

Female Genital Mutilation: Legislative Measures Taken By United Nations Member States and To Combat Socio-Cultural Practices

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Abstract:

This paper is based on doctrinal research about the impact of ‘socio-cultural practice’ where one of them being FGM or Female Genital Mutilation. It focuses on the impact of socio-cultural practices on woman endangering their sexual wellbeing and the very desire of being a woman. A practice which holds no water or substance in its continuance has been unevenly followed affecting many women either physically, psychologically, or emotionally post-FGM. A UN led initiative to end FGM by 2030 has encouraged member nations to strongly follow the International Instruments and ratify the same through domestic laws in their respective countries to control the flow and completely eradicate the practice by 2030. Active participation by state and non-state actors, communities and various other participants including professionals and peer groups have nearly prevented the practices and surfaced out active cases in protest to the same. A comparative analysis of laws adopted by all countries leads us to the final legislative goal to be achieved by the strongest democracy like India also where FGM has been making headlines since 2017. Like the West, Central Asia and Latin America, India needs strong empathetic law to protect the female body from an uneven and unjustified practice, which is still doing business in the market as a ‘hitlist taboo’.

Keywords: Female Genital Mutilation, Human Rights, Health Impact, Types of FGM, United Nations, Anti-FGM, Woman Health.

Unfortunately, women's bodies have always been a battlefield.

It is always about men's control over women's bodies

- MEP Maria Noichl (S&D, Germany)

(in a debate in the European Parliament on 18 December 2019)

1. INTRODUCTION

What exactly do we call a “socio-cultural” practice, either it is backed by “custom,” usage or tradition. But when the very definition of culture, custom, etc. does not support public policy, it is discarded. In fact, even the law does not approve of it. As of today, over 200 million girls have been circumcised, despite UN goals to end FGM by 2030¹. The debate continues from History of Circumcision by David Gollaher to Warrior Marks by Pratibha Parmar, the practice and the end seems to arrive at no consensus. Moreover, Covid-19 witnessed many horrors of this practice crossing 6 million girls all along adding to the last figure.

Primarily, the practice was part of the African continent, but migrations and settlements left no land uncut. Today FGM is a Universal Problem, being practiced in part of Asia, Latin America to persisting in Australia, North America, Western Europe, and New Zealand. Now how has this happened, the people have been migrating from non-cutting countries to new host countries, making the practice of cutting legitimate and influential thereby making the spanning global. In fact, the same is being

¹ UNICEF. Female Genital Mutilation/ Cutting: A global Concern. (2016)

practiced under medical supervision, as in UK. Those without education, illiteracy and lower level of self-education were more vulnerable to such cuts/FGM.

Talking about our largely diversified country, is no stranger to this concept. The practice and its prevalence were initially denied by the centre. However, with lawyers collective and organisations like *Sahiyo*², efforts have been put up through the recent controversy in *Sunita Tiwari v. Union of India*³, where a female lawyer took the initiative to bring the dragon out in front of the judicial body. However, the decision awaits the call of a larger bench.

FEMALE GENITAL MUTILATION: END OF WOMENHOOD

Any literate woman would be spell-bound with the type of FGM being followed. The practice involves procedure which either partially/totally removes the female external genitalia or causing such other injury to the female genital organs for non-medical purposes. As per WHO (World Health Organisation), depending upon the cutting of female genital tissue the practice is divided into four different types with the very first being **Type 1** or clitoridectomy-this consists of surgical or simply partial removal of the clitoris. **Type II** or excision, which consists of removal of the clitoral hood and the prepuce, then **Type III** or infibulation which involves removal of major genitals of female genitalia involving several cuts and stitches, leaving a small opening for vaginal discourse. **Type IV** or cauterisation which majorly involves all the above procedures including labia pulling, piercing, and pricking. Imagine a woman being cut to make herself feel incomplete and be left to feel mutilated/cut with an organ she is gifted to rejoice her womanhood with, it is like leaving her incomplete, losing the very foundation of what she has been made for.

Type-I and Type-II remains to be largely practiced taking the toll to 80% as per WHO. Talking about the instruments, *Mohels* use razor blades, scissors, knives and pieces of broken glasses. FGM comes with several complication, first with the procedure used to perform the practice itself raises a big question. From maiming even, the tiniest part of our body or talk of a small bruise, cut or sphincter, every wound leaves an impact. Nonetheless, cutting the clitoral hood, would never help a women heal herself from physical and psychological traumas with both short term and long-term complications⁴. The health impacts after FGM/C have been severe also, the post-surgical process of de- infibulation have been associated with pain and stress. Women and girls who have witnessed FGM/C, have been affected negatively. A recent study has shown concern towards the rising health risk of women who have experienced FGM/C had dyspareunia, episiotomy, prolonged labour, and perineal tears, then the normal woman⁵.

Talking about physical impact on a body that naturally evolves is itself a beauty to cheer for. For a girl who has not yet witnessed womanhood, is cut before she can sense being a woman or feel being complete, is next to a mirage. Those who are cut, never feel orgasms, they never know what it is like to feel being a woman and have the sense of pleasure and pain both after being loved by someone. After FGM, most of them have complained of having painful intercourse, painful menstrual cycles, and infections, which go untreated. They feel wounded all the time and like normal women feel, they do not feel free after being cut. As per a Demographic Health Survey, 2014 carried out in Kenya, it was found that FGM cut female have witnessed strong and immense physical violence from their sexual partners.

Clinically the immediate health risk subjected on a woman due to FGM is haemorrhage, Genital Tissue Swelling due to inflammation or infection, pain, Shock either neurogenic or septic, infections

² An organisation united to stand and take initiative against the practice of FGC by engaging into social dialogue.

