healthy physical, emotional, intellectual and social development of the child. The Act defines different forms of sexual abuse and prescribes stringent punishment based on the gravity of the offence.

The practice of Female Genital Mutilation can be categorized as an offence under Section 3(b) of the POCSO Act¹⁸⁷ with respect to insertion of tools required to carry out the procedure. The offence is punishable under Section 4 of the Act for a term not be less than seven years, but which may extend to imprisonment for life and liability to pay fine.¹⁸⁸ The practice is an offence under the Indian Penal Code, 1860 (Section/s 320, 322, 334, 335, 336, 337, 338 and 340) read with Criminal Procedure Code, 1973¹⁸⁹). The Indian Penal Code (IPC) is the

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3. 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;

¹⁸⁸ 4. Punishment for penetrative sexual assault.

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

¹⁸⁹ 320. Grievous hurt.: The following kinds of hurt only are designated as "grievous":—
“(First) — Emasculation.

(Secondly) — Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) — Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits”.

322. “Voluntarily causing grievous hurt: Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt.” Explanation. —A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.”

334. “Voluntarily causing hurt on provocation: Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both”

335. “Voluntarily causing grievous hurt on provocation: Whoever 1[voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both. Explanation.: The last two sections are subject to the same provisos as Explanation 1, section 300”

336. “Act endangering life or personal safety of others: Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”

337. “Causing hurt by act endangering life or personal safety of others: Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both”

338. “Causing grievous hurt by act endangering life or personal safety of others: Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either

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official criminal code of India intended to cover all substantive aspects of criminal law. The code is sub-divided into 23 chapters, comprises 511 sections. The Code starts with an introduction, provides explanations and exceptions used in it, and covers a wide range of offences.

4.5 Enforcement and Monitoring of Women Rights in India

For the effective implementation of Human Rights, India enacted the Protection of Human Rights Act in 1993 amended by the Protection of Human Rights (Amendment) Act, 2006. The National Human Rights Commission, the State Human Rights Commission in several States and Human Right Courts were constituted under the Act. The Act was enacted to establish the National and State Human Rights Commission and gives immense powers to the Commission for prevention of violation of human rights. The Act defines Human Rights under Section 2 (1) (d) as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.”

description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both”.

340” Wrongful confinement: Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person.”

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The National Human Rights Commission of India an autonomous public body which was given a statutory basis under the Protection of Human Rights Act, 1993 .The Commission is responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants". A State Government may constitute a body known as the Human Rights Commission of that State to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission. A State Government may constitute a body known as the Human Rights Commission of that State to exercise the powers and perform the functions conferred on it under the Act.

The Commission takes up cases of human rights violation either through suo moto, or when the civil society organization, the media, concerned citizens, or expert advisers, bring the cases to its notice particularly with reference to the marginalized sections of the society. Once the Commission receives as it seeks statements/ replies from the concerned authority regarding the complaint. After receiving the reply a comprehensive note on the merits of the case is prepared for the consideration by the Commission. On completion of process detailed directions and recommendations are communicated to the concerned under Sections 18 and 19 of the Act. Since its establishment in October 1993, the commission has issued compensation in several cases.

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Section 2, 3 and 4 of the Act lay down the rules for appointment to the commission. 190. The NHRC consists of a fixed composition as prescribed in the Act ¹⁹¹

The Protection of Human Rights Act mandates the NHRC to perform the following functions:¹⁹²

¹⁹⁰ The Chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a committee consisting of:

- The Prime Minister (Chairperson)

- The Home Minister
- The Leader of the Opposition in the Lok Sabha (Lower House)
- The Leader of the Opposition in the Rajya Sabha (Upper House)
- The Speaker of the Lok Sabha (Lower House)
- The Deputy Chairman of the Rajya Sabha (Upper House)

- ¹⁹¹ A Chairperson, should be retired [Chief Justice of India or a judge of the Supreme Court]

(through GoI mulling appointment of retired SC Judges as chairperson^[4])

- One member who is, or has been, a Judge of the Supreme Court of India
- One member who is, or has been, the Chief Justice of a High Court
- Two members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights, one of which is to be a woman.
- In addition, the Chairpersons of four National Commissions (Scheduled Castes, Scheduled Tribes, Women and Minorities) serve as ex officio members.

The sitting Judge of the Supreme Court or sitting Chief Justice of any High Court can be appointed only after the consultation with the Chief Justice of Supreme Court.

¹⁹² The Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006

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- proactively or reactively inquire into violations of government of India human rights or negligence in the prevention of such violation by a public servant
- by leave of the court, to intervene in court proceeding relating to human rights;
- make recommendations about granting relief to the victims and their families;
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- to study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- undertake and promote research in the field of human rights;
- engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- encourage the efforts of NGOs and institutions congress to working in the field of anti human rights;
- such other function as it may consider it necessary for the protection of human rights;
- requisitioning any public record or copy thereof from any court or office;
- by sitting and taking application and rejecting then on the basic of sex, caste, income and social status.

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In India there is no specific ban or specific legislation nor any specific provision in the existing criminal law of the country. The violation of Fundamental rights implies that writs can be filed under Article 32 and Article 226 of the Constitution of India. There are other regulatory bodies that assist in the protection of these rights like the National Commission for Women. The Commission can investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.

Chapter 5

International and National Judicial Response on Female Genital Mutilation

Chapter Outline

5.0	Chapter Summary
5.1	Judicial Response on Female Genital Mutilation 5.1.1 International Pronouncements 5.1.2 National Pronouncements

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5.0 Chapter Outline

The glory of justice and the majesty of law are created not just by the Constitution - nor by the courts - nor by the officers of the law - nor by the lawyers - but by the men and women who constitute our society - who are the protectors of the law as they are themselves protected by the law-
Robert Kennedy

The judiciary is an independent organ of state that enforces accountability and answerability of the other organ of the state. The recent years have witnessed the courts as a dynamic institution playing an active role in expanding the scope of individual and collective civil political, economic, social and cultural rights by passing orders, judgements and process of judicial review. By far most legal systems across the world and the Judiciary recognize the practice as abhorrent and a gross violation of human rights of women. This Chapter discusses judicial trends in both international and national legal systems.

5.1 Judicial Response on Female Genital Mutilation

The concept of justice is embedded in the very fibre of society since its inception and with time has grown with it. The social nature of man in society demands peaceful co- existence. Living together in society gives rise to conflicting interests that needs to be balanced to achieve this peace, harmony and stability. Justice is the philosophical theory leading to

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administration of fairness that finds a pivotal place in all socio-political and legal systems around the globe. The concept of justice became more conspicuous with the growth of State and expanded its roots to different spheres of human activities.¹⁹³

Justice in philosophy is the concept of a proper proportion between what is merited to a person and the good and bad things that befall to him. Aristotle on the virtue of justice states that the key element of justice is treating like cases alike. He distinguishes between justice in the distribution of wealth or other goods (distributive justice) and justice in reparation (retributive justice). The notion of justice is also essential in that of the just state, a central concept in political philosophy.¹⁹⁴

There are four forms of justice recognized in legal systems across the world. (1) Distributive justice: Also known as economic justice it finds its roots in social order and socialism where principles of equality and fair share are of prime importance. Distributive justice concerns the socially just allocation of goods. In social psychology it is perceived as fairness of how rewards and costs are shared across members of a group. Aristotle was of the opinion that this form of justice is the most powerful law to prevent any revolution, as this justice believes in proper and proportionate allocation of offices, honours, goods and services as per their requirement being a citizen of the state.

¹⁹³ Term paper

¹⁹⁴ <https://www.britannica.com/topic/justice-social-concept>

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(ii) Procedural justice: Procedural justice is the idea of fairness in the processes that resolve disputes and allocate resources. It deals with fairness and transparency of processes through which decisions are made. Some theories of procedural justice hold that fair procedure leads to equitable outcomes, even if the requirements of distributive or restorative justice are not met.¹⁹⁵ If people believe that a fair process formed the basis of deciding the procedure of distribution they would accept an imbalance in what they receive as compared to other stakeholders. (iii) Restorative justice: Also known as corrective justice this is an alternative model to traditional forms of justice. This form is based on the approach that the response to a crime is to organize a meeting between the victim and the offender, sometimes including a representative from the community. The purpose is to share their experience of the incident, to assess the degree of harm and to create a consensus on what the offender can do to repair the harm. This may include a monetary compensation, apologies other amends and actions to compensate and to prevent the offender from causing harm in the future. This helps offenders to take responsibility for their actions, and to discourage them from causing further harm. For the victim there are reduced feelings of anxiety and powerlessness. (iv) Retributive justice: This theory is based on the premise that that the response to a crime should be proportional to the nature and degree of offence committed, although what constitutes fair and proportional punishment is widely debated. When an offender breaks the law justice requires that he should suffer in return. This is however not the

¹⁹⁵ Tyler, Tom; Rasinski Kenneth; Spodick Nancy (1985). "Influence of voice on satisfaction with leaders: Exploring the meaning of process control". *Journal of Personality and Social Psychology*. 48: 72–81

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same as revenge. Retributive justice is directed only at wrongdoings and has inherent limitations. It is not directed as personal and involves no pleasure at the suffering of others. The purpose of this theory is deterrence, rehabilitation and prevention of crime. It helps to promote social solidarity through participation in the act of punishment. The concept of retributive justice is committed to the following three principles: (1) that those who commit certain kinds of wrongful acts, morally deserve to suffer a proportionate punishment; (2) it is intrinsically morally good if some legitimate punisher gives them the punishment they deserve; and (3) that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.

Having understood the concept of justice what becomes significant is the concept of administration of justice

Administration of justice implies the maintenance of peace and order within a political community by means of physical force of the State. The concept in modern society has evolved through several stages. In primitive stages of society private vengeance and self-help were the only remedies available against the wrongdoer. The second stage of development where the State was in the early rudimentary form, the functions were only persuasive in nature and did not have enforcing power to punish the wrongdoer. In the third stage wrongs could be redressed by payment of compensation to the victim. With advent of time administration of justice became one of the essential functions of the State. Administration of

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justice aims to provide justice for all those accessing the legal system to create an environment of social harmony. Justice is the ultimate end of law and goal of society. The Judiciary has been pouring into law with new variants of justice in the form of contemporary values and need based rights like freedom, liberty, dignity, equality and social justice as enshrined in the constitution. The essence of legal justice lies in ensuring uniformity and certainty of law and at the same time ensuring that rights and duties are duly respected by the people. In words of Justice Krishna Iyer “Access to justice to people is foundation of the Constitution”¹⁹⁶. Lord Bryce once observed that “there can be no better test of the excellence of a Government than the efficiency of its judicial administration”.

The administration of justice under the Indian Legal System can broadly be either with respect to Civil Law System or Criminal Law system. Blackstone preferred to categorize them as “private wrongs and public wrongs”, the former being the violation of civil or legal rights of individuals called civil injuries, while the latter being the violation of public rights and duties which affect the community as a whole and are called as crimes or misdemeanours. Thus crime is a wrong against the community as a whole and is punishable by the State.

In context of the practice of Female Genital Mutilation it is important to have a greater understanding of the criminal justice system. The primary objective of criminal law is to protect the society against law-breakers.

¹⁹⁶ State of Haryana v Darshana Devi ,AIR 1979 SC 885

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Criminal law holds out deterrent threats by way of punishments to prospective and actual offenders creating a sense of security and order. Though the objective of criminal administrative system fundamentally remains the same, the criminal jurisprudence of the country has shown a paradigm shift significantly in respect of sexual offences against women and children. The nature of crimes and criminals, sociological, psychological and economic variables have shown a significant variation with the development and the changing needs of the society.

Certain customary practices that were propagated and carried out in the name of religion and societal benchmarks have now been identified as acts violating the dignity and privacy of an individual, being criminal in nature and in violation of Human Rights. Female Genital Mutilation is one such practice that has gradually been recognized by lawyers, social workers, the Legislature and Judiciary as a cruel practice that needs attention to protect the rights of the rights and interests of the female child and women.

Proper and effective existence and implementation of principles of justice and an independent Judiciary are essential for good governance and establishment of rule of law. In the Indian Legal System based on the adversarial system of justice, precedent is considered of prime importance. Based on the doctrine of *Stare Decisis*, precedent is a legal case that establishes a principle which is then used by the court or other judicial bodies to decide future cases. As an independent organ of the State, the Judiciary has played a significant role across the globe to set down significant laws by way of Judicial Activism

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Below are summary of some prominent judicial responses both in the international and national context on the practice of Female Genital Mutilation. By far most legal systems across the world and the Judiciary recognize the practice as abhorrent and a gross violation of human rights of women.

(a) International Pronouncements

Case 1: Deeqa Dahir Nuur case Somalia¹⁹⁷

In July, 2018 in Somalia, the Attorney General Ahmed Ali Dahir announced its first prosecution against Female Genital Mutilation, following the severe bleeding and death of a 10-year-old girl, Deeqa Dahir Nuur. The Constitution prohibits the practice, but efforts to pass legislation to punish offenders have been stalled. The existing penal codes of Somalia though do not ban the practice as illegal. Hence the government decided to prosecute the case. Somalia, where UNICEF estimates up to 98 per cent of women between 15 and 49 have been subject to the practice having the highest FGM rate in the world

On 14 July, 2018 Deeqa was taken to a traditional cutter in the village of Olol, in central Galmudug state about 50 kilometres from the capital, Mogadishu. Deequ Dahir Nuur was cut in a “ceremony” with her three sisters, two were older and one younger. The operation resulted in a severed vein. The family was unable to stem the hemorrhaging for two days after which the girl was taken to Dhusmareb hospital, where she bled to death. Nuur was subjected to the most severe form of FGM, Type III, which involves the removal of a girl’s clitoris and external genitalia before

¹⁹⁷ <https://www.theguardian.com/global-development/2018/jul/20/10-year-old-girl-death-fgm-female-genital-mutilation-somalia>.

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her vaginal opening is sewn closed leaving a small hole to allow her to urinate and menstruate. Dr. Abdirahman Omar Hassan, one of the doctors who treated the young girl two days after she was cut confirmed the fact and also described that the clitoris was cut, one side of the vulva was cut, and the other side was wounded in three areas.

Conventionally girls who undergo Type III FGM common in Somalia typically must be re-opened in order to engage in sexual intercourse after marriage. Dr Hassan stated that Nuur was bleeding and convulsing when he attempted to treat her. The cutter who performed the procedure on the child is believed to have severed a vein with an unsterilized blade as a result of which she contracted tetanus. Several Irish campaigners in Somalia, launched a week-long campaign against the practice in Mogadishu by the Somali-born Irishwoman, Ifrah Ahmed, whose Ifrah Foundation is working with the London-based Global Media Campaign against FGM. The campaign is sought to enlist the support of local religious leaders and also using local media and medics to convince parents to cease subjecting their daughters to the practice. The activists believe that this case could help form the basis of conversations on the need to strengthen the legal framework

The father of the child defended the practice, saying he is content that the procedure remains widespread and believes she was “taken by Allah and that he held no one responsible for the death of his daughter 198.” The parents and people living around regard the practice as normal

¹⁹⁸ <https://www.independent.co.uk/news/world/africa/fgm-somalia-girl-dead-father-olol-galmudug-bleed-a8460561.html>

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and as part of their lives. The procedure is constitutionally illegal in Somalia, but there is no legislation that punishes those who fail to adhere to those rules.¹⁹⁹

In response to the death, the Deputy Prime Minister, Mahdi Mohamed Guuled and the Attorney General of Somalia confirmed plans for Somalia's first prosecution. The Deputy Minister pointed out that in the 21st century FGM is continuing in Somalia was not acceptable that, it should not be part of their culture. He emphasized that the practice was definitely not part of the Islamic religion. Both believed that the prosecution would send a strong message to the country.

Case 2: Khalid Adem Case Georgia, United States²⁰⁰

Judgement of Court of Appeals of Georgia, November 2009. This case is about Mr. Khalid Misri Adem who was the first person to be prosecuted and the first to be convicted for the practice of Female Genital Mutilation the United States on charges that he had personally excised his 2-year-old daughter Khalid Adem a Muslim man moved from Addis Ababa, Ethiopia to Atlanta, Georgia and worked as a gas-station clerk. He was arrested in March 2003, and charged for aggravated battery and cruelty to children. In 2001 allegedly he had used a pair of scissors to remove the clitoris of his 2 year old daughter in the kitchen of the Duluth apartment.

¹⁹⁹ <https://www.globalcitizen.org/en/content/somalia-fgm-first-prosecution-10-year-old-girl/>

²⁰⁰ 686 S.E.2d 339 (2009)

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During the trial his wife Ms. Fortunate testified that he wanted to preserve the child's virginity and carried out the act as being the will of God.

In Adem's native Ethiopia, the practice has been made illegal by the 2004 Penal Code, and is formally discouraged by the Ethiopian government, the practice was a very common procedure, with the World Health Organization estimating the prevalence of FGM in the country in 2005 at 74.3%.

Adem denied he had excised his daughter's clitoris or asked anyone else to do it. His defense agreed that the girl had in fact had her clitoris removed, but implied that the child's mother's family who were immigrants from South Africa might have been responsible. The defense further argued that the wife's testimony was as a result of a bitter divorce and custody battle between the couple in 2003 where the wife received sole custody of the girl. The fact that the wife failed to report the act immediately in 2001 but waited till 2003 suggested malice and a vindictive intend.

The wife claimed she did not discover her daughter's amateur clitoridectomy until an argument with her husband in 2003 about the practice where the accused had implied it had already occurred to their daughter.

The accused however claimed the opposite stating that it was the mother of the child who had revealed to him that their daughter had her clitoris

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removed and that the accusations were falsely made with the intent to leverage the custody case. The defense claimed that Adem, an urban Ethiopian who grew to adulthood in the United States had not compelling reason to carry out the practice especially as none of his immediate female family (sisters) had been circumcised and that the practice in his native Ethiopia was virtually always performed by women. The defense questioned the veracity of the testimony of Adem's daughter, who was two years old at the time of the incident, but was seven by the time she testified before the court especially on question of false memory. The fact of the clitoridectomy was not disputed by the defense.

In November 2006 he was convicted of aggravated battery and cruelty to children and sentenced to two terms of 15 years, concurrent, the first 10 years to be served in prison and the remaining five years on probation. In addition he was fined with an amount of \$5,000 and an additional \$32 a month for a probation and supervision fee.

At the time of the crime, many states including Georgia had no specific laws on the practice. After Adem's arrest, representative Mary Margaret Oliver in collaboration with Ms. Fortunate Adem, was able to get a law passed specifically outlawing female genital cutting in the state of Georgia which was enacted in 2005. The accused was however not tried under this law, as his actions took place prior to the enactment.

On appeal, he contended that the trial court erred in rejecting his claim of ineffective assistance of counsel. However the same could not be established.

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In March 2017 he was deported by U.S. Immigration and Customs Enforcement to his native Ethiopia, having served 10 years in prison. Performing the procedure on anyone under the age of 18 became illegal in the U.S. in 1997 with the Federal Prohibition of Female Genital Mutilation Act. The case led to a state law prohibiting the practice, which was already prohibited by the federal law. Khalid is the first person to be prosecuted and convicted for female genital mutilation in the United States²⁰¹

Case 3: Fornah v. Secretary of State for the Home Department, ²⁰²

Judgement of House of Lords, United Kingdom 2006

Ms. Zainab Esther Fornah, was a woman from Sierra Leone about 15 years old. In March 2003 she fled from Sierra Leone where she had been captured by rebels, who had killed her family, and was repeatedly raped and arrived alone at Gatwick airport, UK claiming asylum. She claimed that she was entitled to recognition as a refugee because she would be subjected to the practice of FGM if returned to Sierra Leone. Being a minor she was taken into the care of West Sussex Social Services Child Asylum. She was hesitant to return to the village of her uncle in the fear

²⁰¹ <https://law.justia.com/cases/georgia/court-of-appeals/2009/a09a1405-0.html>

²⁰² [2006] UKHL 46, [2006] 3 FCR 381, [2007] 1 All ER 671; [2006] UKHL 46, [2007] 1 AC 412

Susan Edwards, Female Genital Mutilation - Violence against Girls and Women as a Particular Social Group, 19 Denning L.J. 271 (2007)

Denning Law Journal 2007 Vol 19 pp 271-278 CASE COMMENTARY

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of being forcibly genitally mutilated, a customary practice from which her deceased father had protected her till then.

The (Convention and Protocol relating to the Status of Refugees claiming asylum required fulfilment of two basic conditions firstly that the practice of 'female circumcision' did not come within the definition of 'persecution' and second, girls at risk of 'circumcision' in Sierra Leone did not form a 'particular social group'. The Secretary of State accepted her application and granted her protection under Art 3 but refused her claim stating that these two conditions were not fulfilled.

The applicant appealed on the basis that she should be recognised as a refugee. The issue in the appeal was whether the applicant could establish a claim that she faced persecution on account of her membership of a particular social group.

The Court of Appeal had held by a majority that the applicant had not established that she was a member of a particular social group for a number of reasons based on its interpretation of previous United Kingdom case law. These reasons included that the practice of FGM in Sierra Leone was not discriminatory in a way that set those who are subjected to it apart from others in society and that FGM could not be used as the defining characteristic of the particular social group because it was inseparable from the persecution feared.

