
FEMALE GENITAL MUTILATION AND THE INDIAN LEGAL VACUUM: A SOCIOLOGICAL PERSPECTIVE

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Introduction

The concept of justice is embedded in the very fiber of society and with time has grown with it. Social nature and coexistence of a man gives rise to conflicting interest that needs to be balanced to achieve peace and harmony. Justice is the philosophical theory leading to administration of fairness that finds a pivotal place in all socio political and legal systems around the globe. This became more prominent with development of the State stretched its roots in different sphere of human activities.

Administration of Justice entails the maintenance of peace and order, a concept in modern society that has evolved through several stages. In primitive stages of society private retribution and self were the only remedies available against the offender. The second stage of development where state was in rudimentary form, the functions being only persuasive and not enforcing towards the wrong doer. In third stage wrongs could be redressed by payment of compensation to victim.

With advent of time administration of justice for all accessing legal system, to create an environment of social harmony. justice is ultimate end of law and goal of society, which the Judiciary has been pouring into law with new variants of justice in the form of contemporary values and need based rights like freedom, liberty, dignity equality and social justice lies in safeguarding uniformity and certainty of law and at the same time ensuring that rights and duties are duly valued by people. Yet, despite this evolving understanding of justice and human rights, certain deep-seated cultural practices like Female Genital Mutilation continue to challenge the very foundation of dignity, equality, and bodily autonomy that modern legal systems strive to protect.

Female Genital Mutilation (FGM) is a deeply rooted cultural practice that involves the partial or total removal of female genitalia for non-medical reasons. It is widely recognized as a human

rights violation that stems from and reinforces gender inequality. Globally, FGM is prevalent in parts of Africa, the Middle East, and Asia. While India is not commonly associated with FGM in global discourse, the practice continues, particularly within the Dawoodi Bohra community, under the term "*Khatna*".¹ Despite its presence, FGM remains in a grey zone in India's legal framework. This article explores the sociological dimensions of FGM in India, analyzing its cultural persistence, the silence surrounding it, and the legal vacuum that allows the practice to continue. It argues for urgent legislative and societal intervention grounded in human rights and gender justice.

Understanding FGM in the Indian Context

In India, FGM is primarily practiced among the Dawoodi Bohra community, a sub-sect of Shia Islam². Girls, often around the age of seven, are taken for the procedure, which is usually conducted in secrecy. The justifications are varied: controlling sexuality, preserving modesty, and fulfilling religious obligations. These beliefs are passed down matrilineally, often enforced by women within the community, reflecting how patriarchy can be internalized and reproduced by those it oppresses. From a sociological perspective, FGM in India represents a form of social control. It is not merely a ritual but a mechanism through which gender roles are reinforced. The body becomes a site of discipline, where cultural identity and conformity are inscribed. Families subject their daughters to the practice to avoid stigma and maintain their standing within the community. Thus, the practice survives through both cultural inertia and the fear of exclusion.

The Culture of Silence

One of the most insidious aspects of FGM in India is the culture of silence that surrounds it. Survivors often do not have the vocabulary or support to articulate their experiences. Many come to understand the trauma only in adulthood, when they face sexual health issues or emotional distress. This silence is maintained through social conditioning. Speaking out against the practice is equated with betrayal of community values. This leads to isolation of survivors and activists, and deters legal or medical professionals from intervening. The result is a system

¹ World Health Organization. (2024). Female genital mutilation. <https://www.who.int/news-room/factsheets/detail/female-genital-mutilation>

² Patel, T. (2016). India's Bohra Muslim women demand an end to female genital mutilation. BBC News. <https://www.bbc.com/news/world-asia-india-35615534>

where the practice is simultaneously widespread and invisible, continuing unchecked in the absence of societal outrage.

The Indian Legal Vacuum

India does not have a specific law banning FGM.³ The Indian Penal Code (IPC) contains provisions that could be invoked, such as Section 320 (grievous hurt) or Section 326 (voluntarily causing grievous hurt by dangerous weapons), but these are not tailored to the unique dimensions of FGM. Additionally, the Protection of Children from Sexual Offences (POCSO) Act, 2012, could theoretically apply when minors are involved. However, no known prosecutions have taken place under these laws for FGM. The lack of explicit legal prohibition allows for plausible deniability. Law enforcement agencies are hesitant to act, fearing backlash from religious groups or being accused of infringing on religious freedoms. This inaction is not neutral; it signals that the state does not prioritize the bodily integrity and dignity of girls from minority communities. Attempts to seek legal redress have been made. In 2017, a Public Interest Litigation was filed in the Supreme Court by Sunita Tiwari seeking a ban on FGM.⁴ The court acknowledged the seriousness of the issue but referred it to a larger constitutional bench, where it remains pending. Meanwhile, the practice continues.

FGM and Gender Inequality

FGM is both a cause and a consequence of gender inequality. It embodies a belief system that sees female sexuality as dangerous and in need of control. The fact that FGM is typically performed on young girls, without their consent, highlights the broader societal view of children—especially female children—as property rather than as rights-bearing individuals. From a sociological lens, FGM reflects what sociologist *Pierre Bourdieu* called "**symbolic violence**": *a form of coercion that is subtle and internalized, operating through cultural norms rather than overt force*. Women who undergo FGM may initially see it as a rite of passage, only to recognize its oppressive nature later in life. This makes resistance complicated, as it requires unlearning deeply ingrained beliefs.

³. Centre for Child Rights. (2018). Legal Framework Related to FGM in India. National Commission for Protection of Child Rights

⁴ Sunita Tiwari v. Union of India & Ors., Writ Petition (Civil) No. 286 of 2017

The Role of Religion and Community

The Dawoodi Bohra leadership has had a mixed response. While some clerics have called for reform, others defend the practice as religiously mandated. This ambiguity has made it difficult to build a unified opposition within the community. Moreover, the state has been reluctant to intervene in religious practices, often citing Article 25 of the Constitution, which guarantees freedom of religion. However, this right is not absolute. The Supreme Court, in various rulings, has held that practices that violate public order, morality, or health can be regulated⁵. FGM clearly violates all three.

Need for Legislative and Social Reform

There is an urgent need for India to enact a specific law banning FGM. Such a law would provide clarity, enable prosecutions, and signal societal condemnation. Laws have symbolic value; they can shift norms and empower individuals to speak out. Legal reform, however, must be accompanied by community engagement. Efforts must be made to educate religious leaders, healthcare professionals, and families about the harms of FGM. Survivors must be at the forefront of this movement, sharing their stories and reclaiming their narratives. Education plays a key role. Curricula must include comprehensive sexuality education that addresses gender, consent, and bodily autonomy.

Medical professionals should be trained to identify and support FGM survivors.

Conclusion

FGM in India is not just a medical issue or a human rights violation; it is a sociological phenomenon that reflects deep-seated gender hierarchies, cultural norms, and institutional apathy. The silence around it is both a cause and effect of the legal vacuum that persists. To end FGM, India needs more than just laws. It needs a societal reckoning. It needs to listen to survivors, challenge harmful traditions, and prioritize the rights and dignity of every girl. Only then can we hope to consign this practice to history, where it belongs.

⁵ Supreme Court of India. (2017). *Shayara Bano v. Union of India*, Writ Petition (Civil) No. 118 of 2016