

# Genital Mutilation in Females: Is It Legal?

by

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## ABSTRACT

*Female genital mutilation is the non-medical removal of external female genitalia, as well as different injuries to the female genital organs. Young females under the age of 15 have a common practise of doing so. This practise has been linked to major health issues in women, making it a violation of the human rights of girls and women. This rite is claimed to have been performed by the Indian Dawoodi Bohra community. Khafd, as the locals call it, is a centuries-old religious ritual. Using the jurisprudence of Articles 25 and 26 of the Constitution, as well as a catena of judgements spanning the 1950s to the most recent case of the Indian Young Lawyers Association and Ors. v. State of Kerala, the goal of this study is to investigate the essentiality of FGM as a religious practise (Sabarimala Case).*

**Keywords:** Constitutional Rights, Female Mutilation, Article 25, Healthcare, Crucial Cultural Beliefs.

## I. INTRODUCTION

Female circumcision is the partial or total removal of external female genitalia, as well as significant harm to the woman's genital organs, for a variety of reasons.<sup>1</sup> According to UNICEF data, about 200 million girls and women, 44 million of whom are under the age of 15, are affected by this practise.<sup>2</sup> FGM is justified based on custom and tradition, even though it has no known health advantages. Female genital mutilation (FGM) harms a girl's/physical, woman's emotional and social wellbeing.

Female Genital Mutilation is divided into four categories by the World Health Organization<sup>3</sup>:

- i.) **Part 1:** The prepuce/clitoral hood and/or the clitoral glans (the external and visible component of the clitoris, which is a sensitive region of the female genitals) are partially or totally removed (the fold of skin surrounding the clitoral glans).
- ii.) **Part 2:** With or without the labia majora, the clitoral glans and labia minora (the vulva's inner folds) are partially or fully eliminated (the outer folds of skin of the vulva).
- iii.) **Part 3:** Infibulation is the constriction of the vaginal entrance by generating a covering seal. The seal is produced by cutting and repositioning the labia minora, or labia majora, and occasionally by sewing, with or without removing the clitoral prepuce/clitoral hood and glans (Part 1 FGM).
- iv.) **Part 4:** Pricking, piercing, incising, scraping, and cauterising the female vaginal area are all instances of potentially dangerous non-medical therapies.

FGM is carried done in 30 countries around the world, with the bulk of cases taking place in Africa's Western, Eastern, and North-Eastern regions, as well as several Middle Eastern and

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<sup>1</sup> WHO, Female Genital Mutilation, World Health Organisation (Feb 3, 2020), retrieved from <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> visited on June 1, 2021.

<sup>2</sup> United Nations Children's Fund, Female Genital Mutilation/Cutting: A Global Concern, UNICEF (2016), retrieved from [https://www.unicef.org/media/files/FGMC\\_2016\\_brochure\\_final\\_UNICEF\\_SPREAD\(2\).pdf](https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD(2).pdf) visited on June 1, 2021.

<sup>3</sup> *Supra* at note 1.

Asian countries.<sup>4</sup> More than half of all FGM victims live in only three countries: Indonesia, Egypt, and Ethiopia.<sup>5</sup> Female genital mutilation (FGM) is still practised for a variety of reasons. Simultaneously, some believe it is a rite of passage into womanhood, while others believe it is a way to ensure a woman's chastity prior to marriage. In some societies, FGM was thought to improve fertility and make a woman more appealing for marriage. Certain societies consider the clitoris to be dirty (haraam). As a result, eliminating it enhances women's attractiveness and respectability in society by ensuring their cleanliness and purity. Female genital mutilation/cutting can be harmful to the health of women and girls. Acute outcomes include excruciating pain, bleeding, fever, infections, shock, and death, as well as long-term issues include UTIs, menstrual problems, scar tissue, sexual problems, additional procedures (such as deinfibulation), and a range of psychological illnesses. As a result, it is a significant violation of the human rights of girls and women. FGM is prohibited in 26 of the 30 countries where it is practised.<sup>6</sup> Despite the laws, the practise has continued in secret. This is mostly due to a lack of enforcement, ambiguous legislation, and protection for girls at risk of FGM. The global community has banded together to meet the Sustainable Development Goal (SDG) of eradicating FGM by 2030 through boosting support, sharing ideas, campaigning, and information distribution and counselling.