In the House of Lords, Lord Bingham held that the Court of Appeal had been mistaken were a particular social group. Lord Hope allowed the appeal on the basis that the applicant was the member of a particular social

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group of uninitiated women in Sierra Leone. Lord Rodger and Lord Brown agreed with both Lord Bingham and Lord Hope. Lord Bingham approved the UNHCR Guidelines on membership of a particular social group.

The Court of Appeal held that the practice did not fall within the definition of persecution under the Convention because girls at risk of circumcision in Sierra Leone did not form a particular social group within article. The House was unanimous in condemning the practice but in dissent stated that Sierra Leonean women were members of a particular social group on the basis of gender and that it was not necessary to define the group with reference to the persecution.

Case 4: VM (FGM - Risks - Mungiki - Kikuyu/Gikuyu) Kenya v. Secretary of State for the Home Department ²⁰³

Asylum and Immigration Tribunal / Immigration Appellate Authority; June 2008, June 2008.

In 2004 a woman from Kenya appealed against the decision to refuse her asylum claim on the grounds of fear of Female Genital Mutilation. The woman's father had joined the Mungiki sect in Kenya and performed the practice on her sister and mother (who died resultant).

The Appellant appealed to the Asylum and Immigration Tribunal under section 82 of the Nationality, Immigration and Asylum Act 2002 with alleged prospective breach of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as prospective breach of the 1950 European Convention for the Protection of Human Rights and

²⁰³ CG [2008] UKAIT 00049, United Kingdom

Fundamental Freedom as that Convention has been incorporated into United Kingdom domestic law by the Human Rights Act 1998. The Appellant claimed that she left Kenya accompanied by an agent who made all the travel arrangements and with whom she arrived in the UK. The agent who spoke to the Immigration Officer on arrival screening form was completed a written statement of evidence lodged, and the Appellant was interviewed on behalf of the Respondent.

The Respondent set out his reasons for refusing to recognize the Appellant as a refugee and refusing to grant leave to enter or remain on human rights grounds in a letter. The Appellant appealed to an Adjudicator and her appeal was dismissed on asylum grounds but allowed on human rights grounds under article 3 ECHR in a determination. The Respondent appealed to the Immigration Appeal Tribunal.

The important points of determination in the case were whether a Kenyan claimant who fears FGM belongs to an ethnic group amongst which FGM is practised in which case she could be a member of a particular social group for the purposes of the 1951 Refugee Convention. Uncircumcised women in Kenya, whether Gikuyu/Kikuyu or not, are not as such, at real risk of the practice.

There was evidence that Mungiki organisation sought to impose FGM and other forms of violence, on women and children other than those who have been initiated into their sect, particularly such women and children included the wives, partners, children and other female family members of the men who were on the Mungiki oath. Insufficient protection was available from the Kenyan authorities for such persons and therefore not possible for a woman not wishing to undergo the practice or not wishing her child to do so, to relocate to another community which does not follow the practice.

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Those who practiced FGM were not reasonably likely to seek to inflict the practice upon women from ethnic groups or sub-groups which did not practice. A woman or her child who connected by marriage, partnership or other family ties, to an ethnic group where FGM was practised were at a real risk only if there was evidence that she would be reasonably likely to be required by her parents, grandparents, or by others in a position of power and influence over her to undergo the practice.

Internal relocation could be available in Kenya to a woman who was at a real risk of forced FGM in her home area if the evidence showed that she was not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power and influence to require her to undergo the practice or would cause her presence in the place of relocation to become known to such a person or persons (e.g. the Mungiki). Further that the relocation was reasonable taking into account all the relevant factors including the religious and cultural context, the position of women within Kenyan society and the need for kinship links in the place of relocation in order to sustain such movement successfully and survive economically.

By a determination issued on 31 January 2005, the Tribunal allowed the Respondent's appeal, finding that there was an internal relocation alternative available to the Appellant in Kenya and that she was not at real risk of serious harm contrary to Article 3 ECHR. The order stated that the original Tribunal made a material error of law and the appeal

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was allowed on asylum grounds that women in Kenya formed a social group. By reason of paragraph 339C (ii) of the Immigration Rules, the Appellant was not entitled to the grant of humanitarian protection but allowed on human rights grounds

Case 5: FM (FGM) Sudan v. Secretary of State for the Home Department²⁰⁴

Asylum and Immigration Tribunal, April 2007

In 2007 a Sudanese woman and her four children, whose application for leave to remain on grounds of the woman's political opinion and the apprehension of her two daughters of undergoing Female Genital Mutilation if returned to Sudan, was refused, appealed to the Asylum and Immigration Tribunal.

The key points of discussion included the significant action being taken in Sudan, both within government and by NGOs, to fight the practice of female genital mutilation in all its forms. Legal sanctions were however, unlikely to be applied in cases where the woman was subjected to the practice by her family.

The risk being inflicted on an unmarried woman would depend on the attitude of her family, most particularly her parents including her extended family. When a woman's parents were opposed to the practice they would in turn ensure that she does not marry a man who himself or his family endorse the practice. An educated woman or woman coming

²⁰⁴ CG [2007] UKAIT00060, United Kingdom

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from a family of high social status was less likely to experience family pressure to submit to the practice.

However, it does not suggest that such a background would automatically lead to a finding that she is not at real risk.

The determination of the original Tribunal hence was stated to contain a material error of law. The present Tribunal accordingly substituted for it a decision allowing the appeals on asylum grounds and on human rights grounds however not granted humanitarian protection.

Case 6: SK (FGM - Ethnic Groups) Liberia v. Secretary of State for the Home Department²⁰⁵

United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, January 2007, A Liberian woman sought asylum on grounds of fear of herself and her daughter having to undergo Female Genital Mutilation upon return to Liberia. The application being refused she appealed to the Asylum and Immigration Tribunal.

In the decision it was held that women in Liberia belonging to those ethnic groups where the practice was prevalent are a particular social group for the purposes of the 1951 Geneva Convention. All uncircumcised women in Liberia were not as such at real risk of the practice. A woman would be at real risk if she comes from an ethnic group /sub-group where FGM is practiced and it is proven that she is reasonably likely to be required by

²⁰⁵ CG [2007] UKAIT 00001, United Kingdom

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her parents or others in a position of power and influence over her to undergo the procedure. Those who practice are not reasonably likely particularly in urban areas to inflict it upon women from non-practicing groups. Internal relocation would be available in Liberia to a woman who was at real risk of the practice in her home area. This must be proven by evidence that she was not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power or influence to require her to undergo the practice. Further that she could reasonably be expected to live in that place, having regard to the general circumstances prevailing in it and to her personal circumstances.

In the case of a woman from a rural area in Liberia, internal relocation to Monrovia or some other urban center would not be available unless her circumstances are such that she would be able to survive economically²⁰⁶ and resist pressure from any family or other members of her ethnic group, such instances though likely to be rare. Instances where the woman has a husband or other male protector would be different. Individual credibility and country information would be important part in determining whether a woman was at real risk, the subjective element being relevant

The appellant was not able to prove that she belonged to such a group or that she would be required by people in a position of power and influence over her to undergo the procedure. The tribunal held that the Adjudicator's determination contained a material error of law, dismissing the appellant's

²⁰⁶ Januzi v Secretary of State for the Home Department & Ors [2006] UKHL 5)

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appeal on asylum and human rights grounds neither granting humanitarian protection

Case 7: NK (FGM - Cameroon) Cameroon v. Secretary of State for the Home Department²⁰⁷

United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, September 2004. A 30-year-old woman from Cameroon applied for asylum based among other things on the fear of Female Genital Mutilation. In this case she appealed against the decision giving directions for removal following refusal to grant asylum. The basis of the Appellant's claim was that when she turned 18 her stepfather began to pressurize her to become a Muslim. Some years later her stepfather took steps to arrange a marriage for her and demanded that she undergo Female Genital Mutilation.

She stated that the police refused to pursue the matter and the stepfather, arrested, detained and molested her. In her detention in three separate prisons she was raped and released when her mother bribed the guards. With her mother's help she then fled the country.

The Adjudicator accepted the core features of the Appellant's claim as credible. However, he dismissed her appeal for two main reasons. He considered her release on payment of a bribe demonstrated that the authorities no longer had an adverse interest in her. He reasoned that her stepfather, in view of the fact that she was now older (29 at the date of

²⁰⁷ [2004] UKIAT 00247, United Kingdom

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hearing), would no longer have the desire to harm her and she would have a viable option of internal relocation. The appeal was dismissed and it was held that there was no serious risk of harm if she returned that Female Genital Mutilation was not normally

performed on women her age and that she could safely relocate to a Christian area of Cameroon. Whilst, therefore, the Appellant might face hardship in other parts of Cameroon outside her home or other Muslim areas, the evidence justified a conclusion that this Appellant would not face a real risk of serious harm.

Case 8: DI (IFA - FGM) Ivory Coast v. Secretary of State for the Home Department,²⁰⁸

United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, September 2002. A 24-year-old woman from Ivory Coast appealed to the Immigration Appeal Tribunal against the decision to refuse her asylum claim on grounds of fear of Female Genital Mutilation.

The Appellant in her claim to asylum stated that she comes from the village of Yopougon in Abidjan. She has a young son who still lives with her partner, who is not the father of the child in Abidjan. The father worked in Paris and maintained the child. She claimed that it was a custom in her village for young girls between 18 and 30 years to undergo the

²⁰⁸ CG [2002] UKIAT 04437, United Kingdom

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practice between August and December each year. Her mother was the head of the group of village women who performed the procedure. Parents would force their daughters to be excised on reaching the age of 18. She and her elder sister Solange were due to be excised in August 2000. They had both successfully avoided the procedure for several years by going to live elsewhere in the Ivory Coast almost up to six months at a time. In August 2000 when her sister returned to the village to attend the village feast she was caught for excision and died as a result. The Appellant escaped and claimed that if she returns to Ivory Coast her mother would force her for the procedure.

The Tribunal questioned the very credibility of her statements, particularly that the mother would threaten to kill her as a matter of honour. Evidence suggested that the mother took all measures to in order to take the daughter to the hospital who later died bleeding. As to the age range circumcision is performed on young girls or at puberty as part of the right of passage. In the case of the Appellant case it could still be performed even though she was an adult with a child.

The Appellant was able to avoid circumcision while she was in Ivory Coast and she could not give any cogent arguments as to why she could not continue to do so. The appellant could not establish to the appropriate standard of proof that she would be persecuted for a Convention reason if she returned to the Ivory Coast or that there are substantial grounds for believing that she would suffer ill treatment in breach of Article 3 of the ECHR.²⁰⁹ Hence the appeal was dismissed. The appellants claim was

²⁰⁹ European Convention on Human Rights

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established as incredible among other things no breach of physical and moral integrity; due to her age, that she had an internal relocation alternative available in Ivory Coast.

Case 9: BA v JA (Female Genital Mutilation Protection Orders: Immigration Appeals)²¹⁰

The applicant parents were Nigerian citizens of Yoruba ethnicity who had entered the UK in 2010 and subsequently had 3 children, including 2 girls. The parents made an urgent application for a Female Genital Mutilation protection order to the High Court (Family Division) on the basis that there was extreme risk of their daughters being subjected to the practice upon return to Nigeria where it was a customary norm in their tribe. There were several cases of female members of their family being subjected to the practice in the past and even community leaders in power endorsed the same for their daughters.

The application was refused the ground that there was therefore no actual current or immediate risk of mutilation while they were in the UK protected by their parents unless and until the immigration proceedings were completed.

The parents had applied for asylum on the same basis but have been refused by the Home Office who intended to remove the family to Nigeria which was to be heard later. -

²¹⁰ [2018] EWHC 1754

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Making the order would also seem to pre-empt the decision of the Immigration Tribunal on the parents' claims for asylum. The Court further stated that such orders were discretionary and should be made only where there was an appropriate level of risk against which a person needed to be protected. The making of such an order may also impact the discretionary decision w.r.t the immigration proceedings by the immigration appeal tribunal. If the parents' asylum appeal failed, and if the Home Office issued a removal notice, then it would be open to the parents to make a last ditch application for a protection order. The Family Court would retain jurisdiction in those circumstances as the children were habitually resident in the UK subject to very careful consideration at that point to whether or not it was appropriate to make such orders

Case 10: Z (A Child) (FGMPO: Prevalence of FGM), Re Also known as: M v F Family Division 06 November 2017)²¹¹

An English Christian woman married a Muslim man from the Fulah community in Guinea and had a six year old girl Z. She lived with her mother and had contact with her father. The father wanted to take Z to visit his family in Guinea to have a direct experience of the cultural and ethnic background which was half of her heritage. Z's mother opposed relying on the very high prevalence of the practice of Female Genital Mutilation in Guinea, hence filed an application for protection order. In

²¹¹ [2017] EWHC 3566 (Fam)

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light of balancing interest the application was allowed as the situation suggested high probability that the child would be vulnerable to the practice considering that her ability to have a relationship, and spend time, with her father was not compromised.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition anonymity of the children and members of their family would be strictly preserved, failure to do so will be a contempt of court.

5.2.2 National Pronouncements

Case 1: Ms. Sunita Tiwari vs Union of India and Others²¹²

In 2017 Ms. Sunita Tiwari, an advocate from New Delhi filed a Public Interest Litigation in the Hon'ble Supreme Court of India under Article 32 of the Constitution of India seeking a complete ban on the practice of Female Genital Mutilation and making it a cognizable, non-compoundable and non-bailable offence throughout the territory of India with a harsher punishment for the offence.²¹³

The petitioner in this case Ms. Sunita Tiwari, a trained mediator has been working on child rights, human rights and other social issues. She has been taking up the concerns of certain underprivileged classes and cases of violation of human rights by way of filing Public Interest Litigations

²¹² Writ Petition (CIVIL) No. 286 OF 2017

²¹³ Ibid

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which have resulted into passing of landmark judgments and framing of guidelines in the field of child welfare by the Hon'ble Courts.

The petitioner has also been involved in several pro-bono works pertaining to women welfare and engaged in several advocacy and legal awareness campaign pertaining to human rights.

The respondents in this case were Union of India and the concerned ministries, Ministry of Health and Family welfare, Ministry of Social Justice & Empowerment, Ministry of Woman and Child Development, (each through its Secretary) the state governments of Maharashtra, Gujarat, Rajasthan, Govt. of National Capital Territory of Delhi (each through its Chief Secretary) that are responsible for the protection of the fundamental rights of the citizens of India and their human rights, and for ensuring that there is no violation of any of these rights, of any class of citizens.

This petition was filed in public interest after a number of incidents were reported about the illegal practice of Female Genital Mutilation being performed illegally upon girls resulting into serious violations of basic fundamental rights of the victims who in these cases are minors. In India it is practiced among the Dawoodi Bohras who are a sect amongst Shia muslims. Also referred as the Tayyabi Mustaili Ismaili sect under Islam, they are a trader and business community, reputed to be wealthy, progressive and closely knit. They predominantly reside in the western cities of India and also in Pakistan, East Africa and Yemen. The main language of the community is 'Lisanud - Dawar', a dialect of Gujarati

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with inclusions from Arabic, Urdu and other languages and they follow the Persian Arabic script. The petitioner cited several incidents reported in public domain and made contentions on the premises as follows. India is one of the signatories out of the 48 countries who ratified the Universal Declaration of Human Rights convention in 1948 that sets out the fundamental human rights of every human being. India is also a signatory since December, 1992, to the UN Convention on the Rights of the Child ratified by 196 countries. The Convention requires that the nations that ratify this convention are bound to act in the best interest of the child. The United Nations General Assembly adopted a resolution No.A/RES/64/146 in 2010 reaffirming the rights of the child. Thereafter, in 2012, with a view to eliminate the practice the UN General Assembly passed a resolution A/RES/67/146 completely banning FGM all over the world to protect the rights of the child. The petitioner stated that the practice amounts to causing inequality between the sexes and constitutes discrimination against women. Being carried out on minors, it amounts to serious violation of the rights of children and a right to live with dignity and respect. The practice is violative of the basic fundamental rights enshrined under Article 14 and 21 of the Constitution of India.

The petitioner contented that the practice is performed on the girl child without any medical reasons and does not have any reference in the Quran. It is an act of violence and violates the rights of the child and human rights, is a crime in the Unites States of America under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and now a crime in Australia and several other countries. Many countries in the African region which are considered to be the originating source of the practice

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have banned and declared it as illegal, including other countries like Australia, USA, and United Kingdoms. There is no law in India banning Female Genital Mutilation or declaring it as illegal. The petitioner contented that the practice however is an offence under the general criminal laws i.e under Section 320, 322, 334, 335, 336, 337, 338 and 340 of the Indian Penal Code, 1860 and Sections 3, 5, 7 and 9 of the Protection of Children from Sexual Offences (POCSO) Act 2012.

The police of any state do not take any action though there have been several incidents reported and published in the newspapers. The successive governments have also completely failed to take any action to stop this practice. The Union of India has failed to protect its citizens and ensure their rights under Article 39 of the Directive Principles of State Policy enshrined in the constitution and other personal/private rights. It has failed to protect person and property of its citizens and the society from crimes done in the name of rituals and religion which are per se illegal.

The petitioner being a woman herself out of concerned about the atrocity, bodily pain, inhumanness and mental torture faced by the girls and women filed the petition in public interest on behalf of all those voiceless women who have suffered in silence and have not been able to approach the courts themselves due to fear. Women who have undergone the practice though, have been sharing their experiences for some time but that has been with a promise of anonymity which is due to compulsion with the apprehension of being a part of any legal trouble or social outcast. The respondents have failed to frame or enforce any law for banning Female Genital Mutilation

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all over India or for punishing the offenders of practicing, abetting, aiding and perpetrating the practice.

In May, 2017 the Hon'ble Supreme Court in reply terming it as an extremely important, serious and sensitive matter issued notices to the Centre and the governments of Maharashtra, Gujarat, Rajasthan and Delhi and four Ministries: Women and Child Development, Health and Family Welfare, Law and Justice and Human Resource Development seeking a reply over the ban. The Supreme Court ordered states like states like Kerala and Telangana to be made parties to the already existing list of states namely Maharashtra, Gujarat, Rajasthan and Union Territory Delhi.

The matter was *subjudice* before a three bench comprising of then Chief Justice Dipak Misra, Justice D. Y. Chandrachud and Justice A. M. Khanwilkar. When the bench had sought opinion from then Attorney General K. K. Venugopal he categorically stated that the practice violates the preconditions of public order, morality and health imposed under Articles 25 and 26²¹⁴ and the right to bodily integrity recognized by the Supreme Court nine-judge bench in Justice K. S. Puttaswamy (2017).²¹⁵

At the subsequent hearings in the matter the bench of Chief Justice Dipak Misra, Justice D. Y. Chandrachud and Justice A. M. Khanwilkar noted that a religious practice, claimed to be an essential part of the doctrine of

²¹⁴ supra

²¹⁵ supra

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that faith, must also satisfy the test of constitutional morality to be entitled to the protection of Article 25²¹⁶

Senior Counsel Mr. Abhishek Manu Singhvi, appearing on behalf of about 70,000 women belonging to the Bohra Community who support the practice of Female Circumcision referring the Sabarimala Temple controversy cited earlier order of then Chief Justice Misra where he had observed that morality, as envisaged in Article 25 or Article 26, is not an individualized or sectionalized perception subject to the varying ideals of every religion, but is based on the constitutional text and should be in consonance with Articles 14, 15, 17, 21, 38 and 51A

The Senior Counsel objected to the “illusory classification” between Male and Female Circumcision (MC and FC),²¹⁷ which he argued to be of the same genus and specie and only variants of each other, and advanced that the PIL seeking a ban on the practice of FC is in the teeth of Article 14 of the Constitution²¹⁸. He argued. “The practice of MC cuts across denominations and sect, having its origin in Judaism, it is also prevalent among the Jews. While 50% of the men in America undergo circumcision regardless of religion, 30% of planet earth’s male population practices MC under a religious mandate. Circumcision cannot be a per se noxious practice. Article 14 includes equals being treated unequally and unequals being treated equally. For both MC and FC, the theological and scriptural sanctions are the same. The age at which the procedures are performed

²¹⁶ *ibid*

²¹⁷ *ibid*

²¹⁸ Article 14

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and the deemed lack of consent of the child are more or less the same. Medically, MC involves a far higher degree of invasion than FC”

In seeking a nullification of FC he argued a judicial classification would be created which would be in contravention of Article 14 since there being no legislation prohibiting the practice. Hence the court may not enter into a territory where *ex facie* and *prima facie* Article 14 is violated, hence there being no harm in applying Article 14 to this under-inclusion. He questioned the basis of the classification between MC and FC and its nexus to the objective sought to be achieved. There are three tests; one, the origin, which is the same for both, being the tenets of Islam, two, the age; while MC is performed shortly after birth, FC is carried out around the age of 7 and thirdly the mandatory nature is the same while MC is universally prescribed under Islam. He suggested that his submissions on the facet of Article 14 be read together with Articles 15 and 16 in as much as they deal with discrimination based on sex and religion.