³Sunita Tiwari v Union of India WP (C) No 286/2017

⁴Tammary, E., & Manasi, K. (2023). Mental and sexual health outcomes associated with FGM/C in Africa: a systematic narrative synthesis. *eClinicalMedicine*, 101813.

⁵Lurie, J. M., Weidman, A., Huynh, S., Delgado, D., Easthausen, I., & Kaur, G. (2020). Painful gynecologic and obstetric complications of female genital mutilation/cutting: A systematic review and meta-analysis. *PLoS medicine*, 17(3), e1003088.

including reproductive tract infections leading to septicaemia often, urinary problems and death. Obstetric risks include C-section, blood loss during postpartum exceeding 500 ml or more, instrumental delivery, lacerations, neo-natal death, extended hospital stays and infant resuscitation at delivery. Pain during sexual intercourse which is reported to be more severe in TYPE-III FGM than Type-I and II, reduced or no sexual arousal/ pleasure, decreased sexual satisfaction and lubrication, less orgasm or anorgasmia. Apart from the physical impact, psychological impacts include mental trauma, post-traumatic stress disorder, anxiety issues, anxiety issues and depression. Mental illness is a major cause of concern because many of these are long lasting along with physical issues⁶.

REVOLVING AROUND CULTURE AND TRADITION

Any practice, culture, tradition, or usage, is basically time-oriented. Unlike, government rule or order that can be proclaimed in a day, FGM is an age-old practice under different ethnic conclaves. It is believed that the practice is dictated because men shall refuse to marry as they do not prefer marrying a complete or an intact woman⁷. Basically, the purpose behind FGM is to control sexuality of woman, this was also mentioned in Warrior Marks, where the author has narrated the episodes of her visit to African stations and the fragile conditions of women who are being cut by *Mohels* in a “herd,” if they remain intact, these women are considered prostitutes- a stigma follows. It is strange how a small cut can mark the sense of purity among women and be celebrated by men to honour their sexual desires. It is believed that the clitoris symbolises the Male origins and the prepuce of the penis symbolises the forgiving female or the submissive one. Those who back this idea, insist on the removal of both clitoris and prepuce to be accepted as an adult and embrace the same. Also, one more strange reason is that the very creation of God is said to be ugly. The female genitalia is said to be ugly and in order to ensure purity and cleanliness it is important to cut the same.

Eventually question remains the same what culture or tradition? We may never know one reason for performing the practice of FGM, for the reason behind history of circumcision in women is still a mystery but WHO states that there are several cultural and social factors for the continuance of this practice. Depending upon the factors and socio-cultural practices affecting the communities and the families, the reasons vary from one region to another. One of the reasons for following the practice is due to the fear of being rejected from the community, for man is a social animal and everyone wants to stay and be accepted in the society. On the other hand, FGM is an essential part of parental upbringing for raising her into a better adult and marriage material. To be specific, *coming-of-age ritual*- it is done to control her virginity and premarital relations by saving her marital infidelity more so for a “*family honour*”. Also, however strange, the practice has been blindly backed by religious leaders, without having the evidence or information or its prevalence either written or oral.

According to scholarly studies and research, FGM is a practice. When we say “practice”, in a religion that it can be related to any ritual, festival, trances, feasts or sacrifice for matrimonial, prayer or funerary services. Now, FGM, being age old and untraced, has a male binding effect to it. Of course, there was male circumcision that persisted from Egypt to Israel to Europe to Islam but how did it venture into the female community, is still a buried record. So, coming back to practice, is it something which is an essential part of our religion, sect, or community where we come from and in case, we do not follow the same, there are consequences, probably these consequences have been a strong reason for following this rude and unequal practice for decades now. However untraced, it is said to have spread with slave trade approaching from the Mesopotamian regions, western shores of red sea to the South-western African regions. Ancient Rome also witnessed the influence of this practice on female slaves to deter sexual intercourse and pregnancy⁸.

⁶“World Health Organization. WHO guidelines on the management of health complications from female genital mutilation. (2016)

⁷The reasons given for FGM: culture and tradition. *Womens Health Newsl.* 1998 Mar;(36):7. PMID: 12222527.

⁸Andro, A., & Lesclingand, M. (2017). Female genital mutilation around the world. *Population Societies*, 543(4), 1-4.

There could be an unending debate on whether FGM is a culture or part of tradition, for how long? To this we need historical traces which are absent. Then how come they eventually became a practice in no time? The history does not stop just in Rome. Researchers have identified and the practice to have its point of origin from the western coast of the red sea for there are traces from the fifth century BC where Egyptian mummies have been found infibulated with supportive evidence of the same by Greek papyrus in British Museum in 163 BC. Geographers and Historians have reported that leaders from the western coast of Red Sea have infibulated/ cut their women as per the Egyptian culture in adulthood or infancy, while the same is known as “*Pharaonic circumcision*” in Sudan and “*Sudanese Circumcision*” in Egypt, respectively.

One such reason for FGM in 1609 has been linked to slavery, for want of chastity, purity, loyalty to their masters and to prevent conception among a group in Somalia. While the Egyptians controlled conception among women and slaves through circumcision, on the other hand anthropologists believed that FGM was possibly the only way to prevent women from being raped or apart from being just human sacrificial practices, an attempt to control population. As of today, FGM is a deep-rooted practice in Africa, Sudan, Egypt, East African regions, Kenya and Tanzania. Now with transitions and migrations, the practice has grown to be different among different groups. Particularly this is the influence of mixed culture, religion and social practices within the small sects, groups, and communities. Also, a shift into new localities, tend people to adopt the local practices like FGM. Often, the same is said to be a trend of copying practices of neighbouring groups or communities. Therefore, all the above ground become a point to suffice the statement that FGM is part of their tradition or culture. As per studies, FGM was concentrated to just one part of the continent but with transition it has reached the world.