## II. THE TRADITION OF FEMALE GENITAL MUTILATION IN INDIA

Female genital mutilation is practised by the Dawoodi Bohra sect in India. Dawoodi Bohras traces the direct descendants of Prophet Mohammed in Egypt, the Fatimid Imams.<sup>7</sup> They are a peaceful people who value faith, love for their country, belief in societal ideals, education, and women's empowerment, as well as commitment to other religions, physical health, well-being, and environmental stewardship.<sup>8</sup> Dawoodi Bohra's faith is centred on humanity, peace, and love.<sup>9</sup> While the group's members are spread over the globe, India is home to the vast majority of its members. Lisan Al Da'wa has Arabic, Persian, Urdu, and Gujarati as well as other languages. Dawoodi Bohras follow the Fatimi Ismaili Tajyibi school.<sup>10</sup> D'ai al-mutlaq is the

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<sup>4</sup> *Supra* at note 1.

<sup>5</sup> *Ibid.*

<sup>6</sup> Equality Now, FGM and The Law Around the World, *Equality Now* (June 19, 2019), retrieved from <https://www.equalitynow.org/theLawandFGM> visited on June 3, 2021.

<sup>7</sup> About the Dawoodi Bohra, The Dawoodi Bohras, retrieved from <https://www.thedawoodibohras.com/about-the-bohras/> visited on June 10, 2021.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

religious and spiritual head for Dawood Bohra sect [“Dai” or “Syedna”]. He is known as the Imam's spokesman. His role is to lead the community, to guide its members toward a good life, and to oversee religious and secular concerns within the community. Although the Ministry of Women and Child Development did not have a record of female genital cutting in India, several members of the Bohra community came out with their experiences, raising awareness of the existence of FGM in India despite the lack of data from UN research initiatives. One of the members of her group was Masooma Ranalvi, who established a blog in 2015. Her blog drew a lot of responses, including the formation of an organisation called “Speak Out on FGM.”<sup>11</sup> This drew international attention to India's practise of female genital mutilation. The Supreme Court of Justice requested a ban on “Khatna” because it was used to moderate libido and desires in a gender-discriminatory manner, and then filed a public interest litigation (PIL) with Sunita Tiwari, a human rights campaigner. The PIL was prompted by the ongoing issue of Sabarimala, which is currently being heard by a seven-judge panel in the Supreme Court. A 2018 study from We Speak Out emphasises the gravity of the situation.<sup>12</sup> According to the data, 75 percent of the sample respondents were FGM/C children (aged 7 years and older). Khafd is usually introduced to girls when they are around seven years old.<sup>13</sup> Part 1 of the FGM/C (partial or complete clitoral hood/prepuce removal) is also practised by the majority of Bohras. It's also been discovered. While supporters of the Khafd in India claim that only Part 1a (removal of the clitoral hood alone) and Part 4 FGM/C (pricking, piercing, and cauterising) are practised by Bohras, the participants in that study (including the OBGYN doctor who saw the Khafd in his bohra patients) reported that both Parts 1a and 1b are commonly practised in very few cases, either in part or in full.<sup>14</sup> Among the Bohras, the binding sacred scripture of Dawoodi Bohra is one of the religious penalties for FGM. According to the book, Al-Qadi al-Nu'man, the Prophet is “believed” to have advised women to just cut their clitoral skin to give them purity and make them “belong to their spouses.”<sup>15</sup> The Spiritual Leader, Syedna Mufaddal Saifuddin, issued a press statement in June 2016 stating that women's circumcision must continue to be

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<sup>11</sup> Jyoti Punwani, “It was a memory I had blocked out, says activist Masooma Ranalvi”, THE HINDU (October 21, 2017), retrieved from <https://www.thehindu.com/society/it-was-a-memory-i-had-blocked-out-masooma-ranalvi/article19895413.ece> visited on June 12, 2021.