He rebutted that FC attracts liability under sections 3, 5, 7 and 9 of the POCSO for ‘penetrative sexual assault’ ‘aggravated penetrative sexual assault’, ‘sexual assault’ and ‘aggravated sexual assault’ respectively.

He stated that penetrative sexual assault is a sub-set of sexual assault, he suggested that section 2(1)(i) contemplates sexual assault to have the same meaning as understood in section 7. Sexual intent is an essential ingredient of the offence of ‘sexual assault’ in section 7 for an act to qualify as the offence, mens rea is undeniable. It was his contention that ‘sexual intent’ is read into section 2(1)(f) which assigns to the phraseology ‘penetrative sexual assault’ the same meaning as under section 3 and hence, for the practice of FC, the question of punishment under section 4 does not arise.

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Interpreting the provision to attach strict liability would result in an anathema of criminal jurisprudence. Mens Rea as interpreted in *State of Maharashtra v. Mayer Hans George*,²¹⁹ could not be applied for POCSO

Justice Chandrachud reflected while under-inclusion implies that there are other evils which have not been regulated, it is not necessary that all evils in the society have to be regulated. What is of primary importance here is to assess the degrees of harm. There may be a large number of intoxicants which pose a danger to health but not all have to be regulated. He observed that circumcision leaves a permanent, emotional and mental scars in a young girl Article 14 tolerates under-inclusion but not over-inclusion was reinforced by Justice Deepak Misra.

The Hon'ble bench orally observed that the Constitution does not allow a person to cause injury to another and that the practice should be tested in the light of constitutional morality. The hearing witnessed some positive remarks from the Supreme Court. The principle of gender sensitivity is embedded in the Constitution of our country. The practice based on the premise of making a woman more appealing to her husband and the multiple health hazards cannot be constitutional in nature. The children on whom Female Genital Mutilation is practiced are minors. Even their guardians could not give consent on their behalf for the performance of this procedure.

²¹⁹ where it was observed that besides the mere act of voluntarily bringing gold into India, any further mental condition or mens rea is not necessary to constitute an offence under the FERA. It was noted that the very object of the Act, as an instrument for the prevention of smuggling, would be frustrated if a condition were to qualify the plain words of the enactment, that the accused should be proved to possess the knowledge that he was contravening the law

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Hon'ble Chief Justice Dipak Misra emphasized that Female Genital Mutilation infringes the Right to Privacy, recognised as a Fundamental Right in *K. S. Puttaswamy v. Union of India*²²⁰ and amounts to a violation of Article 21 of the Constitution. The practice has been imposed not on men but only on the female gender making it a practice against her identity, dignity and autonomy. The expectation is from the female to make special efforts to please her husband. "An individual has supreme authority over genitalia. Except for medical purposes any touching of the genitals of a woman is an offence under the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act, 2012."²²¹

In September 2018 the Hon'ble bench decided to send the matter to a larger bench of five judges and is sub-judice in the Hon'ble Supreme Court of India.

In the recent 2019 Sabribala verdict the then CJI Ranjan Gogoi has recommended that the matter of female genital mutilation (FGM) practised in the Dawoodi Bohra community to be referred to a seven-judge bench and heard alongside other matters pertaining to women's right to pray, stating that it was a "seminal issue" regarding "the powers of constitutional courts to tread on question as to whether a particular practice is essential to religion or is an integral of the religion

²²⁰ (2017) 10 SCC 1

²²¹ <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-refers-pil-against-female-genital-mutilation-to-five-judge-constitution-bench/articleshow/65930379.cms>

<https://indianexpress.com/article/india/supreme-court-refers-pil-against-female-genital-mutilation-to-five-judge-constitution-bench-5371478/>

Chapter 6: Conclusion and Suggestions

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Primary and secondary data was analysed by qualitative critical analysis based on which we can conclude that Female Genital Mutilation, originating about 2000 years back²²² is a practice that in reality exists, and is prevalent in almost 30 countries across the globe. The practice is carried out on women from infancy to adulthood, the most prominent age being adolescence.

Female Genital Mutilation is a global threat that finds its roots in the principles of inequality and is cradled in the name of religious and customary practices. The practice of Female Genital Mutilation cannot be said to be endorsed by particular religion (Islam) as a good practice. It is not protected under what constitutes an essential practice of a religion as interpreted in Article 25 of the Constitution but can be considered as more of a cultural practice rather than religious. The Quran does not prescribe it. There is a remote mention in certain Hadith (d'if hadith) which is a weak source of law.²²³ In the international regime rather the rite to passage is considered as the primary reason for the practice. The practice has several myths associated with it some that this research has tried to break through. It is estimated that at a minimum of two hundred million women alive today have globally undergone some form of this practice.

²²² all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.

²²³ The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Thirtha Swamiyar of Shri Shirur Mutt., test laid down says essential practices will be ascertained with reference to the tenets and doctrines of that religion itself

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The practice in most cases is like the dark surreptitious closet which people assume does not exist or occurs in rare cases. Others believe the practice is not carried out by their community so does not have any impact on them. There are no proven benefits of the practice of Female Genital Mutilation in women. The practice results long term and short term complications causing damage to physical and mental health of the women.

The practice of Female Genital Mutilation is a gross violation of Human Rights of women. The practice is discriminatory, an act of violence and an illegal and cruel act that violates Women Rights. Women Rights can be understood as legal, political, and social rights for women equal to those of men. Women Rights are Human Rights. The Universal Declaration on Human Rights 1948 recognizes numerous such rights. The spectrum of Human Rights includes several conventions and covenants. The International Covenant on Civil and Political Rights 1966 the International Covenant on Economic, Social and Cultural Rights guarantees 1966 and the Convention on the Elimination of All Forms of Discrimination against Women 1979 being significant ones. The Convention on the Rights of the Child 1989, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006 are other instruments within the spectrum. In addition, certain regional human rights treaties also promote protection of Human Rights especially of women.

Legal Regimes across the world have different approaches towards the practice. Some legal systems have specific legislations on the prevention

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and protection against practice of Female Genital Mutilation including rehabilitation measures for the victims. Where legal systems do not have specific legislations the general legislations serve as the protective shield. Irrespective of these legislative measures sensitization and implementation has always been a major challenge and therefore the practice continues to exist today inspite of several initiatives been taken up by United Nations, NGO's activist movements, lawyers and others. The Judicial responses in both international and national legal systems look down upon the practice as violative of the Women Rights and in particular the right to life and dignity of a woman. There is a need to ban the practice of Female Genital Mutilation and an imperative need to regulate and protect these rights.

There has been an overall decline in the prevalence of Female Genital Mutilation over the last three decades, but not all countries have made progress and the pace of decline has been uneven.

Female genital mutilation is in decline in many countries but continues to persist in countries where it is concentrated. The majority of girls and women in countries with data think the practice should end. 6th February is marked as the International Day of Zero Tolerance for Female Genital Mutilation In the words of the UN Secretary-General- "Sustainable development demands full human rights for all women and girls.

The 2030 Agenda for Sustainable Development promises an end to this practice by 2030". As per UNICEF 68 million girls are at risk of being subject to the practice between 2015 and 2030. Countries with the highest prevalence among women aged 15 to 49 are Somalia at 98 percent, Guinea at 97 percent, Djibouti 93 percent and Egypt at 87 percent.

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The Sustainable Development Goals in 2015 calls for an end to FGM by 2030 under Goal 5 on Gender Equality.²²⁴ The elimination required coordinated and systematic societal dialogue and steps to engage the entire community holistically focussing on human rights and gender equality.

The elimination of Female Genital Mutilation is critical and has been called for by numerous inter-governmental organizations. UNFPA in collaboration with UNICEF, leads the largest global programme to accelerate the elimination of Female Genital Mutilation. February 6 has been categorically declared as the International Day of Zero Tolerance for Female Genital Mutilation.

On September 12th 2019, eight new support clinics for survivors of female genital mutilation been being launched across England by the National Health Service to provide such women with highly-specialised care from specialist doctors, midwives and nurses located in London, Birmingham, Bristol and Leeds. These clinics aim to reach women before they are pregnant, providing women above the age of 18 with a range of services all under one roof.

From Uganda where the practice was prohibited in 2010 came reports of 226 cases of FGM in December 2018 and January 2019 in the Sebei

²²⁴ , Target 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

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region. In the last two decades, the rate has dramatically declined in East Africa from 71 percent of girls under 14 in 1995 to 8 percent in 2016

according to a study published in the journal *BMJ Global Health*. The study also found that the rate has decreased significantly in that age group in West Africa from 73.6 percent in 1996 to 25.4 percent in 2017, and in North Africa from 57.7 percent in 1990 to 14.1 percent in 2013. If the rate holds steady the basic population growth in the high-risk countries would lead to an increase in the number of girls to 4.6 million annually by the year 2030. It cannot be put to end in a day and so a sustained endeavour must be made.

In the recent 2019 Sabrimala verdict the then CJI Ranjan Gogoi has recommended that the matter of female genital mutilation (FGM) practised in the Dawoodi Bohra community to be referred to a seven-judge bench and heard alongside other matters pertaining to women's right to pray, stating that it was a "seminal issue" regarding "the powers of constitutional courts to tread on question as to whether a particular practice is essential to religion or is an integral of the religion"

"The glory of justice and the majesty of law are created not just by the Constitution - nor by the courts - nor by the officers of the law - nor by the lawyers - but by the men and women who constitute our society - who are the protectors of the law as they are themselves protected by the law".²²⁵

²²⁵ Quote by Robert Kennedy; an American politician and lawyer who served as the 64th United States Attorney General from January 1961 to September 1964.

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Summary Conclusion

1. The practice of Female Genital Mutilation exists today in reality across the globe. Female Genital Mutilation as the universally accepted meaning essentially includes procedures that include the partial or total removal of the external female genitalia for non-medical purposes²²⁶. The practice is also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafd*. Locally, *pagsunna*, *pag-islam* or *turi* are the common terms used to refer to the practice. The WHO classifies FGM into four types and they are as follows²²⁷: (a) Clitoridectomy - partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and in very rare cases only or the prepuce (the fold of skin surrounding the clitoris)²²⁸(b) Excision- partial or total of the clitoris and the labia minora with or without excision of the labia majora (the labia are “the lips” that surround the vagina)(c) Infibulation- narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner or outer with or without removal of the clitoris. (d) Other kinds -all other harmful procedures to the female genitalia for non-medical purposes, for e.g.; pricking, piercing, incising, scraping and cauterizing the genital area.

²²⁶ World Health Organization. (2010, February). WHO Female Genital Mutilation. Retrieved

²²⁷ As defined by the World Health Organization, in WHO/UNICEF/UNFPA Joint Statement, 1997; <http://www.who.int/mediacentre>; (Factsheets/fs241)

²²⁸ *supra*

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2. The genesis is obscure and is it is estimated to have originated about 2000 years back having a multiple theory origin with several narratives attached to it. Research shows that the practice is not restricted to a specific community, religion or ethnicity and existed prior to the rise of Islam and Christianity. The predominant school of thought advocates that Female Genital Mutilation originated in ancient Egypt. Gerry Mackie²²⁹ has suggested that infibulation; one type of Female Genital Mutilation may have originated in the Meroite civilization pioneered by slave .The practice and its propagation is believed to have strong roots in Egyptian civilization, the rise and spread of slavery in women and measures to control the lives of these women as slaves making them more worthy for the master primarily the man.

3. Female Genital Mutilation is practiced in 30 countries and is most common in the western, eastern, and north-eastern regions of Africa, in some countries in Middle East and Asia. Immigration resulted in the practice to spread to Australia, New Zealand, Europe, North America and Scandinavia. In India it is practiced by the Dawoodi Bohra Community, a sect among Shia Muslims. Also called as the Tayyabi Mustaili Ismaili sect

²²⁹ supra

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under Islam the community is found in the western cities of India and also in Pakistan, East Africa and Yemen. In India, most of the Bohras live in Maharashtra, Gujarat and Rajasthan and now many traders from the community have shifted to Delhi and some other cities like Kerala and Telangana. That the Dawoodi Bohras are a sect amongst Shia muslims and are also referred as Tayyabi Mustaili Ismaili sect under the Islam. They are traders and a business community reputed to be wealthy, progressive and closely knit and mainly reside in the western cities of India and also in Pakistan, East Africa and Yemen. Though carried out in secrecy, lesser reported cases and distorted data on prevalence the existence of the practice cannot be ignored. It is estimated that at a minimum of two hundred million women alive today have globally undergone some form of this practice

4. The age at which FGM is performed varies: it could be done at any time between a few months old until puberty, on the first wedding night, or even during the delivery of the first baby. The practice is mostly carried out by traditional circumcisers also called as midwives on young girls between infancy and adolescence (around 15 years) and sometimes on adult women, usually with a razor or a scissor as tool. With changing trends and increase in consequential complexities, in exceptional cases health professionals are also involved in the process; the preference though in majority of cases being the traditional midwives.

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5. There are several myths and realities associated with the practice, the pinch of skin reality however being different. Unlike popular belief it is not a practice that find its roots in religion or a religious duty, rather cultural and customary practices. The *Quran* does not specifically mention Female Genital Mutilation or even Circumcision but the subject appears in the *Sunnah* where according to Annie Marie Schimmel a lesser known *Hadith* addresses the practice. This *Hadith* says that *Muhammad* suggests excision is allowed but must not be overdone. A more limited cutting brings more radiance to the face and is better for the husband. The practice is not protected under what constitutes an essential part of a religion as in Article 25 of the Constitution. In the international regime rather the rite of passage i.e ritual that a girl goes through to be considered a woman is considered as the primary reason. Non- religious reasons include cultural and other societal customs and acceptances. The social pressure to adhere to norms of peer groups and the fear of social rejection serve as a strong motivation to continue this practice. It is considered as a necessary part of raising a girl child and preparing her to play the role of a good woman in adulthood

6. Female genital mutilation has immediate short term and long term health consequences sometimes leading to death. The procedure has no proven health benefits for women; rather it interferes with the natural hormonal balances and physiology of a female body. Possible complications include bleeding, urine retention, urinary infection, genital swelling, bacterial vaginosis, dyspareunia, prolonged labor, cesarean section, dystocia, severe pain, shock, sepsis, death, unwanted welding of the labia, surgical interventions for reopening the vagina, chronic anemia due to repeated surgeries for the opening of the vagina, formation of keloid tissue that can

lead to severe pain, dermoid cyst and abscess, painful menstruation due to the retention of menstrual blood, dysuria, urinary incontinence, weak urine stream, hematocolpos, genital ulcers, chronic pelvic and low back pain due to chronic infections, urinary and genital tract infection, abscess formation, septicemia, hepatitis and HIV infection. Factors such as bleeding during repair surgery, trauma during intercourse, anal intercourse because of inability for vaginal intercourse and opening the birth canal by non-sterile equipment can put women at risk of HIV infection. Uterine and ovarian infections may cause infertility. Fractures of the clavicle, femur or humerus can occur when the girl tries to defend herself. Pain, swelling, infection, injury, damage to the urethra and dysuria cause urinary problems in many girls and urinary retention leads to chronic urinary tract infection.”²³⁰. Removal of sensitive tissues such as clitoris, pain, scar tissue formation and the traumatic memories associated with genital mutilation and can lead to sexual dysfunction. The impact is not alone restricted to the physical aspects, the consequences and also psychological and emotional in nature. Depression, anxiety, post-traumatic stress disorder and low self-esteem, are some common ailments. The victim suffers from several psychological disorders.

7. The practice of Female Genital Mutilation is a gross violation of Human Rights of women. The practice is discriminatory, an act of violence and an illegal and cruel act that violates Women Rights. Women Rights can be understood as legal, political, and social rights for women equal to those of men. Women Rights are Human Rights. The Universal Declaration on Human Rights 1948 recognizes numerous such rights. The spectrum of Human Rights includes several conventions and covenants. The International Covenant on Civil and Political Rights 1966 the International Covenant on Economic, Social and Cultural Rights

²³⁰ Socioeconomic and Reproductive Health Outcomes of Female Genital Mutilation
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guarantees 1966 and the Convention on the Elimination of All Forms of Discrimination against Women 1979 being significant ones. The Convention on the Rights of the Child 1989, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 and the Convention on the Rights of Persons with Disabilities, 2006 are other instruments within the spectrum. In addition, certain regional human rights treaties also promote protection of Human Rights especially of women.

8. Legal Regimes across the world have different approaches towards the practice. Some legal systems have specific legislations on the prevention and protection against practice of Female Genital Mutilation including rehabilitation measures for the victims. Where legal systems do not have specific legislations the general legislations serve as the protective shield. Irrespective of these legislative measures sensitization and implementation has always been a major challenge and therefore the practice continues to exist today inspite of several initiatives been taken up by United Nations, NGO's activist movements, lawyers and others. The Judicial responses in both international and national legal systems look down upon the practice as violative of the Women Rights and in particular the right to life and dignity of a woman. There is a need to ban the practice of Female Genital Mutilation
9. Female Genital Mutilation is a practice that violates the basic human rights of a woman and there is an imperative need to regulate and protect these rights. Hence Hypothesis proved.

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Summary Suggestions: Based on detailed study and analysis the following are the suggestions made by the scholar:

A. Policy Measures: Preventive and Redressal

B. Legislative and Regulatory Measures

C. Proposed Draft Legislative Suggestions for Elimination of Practice of Female Genital Mutilation

A. Policy Measures: Preventive and Redressal

- Need for multi-sectorial community led and sustained approach where the different law making and implementing agencies work hand in hand to ban the practice of Female Genital Mutilation. System and Capacity development and strengthening particularly social, legal, gender, health, and judicial, development personnel is critical and can holistically developed by a multi-sectoral sustained model of prevention, protection, punishment, and rehabilitation.
- Comprehensive gender-sensitive, non -discriminatory approach to be incorporated that involves constitutional, civil, criminal and administrative law. Gender mainstreaming or integration to be used to assess the impact of different laws, policies and programmes on groups of men and women. Initiatives must be taken to adopt adequate reforms to promote equality of the sexes
- The State should make endeavours to dissuade the practice from being justified on the grounds of customs or traditions. With changing times, the very nature of customary law has shown change. Customs are no longer unchangeable and have been questioned on numerous occasions in recent times. What was supposedly the need of society and relevant many years

ago may not be significant rather be redundant today. Every custom is not good law. Some customs are opposed to public policy or violative of individual rights must be discouraged.

- The government as custodian of society must take action against the practice of Female Genital Mutilation. This duty of the government has its foundation in the provisions of international human rights treaties. The prevalent legal standard for assessment of government action or inaction is exercise of due diligence in preventing, investigating, and punishing violations of human rights by both government actors and private persons. Action is needed to repeal laws that explicitly discriminate against women; extending the rule of law to protect women rights and lives also in the private domain.
- The State should encourage and direct systematic research around coordinated collection of data on the prevalence, causes and consequences of the practice. This would help in efficient combatting and monitoring mechanisms
- The government must take appropriate measures for education and empowerment of the girl child. This would make women aware of their individual rights and self-sufficient to survive and fight the practice. Women representation in the Parliament and Judiciary would help in advancement of women rights.
- Awareness must be created against the practice by raising campaigns, outreach programs and sensitization to promote the safety of women. Measures must be taken to increase access of women access to courts and other institutions providing help.
- There must be mandatory sensitization and training of law enforcement officials, including police, prosecutors, defence attorneys, and family law attorneys, the judiciary, health care providers, social service providers,

teachers, and religious, customary, community, and tribal leaders, on Human Rights Instruments particularly women rights including domestic laws, policies, and programmes.

- The judiciary in particular should be focused on balanced, well-informed and unbiased judicial decision making with systematic tracking. Strengthening the rule of law by government investing in justice initiative for women. This would repose faith of survivors in system of justice.
- Professional organizations such as medical associations and nursing councils including traditional circumcisers should promote awareness and incorporate ethical guidelines in medical training and practice. The duty to ensure health care and access to health is critical and Health education is a crucial for eliminating the practice.
- Child emergency phone outreach mechanism should be created. There should be a mechanism with a helpline number and other rehabilitation services including foster homes. The people engaged should be sensitized and trained to provide suitable advice and guidance to the survivor.
- National and International Non-Governmental Organizations dedicated to working towards the cause play key actors in designing and implementing programmes for abandonment of the practice. Through established networks and support from the government they can help support elimination of the practice. Women legal organizations are engaged in making justice systems work for women through their advice, counselling and support transforming the jurisprudence of women rights nationally, regionally and internationally.

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B. Legislative and Regulatory Measures

- The general laws of the legal system must be implemented effectively to protect women from this practice. Ratification and implementation of Human Rights instruments is fundamental to fight the practice of Female Genital Mutilation both in national and international legal systems. All existing domestic legislation including the constitution should be compatible with the ratified treaty. Future legislation changes must also be reviewed to determine its compatibility with human right instruments.
- Need for specific legislative changes in the form of amendment to general law or new specific legislation to ban the practice of Female Genital Mutilation. The legislative changes must be specific, well defined and based on principles of human rights with effective implementation mechanism. Draft legislative provisions provided below.