LEGISLATIVE MEASURES TAKEN BY MEMBER STATES OF UNITED NATIONS

UNITED NATIONS: THE ANTI-FGM MOVEMENT

I call on men and boys everywhere to join me in speaking out and stepping forward to end female genital mutilation, for the benefit of all.

UN Secretary-General António Guterres

United Nations has been actively engaged in eliminating practices derogatory to women and restoring the message of human standards and equality through joint efforts with sister organisation. Since 2008, UNFPA⁹ and UNICEF¹⁰ have been leading the largest anti-FGM drive to eliminate FGM globally in coalesce with several governments, community based close knit groups, non-governmental organisations, educational programmes, training and guidance, professionals, teachers, doctors, and medical experts. Over 17 countries have been a part of the implementation and anti-FGM strategies out of which 14 countries have successfully adopted and enforced the law taking serious actions against people involved in FGM procedure despite a ban or law. A public statement has already been issued declaring Female Genital Mutilation as a human rights issue and should be abandoned as a practice. As per 2020 records, over 59 countries of the world have outlawed FGM owing to serious health issues reported during the pandemic. Over 2 million additional girls and women were stated to be at high risk of FGM during COVID-19 pandemic, and only a united, proactive, and well-funded action could prevent the global storm of the practice, under a Joint Statement issued by UNICEF and UNFPA¹¹.

In coordination with UN organisations in 2021, governments and state actors have funded a huge amount in the anti-FGM programme, following a national coordination method and systematically combating FGM. Due to community-based engagements and surveillance programmes, UN efforts

⁹ United Nation Fund for Population Agencies

¹⁰United Nations International Children's Emergency Fund

¹¹UNICEF. (2). million additional cases of female genital mutilation likely to occur over next decade due to COVID-19.

have been successful in preventing the practice upon nearly 532,158 girls. About 6 million girls and women have received extensive care and quality services through the anti-FGM programme. The Joint Programme by UNFPA and UNICEF have been successful in reaching grass root levels, communities, governments, and countries where FGM was practiced since time immemorial. The programme also supports the Saleema initiative (African Union initiative to Eliminate FGM) to hold member states accountable to their commitments. Also, UN General Assembly and UN Human Rights Council had been providing timely assistance and advocating through technical support to bring resolutions calling countries to end the practice.

UN INSTRUMENTS

Currently, United Nations have declared FGM to be an act of violence and discrimination against women. It also infringes right to life and self-physical integrity, right to well-being and good health, right to freedom from all forms of torture, cruelty and ill-treatment including violence and right to highest attainable standard of both physical and mental health. Since the practice is widely being performed on girls from a very young age of 6-7 years, FGM is recognized as violation of children's rights. As per Article 24 (3) of the Child Rights Convention, the states are required to abolish "traditional practices prejudicial to the health of children."

Right to freedom from Gender based discrimination is guaranteed various international instruments. Convention on Elimination of All forms of Discrimination against Women (CEDAW) 1979 under Article 1 defines discrimination 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."

Unlike male circumcision which has medical reasons behind its practice, Female Circumcision is done to control sexuality of women and to ensure her obedience in marriage. This form of practice can be merely seen as a form of suppression over the deepest desire of women thereby exposing her to various health consequences that affect her both emotionally and physically. This form of sexual violence is an invasion in her personal space to enjoy her right to life and personal liberties as well. Despite the International Bill of Rights which provides the best safety standards of preserving the inalienable 'inherent' human rights as envisaged under Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social and Cultural Rights (ICESCR).

Not just as a form of violation of human rights or violence or discrimination against women, FGM is also seen as a form of disability against women under the United Nations Convention on the Rights of Persons with Disabilities, 2006. The convention defines 'Persons with disabilities' as those who have long term mental, physical, and intellectual or nervous impairment which affects their social participation with the mainstream population in the society. Also, the French legal system sees circumcision as a form of physical impairment and the newly enacted 2016 legislation on disabilities in India shares the same legal concern.

The United Nations Convention on the Rights of Persons with Disabilities, 2006 (Article 1) defines 'Persons with disabilities' to include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. It is interesting to see how FGM/C is seen as a form of disability under the French legal regime. A similar case could be made in India under the newly enacted disability rights law of 2016.

THE ANTI-FGM DRIVE: MEMBER STATES IN ACTION AFRICA

Being a concentrated hub of FGM, in 2003, Africa took the initiative to end FGM by adopting the Maputo protocol¹² promoting women's rights and by 2005 with its implementation, the same was ratified by 25 member countries in 2008. According to a report published by UNICEF in 2013¹³, more than 20 African countries have strong legislative provisions or precedent following the abandonment of FGM, these include the Central African. Chad, Egypt, Kenya, Ghana, Guinea, Ethiopia, Eritrea, Mauritania, Niger and followed by Nigeria in 2015. As of today, most of the African continent which was popular for its FGM culture including Sudan, Somalia, Uganda, Tanzania, Togo, and South Africa along with Gambia in 2015, banishing the said practice of FGM.

The practice is not a culture cord in Algeria, still its prevalence created headlines with an issue with its record which was later retrieved through a UNDP report in 2019 which impressed upon its existence among arid Sub-Saharan region practiced by African migrants. As of today, there FGM is considered an offence which is punishable with imprisonment of 25 years.