<sup>12</sup> Laksmi Anantnarayan, Shabana Diler, Natasha Menon, “The Clitoral Hood A Contested Site: Khafd or Female Genital Mutilation/Cutting (FGM/C)”, WESPEAKOUT (2018), retrieved from [http://wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf) visited on June 15, 2021.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Debangana Chatterjee, “Why female Genital Cutting Still Continues: Exploring the Reasons Behind its Sustenance”, SAHIYO (February 5, 2019), retrieved from <https://sahiyo.com/2019/02/05/why-female-genital-cutting-stillcontinues-exploring-the-reasons-behind-its-sustenance/> visited on June 15, 2021.

“circumcised” in countries where it is not clearly prohibited, such as India.<sup>16</sup> “Circumcision between men and women is a religious ceremony performed by Dawoodi Boras throughout history,” the proclamation continues. Sacred literature from roughly a thousand years ago spell out the demands of both men and women as acts of religious purity.<sup>17</sup> A tape was uploaded on social media at the start of that year in the fight against female genital mutilation. Syedna's sermon was recorded in Mumbai after it was validated. “In the Audio Clip, the act must be performed. It must be done quietly when it is a woman, but it must be done.”<sup>18</sup>

### III. CONSTITUTION AND THE ‘ESSENTIAL RELIGIOUS PRACTICE’ TEST

Female genital mutilation is considered a conventional practise among Dawoodi Bohra, as previously stated. When examining FGC in Islam, it is critical to consider all of the Islamic schools. Under the Sunni sub-sections of Hanafi and Maliki, FGCs for males are needed and encouraged. The Sunni Shafi School requires both men and women to attend. Some feel it is mandatory for both men and women in the Sunni Hanbali sect, while others say it is honourable for women.<sup>19</sup> While FGM as an Islamic thought school cannot be religiously confirmed, the many arguments of Islamic jurisdictions must be investigated.<sup>20</sup> Misinterpretation of Islamic precepts has led to hazardous behaviours, such as FGM, becoming a major cause, according to the International Conference on Population and Reproductive Health in Egypt's Muslim World in 1998. The freedom of religion is guaranteed under Articles 25 and 26 of the Indian Constitution, which are contained in Part III.<sup>21</sup> These articles demonstrate the constitutional goal of supporting the country's secularism. In India, however, state action is governed by the principle of secularism. The goal of this intervention was to bring religious and social behaviours closer together. As a result, the Supreme Court developed a theory for defining the relationship between religion and the Constitution. It was decided that the state could not

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<sup>16</sup> Mridula Chari, “Bohra leader upholds female circumcision in countries where it is not banned”, SCROLL (June 07, 2016), retrieved from <https://scroll.in/article/809463/bohra-leader-upholds-female-genital-mutilation-in-countries-where-it-is-not-banned> visited on June 20, 2021.

<sup>17</sup> *Id.*

<sup>18</sup> Rina Chandran, “Muslim leader in India under fire from activists for supporting FGM”, Thomas Reuters Foundation (April 29, 2016), retrieved from <https://www.reuters.com/article/india-fgm-bohra-speech-idINKCN0XQ1FE> visited on June 21, 2021.

<sup>19</sup> Ghadially R, Manushi A., “All for ‘izzat’ the practice of female circumcision among Bohra Muslims”, *Journal About Women And Society*. 1991, 66, p 17–20, retrieved from [http://www.manushi-india.org/pdfs\\_issues/PDF%20files%2066/all\\_for\\_izzat.pdf](http://www.manushi-india.org/pdfs_issues/PDF%20files%2066/all_for_izzat.pdf) Visited on June 20, 2021.

<sup>20</sup> Yasmin Bootwala, “A Review of Female Genital Cutting in the Dawoodi Bohra Community: Part 3—the Historical, Anthropological and Religious Underpinnings of FGC in the Dawoodi Bohras”, *CURRENT SEXUAL HEALTH REPORTS* (August 9, 2019), retrieved from <https://doi.org/10.1007/s11930-019-00214-x> visited on June 20, 2021.