C. Proposed Draft Legislative Suggestions for Elimination of Practice of Female Genital Mutilation

(a) Definition of Female Genital Mutilation as a Practice

Female Genital Mutilation also referred to as Female Genital Circumcision, Female Genital Cutting (FGC), *Khatna* or *Khafdis* as universally accepted essentially includes procedures that involve the partial or total removal of the external female genitalia for non-medical purposes. Most legal systems that have that have regulatory and legislative mechanism aimed to eradicate the practice lack of a well- structured definition and understanding of the term itself. This results in multiple interpretations to what exactly constitutes the practice. Some legal systems have however, adopted specific definitions.

It is proposed that any definition of Female Genital Mutilation including the universally adopted definition by WHO should be categorically inclusive covering all forms of mutilation. It must also include exceptions explicitly excluding any necessary surgical or post-partum procedure carried out by a registered medical practitioner significant for physical and mental health of the women.

(b) Protection and Regulatory Mechanism: Criminalization of Practice

Some legal systems have legislation that criminalize the practice of Female Genital Mutilation either as part of the general legislation or through specific legislation on the practice. When making the decision to apply criminal sanctions the government should can either enacting a law specifically prohibiting the practice or applying an existing criminal law the larger purpose to characterize the practice as a criminal offense.

It is proposed that the legislative change must lay expressly down: (i) classify the practice as a criminal offence (ii) parties who can be punished (ii) quantum of punishment. The legislative change must categorically define the ingredients of the practice classifying it as a criminal offence.

Those whose perform or engage in the practice either directly or indirectly must be held guilty of the offence of committing Female Genital Mutilation. In most legal systems both performing and participating or attempting parties to carry out the practice are subject to be penalized.

Strict punishments and penalties should be provided and quantum specified. The proposed punishment is punishment up to 5 years imprisonment and penalty upto INR 2 Lakhs depending on severity of practice subject to exception of surgical medical operation necessary for the women carried out by a registered medical practitioner. Specific amendments may be made in the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation making any medical

practitioner engaging in the practice Female Genital Mutilation accountable and subject to disciplinary proceedings.

(c) Rehabilitation and Support Mechanism for victims

The primary objective of having a legal frame work whether as a specific legislation/ amendment or chapter is to prevent the commission of the act of Female Genital Mutilation. In addition to criminal sanction there must also be enough support, rehabilitation and monitoring mechanism for effective implementation based on a multi sectorial community and state led approach. Some following are some key propositions:

Reporting of Practice: There must be present a mechanism to enable informants to bonafide provide information regarding propaganda, planning, abeting and actual commission of the practice without any fear victimization or social outcast. The same mechanism should also be available to the victim with reasonable stipulated time upto 3 years from commission or knowledge about the commission of the act to file a complaint so that the informant has enough time to get over any initial apprehensions.

Enforcement: There should a systematic structured investigation, and monitoring mechanism where a protection officer or any other designated official on receiving information takes necessary steps. The officer must have the powers to have FGM Protection Order issued as a means of protecting actual or potential victims under civil law the breach of which could be made an offence. The officer should be accountable for unheard or information not properly catered to. All reported cases should be properly recorded which would help monitor and as repository for research. Concept of one-stop rehabilitation support shops and specialized services for counselling and support to victim without creating secondary victimization. Implement gender-responsive reparations programmes which are victim-focused justice mechanism and can be instrumental in post conflict recovery.

REFERENCES

Statutes and Legal Instruments

- African Charter on Human and Peoples' Rights (Banjul Charter)
- American Convention on Human Rights (Pact of San José)
- Constitution of India
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Convention on the Rights of the Child, 1989
- Criminal Procedure Code, 1973, No. 2, Acts of Parliament, 1974
- Evidence Act, 1872, No. 1, Acts of Parliament, 1872
- European Convention on Human Rights.
- Female Genital Mutilation Act 2003
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Prohibition of Female Circumcision Act 1985,
- Prohibition of Female Genital Mutilation (Scotland) Act 2005
- Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012
- Protection of Human Rights Act in 1993 No. 32, Acts of Parliament, 2012
- Statute of the International Court of Justice
- Universal Declaration of Human Rights, 1948

Books and Commentaries

- BETTINA SHELL-DUNCAN AND YIVA HERNLUND, TRANSCULTURAL BODIES: FEMALE GENITAL CUTTING IN GLOBAL CONTEXT (Rutgers University Press (30 July 2007)
- CLAIRE M RENZETTI, JEFFEREY EDLESON, SOURCE BOOK ON VIOLENCE AGAINST WOMEN (Sage Publications, 2011).
- DAS JATINDRA KUMAR, HUMAN RIGHTS LAW AND PRACTICE (PHI 2016)
- DR. MANJULA S.R DEEPA T.N ,THE CHILDREN AND LAWS IN INDIA WITH REFERENCE TO POCSO ACT 2012,(Notion Press; 1 edition (2018)
- D.D. BASU,INTRODUCTION TO THE CONSTITUTION OF INDIA ,(Lexis Nexis; Twentieth edition 2011)
- DHIMAN O P, UNDERSTANDING HUMAN RIGHTS: AN OVERVIEW (Kalpaz Publications (2011)
- GAUR K.D. COMMENTARY ON THE INDIAN PENAL CODE, (Universal Law Publishing - An imprint of LexisNexis; Second edition 2013)
- HASEENA LOCKHAT, FEMALE GENITAL MUTILATION: TREATING THE TEARS, (Middlesex University Press; 3rd edition 2004)

- H.O AGARWAL; INTERNATIONAL LAW AND HUMAN RIGHTS (Central Law Publications 21st Edition, 2016).
- HUBERT PROLONGEAU, UNDOING FGM: PIERRE FOLDES, THE SURGEON WHO RESTORES THE CLITORIS, (Uncut/Voices Press 2011)
- JAMES NICKEL, MAKING SENSE OF HUMAN RIGHTS, (Wiley-Blackwell; 2nd edition 2006)
- JAMES GRIFFIN ,ON HUMAN RIGHTS, (OUP UK August 2009)
- K.C. JOSHI, INTERNATIONAL LAW AND HUMAN RIGHTS, (4th Edition, 2019)
- MANOJ KUMAR SINHA; IMPLEMENTATION OF BASIC HUMAN RIGHTS (Lexis Nexis 2013)
- MAMTA RAO, WOMEN AND CHILDREN (Eastern Book Company,3rd Edition)
- MARY E. JOHN WOMEN'S STUDIES IN INDIA: A READER,(Penguin India; 1st edition 2008)
- MYRA MARX FERREE; AILI MARI TRIPP,GLOBAL FEMINISM: TRANSNATIONAL WOMEN'S ACTIVISM, ORGANIZING, AND HUMAN RIGHTS (New York University Press, 2006)
- M.P JAIN, CONSTITUTION OF INDIA, Lexis Nexis, (Kamal Law House , Calcutta ,7th Edition ,2014)

- NIRMAL CHIRANJIVI J.HUMAN RIGHTS IN INDIA: HISTORICAL, SOCIAL AND POLITICAL PERSPECTIVES, (Oxford University Press; edition 2002)
- PRATAP S. MALIK , A COMPLETE GUIDE TO PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO) (Universal Law Publishing - An imprint of LexisNexis (2016)
- PSA PILLAI , CRIMINAL LAW,(Lexis Nexis, 11th Edition 2012)
- RATANLAL RANCHHODDAS, DHIRAJLAL KESHAVLAL THAKORE, RATANLAL & DHIRAJLAL'S LAW OF CRIMES: A COMMENTARY ON INDIAN PENAL CODE, 1860 ,(Bharat Law House, 2016)
- Rattan Singh ,*Legal Research Methodology*,(Lexis Nexis,January,2013)
- ROSEMARIE SKAINE, FEMALE GENITAL MUTILATION: LEGAL, CULTURAL AND MEDICAL ISSUES, (McFarland & Co 2005)
- R.V KELKAR, LECTURES ON CRIMINAL PROCEDURE, (Eastern Book Company, 6th Edition,2016)
- SHELLY WRIGHT, INTERNATIONAL HUMAN RIGHTS, DECOLONISATION AND GLOBALISATION: BECOMING HUMAN ,(Routledge, 2001)
- SIMONE DE BEAUVOIR (AUTHOR), CONSTANCE BORDE (TRANSLATOR), SHEILA MALOVANY-CHEVALLIER THE SECOND SEX, (Vintage ,1st edition 2011)

- TOBE LEVIN, WAGING EMPATHY, Uncut/Voices Press 2014
- V.N. SHUKLA, CONSTITUTION OF INDIA, (Eastern Book Company, 13th Edition, 2017 with Supplement 2019)
- WARIS DIRIE, DESERT FLOWER: THE EXTRAORDINARY LIFE OF A DESERT NOMAD, (William Morrow & Company 1999)
- WENDY CHAVKIN; ELLEN CHESLER RUTGERS WHERE HUMAN RIGHTS BEGIN: HEALTH, SEXUALITY, AND WOMEN IN THE NEW MILLENNIUM (University Press, 2005)
- VINOTI OJHA TRIVEDI, GENDER SCHOOL AND SOCIETY, (Agrawal Publications; 1st edition 2016)

Articles

- AdrianaKapla & BabucarrCham, *Female Genital Mutilation/Cutting: The Secret World of Women as Seen by Men*, HINDAWI PUBLISHING CORPORATION OBSTETRICS AND GYNECOLOGY INTERNATIONAL VOLUME (2013).
- *A Contribution to the Study of Mummification in Egypt*, Cairo: L'Institut Egyptien, 1906, 30, and Marc Armand Ruffer, *Studies in the Paleopathology of Egypt*, Chicago: University of Chicago Press, 1921, 171.

- Allen, Clifford. *A Study of Sexual Mutilations*, 2, INTERNATIONAL JOURNAL OF SEXOLOGY 102-107 (1948).
- Adriaan de Buck & Alan H. Gardiner, *The Egyptian Coffin Texts*, VOLUME 7, CHICAGO: CHICAGO UNIVERSITY PRESS, 1961, 448–450;
- Ann-Marie Wilson, *How methods used to eliminate foot binding in China can be employed to eradicate female genital mutilation*, JOURNAL OF GENDER STUDIES (2012)
- Andro A, Lesclingand M. Female genital mutilation. Overview and current knowledge. *Population*. 2016;71(2):215-296.
- Abusharaf RM (2001). Virtuous cuts: female genital circumcision in an African ontology. *Differences, a Journal of Feminist Cultural Studies*, 12:112–140.
- Abusharaf R (2005). Smoke bath: renegotiating self and the world in a Sudanese shantytown. *Anthropology and Humanism*, 30:1–21.
- Agugua NE, Egwuatu VE (1982). Female circumcision: management of urinary complications. *Journal of Tropical Pediatrics*, 28:248–252.
- Ahmadu F (2000). Rites and wrongs: an insider/outsider reflects on power and excision In: Shell-Duncan B, Herlund Y, eds. *Female ‘circumcision’ in Africa: culture, controversy and change*. Boulder, Colorado, Lynne Rienner: 283-312.
- Almroth L, Almroth-Berggren V, Hassanein OM, Al Said SS, Hasan SS, Lithell UB (2001). Male complications of female genital mutilation. *Social Science and Medicine*, 53:1455–1460.

- Almroth L, Bedri HA, Elmusharaf S, Satti A, Idris T, Hashim MS (2005a). Urogenital complications among girls with genital mutilation: A hospital based study in Khartoum. *African Journal of Reproductive Health*, 9:127–133.
- Almroth L, Elmusharaf S, El Hadi N, Obeid A, El Sheikh MAA, Elfadil SM (2005b). Primary infertility after genital mutilation in girlhood in Sudan: a case–control study. *Lancet*, 366:385–391.
- Almroth-Berggren V, Almroth L, Bergstrom S, Hassanein OM, Hadi NE, Lithell UB (2001). Reinfibulation among women in a rural area in central Sudan. *Health Care Women International*, 22:711–721.
- Asali A, Khamaysi N, Aburabia Y, Letzer S, Halihal B, Sadovsky M (1995). Ritual female genital surgery among Bedouin in Israel. *Archives of Sexual Behavior*, 24:571–575.
- Askew I (2005). Methodological issues in measuring the impact of interventions against female genital cutting. *Culture, Health and Sexuality*, 7:463–477.
- Auvert B, Taljaard D, Lagarde E, Sobngwi-Tambekou J, Sitta R, Puren A (2005). Randomized, controlled intervention trial of male circumcision for reduction of HIV infection risk: the ANRS 1265 trial. *PLoS Med*, 2:e298.
- Badawi, Mohamed, "Epidemiology of Female Sexual Castration in Cairo, Egypt." *The Truth Seeker* "1, No. 3 (July/August 1989): 31-34. Kinsey.
- Baasher, T "Psychological Aspects of Female Circumcision", *Traditional Practices Affecting the Health of Women and Children* (1979). Kinsey: (Book chapter). WHO/EMRO Technical Publication No. 2.

- Cook, R. "Damage to Physical Health from Pharaonic Circumcision (Infibulation) of Females: A Review of the Medical Literature." *Traditional Practices Affecting the Health of Women and Children* (1979). Kinsey: (Book chapter). WHO/EMRO Technical Publication No. 2.
- C. G. Seligman, *Aspects of the Hamitic problems in the Anglo-Egyptian Sudan*, THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE OF GREAT BRITAIN AND IRELAND, 40(3) (593–705), 639–646. (1913).
- Connors Jane, GENDER EQUALITY AND THE JUDICIARY USING INTERNATIONAL HUMAN RIGHTS STANDARDS TO PROMOTE THE HUMAN RIGHTS OF WOMEN AND THE GIRL-CHILD AT THE NATIONAL LEVEL London Commonwealth Secretariat (2000).
- Elliot Klein, Elizabeth Helzner, Michelle Shayowitz, Stephan Kohlhoff, Tamar A. Smith-Norowitz et al. *Female Genital Mutilation: Health Consequences and Complications –A short Literature* (2018).
- Florence Howe, *Toward the Twenty-First Century of Women Women's Studies* 24 BEIJING AND BEYOND: QUARTERLY 98-101 (1996).
- Galey, *International Enforcement of Women's Rights*," 273 HUMAN RIGHTS AGAINST WOMEN: THE U.N. COMMISSION ON THE STATUS OF WOMEN, (1979).
- Hakansson, Tore, "Genital and Sexual Mutilation." *Sexology, Sexual Biology, Behavior and Therapy* (1982): 255-257. Kinsey: 522.08 W92 s5 1982 (Book chapter

- Hosken, Fran, *Towards a Definition of Women's Rights*, HUMAN RIGHTS QUARTERLY, 3 1–10. (1981).
- Rajat Khosla & Joya Banerjee, Doris Chou1, Lale Say1 and Susana T. Fried, Khosla et al. *Reproductive Health* (2017).
- Sukhpal Kaur, *Women's Rights: A Historical Perspective*, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 70, 121-130(2009).
- Veronika Divišová *The Position of Czech Women in the Society of the 1990s* in the Spectrum of Research, CZECH SOCIOLOGICAL REVIEW 7, 2 (1999)
- Zehra F. Kabaskal Arat, *Human Rights World Wide, Contemporary World Issues*, 4 ABC - CI LO, ENGLAND,(2006).
- Bailey RC, Moses S, Parker CB, Agot K, Maclean I, Krieger JN (2007). Male circumcision for HIV prevention in young men in Kisumu, Kenya: a randomized controlled trial. *Lancet*, 369:643–656.
- Behrendt A (2005). The practice of excision in Moyamba and Bombali districts of Sierra Leone: perceptions, attitudes and practices. Dakar, Plan West Africa Regional Office
- .Behrendt A, Moritz S (2005). Posttraumatic stress disorder and memory problems after female genital mutilation. *American Journal of Psychiatry*, 162:1000–1002.
- Berggren V, Abdel Salam G, Bergstrom S, Johansson E, Edberg AK (2004). An explorative study of Sudanese midwives' motives, perceptions and experiences of re-infibulation after birth. *Midwifery*, 20:299–311.
- Berggren V, Yagoub AE, Satti AM, Khalifa MA, Aziz FA, Bergstrom S (2006). Postpartum tightening operations on two delivering wards in Sudan. *British Journal of Midwifery*, 14:1–4.

- Bjälkander O, Almroth L (2007). FGM in Sierra Leone: rituals, youth, fistula and local laws. Paper presented at the 4th FOKO conference (Nordic Network for Research on FGM), Hansaari, Finland, 7–8 September.
- Centre For Gender Studies Author(s): Veronika Divišová Source: Czech Sociological Review, Vol. 7, No. 2, The Position of Czech Women in the Society of the 1990s in the Spectrum of Research (FALL 1999), pp. 253-254
- Chalmers B, Hashi KO (2000). 432 Somali women's birth experiences in Canada after earlier female genital mutilation. *Birth*, 27:227–234.
- Christoffersen-Deb A (2005). Taming tradition: medicalized female genital practices in western Kenya. *Medical Anthropology Quarterly*, 19:402–418.
- Cook, Rebecca J.; Bernard M. Dickens, Mahmoud F. Fathalla (2003). *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and law*. Oxford University Press. p. 262.
- C. G. Seligman, "Aspects of the Hamitic problems in the Anglo-Egyptian Sudan", *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 1913, 40(3) (593–705), 639–646.
- Dare FO, Oboro VO, Fadiora SO, Orji EO, Sule-Odu AO, Olabode TO (2004). Female genital mutilation: an analysis of 522 cases in South-Western Nigeria. *Journal of Obstetrics and Gynaecology*, 24:281–283.
- Dellenborg L (2004). A reflection on the cultural meanings of female circumcision: experiences from fieldwork in Casamance, southern Senegal. In: Arnfred, S, ed., *Re-thinking sexualities in Africa*. Uppsala, Nordic Africa Institute, 79–98.

- Dembour M (2001). Following the movement of a pendulum: between universalism and relativism. In: Cowan J, Dembour M, Wilson, R, eds. Culture and rights: anthropological perspectives. Cambridge, Cambridge University Press: 56–79.
- Dirie MA, Lindmark G (1992). The risk of medical complications after female circumcision. *East African Medical Journal*, 69:479–482.
- Egwuatu VE, Agugua NE (1981). Complications of female circumcision in Nigerian Igbos. *British Journal of Obstetrics and Gynaecology*, 88:1090–1093.
- El-Defrawi MH, Lotfy G, Dandash KF, Refaat AH, Eyada M (2001). Female genital mutilation and its psychosexual impact. *Journal of Sexual and Marital Therapy*, 27:465–473.
- Elmusharaf S, Elhadi N, Almroth L (2006a) Reliability of self reported form of female genital mutilation and WHO classification: cross sectional study. *British Medical Journal*, 333(7559):124.
- Elmusharaf S, Elkhidir I, Hoffmann S, Almroth L (2006b). A case–control study on the association between female genital mutilation and sexually transmitted infections in Sudan. *British Journal of Obstetrics and Gynaecology*, 113:469–474.
- Elliot Klein, Elizabeth Helzner, Michelle Shayowitz, Stephan Kohlhoff, and Tamar A. Smith-Norowitz et al. *Female Genital Mutilation: Health Consequences and Complications –A short Literature* (2018)
- Elnashar RA, Abdelhady R (2007). The impact of female genital cutting on health of newly married women. *International Journal of Gynecology and Obstetrics*, 97:238–244.
- Fernandez-Aguilaret S, Noel JC (2003). Neuroma of the clitoris after female genital cutting. *Obstetrics and Gynecology*, 101:1053–1054.

- Female genital mutilation. Maria Kontoyannis and Christos Katsetos; Health Science Journal Volume 4 issue 1 (2010)
- Fisaha KG, Female Genital Mutilation: A Violation of Human Rights J POL SCI PUB AFF 4: 198(2016).
- Florence Howe, *Toward the Twenty-First Century of Women Women's Studies* 24 BEIJING AND BEYOND: QUARTERLY 98-101 (1996).
- Galey, *International Enforcement of Women's Rights,*" 273 HUMAN RIGHTS AGAINST WOMEN: THE U.N. COMMISSION ON THE STATUS OF WOMEN, (1979).
- Gerry Mackie & John LeJeune, *Innocenti Working Paper No. Xxx. Florence, UNICEF INNOCENTI RESEARCH CENTRE.*(2008).
- Gray RH, Kigozi G, Serwadda D, Makumbi F, Watya S, Nalugoda F et al. (2007). Male circumcision for HIV prevention in men in Rakai, Uganda: a randomised trial. *Lancet*, 369:657–666.
- Gruenbaum E (2006). Sexuality issues in the movement to abolish female genital cutting in Sudan. *Medical Anthropology Quarterly*, 20:121.
- Hayford SH (2005). Conformity and change: community effects on female genital cutting in Kenya. *Journal of Health and Social Behavior*, 46:121–140.
- Herieka E, Dhar J (2003). Female genital mutilation in the Sudan: survey of the attitude of Khartoum university students towards this practice. *Sexually Transmitted Infections*, 79:220–223.