Being a Muslim populated nation, Benin showed a remarkable decline in FGM with 8% in 2012 to merely 0.2% being subjected to FGM as of recent UNICEF records post 2014 and 2018. A 75% decline from where it was 49 % prevalent among Muslim women, 3% among Roman Catholics and 1% among the Christian urbs. Year 2003 witnessed a major stand taken by the country with the banishment of the practice of FGM.

The 1994 survey reported a 43% prevalence of FGM in the Central African region, later on in 2000 the same dropped to 36%, among women. As per WHO, in 2010, the practice dropped to 24%. The practice was banned in 1996 through an ordinance throughout the country making the offence punishable with an imprisonment of one day to two years and a maximum fine of 100,000 Francs.

Chad had 61% FGM practicing Muslim population which varied with ethnic groups. There are provision prohibiting FGM but without sanctions. All in all, Chad still does not have a proper FGM related law, case of FGM may be punished under existing laws of assault, mutilation of body, etc. The Union of Comoros made up of three islands is an independent country in South Eastern Africa near the Mozambique Channel, had discouraged FGM but a proper law is not in operation. Prevalence of FGM is rare without about 5% of the toll among its population still it is illegal and punishable with a maximum punishment of two years and fine of 200,000 Congolese Francs.

Djibouti was reported to be the second highest country with 98% FGM prevalence rate whereabout two-third of women practicing **TYPE-III** circumcision, and **TYPE-I** being the most common practice, with re-infibulation being a matter of concern. Primarily consisting of a major Muslim demography, religion became the foremost reason. It adopted the Maputo protocol in 2005.

Eritrea reported 89% prevalence of FGM in 2003, with a major part of population practicing on religious pretext with government sanctions. **TYPE-III** being practice in rural areas and **TYPE I & II** being common in the cities. In 2007, Eritrean government took a bold step and outlawed all forms of FGM making it a punishable offence with imprisonment and fine.

Ethiopia and Gambia followed the same, due to a massive outburst and practice, Ethiopia penalised FGM in 2004 while Gambia took the initiative in 2015, after serious survey records of female suffering health complications after FGM, which resulted in elimination of the practice, especially among young girls.

While most of the African countries have adopted the Maputo Protocol Like Ghana, Liberia, Mauritania, Senegal, Togo, Uganda, others have signed but not ratified the same.

ASIA

Africa was said to be the whole sole continent to have taken measures in eradicating the practice of FGM, however, record Asia came much later. Rather their acknowledgement created controversies. Due to lack of data, the numb ears never heard of the practice and never came up front with any set of

¹²Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol is an international human rights instrument adopted by the African Union w.e.f. from 2005.

¹³United Nations Children's Fund. (2013). Female genital mutilation/cutting: a statistical overview and exploration of the dynamics of change. *Reprod Health Matters*, 21(42), 184-190.

law. It was not in India, until Masooma Ranalvi, being a victim of genital mutilation, spoke about the rare fact.

FGM is also prevalent in the south borders of Afghanistan, bordering the Pak-provinces. Afghanistan has less data over the prevalence, but yes, the practices take place in the garb of the land locked country without any survey. It is often said to be the most unsafe country for women.

Bahrain, Brunei, and India, have shown records of FGM however denied by the government, there are no laws on the said practice.

The practice inched in the country in 13th Century with the influence of Islam and conversion rate grew in 17th Century. Indonesia is the next tourism hub for FGM being widely practiced by Muslim Females, comprising of 85% of its female Muslim population. In fact, in some communities' mass female ceremonies (*khitanan massal*) are organised. According to studies, it was found that most of the population demanded the continuation of the practice. In 2006, the government banned FGM but the prevalence found no halt. In response to this, the Indonesian Health Ministry issue guidelines and proper procedure to be followed to continue the practice but the same was challenged to be prohibitive of 2006 ruling issues by the authorities. The religious bodies and Indian Ulema Council in Indonesia impressed upon the continuance of the practice for being "Morally binding", leaders supported by stating that the pricking and cutting does not amount to FGM. However, in 2013, Indonesia enacted laws with total criminalisation of the practice.

Iran is said to be a strong Islamic nation, FGM was traced to be prevalent in four provinces of Iran, west Azerbaijan, Kurdistan, Kermanshah and Hermozgan although neither of the two sects admit to its existence, i.e., the Sunnis (amongst whom it is widely practiced) and Shias (practiced in small minorities). In 2016, FGM was reported to be banned in south-western province, especially the Kurdish women have abandoned the ritual.

Iraq, eliminating a religiously strong practice in an Islamic state is difficult. Distribution of the practice in Iraq varies with 72% prevalence rates for the entire regions practicing TYPE -I FGM commonly with about 60% of young girls undergoing FGM at the age of 4 to 7 years. Iraqi Kurdistan, proposed a draft legislation before the regional parliament abandoning the practice, however the same never saw the light of the day. At present Iraq has no law on FGM and the practice continues in the name of religious denominations. Also, WADI¹⁴ and PANA, a self-help organisation, and an NGO, made efforts through the anti-FGM campaign, but the same has stopped due to lack of funding in the Middle-East. One successful result of the campaign was seen in 2011 where Tutaqal village in Kurdistan was reported to be free from FGM, not even a single girl mutilation/cut.

Israel, although the practice remains illegal, but the secret-folk-ritual makes it difficult to ban. Jordan residents practice FGM in its southern village known as Wadi Araba. The practice was foreign to the residents of Jordan and has been followed through tribal migrations from the neighbouring areas of Gaza and Beer Sheba. Malaysia being a multi-cultural society does not enforce the practice since only Muslim population follows the same. 93% of Muslim female perform this practice as per their cultural norms, since the practice is obligatory Health Ministry of Malaysia has issued certain guidelines to avoid harmful procedures from being followed. The country does not have any present-day law to ban FGM. Practice of FGM was banished in Maldives way back in 1990 but since 2014 FGM is taking a reversal role road back through religious leaders and their preaching.