<sup>21</sup> Constitution of India; Articles 25, 26.

regulate a practise that is considered “essential” to any faith. In the case of *Commission of Hindu Religious Endowments, Madra v. Sri Lakhmindra Thirtha Swamiar of Sri Shirur Mutt*, the Supreme Court created the Essential Religious Practices (ERP) test.<sup>22</sup> The Court has been tasked with determining whether a “religious” practise has been developed based on the evidence presented and the religious principles in question.<sup>23</sup> In this regard, one can wonder if the practise is a necessary part of religion.<sup>24</sup> The Supreme Court backed both religious and religious freedom. The Court must consider the religion itself when determining the essence of any practise.<sup>25</sup> What does it mean to be “essential”? The Shirur Mutt case was about this, and the Supreme Court wanted to look into it. There were two possible outcomes. The essential could be defined by religious principles, or the Court could decide what constituted an essentially religious activity. *Sri Venkataramana Devaru v. the State of Mysore* was a case in which the plaintiff, Sri Venkataramana Devaru, sued the state of Mysore.<sup>26</sup> The question of whether excluding Dalits from the temple established by Gowda Saraswath Brahmins constituted a significant religious practise arose. Following Article 26(b), the Court decided that a denomination's religious rights in conducting his business were protected by Article 25. (2) The Court stated that this establishes a precedent that courts can evaluate the significance and importance of all religious practises without placing a higher value on the opinions and opinions of religious communities. The Supreme Court increased its reliance on religious sources as proof of fundamental importance. On the other side, in the *Durgah Committee, Ajmer v. Syed Hussain Ali* case, this viewpoint was modified.<sup>27</sup> The constitutionality of the *Dargah Khwaja Saheb Act, 1955*, was challenged in this case, with the claim that the Act stripped Muslims of their basic rights as the sole guardians of the sanctuary in Ajmer.<sup>28</sup> The Court dismissed this petition, holding that religious practises that arose as a result of superstition are not protected by Article 26 because they are neither “important” nor “integral” to the faith. As a result, scripture interpretation evolved into a study of human behaviour, with the religious denomination's viewpoint being replaced by the Court's.<sup>29</sup> In the same way the Supreme Court in *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan & Ors.*<sup>30</sup> The Court

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<sup>22</sup> *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt*, (1954) SCR 1005 (India), p 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Sri Venkataramana Devaru v. State of Mysore*, (1958) SCR 895(India), p 17.

<sup>27</sup> *Durgah Committee, Ajmer v. Syed Hussain Ali*, (1962) 1 SCR 383(India), p 33.

<sup>28</sup> *Id.*

<sup>29</sup> H.M.Seervai, *Constitutional law of India*, 1269 (Universal Law Publishing, New Delhi, 4th ed., 1993).

<sup>30</sup> *Tilkayat Shri Govindlalji Maharaja v. State of Rajasthan and Ors.*, AIR 1963 SC 1638 (India), p 57.

itself believed that the fundamental problem would be resolved, removing the religion's ability to agree. The Court stated that relying on communities to determine essentiality may prove to be erroneous if opposing complaints over the same conduct exist within the same community.