- Hosken, Fran, *Towards a Definition of Women's Rights*, HUMAN RIGHTS QUARTERLY, 3 1–10. (1981).
- Isa AR, Shuib R, Othman MS (1999). The practice of female circumcision among Muslims in Kelantan, Malaysia. *Reproductive Health Matters*, 7:137–144.
- Johnsdotter, S and Essén, B. 2010: “Genitals and ethnicity: the politics of genital modifications.” *Reproductive Health Matters* 2010; 18 (35) 29-37.
;
- Johnsdotter & Essén, *Genitals and ethnicity: the politics of genital modifications*, REPRODUCTIVE HEALTH MATTERS 18 (35) 29-37(2010)
- Johansen REB (2002). Pain as a counterpoint to culture: towards an analysis of pain associated with infibulation among Somali immigrants in Norway. *Medical Anthropology Quarterly*, 16:312–340.
- Johansen REB (2006a). Care for infibulated women giving birth in Norway- An anthropological analysis of health workers management of a medically and culturally unfamiliar issue. *Medical Anthropology Quarterly*; 20:516-44.
- Johansen REB (2007). Experiencing sex in exile—can genitals change their gender? In: Hernlund Y, Shell-Duncan B, eds. *Transcultural bodies: female genital cutting in global context*. New Brunswick, Rutgers University Press: 248–277.
- Jones H, Diop N, Askew I, Kaboré I (1999). Female genital cutting practices in Burkina Faso and Mali and their negative health outcomes. *Studies in Family Planning*, 30:219–230.
- Klouman E, Manongi R, Klepp KI (2005). Self-reported and observed female genital cutting in rural Tanzania: associated demographic factors,

HIV and sexually transmitted infections. *Tropical Medicine and International Health*, 10:105–115.

- Knight R, Hotchin A, Bayly C, Grover S (1999). Female genital mutilation—experience of The Royal Women’s Hospital, Melbourne. *Australia New Zealand Journal of Obstetrics and Gynaecology*, 39:50–54.
- Leonard L (2000). Adopting female ‘circumcision’ in southern Chad: the experience of Myabe. In: Hernlund Y, Shell-Duncan B, eds. *Female ‘circumcision’ in Africa: culture, controversy, and change*. Boulder, Colorado, Lynne Rienner, 167-192.
- Mackie G (2000). Female genital cutting: the beginning of the end. In: Hernlund Y, Shell-Duncan B, eds. *Female ‘circumcision’ in Africa: culture, controversy, and change*. Boulder, Colorado, Lynne Rienner: 253-282.
- Maria Kontoyannis Christos Katsetos, *Health Science Journal* 31 PP:31-36 E-ISSN:1791-809X VOLUME 4, ISSUE 1 (2010) .
- Marian Onomerhievurhoyen & Ndidi Mercy *European Scientific Journal* VOL.11, NO.14 ISSN: 1857 – 7881 (2015).
- McCaffrey M (1995). Female genital mutilation: consequences for reproductive and sexual health. *Sexual and Marital Therapy*, 10:189–200.
- McClelland RS, Lavreys L, Hassan W, Mandaliya K, Ndinya-Achola J, Baeten JM (2006). Vaginal washing and increased risk of HIV-1 acquisition among African women: a 10-year prospective study. *AIDS*, 20:269–273.

- Mohamud OA (1991). Female circumcision and child mortality in urban Somalia. *Genus*, 47:203–223.
- Momoh C. Attitudes to female genital mutilation. *British Journal of Midwifery*. 2004; Vol 12. Iss 10. p.p 631-635
- Msuya SE, Mbizvo E, Hussain A, Sundby J, Sam NE, StrayPedersen B (2002). Female genital cutting in Kilimanjaro, Tanzania: changing attitudes? *Tropical Medicine and International Health*, 7:159–165.
- M. Sepúlveda, T. van Banning, G.D. Gudmundsdóttir, C. Chamoun and W.J.M. van Genugten, ‘Human Rights Reference Handbook’, University for Peace, 2004, p. 3.
- Mwenda KK (2006). Labia elongation under African customary law: a violation of women’s rights? *International Journal of Human Rights*, 10:341–357.
- Newland L (2006). Female circumcision: Muslim identities and zero tolerance policies in rural West Java. *Women’s Studies International Forum*, 29:394–404.
- Nypan A (1991). Revival of female circumcision: a case of neo-traditionalism. In: Stolen KA, Vaa M, eds. *Gender and change in developing countries*. Oslo, Norwegian University Press: 39–65.
- Obermeyer CM (2005). The consequences of female circumcision for health and sexuality: an update on the evidence. *Culture, Health and Sexuality*, 7:443–461.
- Plowman, T. “The Perfect Vagina.” *Reproductive Health Matters* 2010; 18(35) 111-114.

- Ranbir Singh, G.S. Bajpai;, “*Research Methodology -Socio-Legal Research* “
- Rouzi AA, Sindi O, Bandar Radhan F, Ba’aqeel H (2001). Epidermal clitoral inclusion cyst after type I female genital mutilation. *American Journal of Obstetrics and Gynecology*, 185:569–571.
- Ross CT, Strimling P, Ericksen KP, Lindenfors P, Mulder MB. The Origins and maintenance of female genital modification across Africa. *Human Nature*. 2016;
- Rushwan H (1980). Etiologic factors in pelvic inflammatory disease in Sudanese women. *American Journal of Obstetrics and Gynecology*, 138:877–879.
- Rushwan H (2000). Female genital mutilation (FGM) management during pregnancy, childbirth and the postpartum period. *International Journal of Gynaecology and Obstetrics*, 70:99–104.
- Satti A, Elmusharaf S, Bedri HA, Idris T, Hashim MSK, Suliman GI, Almroth I (2006). Prevalence and determinants of the practice of genital mutilation of girls in Khartoum, Sudan. *Annals of Tropical Paediatrics: International Child Health*,26:303–310.
- Shell-Duncan B (2001). The medicalization of female’ circumcision’: harm reduction or promotion of a dangerous practice? *Social Sciences and Medicine*, 52:1013–1028.
- Shell-Duncan B, Hernlund Y (2006). Are there ‘stages of change’ in the practice of female genital cutting? Qualitative research findings from Senegal and The Gambia. *African Journal of Reproductive Health*, 10:57–71.

- Susan Edwards, Female Genital Mutilation - Violence against Girls and Women as a Particular Social Group, 19 Denning L.J. 271 (2007)
Denning Law Journal 2007 Vol 19 pp 271-278 CASE COMMENTARY
- She Who Speaks Shadow Speaks Truth: Transdisciplinarity in Women's and Gender Studies Author(s): Irene Dölling and Sabine Hark Source: Signs, Vol. 25, No. 4, Feminisms at a Millennium (Summer, 2000), pp. 1195-1198
- Sara Johnsdotte, Birgitta Essen, "Genitals and Ethnicity –The Politics of Genital Modifications"
- Sequeira, James H,"Female Circumcision and Infibulation." Lancet 221 (November 7, 1931): 1054-1056. Kinsey: 528.52.
- Talle A (1993). Transforming women into 'pure' agnates: aspects of female infibulation in Somalia. In: BrochDue V, Rudie I, Bleie T, eds. Carved flesh, cast selves: gender symbols and social practices. Oxford, Berg; 83-106.
- Talle A (2007). Female circumcision in Africa and beyond: the anthropology of a difficult issue. In: Hernlund Y, Shell-Duncan B, eds. Transcultural bodies: female genital cutting in global context. New Brunswick, Rutgers University Press: 91–106.
- Tamale S (2006). Eroticism, sensuality and 'women's secrets' among the Baganda. Institute of Development Studies Bulletin, 37:89–97.
- Tahzib F (1983). Epidemiological determinants of vesicovaginal fistulas. British Journal of Obstetrics and Gynaecology, 90:387–391.

- Thabet SM, Thabet AS (2003). Defective sexuality and female circumcision: the cause and the possible management. *Journal of Obstetrics and Gynaecology Research*, 29:12–19.
- Tyler, Tom; Rasinski Kenneth; Spodick Nancy (1985). "Influence of voice on satisfaction with leaders: Exploring the meaning of process control". *Journal of Personality and Social Psychology*. **48**: 72–81
- Vangen S, Johansen REB, Træen B, Sundby J, StrayPedersen B (2004). Qualitative study of perinatal care experiences among Somali women and local health care professionals in Norway. *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 112, 29-35.
- Veronika Divišová *The Position of Czech Women in the Society of the 1990s* in the Spectrum of Research, *CZECH SOCIOLOGICAL REVIEW* 7, 2 (1999)
- Vangen S, Stoltenberg C, Johansen REB, Sundby J, StrayPedersen B (2002). Perinatal complications among ethnic Somalis in Norway. *Acta Obstetrics et Gynecologica Scandinavica*, 81:317–322.
- WOMEN'S RIGHTS: A HISTORICAL PERSPECTIVE Author(s): Sukhpal Kaur Source: *The Indian Journal of Political Science*, Vol. 70, No. 1 (JAN. - MAR., 2009), pp. 121130
- Whitehorn J (2002). Female genital mutilation: cultural and psychological implications. *Sexual Relationships and Therapy*, 17:161–170.
- Yount KM (2002). Like mother, like daughter? Female genital cutting in Minia, Egypt. *Journal of Health and Social Behaviour*. 43(3):336-358.
- Yount KM, Abraham BK (2007). Female genital cutting and HIV/AIDS among Kenyan women. *Studies in Family Planning* 30:73–88

Webliography

- <http://www.livelaw.in/sc-issues-notice-on-pil-seeking-complete-ban-on-female-genital-mutilation-read-petition/>.
- <https://www.livemint.com/Politics>.
- www.opendemocracy.net/5050/rita-banerji/indias-female-genital-mutilationj-thousand-year-old-secret.
- <http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>
- <http://forwarduk.org.uk/key-issues/fgm/>
- <http://www.endfgm.eu/female-genital-mutilation/what-is-fgm/>
- <http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx>
- <http://www.who.int/mediacentre/factsheets/fs241/en/>
- <https://www.theatlantic.com/international/archive/2015/04/female-genital-mutilation-cutting-anthropologist/389640/>
- <https://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen>
- <http://www.dofeve.org/about-fgm.html>
- <http://www.cosmopolitan.com/lifestyle/advice/a6504/female-genital-mutilation-survivor-stories/>
- https://en.wikipedia.org/wiki/Gender_studies
- <http://www.livelaw.in/sc-issues-notice-on-pil-seeking-complete-ban-on-female-genital-mutilation-read-petition/>

- <https://thewire.in/women/centre-urges-sc-to-issue-directions-to-curb-female-genital-mutilation>
- <https://www.theguardian.com/global-development/2018/mar/06/study-reveals-fgm-india-female-genital-mutilation>
- <https://www.indiatoday.in/lifestyle/people/story/female-genital-mutilation-india-clitoris-pleasure-muslim-bohra-community-1162510-2018-02-06>
- <https://www.hindustantimes.com/mumbai-news/in-india-female-genital-mutilation-is-not-just-restricted-to-bohras-says-study/story-xvSpJinigWyCzH94R37MoN.html>
- <http://indianexpress.com/article/india/75-bohra-women-admit-female-genital-mutilation-study-5052869/>
- <http://www.thehindu.com/opinion/op-ed/protecting-the-girl-child/article22765513.ece>
- <https://timesofindia.indiatimes.com/city/mumbai/female-genital-mutilation-widely-prevalent-among-bohras-study/articleshow/62796533.cms>
- <https://thewomaninc.com/2016/03/16/suffering-women-female-genital-mutilation/>
- <https://scroll.in/latest/862992/theres-no-data-on-female-genital-cutting-in-india-women-and-child-development-ministry-tells-sc>
- <https://www.questia.com/library/sociology-and-anthropology/gender/women/female-genital-mutilation>
- <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>
- <https://data.unicef.org/data/fgm/>

- <http://www.who.int/reproductivehealth/topics/fgm/prevalence/en/>
- <https://data.worldbank.org/indicator/SH.STA.FGMS.ZS?view=chart>
- <https://www.prb.org/wallchart-female-genital-mutilation-declining/>
- <https://scroll.in/latest/862992/theres-no-data-on-female-genital-cutting-in-india-women-and-child-development-ministry-tells-sc>
- <http://www.refugeelaidinformation.org/united-kingdom-fgm>
- <https://www.pri.org/stories/2018-08-02/indias-dawoodi-bohra-community-theres-growing-debate-about-fgm>
- <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>.
- <http://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.
- <https://cyber.harvard.edu/population/fgm/fgm.htm>.
- https://en.wikipedia.org/wiki/Prevalence_of_female_genital_mutilation_by_country.
- <https://www.reuters.com/article/us-africa-fgm-lawmaking/african-countries-urged-to-toughen-laws-on-female-genital-mutilation-idUSKCN1LT2OQ>.
- <https://www.mid-day.com/articles/sunita-tiwari-lawyer-pil-female-genital-mutilation-interview-bohra-community-khatna/18300161>.
- <http://refugeelaidinformation.org/fgmc-case-law-and-other-legal-documents>.
- <http://nhrc.nic.in/acts-&-rules/declarationcovenants-1>
- https://en.wikipedia.org/wiki/Religious_views_on_female_genital_mutilation.

- <https://www.28toomany.org/blog/2016/may/16/the-psychological-effects-of-female-genital-mutilation-research-blog-by-serene-chung/>.
- <https://timesofindia.indiatimes.com/city/mumbai/Rival-Syedna-denounces-female-genital-mutilation-kindles-hope/articleshow/52168301.cms->
- <http://www.livelaw.in/female-genital-mutilation-fgm-one-has-supreme-authority-over-genitalia-it-is-central-to-her-identity-dignity-and-autonomy-observes-chandrachud-j/>
- https://timesofindia.indiatimes.com/india/sc-to-decide-legality-of-female-genital-mutilation/articleshow/65205830.cms?&utm_source=Articleshow&utm_medium=Organic&utm_campaign=Related_Stories
- <https://timesofindia.indiatimes.com/india/no-new-law-for-now-it-is-pocso-and-ipc-to-curb-female-genital-mutilation/articleshow/65203182.cms>
- <https://www.ndtv.com/india-news/female-genital-mutilation-violates-bodily-integrity-supreme-court-1880654>
- <https://timesofindia.indiatimes.com/india/supreme-court-questions-practice-of-female-genital-mutilation/articleshow/64922201.cms>
- <https://www.moneycontrol.com/news/india/ban-female-genital-mutilation-supreme-court-to-hear-plea-on-july-16-2689891.html>
- <https://www.hindustantimes.com/india-news/female-genital-mutilation-violates-privacy-a-crime-under-pocso-supreme-court/story-27crDBKvhZnkatR49FbiLO.html>
- <https://deccanchronicle.com/nation/current-affairs/100718/supreme-court-for-ban-on-female-genital-mutilation.html>
- <http://www.livelaw.in/tag/female-genital-mutilation/>

- <http://www.tribuneindia.com/news/nation/top-court-questions-practice-of-female-genital-mutilation/618149.html>
- <https://barandbench.com/anyones-bodily-integrity-compromised-sc-asks-female-genital-mutilation/>
- <http://indianexpress.com/article/india/bohra-women-against-female-genital-mutilation-supreme-court-seeks-centre-4646146/>
- <http://www.livemint.com/Politics/Au1pn0Rwg74ZqaqmPGEoIL/Supreme-Court-to-examine-female-genital-mutilation-issue.html>
- <http://www.news18.com/news/india/sc-issues-notice-to-centre-in-female-genital-mutilation-case-1395091.html>
- http://www.ptinews.com/news/8683690_SC-to-examine-practice-of-female-genital-mutilation.html
- [https://theprint.in/2017/05/10/the-supreme-court-petition-on-fgm-will-get-a-boost-if-victims-join-lawyer-says/.](https://theprint.in/2017/05/10/the-supreme-court-petition-on-fgm-will-get-a-boost-if-victims-join-lawyer-says/)
- <http://www.aninews.in/newsdetail-Mg/MzEzMDM1/bohra-women-against-female-genital-mutilation-sc-seeks-centre.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://www.hindustantimes.com/mumbai-news/why-bohra-women-were-reluctant-to-go-to-court-against-genital-mutilation/story-1b05q7ODx3VN9s0VXfgIyH.html>
- <http://www.mid-day.com/articles/sunita-tiwari-lawyer-pil-female-genital-mutilation-interview-bohra-community-khatna/18300161>
- <http://www.hindustantimes.com/india-news/sc-seeks-govt-response-to-plea-seeking-ban-on-female-genital-mutilation/story-NpLEnSLmg7wcQHnsboUIQI.html>

- <http://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html>
- <https://sahiyo.com/2017/06/07/fgm-before-the-indian-supreme-court/>
- <http://indiatoday.intoday.in/story/supreme-court-female-genital-mutilation-muslims/1/949121.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://indianexpress.com/article/india/female-genital-mutilation-sc-notice-to-centre-states-4646952/>
- <https://www.opendemocracy.net/5050/rita-banerji/indias-female-genital-mutilationj-thousand-year-old-secret>
- <http://www.hindustantimes.com/static/fgm-indias-dark-secret/>
- <http://www.lawyerscollective.org/the-invisible-lawyer/female-genital-mutilation-changing-scenario>
- <http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>
- <http://forwarduk.org.uk/key-issues/fgm/>
- <http://www.endfgm.eu/female-genital-mutilation/what-is-fgm/>
- <http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx>
- <https://www.theatlantic.com/international/archive/2015/04/female-genital-mutilation-cutting-anthropologist/389640/>
- <https://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen>

- <http://www.dofeve.org/about-fgm.html>
- <http://www.cosmopolitan.com/lifestyle/advice/a6504/female-genital-mutilation-survivor-stories/>
- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://edition.cnn.com/2017/05/11/health/fgm-us-survivor-stories-trnd/index.html>
- <http://edition.cnn.com/2017/05/11/health/female-genital-mutilation-fgm-explainer-trnd/index.html>
- <http://indianexpress.com/article/explained/understanding-female-genital-mutilation-the-practice-and-the-issues-fgm-4659216/>
- <https://www.theguardian.com/society/2012/nov/18/female-genital-mutilation-circumcision-indonesia>
- <http://www.foxnews.com/opinion/2017/04/28/ayaan-hirsi-ali-female-genital-mutilation-and-what-were-really-talking-about-beneath-weasel-words-genital-cutting.html>
- <https://www.thestar.com/news/fgm/2017/07/14/canadian-girls-are-being-taken-abroad-to-undergo-female-genital-mutilation-documents-reveal.html>
- <https://www.nytimes.com/topic/subject/female-genital-mutilation?mcubz=1>
- <https://www.terre-des-femmes.ch/en/topics/female-genital-mutilation-fgm>

- <http://www.voicesofyouth.org/en/posts/female-genital-mutilation-a-violation-of-human-rights>
- <http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/3-fgm-internationally-recognized-human-rights-issue>
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5429526/>
- <http://www.sudanforum.net>
- <https://www.britannica.com/topic/justice-social-concept>
- <https://data.unicef.org/topic/child-protection/female-genital-mutilation>
- <https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285/2017/01/Llamas-Paper.pdf>
- <https://data.unicef.org/topic/child-protection/female-genital-mutilation>
- <https://sahiyo.com/2018/07/21/tracing-the-origins-of-female-genital-cutting-how-it-all-started/>
- <https://www.cfr.org/blog/aspiration-action-achieving-gender-equality-economy>
- <https://www.cfr.org/blog/landmarks-global-movement-womens-rights-timeline>
- <http://www.unwomen.org/en/news/in-focus/international-womens-day>
- <https://www.standup4humanrights.org/en/article.html>
- <https://www.theguardian.com/global-development/2018/jul/20/10-year-old-girl-death-fgm-female-genital-mutilation-somalia>.
¹<https://www.independent.co.uk/news/world/africa/fgm-somalia-girl-dead-father-olol-galmudug-bleed-a8460561.html>

- <https://www.globalcitizen.org/en/content/somalia-fgm-first-prosecution-10-year-old-girl/>
- <https://law.justia.com/cases/georgia/court-of-appeals/2009/a09a1405-0.html>
- <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-refers-pil-against-female-genital-mutilation-to-five-judge-constitution-bench/articleshow/65930379.cms>
- <https://indianexpress.com/article/india/supreme-court-refers-pil-against-female-genital-mutilation-to-five-judge-constitution-bench-5371478/>
- <http://indianexpress.com/article/india/bohra-women-against-female-genital-mutilation-supreme-court-seeks-centre-4646146/>
- <http://www.livemint.com/Politics/Au1pn0Rwg74ZqaqmPGEoIL/Supreme-Court-to-examine-female-genital-mutilation-issue.html>
- <http://www.news18.com/news/india/sc-issues-notice-to-centre-in-female-genital-mutilation-case-1395091.html>
- http://www.ptinews.com/news/8683690_SC-to-examine-practice-of-female-genital-mutilation.html
- [https://theprint.in/2017/05/10/the-supreme-court-petition-on-fgm-will-get-a-boost-if-victims-join-lawyer-says/.](https://theprint.in/2017/05/10/the-supreme-court-petition-on-fgm-will-get-a-boost-if-victims-join-lawyer-says/)
- <http://www.aninews.in/newsdetail-Mg/MzEzMDM1/bohra-women-against-female-genital-mutilation-sc-seeks-centre.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://www.hindustantimes.com/mumbai-news/why-bohra-women-were-reluctant-to-go-to-court-against-genital-mutilation/story-lb05q7ODx3VN9s0VXfgIyH.html>
- <http://www.mid-day.com/articles/sunita-tiwari-lawyer-pil-female-genital-mutilation-interview-bohra-community-khatna/18300161>