Pakistan follows the Hanafi and Jafari schools of thought therefore practice of FGM is uncommon in this bordering state. FGM is practiced among a minority group of Bohra Muslim and the Sheedi Muslim community and near the bordering areas of Baluchistan.

As to the rest of the Asian continent, the practice is prevalent in Palestine, Qatar, Philippines, Saudi Arabia, Turkey, Thailand, Sri Lanka, Syria and even Singapore as well. These countries have accepted the existence of FGM followed by its Muslim population but strong laws on account of resentments remain absent. Yemen, despite efforts and anti-FGM campaigns by UNICEF and other female centric organisation has shown no decline in the practice.

¹⁴About. Wadi. (2021, November 27). Retrieved April 25, 2023, from <https://wadi-online.org/about/>

EUROPE

Several projects and studies have identified that the practice has reached the European continent and other developed areas through migrations. Europe estimates about 600,000 females have undergone FGM and near about 180,000 girls are prone to FGM in 13 more countries of Europe. As of now, EU is using right set of networks to work around through its campaign, policies, and decision makers in order to collaborate with the stakeholders to end FGM.

For EU, the Istanbul Convention or Convention on preventing and combating violence against women and domestic violence is a treaty by the Council of Europe against human rights to end violence and discrimination against women. The convention is made keeping in regard the fine lines of the International Bill of Rights comprising ICCPR that is International Convention on Civil and Political Rights (1966), ICESCR that is International Convention on Economic, Social and Cultural Rights (1966) and CEDAW that is the Convention on Elimination of all forms of Discrimination Against Women (1979), CRC or Child Rights Convention (1989), United Nations Convention on the Rights of Persons with Disabilities (2006) and all optional protocols, respectively¹⁵.

Also, the Rome Statute of International Criminal Court (2002), Basic principles of humanitarian law which is strict adherence to the Geneva Convention (IV) considering Civilians at war time. (1949) and its additional protocols. The convention is a beautiful artwork of 81 Article that cater to purpose of the convention, fundamental rights and duties, state responsibilities and due diligence, integrated policies, data collection, prevention, protection, and support through a substantial law against FGM. The convention also includes the idea of international mechanism, monitoring the issue of FGM, asylum and parliamentary involvement to frame guided and better laws in nexus with the international instruments.

The convention came into effect on 1st August, 2014. Article 38 of the instruments, defines and criminalises the practice of FGM.

'Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

excising, infibulating, or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;

coercing or procuring a woman to undergo any of the acts listed in point a;

inciting, coercing, or procuring a girl to undergo any of the acts listed in point a.'

Europe was non-FGM country before migration, post migration FGM increased through people practicing the ritual in their home country¹⁶. When FGM flooded EU population, the very first study was conducted by European Institute of Gender and Equality to combat this harmful Genital Mutilation/Cutting practice in 2012. The second study was conducted in 2015 to trace out the estimated risk of female genital mutilation among girls in Portugal, Ireland, and Sweden. And another conducted between 2017 to 2020 to identify the total estimation of FGM risk to females in the neighbouring member states of the European continent.

From thereon, EU has successfully established strong laws to combat FGM.

FRANCE

France is said to be the first country to penalise FGM in 1983¹⁷. The French Family Planning Association protested before the World Health Organisation in 1977 against the Genital Mutilation continuing in Far East and Africa and South Africa. As the concern for Women right grew, the whole situation became clear to the authorities when a high mass of population started arriving as

¹⁵Council of Europe Convention on preventing and combating violence. (n.d.)

¹⁶Female genital mutilation. European Institute for Gender Equality. (2022).

¹⁷Gallard C. Female genital mutilation in France. BMJ. 1995 Jun 17;310(6994):1592-3.

immigrants in the family child care and protection centres from African countries. The earlier approach was not to intervene in the practices of a foreign culture, but as the rising evidences blew big marks and news, a public effort deemed to be necessary. It was not until the death of two young girl in 1982, that France came to fight about the issue in public. Health professionals and family planning clinics were guided to educate women about FGM and its consequences. Today, FGM is a punishable offence in France with imprisonment of 10 to 20 years, as of 2014 more than 100 people have been convicted and jailed for FGM, both father and mothers. Not only the ones performing the procedure but also parents have been liable. Any information regarding FGM is strictly dealt in France¹⁸.

GERMANY

A woman's right organisation in France reported 25,000 victims in 2014. This toll increased to 65,000 in 2018. Germany rose to severe concern since 2006 on establishing a major body to analyse the statistical data of young girls and females undergoing FGM. This was later revised and updated in 2012 by the Federal Ministry of Health of Germany. In 2009, Germany through Federal Centre for Health Education introduced a Booklet-prevention kit, 'Body Knowledge and Contraception', targeting health professionals, doctors, nurses, midwives, parents and people from other cultural background. Under the head, "So called Circumcision and Genital Mutilation", various incidence, forms and the health impact on female body due to Genital Mutilation were described with the fact and guidance that such practices were prohibited by law. Germany ensured statutory health insurance to females affected through genital mutilation and gave then health assistance in order to heal and not to alleviate other health symptoms in order to prevent the wound from worsening¹⁹. In 2013, Female Genital Mutilation and its health consequences were accommodated in the Medical Diagnosis Code and classified the same in the Medical Health Insurance Re-imburement system of Federal Republic of Germany.