To demonstrate this, the Aga Khani Ismailis follow the same jurisprudence as the Dawoodi Bohras and trace their religious heritage back to the Fatimid empire, which ruled from the tenth to the twelfth centuries and was a hotbed of FGM. The Ismailis of Aga Khani.<sup>31</sup> Rather than Dawood Bohras from Yemen, the Aga Khani Ismaili Muslims lived in Persia for 600 years before moving to India. Both of these organisations are led by a supreme leader who determines how religion is practised in society. FGM is currently being phased out among the Aga Khani Ismailis.<sup>32</sup> Although Islamic Law is widely accepted, its application differs by community. There was substantial development in the Important Religious Practice test in *Police Commissioner & Ors. v. Acharya Jagadisharananda Avadhuta & Anr.* [“Avadhuta”], where the Tandava dance was not regarded an essential religious practise of the Ananda Marga Faith. In its majority opinion, the Court determined that the underlying principles on which religion is founded, as well as the practical acts that are essential to religious members, are essential components of religion.<sup>33</sup> To assess if a practise is an essential aspect of religion, the test must be whether the religion would be substantially altered if the practise were not present.<sup>34</sup> The concept has been enveloped in a cloud of inconsistencies due to differing perspectives on the test's substance. *Shayara Bano v. Union of India* is an example of this,<sup>35</sup> when triple talaq was declared illegal by a small majority of 3:2. The duration of the practise, according to Justice Kurien Joseph, is not required (contrary to Avadhuta). The abolition of triple talaq, according to Justice Nariman, does not change Islam's fundamental nature (similar to Avadhuta). Judges Khehar and Nazeer disagreed that triple talaq is a necessary religious ritual just because Islam permits it.<sup>36</sup> This was different from any previous test application in that it required the religion to order the conduct rather than just condone it.<sup>37</sup> Culminating in *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.* [“Sabarimala” Case],<sup>38</sup> The Sabarimala temple, dedicated to Lord Ayyappa, was put to the test to see if the barrier entrance of women

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<sup>31</sup> Kassamali N. Genital cutting. [ed.] Suad Joseph, “Encyclopedia of Women & Islamic Cultures”, Vol. III *Brill-Leiden*, p 129-134 (2006).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>36</sup> *Id.*

<sup>37</sup> *Acharya Jagdishwaranand Avadhuta and Ors. v. Comm. of Police Calcutta and Ors.*, (1983) 4 SCC 522 (India), *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

<sup>38</sup> *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1 (India), p 7.



aged 10 to 50 years was necessary. Judge Chandrachud suggested putting some restrictions in place to reconcile conflicting rights and the core religious practise test.<sup>39</sup> The lone opposing judge, Justice Indu Malhotra, believes that the underlying essence of the designation itself must be determined.<sup>40</sup> In a revised petition filed with the Supreme Court in 2018, the Court deferred its judgement. The study addressed the issue of entering Sabarimala, practising female genital mutilation, and the precise extent of rights of a large seven-judge bench in *Kantaru Rajeevaru v. Indian Young Lawyers Association* considering the ERP test under Articles 25 and 26.<sup>41</sup>

#### **IV. KHATNA THROUGH THE LENS OF CONSTITUTIONAL MORALITY AND FUNDAMENTAL RIGHTS**

Moral concepts are continually evolving. Morality is a subjective concept that is subject to alter on occasion. What is moral for one person may be immoral for another. What is the basis of morality in one section of society may differ from what constitutes the basis of morality in another part of society. In the battle to maintain this social morality that does not distinguish between right and wrong and is based on discrimination, which is founded on inherent in society, sometimes society morals are based on institutionalised discrimination and inequality, and there may be a violation of basic human and fundamental rights of certain classes of people. The removal of a woman's "clitoral cap" or "clitoris" to reduce her sexual urge is a traditional Khatna ritual. The purpose of practise is to ensure a woman's sexual honesty and purity. The goal is to limit women's sexual liberty based on the gender stereotype that women are submissive and do not demand sexual autonomy, and that women are only interested in leisure and husband-friendly activities. Sex behaviour is based on the notion that a man's right to sexual autonomy is unalienable. The entire concept is extremely discriminatory and illegal in the eyes of women. Before marriage, Khatna is used to ensure that women are "pure" and "puritous." It is based on the belief that "women are men's property, like chains".<sup>42</sup> It promotes the idea of men managing their autonomy in the same way that women do. The foundation of the entire marriage structure is this control over women, in which women's standards are set and labelled "clean" and "chastisement." In terms of sexual autonomy, there have always been a couple of moral standards in our society. One is a set of standards for men, where they have the freedom to express freely their desires and fantasies; it assumes that men have a right to

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<sup>39</sup> *Id* at 49

<sup>40</sup> *Id* at 10

<sup>41</sup> *Kantaru Rajeevaru v. Indian Young Lawyers Association and Ors.* (2020) 3 SCC 52 (India).