- <http://www.hindustantimes.com/india-news/sc-seeks-govt-response-to-plea-seeking-ban-on-female-genital-mutilation/story-NpLEnSLmg7wcQHnsboUIQI.html>
- <http://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html>
- <https://sahiyo.com/2017/06/07/fgm-before-the-indian-supreme-court/>
- <http://indiatoday.intoday.in/story/supreme-court-female-genital-mutilation-muslims/1/949121.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://indianexpress.com/article/india/female-genital-mutilation-sc-notice-to-centre-states-4646952/>
- <https://www.opendemocracy.net/5050/rita-banerji/indias-female-genital-mutilationj-thousand-year-old-secret>
- <http://www.hindustantimes.com/static/fgm-indias-dark-secret/>
- <http://www.lawyerscollective.org/the-invisible-lawyer/female-genital-mutilation-changing-scenario>
- <http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>
- <http://forwarduk.org.uk/key-issues/fgm/>
- <http://www.endfgm.eu/female-genital-mutilation/what-is-fgm/>
- <http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx>
- <http://www.who.int/mediacentre/factsheets/fs241/en/>
- <https://www.theatlantic.com/international/archive/2015/04/female-genital-mutilation-cutting-anthropologist/389640/>
- <https://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen>
- <http://www.dofeve.org/about-fgm.html>
- <http://www.cosmopolitan.com/lifestyle/advice/a6504/female-genital-mutilation-survivor-stories/>

- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://edition.cnn.com/2017/05/11/health/fgm-us-survivor-stories-trnd/index.html>
- <http://edition.cnn.com/2017/05/11/health/female-genital-mutilation-fgm-explainer-trnd/index.html>
- <http://indianexpress.com/article/explained/understanding-female-genital-mutilation-the-practice-and-the-issues-fgm-4659216/>
- <https://www.theguardian.com/society/2012/nov/18/female-genital-mutilation-circumcision-indonesia>
- <http://www.foxnews.com/opinion/2017/04/28/ayaan-hirsi-ali-female-genital-mutilation-and-what-were-really-talking-about-beneath-weasel-words-genital-cutting.html>
- <https://www.thestar.com/news/fgm/2017/07/14/canadian-girls-are-being-taken-abroad-to-undergo-female-genital-mutilation-documents-reveal.html>
- <https://www.nytimes.com/topic/subject/female-genital-mutilation?mcubz=1>
- <https://www.terre-des-femmes.ch/en/topics/female-genital-mutilation-fgm>
- https://www.unicef.org/media/media_90033.html
- journal.biomedcentral.com/articles/10.1186/1742-4755-8-26
- <http://indianexpress.com/article/india/bohra-women-against-female-genital-mutilation-supreme-court-seeks-centre-4646146/>
- <http://www.livemint.com/Politics/Au1pn0Rwg74ZqaqmPGEoIL/Supreme-Court-to-examine-female-genital-mutilation-issue.html>
- <http://www.news18.com/news/india/sc-issues-notice-to-centre-in-female-genital-mutilation-case-1395091.html>
- http://www.ptinews.com/news/8683690_SC-to-examine-practice-of-female-genital-mutilation.html

- <https://theprint.in/2017/05/10/the-supreme-court-petition-on-fgm-will-get-a-boost-if-victims-join-lawyer-says/>.
- <http://www.aninews.in/newsdetail-Mg/MzEzMDM1/bohra-women-against-female-genital-mutilation-sc-seeks-centre.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://www.hindustantimes.com/mumbai-news/why-bohra-women-were-reluctant-to-go-to-court-against-genital-mutilation/story-lb05q7ODx3VN9s0VXfgIyH.html>
- <http://www.mid-day.com/articles/sunita-tiwari-lawyer-pil-female-genital-mutilation-interview-bohra-community-khatna/18300161>
- <http://www.hindustantimes.com/india-news/sc-seeks-govt-response-to-plea-seeking-ban-on-female-genital-mutilation/story-NpLEnSLmg7wcQHnsboUIQI.html>
- <http://www.hindustantimes.com/india-news/practise-of-female-genital-mutilation-should-be-banned-in-india-maneka-gandhi/story-kQhNA4rIYOLQTurkN5zAAM.html>
- <https://sahiyo.com/2017/06/07/fgm-before-the-indian-supreme-court/>
- <http://indiatoday.intoday.in/story/supreme-court-female-genital-mutilation-muslims/1/949121.html>
- <http://www.thehindu.com/news/cities/mumbai/waging-a-legal-battle-to-ban-fgm/article18421127.ece>
- <http://indianexpress.com/article/india/female-genital-mutilation-sc-notice-to-centre-states-4646952/>
- <https://www.opendemocracy.net/5050/rita-banerji/indias-female-genital-mutilationj-thousand-year-old-secret>
- <http://www.hindustantimes.com/static/fgm-indias-dark-secret/>
- <http://www.lawyerscollective.org/the-invisible-lawyer/female-genital-mutilation-changing-scenario>
- <http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>
- <http://forwarduk.org.uk/key-issues/fgm/>

- <http://www.endfgm.eu/female-genital-mutilation/what-is-fgm/>
- <http://www.nhs.uk/Conditions/female-genital-mutilation/Pages/Introduction.aspx>
- <http://www.who.int/mediacentre/factsheets/fs241/en/>
- <https://www.theatlantic.com/international/archive/2015/04/female-genital-mutilation-cutting-anthropologist/389640/>
- <https://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen>
- <http://www.dofeve.org/about-fgm.html>
- <http://www.cosmopolitan.com/lifestyle/advice/a6504/female-genital-mutilation-survivor-stories/>
- <http://www.livelaw.in/sc-issues-notice-on-pil-seeking-complete-ban-on-female-genital-mutilation-read-petition/>
- <https://thewire.in/women/centre-urges-sc-to-issue-directions-to-curb-female-genital-mutilation>
- <https://www.theguardian.com/global-development/2018/mar/06/study-reveals-fgm-india-female-genital-mutilation>
- <https://www.indiatoday.in/lifestyle/people/story/female-genital-mutilation-india-clitoris-pleasure-muslim-bohra-community-1162510-2018-02-06>
- <https://www.hindustantimes.com/mumbai-news/in-india-female-genital-mutilation-is-not-just-restricted-to-bohras-says-study/story-xvSpJinigWyCzH94R37MoN.html>
- <http://indianexpress.com/article/india/75-bohra-women-admit-female-genital-mutilation-study-5052869/>
- <http://www.thehindu.com/opinion/op-ed/protecting-the-girl-child/article22765513.ece>
- <https://timesofindia.indiatimes.com/city/mumbai/female-genital-mutilation-widely-prevalent-among-bohras-study/articleshow/62796533.cms>
- <https://thewomaninc.com/2016/03/16/suffering-women-female-genital-mutilation/>

- <https://scroll.in/latest/862992/theres-no-data-on-female-genital-cutting-in-india-women-and-child-development-ministry-tells-sc>
- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://www.motherjones.com/politics/2017/04/genital-cutting-indian-doctor-women-khatna/>
- <http://edition.cnn.com/2017/05/11/health/fgm-us-survivor-stories-trnd/index.html>
- <http://edition.cnn.com/2017/05/11/health/female-genital-mutilation-fgm-explainer-trnd/index.html>
- <http://indianexpress.com/article/explained/understanding-female-genital-mutilation-the-practice-and-the-issues-fgm-4659216/>
- <https://www.theguardian.com/society/2012/nov/18/female-genital-mutilation-circumcision-indonesia>
- <http://www.foxnews.com/opinion/2017/04/28/ayaan-hirsi-ali-female-genital-mutilation-and-what-were-really-talking-about-beneath-weasel-words-genital-cutting.html>
- <https://www.thestar.com/news/fgm/2017/07/14/canadian-girls-are-being-taken-abroad-to-undergo-female-genital-mutilation-documents-reveal.html>
- <https://www.nytimes.com/topic/subject/female-genital-mutilation?mcubz=1>
- <https://www.terre-des-femmes.ch/en/topics/female-genital-mutilation-fgm>
- <http://www.voicesofyouth.org/en/posts/female-genital-mutilation-a-violation-of-human-rights>
- <http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/3-fgm-internationally-recognized-human-rights-issue>
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5429526/>

APPENDECES

APPENDIX 1 – EXHIBITS

Figure 1.1: Sample Expert Interview Question

Expert Interview for Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*

Objective of the Interview:

The objective of the expert interview is to serve as a research tool to aid in research required as part of Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*.

The expert for this interview means a person who possesses extensive knowledge, experience and ability.

Brief Profile of the Expert (Optional)*

Name:

Gender: Age:

Educational Qualification:

Profession:

Address:

Email ID:

Summary Profile:

INSERT PHOTO

** The expert may choose to keep his identity as anonymous*

Date:

Time:

Place:

Mode of Interview:

Duration of Interview depending on Mode:

1. What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

2. Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

3. Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

4. Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

5. What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

6. What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

Figure 2.1: Figures showing a male circumcision scene, based on a wall carving found in Sakkara,

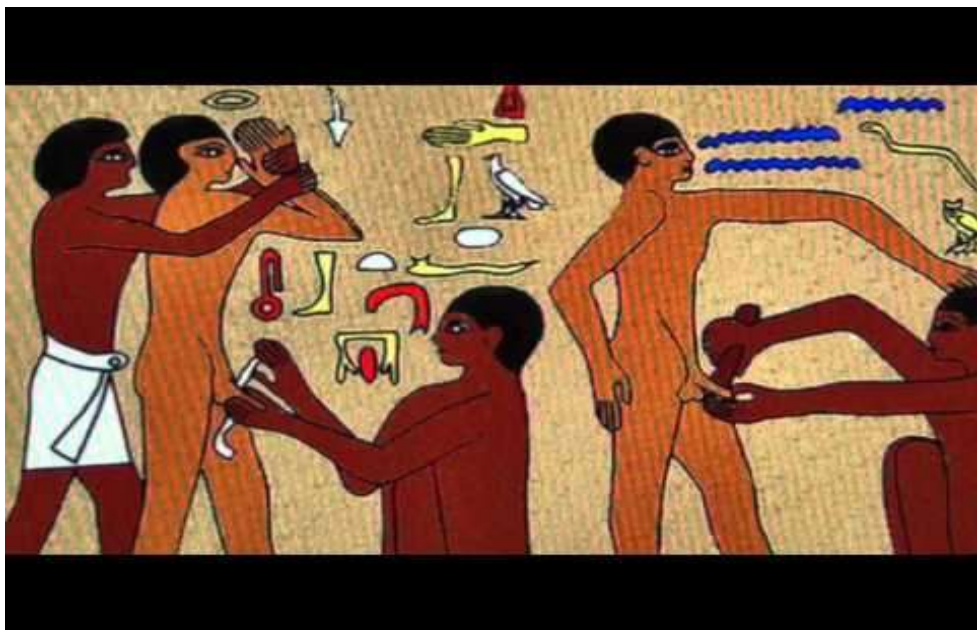


Figure 2.2: Illustrations from Egypt



Figure :2.3: Illustrations from Egypt



Figure 2.2.1: Anatomy of Female Vagina

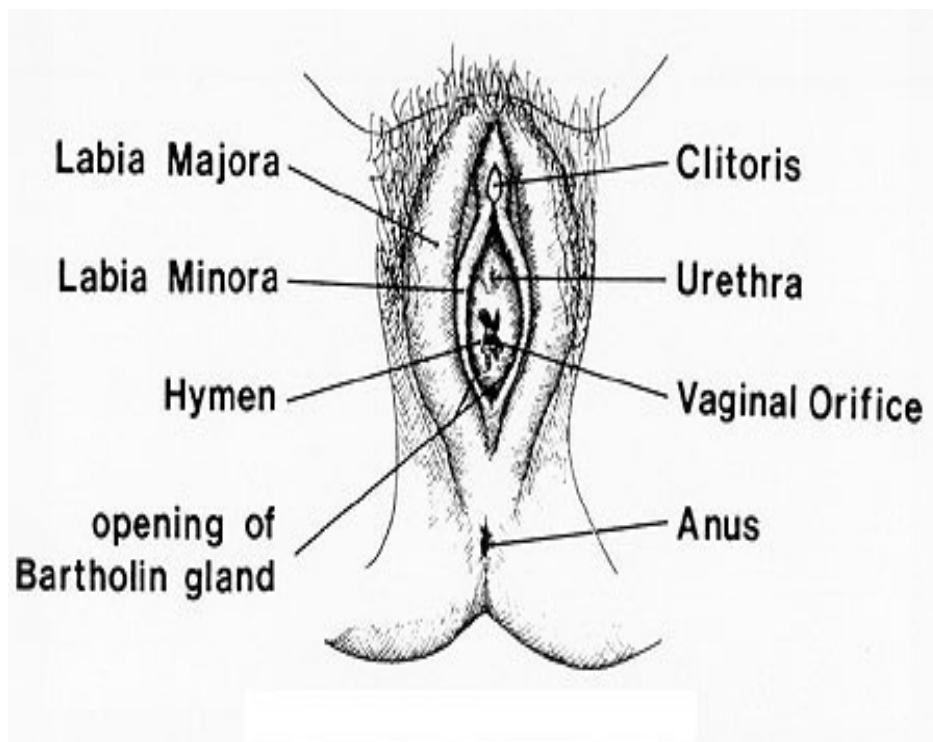


Figure 2.2.1.2: Types of Female Genital Mutilation

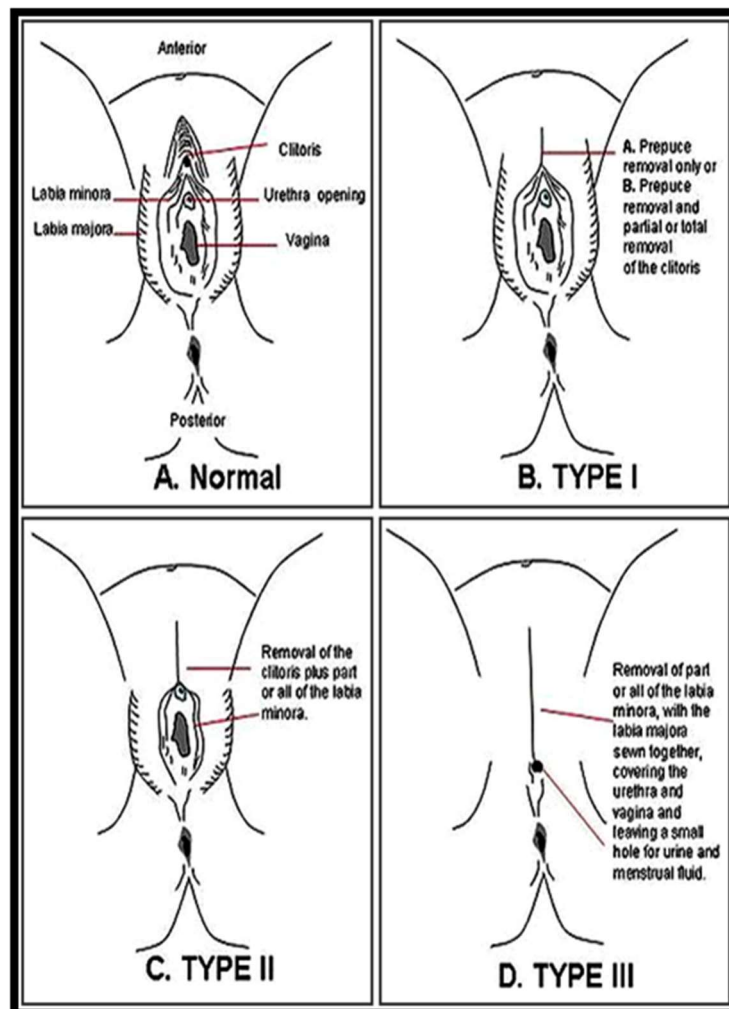
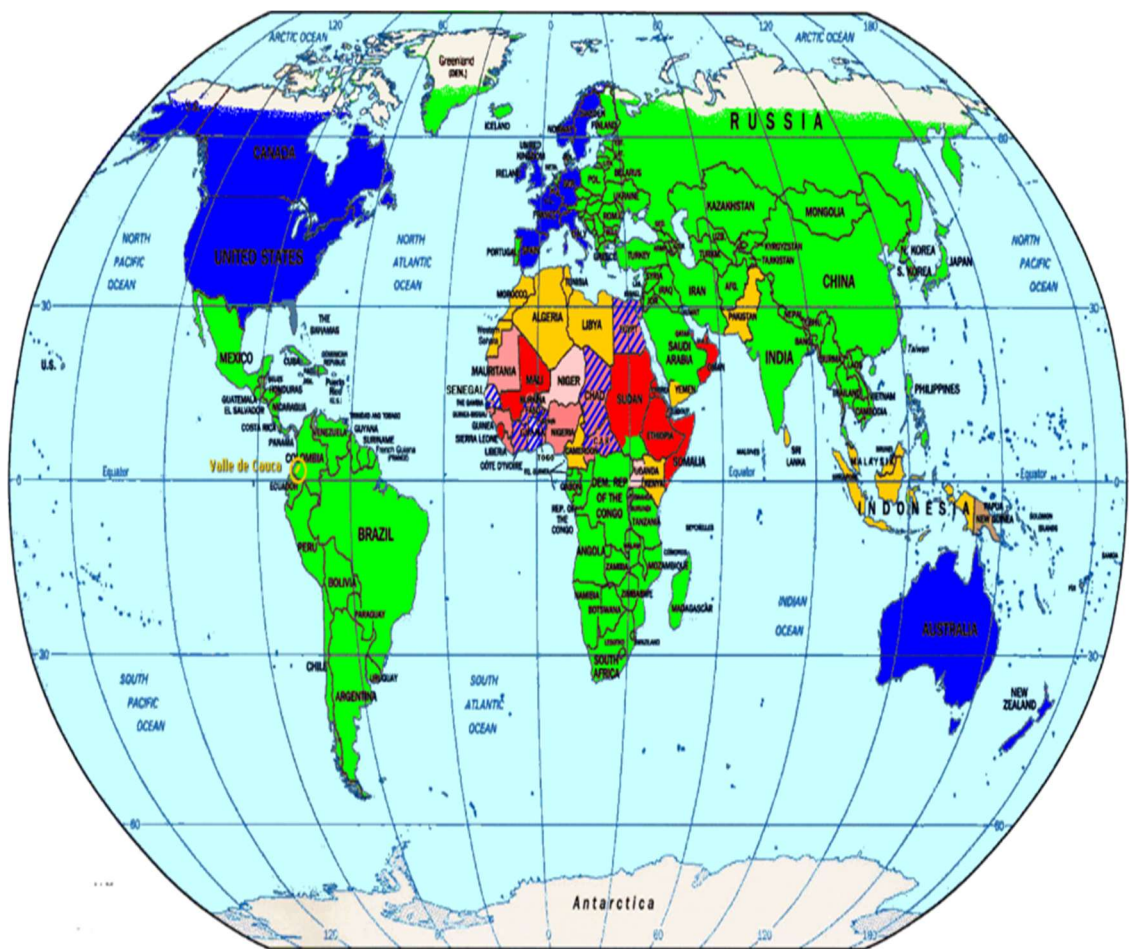


Figure 2.2.1.3: Crude Tools used in FGM



Figure 2.3.1 : Geographical Prevalence of FGM



APPENDIX 2- INTERVIEWS

Selected Excerpts

Interview 1 : Ms. Masoolma Ranalvi : Publisher ,lawyer and social activist is at the forefront of the campaign to end female genital mutilation in India, has presented before the UNHRC She is one of the many Dawoodi Bohra women who was mutilated at the age of 7 and started #EndFGM petitions on Change.org. She is committed to spreading awareness on the issue of FGM in her community. Founder of “wespeakout.org”

(a) Email communication

From: Masooma Ranalvi <formasooma@gmail.com> Sent: 18 October 2018 09:32 To: Shambhavi Sinha Subject: Re: Request for filling PH.D Expert Questions. Attachments: FGM Statement for endorsement.docx; WA-WSO-Courtesy-2.jpg

Dear Shambhavi

Sending you the pic and the statement.

Masooma

Founder: WeSpeakOut

www.wespeakout.org

fb: speakoutonfgm

twitter:speakoutonfgm

On Wed, Oct 17, 2018 at 9:19 PM Shambhavi Sinha
<ssinha@ddn.upes.ac.in> wrote:

Dear Masooma,

Thank you for your time and the enriching telephonic interview. There is so more much clarity in my thoughts and research.

If I could please request for one photograph from you and one page from you on your letter head/ email with some words from you that I could add as an annexure to my thesis.

Also the statement that you said you would share.

Thanks once again.