The 47th Criminal Law Amendment in 2013, w.e.f. from 28th September, 2013 invoked the provisions of Female Genital Mutilation as a separate criminal offence under the German Criminal Code under section 226a with imprisonment from one year to 15 years greater sentence. The offence of FGM was now classified as a felony in the German State with a statutory limitation of 20 years²⁰. However, despite a law, in 2020, 68,000 people were subjected to FGM, showing an increase of 44% post 2017. This rise was a result of uneven rise in immigration.

IRELAND

In Ireland more than 5000 girls and women have undergone the severe pain of FGM²¹. Migration is very frequent in Ireland, women and families continue to migrant from FGM practiced states to Ireland sub-urbs. Now this has led to an influence and the increase in the FGM rates which requirement proper policy framework and health assistance to this IFPA comes into action. The Ireland Family Planning Association since 1969 is a leading sexual health charity organisation working towards safeguarding sexual and reproductive health of the people by providing them timely assistance, guidance, and affordable health care services. The organisation works for attaining the highest possible standard for sexual and reproductive health and rights both nationally and internationally. As per the Irish Statute Book, Ireland made FGM an offence in 2012 through Criminal Justice (Female Genital Mutilation) Act, 2012 as per section 2, 3 and 4 liable for imprisonment of 12 months to 14 years with fine.

¹⁸ K. Wilsher, "France's tough stance on female genital mutilation is working, say campaigners" (2014) The Guardian.

¹⁹Section 27 subsection 1 sentence 1. Social Code Book V- Germany State Health Insurance.

²⁰section78 (3), no. 2 of the German Criminal Code.

²¹Luk Van Baelen, Livia Ortensi & Els Leye, 'Estimates of first-generation women and girls with female genital mutilation in the European Union, Norway and Switzerland', (2016) The European Journal of Contraception & Reproductive Health Care.

ITALY

FGM has been fuming policy issues since 1990, it was after the EU on Gender Equality through its several projects like Daphne and REPLACE, stages the estimation of FGM data through a survey between 2000-2004. In 2006, 'Dispositions regarding prevention and prohibition of female genital mutilation practices', were set out with other strategies and initiative to deal with FGM. The act dealt with a law prohibiting FGM and the aftercare requirements post FGM. Italy installed a helpline number connected with the Ministry of Interior in case of such practice on the run and create public awareness and health programmes to educate women and girls about FGM. Italy has been the highest and active donor to UNFPA-UNICEF joint programme to end Female Genital Mutilation across the world.

While in Netherlands and Norway, FGM is a punishable offence under existing laws for inflicting harm to human body with imprisonment and fine. While in Netherlands, the Government is actively involved in declaration of FGM as an offence, awareness of FGM through Social Workers, Training programmers, Expert advice from medical groups and Education Risk Groups. Norway, where a majority population is settled from Somalia since 1988-1991, FGM which was criminalised in 1995, is punishable with imprisonment from 6 to 15 years with fine. Also in 2000, the Government established an action plan against FGM to prevent and to change the attitude of people towards the practice through various health and guidance programs for both professionals and parents. However, in 2014 an inconsistent government report on FGM again raised concern for showing no record/ less serious concern towards FGM, as if it was no more a major problem in Norway²².

RUSSIA

Russia does not have an active law on FGM. In 2016 the bulletins fumed with the incident in Dagestan where majority of Muslim and conservatives reside, reported through Russia Justice Initiative that tens of thousands of women have undergone FGM in the mountain village of Dagestan with public approval of Muslim Religious Leaders predominantly. The Russian Ministry considered the practice as a "crippling act." In 2016, Duma staged a draft bill to outlaw FGM, but the said bill was not passed. In 2023, we are witnessing a Ukraine-Russia war, but there are matters more serious than this, where girls and women still need help through a law.

SPAIN

The first study was conducted in 2002, to determine the risk associated through females originating from FGM. Since then, Spain has been a part of various regional plan of action against FGM and violence against FGM. The Comunidad de Madrid considers the practice of FGM as crime of injuries and the same is penalised under Article 149 of the Spanish Penal code that was adopted in 2003. It follows the principle of extraterritoriality wherein; it holds jurisdiction to punish the offence both within and outside its territory. In 2018, the European Institute of gender Equality estimated about 9-15% girls are at risk of FGM in Spain out of 39, 734 girls aged between 0-18 years. This risk originates from Mali, Somalia, Gambia and Egypt, Mauritania, Niger, and Guinea.

SWEDEN

In 1982, Sweden became the first country to prohibit all types of Genital Mutilation. In 1999, the government extended its jurisdiction to extra-territorial cases as well to include procedures performed across the border. As per the latest survey of 2020 conducted by National Board of Health more than 5000 girls in Sweden who have undergone FGM have taken aid of specialist or obstetric case between 2012 to 2018. Since 2012, no prevalence cases have been reported in Sweden.

UNITED KINGDOM

²²Gele AA, Sagbakken M, Kumar B, 'Is female circumcision evolving or dissolving in Norway?' A qualitative study on attitudes toward the practice among young Somalis in the Oslo area. *Int J Womens Health* (2015) Nov 26; 7:933-43.

United Kingdom donned with its first law against FGM in 1985 with prohibition of Female Circumcision Act, 1985. This was initiated by Wayland young and 2nd Baron Kennet before the House of Laws and came into effect on 16 July, 1985. This law has been replaced by Female Genital Mutilation Act of 2003 and Prohibition of Female Genital Mutilation Act, (Scotland) of 2005 to deal with cases outside UK where FGM is practiced on a British resident irrespective whether FGM is penalised in that country or not. The offence is punishable with imprisonment up to 14 years.