<sup>42</sup> *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676



sexual pleasure and that it is their most natural bodily urge. Women are viewed as passive beings who must be denied sexual autonomy since such autonomy would jeopardise society's purity. Women's most basic physical urge is supported by coding laws on the control substance. Our culture has always had these moral rules, which are based on core patriarchy. The question is whether discrimination between genders is permissible under our constitution just for the sake of public morals and society as a whole. This question has been answered negatively by the “Doctrine of Constitutional Morality.” Though constitutional morality is a relatively new word, it has recently been invoked by the courts in the cases of *Joseph Shine v. Union of India* and *Joseph Shine v. Union of India*,<sup>43</sup> *Navtej Singh Johar v. Union of India*<sup>44</sup>, and *Indian Young Lawyers Association v. State of Kerala*<sup>45</sup> Our constitution, on the other hand, has always existed. In a recent Supreme Court of India judgement, the term “constitutional morality” was coined as a new criterion for constitutional legitimacy. Constitutional morality has created the core concepts of human dignity, freedom, and equality. Although the term constitutional morality is used in two different ways, the court does not define it. In one sense, it refers to the Constitution of India's soul, awareness, and spirit. It is based on the values of dignity, liberty, equality, and justice, as well as the soul, conscience, and spirit. The distinction between public and social morality was also made using constitutional morality. The public/social sector's ethics cannot be used to restrict an individual's fundamental rights. The principle of constitutional morality, which must direct the fact that an individual's basic rights are above public-societal moral notions, can be drawn from both views. Khatna activities are not only uncomfortable and distressing for genital mutilation patients, but they also directly question their identity. It goes against the foundations of dignity, equality, and liberty. Khatna is based on a deep prejudice that has long existed in our culture. It infringes on women's privacy, jeopardises their health in order to comply with the conceptions of “pure” and “unclean” women, and restricts their independence. As a result, Khatna is in violation of the Indian Constitution's Articles 14, 15, and 21. Sexual autonomy is a reflection of personal preference.<sup>46</sup> No one can make decisions for another person's body. This option for sexual and bodily liberty is inextricably linked to a person's existence. Individuals are denied the ability to express themselves and chose their activities when they refuse to choose a specific sex.

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<sup>43</sup> *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676

<sup>44</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

<sup>45</sup> *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC

<sup>46</sup> *Joseph Shine v. Union of India*, 2018 SCC OnLine SC 1676

So, while constitutional morality is a relatively new concept, it is not unfamiliar to the Indian Constitution. As previously said, it is based on the constitution's substance. It is codified in India's Constitution, which includes a number of basic rights sections. Khatna's actions are not only in violation of women's basic rights, but also of constitutional morals. While practising in Khatna is an important religious activity, the constitution does not safeguard religious rights because they must be viewed through the prism of constitutional morality and are not above everyone's basic rights.

## **V. EXCEPTIONS UNDER ARTICLE 25**

Indians have the right to practise, advocate, and confess their religion, as well as freedom in religious affairs, under Articles 25 and 26 of the Indian Constitution. These rights, however, are not limitless under the Indian constitution. Religious practises shall be regulated if they are harmful to public order, morals, health, and other requirements of Part III of the Constitution of India, and the same limitations apply under Article 26 of the Constitution of India, Article 25(1). *Narasu Appa Mali v. State of Bombay*,<sup>47</sup> The Court held:

“When religious practises are incompatible with public order, morality, or health, or with the State's social welfare programme, the good of the people of the State as a whole must take precedence in religious practises.”

As a result, Khatna's practise is covered by Articles 25 and 26 on its own.