Shambhavi

From: Masooma Ranalvi [mailto:formasooma@gmail.com]

Sent: 17 October 2018 11:10

To: Shambhavi Sinha

Subject: Re: Request for filling PH.D Expert Questions.

ok

On Wed, Oct 17, 2018 at 10:37 AM Shambhavi Sinha
<ssinha@ddn.upes.ac.in> wrote:

Hi Maam,

I will be back from work around 6.30 .Can I please call you around 7pm

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From: Masooma Ranalvi <formasooma@gmail.com>
Sent: Wednesday, October 17, 2018 10:26:45 AM
To: Shambhavi Sinha
Subject: Re: Request for filling PH.D Expert Questions.

hi Shambhavi

can you call me today at 5 pm. My no is 9811174784.

Thanks

Masooma

On Sat, Oct 13, 2018 at 7:07 PM Shambhavi Sinha
<ssinha@ddn.upes.ac.in> wrote:

Dear Ma'am,

I Shambhavi Sinha presently working as a Lecturer and Proctor in
School of Law, UPES, Dehradun. ** As part of my research for my
Ph.D request you to please fill out set of expert questions .

My thesis title is *Female Genital Mutilation and Rights of Women: A Socio Legal Study*; a subject very close to my heart.

Request you to please take out some time to fill the attached expert questions and revert by latest 25th October.

In case you are more comfortable giving a telephonic response to the questions request to please provide a suitable time along with contact details where I can take down your responses

Thanking You,

Shambhavi Sinha

Lecturer and Proctor, School of Law
Knowledge Acres,P.O Kandoli via Prem Nagar,

Dehradun- 248007

Email ssinha@ddn.upes.ac.in

Contact: 0135 - 2770137 (Extn 2086)

Mobile: (+91) – 7060990062/9818261422

** Born and brought up in the city of Ranchi, she completed her schooling from Loreto Convent Ranchi and DAV, Shymali Ranchi. Pursued her graduation in (BSc. Zoology (Hons) from Miranda House, Delhi University and eventually did her LL.B from Campus Law Centre, Faculty of Law Delhi University. Having worked in the Legal Industry for about 7 years she did her Masters in Law (LL.M) from Amity Institute of Advanced Legal Studies with a Gold Medal and specialization in Family Law. Currently working in UPES since July 2016

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(b) Endorsement Statement

Indian Government must ban FGM/Khafz

We, the undersigned women's groups and individuals, stand in support of the survivors who are bravely speaking out against the practice, and join them in calling on the Indian Government to take immediate action against the practice of FGM/Khafz. The practice, which aims to suppress the sexuality of women and girls, is discriminatory and violates the rights to autonomy, bodily integrity and equality of the women and girls on whom it is performed.

Female Genital Mutilation (FGM)/Khafz is a violation of the human rights of women and girls, under both international law and the Indian constitution, including the right to bodily integrity. It has no health benefits, and in fact, often has both short-term and long-term health and psychological consequences.

In an ongoing case at the Supreme Court, the judges on the bench have made remarks stating that FGM/Khafz prima facie appears to be a violation of the right to privacy guaranteed by the Constitution, and the bodily integrity of the child. The Court also notes that there seems to be no scientific or medical basis for the practice of FGM/Khafz, which is likely to cause a significant amount of trauma, pain and bleeding. The case has now been referred to a Constitution Bench and is pending before the Court. The Attorney General, on behalf of the government, has argued in Court that FGM/Khafz is already a crime under existing laws, punishable with 7 years' imprisonment.

The Minister for Women and Child Development, Mrs. Maneka Gandhi has publicly stated that FGM/Khafz is a crime under existing laws, and

has asked the religious head of the Bohra community to take measures to put an end to the practice.

It is time for the Government for back up its words with concrete action. It cannot wait for the Supreme Court to issue a verdict. The Government has the responsibility to protect girls from being cut, and to ensure this human rights violation does not continue to take place even after it has publicly recognized that the performance of FGM/Khafz is a criminal offence under Indian law.

We demand that the Indian Government take the following actions:

- The government must collect national-level official statistics estimating prevalence of FGM/Khafz across the country.
- The Indian government should pass a separate law that bans FGM/Khafz in India, and makes it a criminal offence for anyone who performs the procedure of FGM/Khafz, or aids, propagates, abets or procures any person to carry FGM/Khafz.
- The law should recognize FGM/Khafz as a human rights violation, and a form of gender based violence and child abuse. It should prioritise prevention and awareness generation measures to protect girls and women from FGM/Khafz based on an integrated framework addressing gender based discrimination.
- Until a separate law is passed on FGM/Khafz, proactive measures should be taken to prosecute instances of FGM/Khafz as criminal offences of hurt, and grievous hurt, under sections 319 to 325 of the Indian Penal Code. However, existing laws fail to recognize FGM/Khafz as a systematic act of violence imposed as a norm, which is why a stand-alone law dealing with this issue is necessary.
- The central and respective State governments must issue appropriate orders/directives/guidelines to the police in all States, which provide education and information to law enforcement officials on the existence and effects of FGM/Khafz in India, the applicability of existing criminal laws, and the need to prosecute these offences.
- The government should immediately issue guidelines and advisories to all health professionals, noting that FGM/Khafz is a crime under existing laws, and direct them not to carry out the procedure.

Interview 2 : Ms. Chandani Shiyal : (Representative-Ms. Chandini Shiyal) -Sahiyo began in 2015 as a conversation between five women who felt strongly about the ritual of female genital cutting (khatna) in the Bohra community. Sahiyo is dedicated to empowering Asian communities to end female genital cutting (FGC) and create positive social change.

(a) Email communication

From: Chandni Shiyal <admin.india@sahiyo.com> Sent: 18 October 2018 23:06 To: Shambhavi Sinha Subject: Re: Chandni Shiyal (from Sahiyo)

Welcome! It was nice talking to you. Happy that more and more people are coming up and supporting to end FGC as well as doing research on it. Will surely send my image and my thoughts on FGC.

Thanks

Regards

Chandni Shiyal

On Thu, 18 Oct 2018, 23:03 Shambhavi Sinha,
<ssinha@ddn.upes.ac.in> wrote:

Dear Chandni

Thank you for your time and the enriching telephonic interview.

If I could please request for one photograph from you and one page from you on your letter head/ email with some words from you that I could add as an annexure to my thesis.

Thanks once again.

Shambhavi

From: Chandni Shiyal [mailto:admin.india@sahiyo.com]

Sent: 18 October 2018 19:35

To: Shambhavi Sinha

Subject: Re: Chandni Shiyal (from Sahiyo)

Thanks and Incase I can make today at 10 will call u

On Thu, 18 Oct 2018, 19:32 Shambhavi Sinha,
<ssinha@ddn.upes.ac.in> wrote:

Sure. No issues. I will call you tomorrow at 10pm.

Thanks .

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From: Chandni Shiyal <admin.india@sahiyo.com>

Sent: Thursday, October 18, 2018 7:11:49 PM

To: Shambhavi Sinha

Subject: Re: Chandni Shiyal (from Sahiyo)

Hi Shambhavi,

If you don't mind can we make a call tomorrow or today by 10pm. Have some sudden plan.

Regards

Chandni Shiyal

On Tue, 16 Oct 2018, 21:43 Chandni Shiyal,
<admin.india@sahiyo.com> wrote:

Welcome! Looking forward to talk to you.

On Tue, 16 Oct 2018, 21:40 Shambhavi Sinha,
<ssinha@ddn.upes.ac.in> wrote:

Thanks a ton. Noted.

From: Chandni Shiyal [mailto:admin.india@sahiyo.com]
Sent: 16 October 2018 21:39
To: Shambhavi Sinha
Subject: Re: Chandni Shiyal (from Sahiyo)

Sure call me on 18th, 7.30pm.

On Tue, 16 Oct 2018, 21:36 Shambhavi Sinha,
<ssinha@ddn.upes.ac.in> wrote:

Apologies, Thursday, 18th

From: Shambhavi Sinha
Sent: 16 October 2018 21:35
To: 'Chandni Shiyal'
Subject: RE: Chandni Shiyal (from Sahiyo)

Dear Chandini ,

Thanks a lot for your response. It would be amazing to speak to you.

Is it ok if I call you at 7.30 pm after work on 17th ?

Thanks,

Shambhavi

From: Chandni Shiyal [mailto:admin.india@sahiyo.com]
Sent: 16 October 2018 21:31
To: Shambhavi Sinha
Subject: Chandni Shiyal (from Sahiyo)

Dear Shambhavi,

I am Chandni Shiyal, Admin Assistant at Sahiyo. I just completed my PhD and my thesis also focused on the practice of FGC in a India and Africa.

Glad to hear that you also would like to research on such a sensitive issue which is of course very close to my heart too. I went through your questionnaire. It would be good if you call me. Phone conversation I think is better where we could easily share our ideas. My number is 9930043439. Please feel free to call me. You can call me on Thursday any time after 11am.

Let me know if this day is OK for you too.

Thanks

Regards

Chandni Shiyal

Interview 3: Mrs. Fouzia Mirza- Advocate

Name : Mrs. Fouzia Mirza

Gender : Female

Age : 49 years

Educational : B.Sc. B.H.M.S. &

Qualification



Profession : Lawyer

Address : F-7, Minocha Colony, Bilaspur

(CG)

Email ID : fouziamirza@gmail.com

Date: 21st October, 2018

Time: 9.00 PM

Place: Bilaspur (CG)

Mode of Interview: Email

Duration of Interview depending on Mode:

1. What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

Ans. The practice of Female Genital Mutilation is prevalent in Daudi Bohra community. Circumcision of female which consists of removal of part of clitoris is known as Female Genital Mutilation. Majority of the people in India and the world do not know exactly what Female Genital Mutilation is. It has seen the light only after the Hon'ble Supreme Court of India has taken cognizance of the matter finding it to be a violation of Article 14 of the Constitution of India.

2. Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

Ans. It cannot be said to be a positive socio-cultural practice but it amounts to cruelty inflicted on women under the veil of Islamic rituals, customs and religion. Ibn Qudamah in his book Al Mujhni has said that circumcision is obligatory for men and it is an honour for women but it is not obligatory for them. This is the opinion of many scholars of Islam. Imam Ahmed in Al Mughni (1/70) has said that for men it is most strictly required but for women it is less strictly required. In Al Mawsauh-al-Fiqhiyyah (19/28) has said that Sunnat or Sunnah, as per Islam, is not to remove all of it i.e. not to remove the clitoris but only a part of it. A Hadith on the topic of Female Circumcision has been attributed to Prophet Muhammad (P.B.U.H.), according to which circumcision is a Sunnah for man and an honour for woman. But the authenticity of this Hadith is also doubtful. A Hadith narrated by Umma Atiyah is that woman used to

perform circumcision in Madina. The Prophet Muhammad (P.B.U.H.) told her “do not abuse” i.e. do not go to the extreme in circumcision and it can only be done if it is in the interest and betterment of woman and as per likeness of her husband. This Hadith has been reported by Abu Daud in Al Sunan Kitab Al Adab.

3. Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

Ans. The issue regarding violation of the rights of a girl child or women through practice of Female Genital Mutilation depends upon the age as well as interest of the female. If it is being done in an age where the girl is minor and does not have an opinion of her own, then certainly it violates her rights whereas if a major girl does it on her own and in her interest by following the customs and rituals prevailing in the family, then no right could be said to be violated.

4. Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

Ans. The practice of Female Genital Mutilation cannot be termed as illegal and cannot be made punishable as an offence across the globe because there is no harm to the society being caused by practising Female Genital Mutilation by a particular community. By making it a criminal offence, the Legislature or the Parliament would be exceeding their power of law making as it is a right *in persona* and no violation is being done by following the practice of Female Genital Mutilation on her own and as per the interest of the major female. No society or community is being harmed necessitating declaration of this practice a criminal offence.

5. What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current

status sufficient?

Ans. It is true that the Constitution of India has given the power of law making to the Parliament of this country. Article 25 of the Constitution also gives right to freedom of religion though it is subjected to public order, morality and health and to other provisions of Part-III. All person are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. The only restriction that has been imposed in this Article is that the State can make any law for regulating or restricting any economic, financial, political or other secular activities which may be associated with the religious practice. However, in the matter of Female Genital Mutilation, there is no such need to make any law for restricting or regulating this practice. Making any law just for electoral gain and by criminalizing the practice of Female Genital Mutilation, the government is only over-criminalizing an act which is purely personal and does not harm the interest of the society at large. Criminal law is an instrument of the government and it should not be used for electoral gains.

6. What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

Ans. Female Genital Mutilation is purely a private custom prevailing in a particular community and no law enforcement agency or the government should interfere with it by making it a criminal offence. If at all the community is conducting this against the will of a woman, then Penal Code of this country already has sections for booking the person committing such act. The only restriction that can be made by the government or the community itself is that they should come up with suggestions that it should not be performed on minor girls who are unable to give their opinion or should not be done against the wish of a minor girl.

Interview 4: Ms. Zoha Khan

Name : Ms. Zoya Khan
Gender : Female
Age : 21 years

Educational : Student
(Diploma in Pharma
Qualification

Profession : Student



Address : Juni Line, Madhya Nagri,
Bilaspur (CG)

Email ID : wahabkhan1962@gmail.com

Date : 21st October, 2018

Time : 9.00 PM

Place : Bilaspur (CG)

Mode of Interview

Duration of Interview depending on Mode:

What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

The practice of Female Genital Mutilation is only prevalent in Shia community. Bohra community forms a part of Shia community and excluding this community, no other communities in Islam are much aware of this practice in the world or in India.

Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

Ans. It is a cruel and abusive practice being done by the parents on their girl child for depriving them of pleasures of life. This practice was prevalent at the time when there were wars going on in Arab countries and due to scarcity of men, in order to decrease the sexual need of the girl, the practice was made prevalent in Arab countries.

Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

Ans. It greatly violates the right of a girl child because the age at which Bohra community conducts circumcision on a girl child, the girl child is not even aware of her own body and the needs of her body. So it certainly violates the right of life of a person at the time when she is not even able to understand that her right is being violated by her own parents.

Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

Ans. It should certainly be termed as illegal and should be made punishable, at least in India as there are law in America which penalizes conduction of Female Genital Mutilation by the parents on their girl child.

7. What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

Ans. The Parliament of India should certainly draft a law to criminalize and penalize the conduction of circumcision on girl child as many girls when they are minor and not aware of the act being performed

on them, go through it and it is within the four corners of the house that this circumcision is done on them. In Bohra community, the girls even after attaining majority are not allowed to speak against this cruel practice prevalent in their community and any woman objecting to it is threatened of being ostracized.

8. What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

Ans. The government should make a survey in the families of Bohra community and the parents should be educated by the NGOs or Para Legal Volunteers to stop the practice of Female Genital Mutilation till the Parliament makes any law for penalizing this practice.

Interview 5: Ms. Fareha Afzaal Rizwi- Advocate

Brief Profile of the Expert (Optional)*

Name : Mrs. Fareha Afzaal Rizvi

Gender : Female

Age : 47 years

Educational Qualification : B.H.Sc., M.A. (English) & LL.B.

Email ID : fareha.rizvi@yahoo.com



Date : 21st October, 2018

Time : 9.00 PM

Place :

Mode of Interview

Duration of Interview depending on Mode:

What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

Ans. The practice of Female Genital Mutilation is neither religious nor mandatory in Islam and should not be continued as it is not an essentiality of Islam. Majority of the people across the world and in India are not aware of this practice.

Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

Ans. It is not a positive socio-cultural practice. It is an abusive cruel practice in the garb of customs and religion.

Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

Ans. It certainly violates the right of a girl child or a woman because at the time when Female Genital Mutilation is done on a girl child, it is only the will of the parents of that child which prevails as the girl child is not aware of the act being performed and in this way, the parents are violating the most fundamental right of a woman to be sexually contented and happy.

Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

Ans. The practice of Female Genital Mutilation cannot be termed as illegal to make it punishable as an offence across the globe.

What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

Ans. There is no need of drafting any law in relation to Female Genital Mutilation because only a section of Bohra community practises it and it can be stopped only by educating the parents. They should be made aware of the consequences of conducting circumcision on their girl child and should be made aware that they should not force this practice on their girl child. There cannot be any law for penalizing Female Genital Mutilation as this practice is being conducted within the four corners of the house and until and unless the minor girl, who is not even aware of the act so committed and its consequences, lodges a report or any other person who becomes aware of this very particular practice, lodges a report, no legal action can be taken against the parents. Further, any legal action against the parents will destroy the family structure and may also endanger the life of the girl child.

What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

Ans. The role of the government and other law enforcement agency is only to educate the parents and to make them aware that this practice deprives their girl child of leading a normal and healthy sexual life.

Interview 6: Ms. Zeb Hasan- Law Student

Expert Interview for Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*

Objective of the Interview:

The objective of the expert interview is to serve as a research tool to aid in research required as part of Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*.

The expert for this interview means a person who possesses extensive knowledge, experience and ability.

Brief Profile of the Expert (Optional)*

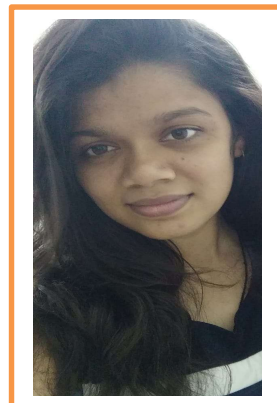
Name: Zeb Hasan

Gender: female

Age: 22

Educational Qualification: BA.LLB

Profession:



Address:

Email ID: zebhasan3@gmail.com

Summary Profile:

** The expert may choose to keep his identity as anonymous*

Date:

Time:

Place:

Mode of Interview

Duration of Interview depending on Mode:

1. What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?
Female genital mutilation (FGM), also known as female genital cutting and female circumcision, is the ritual cutting or removal of some or all of the external female genitalia. ... Typically carried out by a traditional circumciser using a blade, FGM is conducted from days after birth to puberty and beyond.
The majority of people in India are not aware of it as it is a rare practice that takes place in only few states in India.
2. Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

I believe it is a cruel cultural and customary practice that has no threads attached to religion. When asked by these people why they need to conduct this practice, they say it is important in order to make sexual intercourse more pleasurable for men. This practice has nothing to do with Islam.

3. Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

Female genital mutilation is a harmful practice and has adverse affects on women. It can cause haemorrhage, genital tissue swelling, infection and many other. Every woman has the right to life, I believe it is a violation of this right.

4. Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?
It should be made punishable across the global considering how harmful its effects are on women.

5. What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

No. No actions have been taken so far in regard to this subject. Probably because people argue it is a part of their religious practice which makes it fall under article 25. However thats not the case, the same distinction was drawn during the landmark judgement of triple talaq, there is a difference between religious practices and customary practices.

6. What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

I believe going by way of petition will be best. Let the judiciary decide on the matter in light of the current events and let it give guidelines for the same

Interview 7: Mr. Azhar Ahmed -Non Law Student

Expert Interview for Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*

Objective of the Interview:

The objective of the expert interview is to serve as a research tool to aid in research required as part of Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*.

The expert for this interview means a person who possesses extensive knowledge, experience and ability.

Brief Profile of the Expert (Optional)*

Name:

Gender:

Age:

Educational Qualification:

Profession:

Address:

Email ID:



Summary Profile:

** The expert may choose to keep his identity as anonymous*

Date:

Time:

Place:

Mode of Interview

Duration of Interview depending on Mode:

What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

Female genital mutilation is an age old practice prevalent in africa middle east iraq india and some other muslim populated countries. The practice involves partial or complete removal of the external vaginal parts such as the clitoris external labia etc. It is supposed to reduce the libido hence reducing the sexual drive of women making them pure and loyal towards one man. Also in some culture it is believed that this increases sexual pleasure.no not majority of the people are aware of the practice.

Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

This is no doubt an abusive cruel practice and it needs to be stopped as early as possible and within the legal gambit to force people to stop it.

Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

Yes it violates the rights of the girl and women. I think the rights violated are right to freedom of religion right against exploitation right to equality.

Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

Yes it should be made punishable as a criminal offence and should be termed illegal

What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

Definetely the current status is insufficient as the practicee is still being followed in india and in the absence of a proper legal system regarding the issue the victims do

What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

The government is the one responsible to draft laws to stop this heinous activity and the law enforcement agencies should put in place mechanisms to curb this activity as effectiveky as possible.

Interview 8: Mr. Gautam Kumar- Law Student

Expert Interview for Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*

Objective of the Interview:

The objective of the expert interview is to serve as a research tool to aid in research required as part of Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*.

The expert for this interview means a person who possesses extensive knowledge, experience and ability.



Brief Profile of the Expert (Optional)*

Name: Gautam Kumar

Gender: Male

Age: 20

Educational Qualification: Pursuing 5 Year B.A LL.B (Hons) School of Law, UPES

Profession: Law Student,

Address: School of Law, UPES, Kandoli Campus via PremNagar, Dehradun, (UK) 248007

Email ID: Adv.gautamkr@gmail.com

** The expert may choose to keep his identity as anonymous*

Date:

Time:

Place:

Mode of Interview

Duration of Interview depending on Mode:

What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India?

- It's the procedures which involve partial or total removal of the external female genitalia and/or injury to the female genital organs, whether for cultural or any other non-therapeutic reasons. I think majority of people following Islam are aware and also the people who are interested in Islamic culture and laws.

Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?

- Being an outsider to that culture I believe this to be a cruel practice and against the human rights philosophy but I have friends from that culture who justify this as scientific and according to Quran. But I don't understand that what a religion is trying to achieve with such brutal practice.

Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

➤ Yes, it violates the rights of the girl child and women. It violates the law of the natural and Human rights. The personal Dignity too is violated which is well enshrined in Article 21 of the Indian Constitution.

Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?

➤ Yes, The country who have some respect for Human Rights and believes in the philosophy of UDHR must termed it as illegal; but again no declaration is of binding nature on any sovereign state nothing can be done until the people of that very community initiates dissent against the same.

What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient?

➤ Since there is no specific mention of FGM in our laws (in my knowledge) and the practice goes unnoticed from the eyes of the law, there should be law to regulate the same. Such heinous practice cannot be justified as a religious one and should be allowed to continue.

What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?

➤ Since it a religious practice and as we are aware that neither the courts nor the government indulge much in these situation, but being a welfare and democratic nation India should ban this.

➤ Many advocates like Indira Jaisingh have already initiated the move against this practice. A NGO named Lawyers Collective has submitted a 57 page report to spell out a road map of measures needed to be taken.

➤ It will be much appreciated if the Government do so, why the Courts have to take the responsibility of bringing social and cultural change in the society every time.

Interview 9: Ms. Sabreen

Expert Interview for Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*

Objective of the Interview:

The objective of the expert interview is to serve as a research tool to aid in research required as part of Ph.D. thesis titled *Female Genital Mutilation and Rights of Women: A Socio Legal Study*.

The expert for this interview means a person who possesses extensive knowledge, experience and ability.

Brief Profile of the Expert (Optional)*

Name: Sabreen Ahmed

Gender: F

Age: 21

Educational Qualification: ba llb 4th year

Profession: student

Address:kandoli , dehradun

Email ID: sabreen.ahmed1804@gmail.com

Summary Profile:

** The expert may choose to keep his identity as anonymous*

Date:

Time:

Place:

Mode of Interview

Duration of Interview depending on Mode: Email

1. What is your understanding about the practice of Female Genital Mutilation? Do you think that majority of people are aware about the practice across the world and in India? Female genital mutilation is a cultural taboo, where the whole or some part of inner parts of vagina are cut for inhibition of sexual pleasure. Not much people are aware about it.
2. Do you think this is a positive socio-cultural practice or an abusive cruel practice in the garb of customs and religion?
It's an abusive practice with no basis..
3. Whether the practice of Female Genital Mutilation violates the rights of the girl child and women? What are the rights that you think are violated?

It violates all the rights envisaged within the UDHR and Constitution of India..it takes away the right to life in all fronts.

4. Whether the practice of Female Genital Mutilation be termed as illegal and be made punishable as an offence across the globe?
yes it should be put equivalent to that of outraging the modesty of women..
5. What is your opinion on the legal regime and judicial response on the practice of in India? Is there a need of Female Genital Mutilation drafting of laws in relation to Female Genital Mutilation or is the current status sufficient nothing much had been said or done about the cruel practice and now that right to privacy and choice have been celebrated as the most important fundamental right strict legal regime should be drafted and enforced.
6. What do you think should be the role of the Government and other law enforcement agencies with regard to the practice of Female genital mutilation?
7. Government under part 3 of the Constitution has promised the citizens to protect their fundamental right to life and dignity and it should be followed under strict regime.the pressure groups and interest groups can play a major role in getting their dues .

APPENDIX 3: EXCEL DATA

Figure 2.3.2: Percentage of girls who have undergone FGM(as reported by their mothers, by place of residence and household wealth quintile.

Last update: August 2019

Country	FGM prevalence among girls aged 0 to 14 years (%)	FGM prevalence among girls aged 0 to 14 years, by residence and wealth quintile (%)							Reference year	Data source
		Residence		Wealth quintile						
		Urban	Rural	Poorest	Second	Middle	Fourth	Richest		
Benin	0.2	0	0	1	0	0	0	0	2014	MICS
Burkina Faso	13	7	15	16	16	13	12	8	2010	DHS/MICS
Central African Republic	1	1	2	2	1	2	0.4	0.4	2010	MICS
Chad	10	9	10	11	10	11	10	8	2014-2015	DHS
Côte d'Ivoire	10	8	12	13	13	13	6	3	2016	MICS
Djibouti	43	41	50	48	43	44	39	37	2012	EDSF/PAPFAM
Egypt	14 y	10	16	23	16	13	11	5	2015	Health Issues Survey (DHS)
Eritrea	33	25	37	41	39	33	29	22	2010	Population and Health Survey
Ethiopia	16	7	17	16	16	16	19	10	2016	DHS
Gambia	56	51	60	51	55	62	66	45	2010	MICS
Ghana	1	0.3	1	2	0.2	0.1	0.2	0.3	2011	MICS
Guinea	45	40	48	50	43	48	44	41	2016	MICS
Guinea-Bissau	29	21	34	13	41	44	28	18	2014	MICS
Indonesia	49 y	56 y	47 y	45 y	49 y	51 y	56 y	53 y	2013	RISKESDAS
Iraq	1	1	1	0	0	0	0	2	2018	MICS
Kenya	3	2	3	6	2	2	2	1	2014	DHS
Mali	73	78	72	63	74	73	77	79	2015	MICS
Mauritania	51	33	66	82	69	47	36	13	2015	MICS
Nigeria	13	14	12	12	13	14	13	11	2016	MICS
Senegal	14	6	19	26	18	12	5	4	2017	DHS
Sierra Leone	8	7	9	10	10	8	8	6	2017	MICS
Sudan	30	27	31	29	28	30	25	30	2014	MICS
Togo	0.3	0.2	0.3	1	0.1	0.2	0.2	0.1	2013-2014	DHS
Uganda	1	1	1	2	2	0.4	2	1	2011	DHS
United Republic of Tanzania	0.4	0.1	0.4	1	0.2	0.3	0.1	0.1	2015-2016	DHS
Yemen	15.0	12.4	15.8	26	16.5	5.4	10.1	14.7	2012	NSPMS

FGM prevalence among daughters of girls and women aged 15 to 49 years										
Country	Mothers with at least one daughter cut (%)	Girls and women with at least one living daughter who has undergone FGM/, by residence and wealth quintile (%)							Reference year	Data source
		Residence		Wealth quintile						
		Urban	Rural	Poorest	Second	Middle	Fourth	Richest		
Cameroon	1	1	1	0.2	2	1	1	1	2004	DHS
Liberia	-	-	-	-	-	-	-	-	-	-
Niger	1	1	1	1	1	0.4	2	1	2006	DHS/MICS
Somalia	46	48	45	49	44	44	46	48	2006	MICS
- Data not available.										
y Data differ from the standard definition or refer to only part of the country.										
Indicator definition: Percentage of most recently cut daughters among girls and women aged 15 to 49 years with at least one living daughter who has undergone FGM.										
Source: UNICEF global databases 2019, based on Demographic and Health Surveys (DHS), Multiple Indicator Cluster Surveys (MICS) and other nationally representative surveys.										

Figure 2.3.3, Percentage of girls and women aged 15-49 years who have undergone FGM by place of residence and household wealth quintile

Last update: August 2019

Country	Girls and women opposing the continuation of FGM (%)	Reference year	Data source
Benin	86	2014	MICS
Burkina Faso	90	2010	DHS
Cameroon	84	2004	DHS
Central African Republic	75	2010	MICS
Chad	45	2015	DHS
Côte d'Ivoire	79	2016	MICS
Djibouti	51	2006	MICS
Egypt	38	2015	Health Issues Survey (DHS)
Eritrea	82	2010	Population and Health Survey
Ethiopia	79	2016	DHS
Gambia	33	2013	DHS
Ghana	93	2006	MICS
Guinea	22	2016	MICS
Guinea-Bissau	81	2014	MICS
Iraq	94	2018	MICS
Kenya	93	2014	DHS
Liberia	55	2013	DHS
Mali	14	2015	MICS
Mauritania	50	2015	MICS
Niger	82	2012	DHS
Nigeria	68	2017	MICS
Senegal	81	2017	DHS
Sierra Leone	27	2017	MICS
Somalia	33	2006	MICS
Sudan	53	2014	MICS
Togo	95	2014	DHS
Uganda	83	2011	DHS
United Republic of Tanzania	95	2016	DHS
Yemen	75	2013	DHS

Boys and men opposing the continuation of FGM (%)	Reference year	Data source
89	2012	DHS
87	2010	DHS
85	2004	DHS
–		
49	2004	DHS
82	2012	DHS
–		
28	2015	Health Issues Survey (DHS)
85	2010	Population and Health Survey
87	2016	DHS
–		
–		
38	2012	DHS
–		
–		
89	2014	DHS
–		
22	2006	DHS
19	2001	DHS
91	2012	DHS
62	2013	DHS
79	2017	DHS
40	2013	DHS
–		
64	2010	SHHS
96	2014	DHS
–		
89	2005	DHS
–		

Figure 2.3.4 : Percentage of girls and women aged 15 to 49 who have undergone FGM

Last update: March 2019

Country	FGM prevalence among girls and women (%)	FGM prevalence among girls and women aged 15 to 49 years, by residence and wealth quintile (%)							Reference year	Data source
		Residence		Wealth quintile						
		Urban	Rural	Poorest	Second	Middle	Fourth	Richest		
Benin	9	5	13	16	14	10	7	2	2014	MICS
Burkina Faso	76	69	78	77	78	78	80	69	2010	DHS/MICS
Cameroon	1	1	2	1	4	1	1	1	2004	DHS
Central African Republic	24	18	29	34	31	26	17	15	2010	MICS
Chad	38	40	38	46	42	37	30	37	2014-2015	DHS
Côte d'Ivoire	37	31	44	50	44	43	34	20	2016	MICS
Djibouti	93	93	96	-	-	-	-	-	2006	MICS
Egypt	87	77	93	94	93	92	87	70	2015	Health Issues Survey (DHS)
Eritrea	83	80	85	89	86	84	83	75	2010	Population and Health Survey
Ethiopia	65	54	68	65	69	69	69	57	2016	DHS
Gambia	75	72	79	79	78	82	73	66	2013	DHS
Ghana	4	3	5	13	4	3	1	1	2011	MICS
Guinea	97	96	98	98	97	97	96	96	2016	MICS
Guinea-Bissau	45	40	50	18	59	65	47	36	2014	MICS
Iraq	7	7	8	1	3	3	6	22	2018	MICS
Kenya	21	14	26	40	26	18	17	12	2014	DHS
Liberia	44	37	56	58	56	51	38	26	2013	DHS
Mali	83	85	82	64	84	88	89	87	2015	MICS
Mauritania	67	55	79	92	86	70	60	37	2015	MICS
Niger	2	1	2	2	2	2	3	1	2012	DHS
Nigeria	18	23	16	10	15	19	23	23	2016-17	MICS
Senegal	24	20	28	41	30	25	17	14	2017	DHS
Sierra Leone	86	80	92	93	93	90	85	75	2017	MICS
Somalia	98	97	98	98	99	98	98	96	2006	MICS
Sudan	87	86	87	88	82	81	90	92	2014	MICS
Togo	5	3	6	8	5	5	4	2	2013-2014	DHS
Uganda	0	0	0	1	0	0	0	0	2016	DHS
United Republic of Tanzania	10	5	13	19	10	12	9	4	2015-2016	DHS
Yemen	19	17	19	27	21	13	20	14	2013	DHS
- Data not available.										
Indicator definition: Percentage of girls and women aged 15 to 49 years who have undergone FGM.										
Notes: In Liberia, only girls and women who have heard of the Sande society were asked whether they were members; this provides indirect information on FGM, since it is performed during										
Source: UNICEF global databases 2019, based on Demographic and Health Surveys (DHS), Multiple Indicator Cluster Surveys (MICS) and other nationally representative surveys.										

PUBLICATIONS

Publications

- Published paper titled *Female Genital Mutilation in India: Practice, Legality, and Comparison viz a viz other forms of Circumcision and Cosmetic surgery in Men and Women* in UGC listed Journal Bharati Law Review, (ISSN no. 2278-6996, RNI No. MAHENG/2012/43568) Vol. VII Issue 3 (Jan-March, 2019)
- Paper titled “PRACTICE OF FEMALE GENITAL MUTILATION: A SOCIO-LEGAL CRITIQUE” in AD VALOREM- Journal of Law: Volume 5: Issue III: Part-III: July-September2018: ISSN : 2348-5485 Author Shambhavi Sinha Co: Author & Dr Mamta Rana
- Paper titled “Female Genital Mutilation (Khatna), An Abhorrent Act of Human Right Violation: Where Dreams End And Nightmares Begin in Suraj Punj Journal of Educational Research; ISSN : 2394-2886; UGC Journal Sr. No. – 64786 Author -Ms. Shambhavi Sinha Co-Author Dr. Mamta Rana
- Paper titled “FEMALE GENITAL MUTILATION – THE SURREPTITIOUS CLOSET OF INDIA” published in the Social Sciences International Research Journal Vol 3 Spl Issue with ISSN 2395-0544

Paper Presentations

- Presented paper titled *The Dark Secret of Female Genital Mutilation: A Legal Perspective* in International Seminar on Criminal Law & Administration of Criminal Justice System: National & International Commitments organized by School of Legal Studies, Babu Banarsi Das University, Lucknow in collaboration with Uttar Pradesh State Legal Service Authority, Lucknow held on 9th and 10th March 2019
- Presented paper titled Titled Female Genital Mutilation and Rights of Women: A Socio Legal Study on 24th May at DC Colloquium , UPES
- Presented paper titled The Unveiled Chamber of Secrets in India: Female Genital Mutilation in International Conference on Women Entrepreneurship, Gender Equality, Law, Business and Social Sciences 2018 and Dr. B R Ambedkar Lecture held on April 13-14, 2018; Shri Ram College of Commerce & Science, Bhandup (W), Mumbai, India
- Presented Paper titled FEMALE GENITAL MUTILATION - THE SURREPTITIOUS CLOSET OF INDIA in the International Conference on Women Entrepreneurship, E Commerce, Management, Law, Gender Studies, Humanities, & Social Sciences 2017, on March 31st 2017 held in Goa.

RESUME

Educational Qualifications

- LL.M (Family Law) from Amity Institute of Advanced Legal Studies in 2016 with Gold Medal and CGPA of 9.58.
- LL.B from Campus Law Centre, Faculty of Law, University Of Delhi in 2008 with an aggregate of 61%.
- Graduated in B.Sc Zoology (Hons) from Miranda House, University of Delhi in 2005 with 53%.
- Passed 12th class examination of CBSE from DAV, Shyamali, Ranchi in 2001 with 83%.
- Passed 10th class examination of ICSE from Loreto Convent, Ranchi in 1999 with 82%.

Work Experience

- July 2017 to present- Lecturer UPES, School of Law
- May 2013-June 2015: Self Practice; Knowledge Manager at BMR Advisors (Indirect Taxation).
- September 2011-April 2013: Senior Editor at Manupatra Information Solutions Private Limited, Noida.
- March 2010 - August 2011: Self Practice
- September, 2009 -February 2010: Law Researcher to Hon'ble Justice V.K Jain in the Delhi High Court.
- June, 2008 - August, 2009: Worked as an Associate with law firm Indus G and D Law Chambers, (now renamed as Indus Law), Noida

Publications

- Published paper titled *Female Genital Mutilation in India: Practice, Legality, and Comparison viz a viz other forms of Circumcision and*

Cosmetic surgery in Men and Women in UGC listed Journal Bharati Law Review, (ISSN no. 2278-6996, RNI No. MAHENG/2012/43568) Vol. VII Issue 3 (Jan-March, 2019)

- Paper titled “MARITAL RAPE IN INDIA: A FEMINIST SOCIO – LEGAL CRITIQUE published in Human Rights International Research Journal Vol 5 Spl Issue with ISSN 2320-6942. (January 2018)
- Human Rights International Research Journal Vol-6 Spl Issue with ISSN 2320 – 6942 paper titled A Socio Legal Study on Adoption under Juvenile Justice (Care and Protection of Children), Act, 2015: Need for Protection of Rights and Welfare of the Adopted Child, Pre and Post Adoption (April 2018)
- **Book Chapter** : Chapter in the Edited Book which is being released with title – “Advances in Women Entrepreneurship, Gender Equality, Law, Business and Social Sciences” with ISBN 978-93-86435-41-5 titled -The Unveiled Chamber of Secrets in India: Female Genital Mutilation
- Paper titled “PRACTICE OF FEMALE GENITAL MUTILATION: A SOCIO-LEGAL CRITIQUE” in AD VALOREM- Journal of Law: Volume 5: Issue III: Part-III: July-September2018: ISSN : 2348-5485 Author Shambhavi Sinha Co: Author & Dr Mamta Rana
- Paper titled “Female Genital Mutilation (Khatna), An Abhorrent Act of Human Right Violation: Where Dreams End And Nightmares Begin in Suraj Punj Journal of Educational Research; ISSN : 2394-2886; UGC Journal Sr. No. – 64786 Author -Ms. Shambhavi Sinha Co-Author Dr. Mamta Rana

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Paper Presentations

- Presented paper titled *The Dark Secret of Female Genital Mutilation: A Legal Perspective* in International Seminar on Criminal Law & Administration of Criminal Justice System: National & International Commitments organized by School of Legal Studies, Babu Banarsi Das University, Lucknow in collaboration with Uttar Pradesh State Legal Service Authority, Lucknow held on 9th and 10th March 2019
- Presented paper titled *Same Sex Marriage: The morality and right to life paradox in the changing nature of the institution of marriage in India* in the 15th International Seminar on Society and Law organized by the Institute for Social Development and Research, Ranchi held on 9th -11th March,2019
- Presented paper titled *A Socio Critical Analysis on Environmental Degradation and the Need for Sustainable Development* in National Seminar on Environmental Protection Socio-Legal Issues and Challenges organized by IMS Unison University, Dehradun held on 15th and 16th March 2019
- Presented paper titled *Pruning of Social Media in Sensitive and Critical Issues of Social Significance: An Analysis* in National Conference On Technological Developments & Changing Dimensions Of Law; ICFAI, Dehradun held on 13th – 14th April

- Presented paper titled Titled Female Genital Mutilation and Rights of Women: A Socio Legal Study on 24th May at DC Colloquium , UPES
- Presented Paper titled - A Socio Legal Study on Adoption under Juvenile Justice (Care and Protection of Children), Act, 2015: Need for Protection of Rights and Welfare of the Adopted Child, Pre and Post Adoption in International Conference on Women Entrepreneurship, Gender Equality, Law, Business and Social Sciences 2018 and Dr. B R Ambedkar Lecture held on April 13-14, 2018; Shri Ram College of Commerce & Science, Bhandup (W), Mumbai, India
- Presented paper titled The Unveiled Chamber of Secrets in India: Female Genital Mutilation in International Conference on Women Entrepreneurship, Gender Equality, Law, Business and Social Sciences 2018 and Dr. B R Ambedkar Lecture held on April 13-14, 2018; Shri Ram College of Commerce & Science, Bhandup (W), Mumbai, India
- Presented paper titled “Role of E -Learning in Indian Education System: The Way Ahead” in National Seminar on Teacher Education: Emerging Issues Trends and Diagnosis held on 24th April, 2018 a Uttaranchal College of Education, Dehradun.

Workshops/FDPS

- SHAKTI Training Program
- Faculty Development Program on “Multidisciplinary Research and Teaching Methodologies in Contemporary Era” held on 21-23 Jan, at UPES, School of Law

Paper Presentations

- Paper titled “MARITAL RAPE IN INDIA: A FEMINIST SOCIO – LEGAL CRITIQUE presented International Conference on Advances in English Studies, Women Empowerment, Business, Humanities & Social Sciences – 2017 organized by Carmel College for Women, Goa and International Multidisciplinary Research Foundation India r during 28/12/2017 - 29/12/2017 & 30/12/2017
- Presented paper titled Water Pollution and Sustainable Development in India- An Enviro-Legal Critique in the International Seminar on Water laws on 3rd-4th November, 2017
- Presented Paper titled “ From Click on the Mouse to Prison Bars-The rise of Crime and Criminals” in the 3rd International Conference on Data Protection and Privacy Laws organized by College of Legal Studies
- Presented paper titled “BEING FOOD -THE QUINTESSENTIAL ELIXR OF LIFE “ in IMS Law College, Noida National Seminar on Food Governance: Efficacy of Existing Legal Regime held on 11 May 2017
- Presented Paper titled FEMALE GENITAL MUTILATION - THE SURREPTITIOUS CLOSET OF INDIA in the International Conference on Women Entrepreneurship, E Commerce, Management, Law, Gender Studies, Humanities, & Social Sciences 2017, on March 31st 2017 held in Goa.

FDP/Workshops

- Participated in the 3rd National Litigation Workshop on Criminal Law: Practice, Procedure and Compliance organized by UPES, School of Law between December 11th to 15th ,2017

- Five Days Faculty Development Programme on theme Innovative Research and Teaching Methodologies in Contemporary Era between July,17th – 21st, 2017 organized by SoL UPES
- Faculty Development Programme Workshop based on Outcome Oriented Inspirational Teaching and Quality Legal Research held on January 3rd - 7th, 2017 organized by SoL UPES.

PLAGARISM REPORT