NORTH AMERICA

CANADA

FGM has been banned in Canada since 1997 under Canada's Criminal Code. It is considered as an aggravated form of assault also displacing a child or relocating the child outside Canada for the purpose of FGM is also a criminal offence. WAGE²³, can active department of Canada also known as Status of women is working actively to address all forms of Gender Based Violence against women. Anyone guilty of the above offence shall be punished with 14 years of imprisonment and fine. But despite a banned for eighteen years Canada did not witness any case on FGM. However, with the increasing immigration and tourist idea for facilitate FGM for their child to a Western Country or where FGM is practiced, estimating the prevalence rate has become a difficult task²⁴. In 2017, FGM surfaced the bulletins once against when *Sahiyo*, an anti-FGM organisation authored a study in 2016 discovering unidentified cases of FGM in Canada.it found that a ration of Dawoodi Bohra community women have undergone FGM that accounted 18%, being residents or either have undergone FGM in the country out of 385. Although no case of criminal prosecution has been reported in Canada, it has shown proactive participation in cross border prosecution against FGM. Post to this, in 2018 a warning was issued for those coming to Canada for FGM or performing procedure. Also, Ministry of Health's office state FGM to be more of crime than a healthy practice.

UNITED STATES

Migrating population flocked the USA with FGM through immigration, also persisting in metro-cities of USA. The first data on FGM was collected in 1990. Until 1996, the practice was performed by medical procedures through surgeon along with other medical procedures till the 19th century but females came for treatments with hysteria, nymphomania, higher sexual desires, depression, and other related issue. FGM was insured till 1977 under Blue Cross Blue shield Insurance. But with the severity of health issues, the federal system banned FGM in 1996, terming it a felony against girls undergoing FGM below 18 years of age. In 2018, FGM law was declared unconstitutional stating it to be legislation outside the legislating authority or the 'inter-commerce' clause.in 2007, US participated jointly with UNICEF and UNFP to take initiative to ending FGM within a generation²⁵.

In 2021, STOP Act of FGM, 2020 was passed into Law, with strong measures against people instigating, aiding, or committing the offence of FGM with an enhanced punishment from five to ten years of imprisonment levied with fine. As of 2021, US with 40 member states have made FGM specific laws prohibiting the practice. It has widely participated in various women centric UN meetings including CEDAW²⁶, CRC²⁷ and the International Human Rights Instruments (UDHR)²⁸.

LATIN AMERICA

²³Women And Gender Equality

²⁴Packer C, Runnels V, Labonté R, 'Canada's response to female genital mutilation: are we failing our girls?'(2015) CMAJ187(6):E188-E189.

²⁵Mpinga EK, Macias A, Hasselgard-Rowe J, Kandala NB, Félicien TK, Verloo H, Bukonda NK, Chastonay P, 'Female genital mutilation: a systematic review of research on its economic and social impacts across four decades' Glob Health Action (2016).

²⁶ Convention on Elimination of All forms of Discrimination Against Women, 1979.

²⁷ Convention on the Rights of Child, 1989

²⁸ Universal Declaration of Human Rights, 1948

COLOMBIA, ECUADOR, AND PANAMA

FGM in Colombia is silent epidemic, this silence has made it hard for various anti-FGM organisation to counter true records of the practice. Embera are the only group in Colombia said to practice FGM, inhabited in Ecuador and Panama. It is estimated that over 250,000 Embera live in Colombia. Despite several expeditions and campaign, the people were hesitant and insensitive to outsiders in talking about the practice. To this approach UNFPA began educating communities about FGM, in response, 2017 was the year of progress, Embera leaders signed an accord to ban FGM and later in 2015 anti-FGM intervention was successfully established among other communities in Colombia²⁹.

PERU

There is no direct data collected about existence of FGM in Peru but it is reported that Introcision is practiced widely among the Conibos, Shipibo and Amahuaca tribe, a group of indigenous people to control women's sexuality and to take control over her bodily desires and to be faithful towards their husbands. A documentary film called '*Chua*,' explains the existence of this practice among the Shipibo community perform clitoridectomy. It is however a story that they performed the practice forty years ago as of now there is no record of recent evidence of continuance of the practice in Peru. Right now, there is no specific law on FGM. In all, Latin America has no law or specific legislation to control the practice of FGM.

FEMALE GENITAL MUTILATION IN INDIA

*Sunita Tiwari v. union of India*³⁰, stroked the corridors of Supreme Court of India raising a battlefield to ban FGM, through the writ petition India became aware of FGM and its health impact were laid open before the country. In response to this the court had issued notice to the Central Government and the three states Maharashtra, Rajasthan, and Gujrat with high concentration of Bohra population. Since 2018, the news has been on a long voyage, no talk on the ground and no pitch in the loud skies along with various women centric issues that wait for the decision of the supreme court at the mercy of a larger bench. It is reported the FGM is practiced in India by some Islamic groups and performed when the girls are Seven years of age by removing the clitoral hood either totally or partially. Now with the recent discussions above, it is evident that FGM is a violent act against women and children inflicted to either control sexuality or her desires. Men in some or the other manner have been successful in controlling even the sensory organ of a women conquering even her deepest personal thought of a man.