## **VI. ACROSS FRONTIERS**

The Khatna is a traditional activity of the Dawoodi Bohra Community that is widespread in India and around the world. Khatna's female genital mutilation is covered in Part I. Female genital mutilation is most common in the United Kingdom, the United States of America, Australia, and Canada, among other Western countries. Female genital mutilation is an abhorrent practise that is practised all over the world. And, in order to end this heinous practise, numerous countries have stepped up their efforts by enacting special legislation to deal with FGM, as well as raising awareness of FGM and its repressive goals. The unique rule encourages further discussion and not only prosecutes the violators, but also prevents, informs, and sensitises people to this type of behaviour. Even if these facts are not addressed, the perpetrator's thoughts are still filled with fear.

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<sup>47</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 BOM. 84

Some of the nations with codified laws or codified rules on female genital mutilation:

A) **UK:** Female Genital Mutilation Act of 2003 prohibits all kinds of internationally classified FGM.<sup>48</sup> This regulation follows international law in defining the term “genital mutilation of women.” It also makes health professionals responsible for reporting any FGM-related offences to authorities. Not only is the person who commits the crime personally liable, but he or she is also responsible for encouraging such behaviour. The Act also acknowledges “holiday cutting” both in and out of the UK, and holds all those who participate in the mutilation accountable.

B) **United States of America:** Female genital mutilation was made illegal in the United States in 1966 by federal legislation. Female genital mutilation and “salvation” are defined in Section 116 of the United States Criminal Code, and felony punishments include fines, imprisonment for up to five years, or both.<sup>49</sup> FGM has already been outlawed in 38 states with specific laws.

C) **Canada:** Female genital mutilation was included under the title “excision” in Section 268(3) of the Canadian Criminal Code in 1977, despite the fact that it is specified in Section Female Genital Mutilation.<sup>50</sup>

D) **Africa:** Female Genital Mutilation (FGM) part III is a practise that originated in African countries and is also the most commonly practised in these countries.

Furthermore, about 20 countries have FGM-specific legislation that prohibits the practise of infibulation.<sup>51</sup> The Sudanese cabinet has approved changes to the country's penal code that include female genital mutilation as a specific crime against women.<sup>52</sup>

## VII. DOES INDIA NEED SPECIFIC LEGISLATION?

In India, Khatna is not lawful on its own. Many Indian laws make the criminal offence of Khatna punishable if it is reported. Anyone who performs Khatna may face charges under

<sup>48</sup> Female Genital Mutilation Act, 2003 & ‘FGM Prosecution Guidance’, CPS, (17th October 2019) retrieved from <https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-prosecution-guidance> visited on June 22, 2021.

<sup>49</sup> U.S. Criminal Code, Title 18, U.S.C. § 116, retrieved from [https://www.law.cornell.edu/uscode/text/18/116#:~:text=\(a\)%20read%20as%20follows%3A,than%205%20years%2C%20or%20both](https://www.law.cornell.edu/uscode/text/18/116#:~:text=(a)%20read%20as%20follows%3A,than%205%20years%2C%20or%20both) visited on June 24, 2021.

<sup>50</sup> Canada Criminal Code, R.S.C 1985, Section 268(3), retrieved from <http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/4-fgm-canada> visited on June 24, 2021.

<sup>51</sup> ‘FGM and Law Around the World’, Equality Now (19th June 2019) retrieved from [https://www.equalitynow.org/the\\_law\\_and\\_fgm](https://www.equalitynow.org/the_law_and_fgm) visited on June 25, 2021.

<sup>52</sup> ‘Sudan Criminalises FGM’, BBC News (1st May 2020) retrieved from <https://www.bbc.com/news/world-africa-52502489> visited on June 26, 2021.

various sections of the Indian Penal Code. Human-body offences are defined under Chapter XVI of the Indian Penal Code. The International Criminal Code (IPC) Sections 319 to 326<sup>53</sup> deals mainly with various degrees of hurt and grievous hurt. Section 325<sup>54</sup> and Section 326<sup>55</sup> “Willfully inflicting serious injury” and “voluntary harm by the use of arms” are punishable by fines and penalties. Khatna is most commonly used in children aged 6-7 years, in accordance with the criteria of the Sexual Offence Act of 2012 on minors' protection<sup>56</sup> (also known as the POCSO Act) might be utilised to file charges against Khatna. Despite the fact that legal remedies exist to prevent this, no one has been charged in India with carrying out the act. In India, there is a practise that is unknown. Khatna is generally carried out by women in the Dawoodi Bohra community and is not mentioned outside. Young girls have no idea what is going on around them. They are conditioned to believe that Khatna is a fundamental prerequisite for marriage, and that if it is not followed, a custom is excommunicated, and this fear of excommunication leads to poor reporting of incidents. People must be conscious of their heritage, and a dialogue must be started. Dialogue and discussion can dispel the myth that underpins the practise of a woman's purity and chastity. To address the root of the problem, the community and women within it should confront institutional patriarchy's brainwashing. The IPC would help raise awareness, recognition, and horror in the minds of people who commit this crime as defined by the statute or definition of crime. India has ratified a number of international treaties and conventions aimed at protecting human rights, women's rights, and children's rights, including the 1948 Universal Declaration of Human Rights, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child, and others. Under all of these international agreements, the Signatory States must eliminate discrimination against women, defend women's and children's rights, and protect them from harm.

In India, there is no legislation or regulation that recognises Khatna or female genital mutilation. India must make considerable efforts to comply with international treaties and conventions aimed at safeguarding the health and rights of children and women. *Sunita Tiwari v. Union of India* is a case where a woman sued the government of India.<sup>57</sup> The Supreme Court of India received a written request to outlaw the practise of Khatna. Despite this, the petition

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<sup>53</sup> Indian Penal Code, IPC 1860

<sup>54</sup> Indian Penal Code, IPC 1860, Section 325

<sup>55</sup> Indian Penal Code, IPC 1860, Section 326

<sup>56</sup> Protection of Children from Sexual Offences Act, (POCSO) 2012.

<sup>57</sup> *Sunita Tiwari v. Union of India*, 2018 SCC On-Line SC 2667

was referred to a larger bench, and the case is still pending. In the absence of such legislation, the judiciary can rely on international treaties and conventions to make recommendations that are enforceable until all laws are enacted, as provided for in Article 142 of the Constitution. According to Articles 14, 15, and 21 of the Indian Constitution, Khatna is a violation of women's essential rights, and the Supreme Court has the ability to impose the Constitutional remedy pursuant to Article 32.

Female Genital Mutilation is a crime that is backed by the International Forums, according to a comparative analysis of the laws of these countries (WHO, UN).

A) Female genital mutilation should be defined in accordance with the international standards provided.

B) Anyone who commits or encourages the act of Khatna should be punished.

C) It is necessary to acknowledge the concept of “holiday cutting.” People travelling to and from India must be punished if they engage in the Khatna practise.

D) Anyone who is aware of illegal action should be held accountable by the law and should report it.

## **VIII. CONCLUSION**

According to study, the Khatna rite is repulsive and disrespectful to women. All of the logic that underpins Khatna's approach is based on society's deep sexism, which encourages more discrimination against women. Khatna has a negative impact on women's health and takes away their autonomy, dignity, health, and freedom. Under the pretence of purity and cleaning, FGM is a barbaric technique aimed at vilifying and restricting the expression of women's sex. It's a savage approach. Despite its religious and cultural denominations, the act of mutilation violates the human rights of young men and women who were minors at the time of the incident and are unable to grant informed consent. FGM is an unpleasant experience for those who are subjected to it, and it can have a long-term impact on a person's mind and body. Women are subjected to this horrific experience in the guise of custom, religious or cultural tradition, societal pressure, or simply aesthetic reasons, which is a gross contempt of the lives and worth of girls and women in a society. While it is crucial to recognise and acknowledge religious and cultural expression, especially in a diverse country like India, the question is whether such speech infringes on a group's fundamental human rights. A secular nation's cornerstone is religious freedom; nevertheless, this freedom does

not preclude a person's right to life and equality. When such a divisive issue arises, it must be handled delicately and judged without alienating the community or its traditions. Women can be properly liberated from this repulsive behaviour if Khatna practise is outlawed by law.