In India, FGM is practiced among the Muslim clan of Dawoodi Bohra community, which is known as *Khatna* or *Khafz*. Under the procedure, the clitoral hood is disconnected from your body, it is being cut through midwives or Mullanis using a knife or cutter It is believed that the clitoral hood is unwanted part of the body also known as '*Haraam ki boti*' (an immoral lump of flesh) or a '*Source of sin*, that will make them stray and lead to infidelity towards their partner in marriage, and that is why it is important to be cut to stay obedient, loyal, and submissive to their husbands to maintain family honour. The saddest part of this procedure is, it is practice by a woman over a woman and supported, aided, and guided by the women within the community. Many women said it is a custom, it is a religious obligation to follow the practice, some hesitated talking in the open, those who responded supported their mutilation and accepted they do not have a hood, or they do not need any organ or part of body which is likely to cause a sin. To this, many organisations and groups took efforts to launch a community-based awareness programme to eliminate the practice, religious leaders interrupted and stated that the practice was a part of their religion. The practice is very active in the *Bohri Mohalla* of Mumbai. The Dawoodi Bohra Community is a Muslim sect from far Middle-East who migrated to India. These Arab community descendants are also known as *Atba-e-Malak Badar* or *Bawahi* or *Bohara* or *Bohoro* or *Daudi*, even called as *Ismailia Daudi Bohra*.

²⁹Lucile Scott, 'A silent epidemic: The fight to end female genital mutilation in Colombia,' UNFPA (2016).

³⁰Sunita Tiwari v Union of India WP (C) No 286/2017

As per 2021 data, it is estimated that their population constitutes to be two to five million spread around the world. India accounts for 1,311,000 Dawoodi Bohra's population where a majority of these Dawoodi people reside in Gujrat, Rajasthan, Tamil Nadu, Andhra Pradesh, and West Bengal while the rest are spread in Karachi city of Pakistan and other parts of Europe, North America, Africa and Middle-East. The real reason for the prevalence and continuance of the practice is due to the Bohra High Priest or *Syedna Mohammad Burhanuddin*³¹, who support and preach the practice to be a part of Islamic religious morality and obligation. They deny engaging in active talk with women or media or the campaigners and show reluctance in abandoning the practice as well. Not just women, it is gross violation of a child's right over its own body as well. Active protestors and lawyers on the ground have showed resentment and strong opposition towards the practice due to grave secrecy, betrayal and deceit that come with the method and the impact of abuse and pain inflicted on young girl child³². Due to the influence of *Dai-al-Mutalaq*, boycott or defiance becomes intractable due to fear of ostracization or excommunication from the community.

News about FGM raised protest in 2011, when a Bohra woman protested the practice through a petition before the then leader Mohammed Burhanuddin of the Bohra clan, those who advocated for the practice opposed the protest emphasising it to be a part of religious procedure and the same should be followed without any remonstrance. The movement gained momentum through an online petition on the social platform by woman who had already undergone FGM and wanted this close-knit practice to end thereby preventing the lives of many young girls from being cut/bruised or deceived in the name of religion³³.

On law point, in 2017, the then Union Minister of Women and Child Development, Maneka Gandhi assured if Bohra community does not give up the practice, then the Centre shall enact a strong law to prohibit the same. It is reported that FGM is a crime under the local laws, but there are no strong provisions to penalise the guilty. After 2017, the news-bulletins have shut down on the news, the political onset shows a different air in favour of the Bohra's and a larger bench coming to action is a vivid dream. FGM needs a ban, India needs a Constitutional Bench to decide on the pending case.

2. CONCLUSION

It is 2023, the talk about FGM is still a debatable issue after we do not know how many years of tolerance and sexual agonies. It is understood that FGM is a practice against women, take it as violence or discrimination, men taking control over a women's body or women performing the procedure is both a crime on the face of mankind. Having a whole sole control over one's body is what every human is living for, but looking at the comparison drawn it seems there are countries like Germany who have taken an emotional stand to protect its women by engaging into awareness, family groups, educational as well as parenting guidance to protect young girls from such impolite and uneven practices that hold no substance today. Europe itself has taken so many legislative measures to combat FGM. Like the rest of the world has shown consciousness towards the issue of mutilation, the practice has been controlled but a progressive democracy like India is also a part of various international instruments and treaties which likewise requires to either bring a new law against FGM or amend the existing ones to ensure a complete abolition of such practices derogatory against the very existence of womanhood.

India has its penal code but FGM is not explicitly defined as an offence under the Indian Penal Code, in fact even if there arise a complaint on the said offence it can either be tried under Section 326 of the said Act. Under Section 3 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) states that penetrative sexual assault by any person on any child, inter alia can be treated a insertion of any object inside the vagina of a girl child however, penetration in sexual offences does not amount to complete penetration. To this, Explanation 1 to Section 375 further

³¹52nd Dai-al Mutalaq or absolute missionary of the Bohra community who has dominion to decide on all spiritual and temporal matters.

³²Harinder Baweja, "India's Dark Secret", Hindustan Times

³³AFP, "Female circumcision anger aired in India", DAWN (2012)

explains that very definition of Vagina includes labia majora and the same suffices the ingredients of Section 3 of the POCSO Act, 2012 read with Explanation 1 to section 375 of the Indian Penal Code. Connecting with the constitutional approach, there are various branches of law as above including the Goa Children's Act, 2003, but what is implicit can be made explicit with the changing needs and aspirations of the people is *lexfori*. As of today, women have been holding for a change ending various discriminatory practices, taboos around the table are leading the markets and social communities along with constitutional morality, what will prevail is in the hands of a legislative body that needs to draft a bill stating a complete ban on the practice. The existing laws do prevail where offenders may be prosecuted under any of the above provisions but that does not accomplish the purpose behind the whole anti-FGM drive. A strong, clear, and existing law banishing the practice of Female genital Mutilation exhausts the requirement of any further action in this regard. A larger bench is still a dream, political policies and breaks are making the incidents take another toll on the number of cases, India does not know when will the ban come or when will the law against FGM be staged in the parliament. Hundreds and thousands of women are waiting for a decision, girls are waiting to come out of abuse and victims for a relief, India needs to take a lead.