

**FEMALE GENITAL MUTILATION: A GROSS VIOLATION OF HUMAN RIGHTS
VIOLATION**

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ABSTRACT

Female Genital Mutilation (FGM) is cutting or injuring the female genitalia for non-medical reasons and is most common in the countries across Africa, Middle East, Latin America and in India. FGM also known as KHATNA\KHAFZ. It is a horrific act, agreed by all the major global humanitarian and legal organizations, and by the many nations, to be a gross violation of human rights. It is grim manifestation, along with ‘Honour’ killings, breast ironing, beading and other harmful traditional practices inflicted on women and girls, of patriarchy incarnate. But still FGM continues, perpetrated on some three million small girl and young women every year, often under barbaric conditions. The generally accepted World Health Organization classifications for FGM are type of Clitoridectomy, Excision, Infibulation, Unclassified. It is important to note that FGM is not the sole source of danger for girls and women-and sometimes of boys and subordinate men too. Supreme Court of India declared FGM unconstitutional amounts to a violation of Legal Rights. SC of India remarked that the bodily integrity of a woman could not be infringed without her consent and It is a crime under the Indian Penal Code and the POSCO Act it is also illegal in many countries. “Though this is practiced in many countries too but their respective governments have brought laws to curb this evil. But unfortunately, no one speaks about this here, forget bringing a law for it”. FGM should have become history everywhere, decades ago.

Key words- Female Genital Mutilation, Human rights violation, Complications

1. INTRODUCTION

The Topic of my research paper is Female Genital Mutilation (FGM). The practice of FGM has received a great deal of attention I recent years at the both national and international levels. Female Genital Mutilation is a extremely important and sensitive issue of many women’s and girls’ across the world. FGM refers to a variety of operations on the private parts of women and young girls that involves partial or total removal of the external genitalia. It is a beginning of the pain. Everyday estimated 3 girls are at risk of undergoing FGM. It is practiced for many different reasons because of Genitalia considered dirty & ugly, to control women’s sexuality, for religious reasons and culturally it believed that FGM makes girl pure and acceptable women for marriage

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and therefore families' procedure over Social security. FGM affects girls for the rest of their lives making daily activities extremely painful. FGM is bone of violence. The purpose of this research paper is to investigate the issue of FGM in India as one of the biggest social problem that is affecting the majority of women and Young girl's .This is a sensitive topic, which needs to be addressed with great care, without affecting people's feelings as it is touching on other people's culture.

1.1 Aims & Objectives - The aim of this research paper is to introduce female Genital mutilation to the field of social work and social services as one of the social problem that affects women and young girl's who come from the developing countries and to gather baseline data in the overall knowledge, attitude and the prevailing practices of FGM and other harmful traditional practices [HTP's]¹. The specific objective is to getting an in depth knowledge about FGM and other HTP's and its impact on the development of the child.

1.2 Research Questions - Female genital mutilation is one of the most dangerous practice that cause torture and death among those undergo the procedure. The aforesaid discussion of the research paper on the topic of female genital mutilation leads to following set of the questions ought to be addressed as a prerequisite for this study.

- 1. How female genital mutilation violates the Human rights of the women and children?**
- 2. What kinds of experiences do women have of the female genital mutilation?**
- 3. Is New criminal legislation needed?**

1. https://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Harm_Pract_WEB.pdf

2. BACKGROUND OF FGM

Female Genital Mutilation or Cutting is defined by World Health Organization , United Nations Children’s Fund, United Nations Population Fund (WHO,UNICEF,UNFPA)² “partial or total removal of the external female genitalia or other injury to the female genital organs for non medical reasons”³. It involves the removal of clitoris, inner and outer lips of the vagina and the sewing or stapling together of the two sides of the vulva leaving only a hole to pass the urine and for menstruation – depending upon the type. FGM is generally recognized internationally as violation of the human rights of rights of women. Because it happens to women and to girls in adolescence, childhood and even sometimes to who are newly born. It is seen by some as a right to passage to womanhood or as a condition of marriage. It primarily focuses on the minors which also violates the right of children and also right to health, security and physical integrity , the right to be free from torture and cruel, inhuman or degrading treatment and right to life when the procedures results in death. One or more types of FGM are practiced in more than 29 African countries and also by ethnic groups in the southern part of the Arabian Peninsula along the Persian Gulf. The World Health Organization (WHO) has also reported FGM has occurred in India, Indonesia, Iraq, Kurdistan, Israel, Malaysia and United Arab Emirates. There are also anecdotal reports FGM occurs in several other countries including Colombia, Democratic Republic of Congo, Oman, Peru and Sri Lank. WHO estimates that between 100 and 140 million girls and women worldwide have been subjected to one of the first three types of female genital mutilation every year. Many refugee communities have resettled in Western countries and FGM is thought to be increasingly practiced in refugee camps and some Western countries.

2. ‘Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement’, 1997. Available at: <http://apps.who.int/iris/bitstream/10665/41903/1/9241561866.pdf>

3. *OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, ‘Eliminating Female Genital Mutilation: An interagency statement’*, 2008 at p. 4. Available at: http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442_eng

2.1. CLASSIFICATION OF FGM - The most common types of FGM are excision of the clitoris (Type 1), and excision of the clitoris and labia minora (Type 2) – accounting for up to 80% of all cases. The most extreme type is infibulation (Type 3) , which constitutes about 15% of all procedures, but is practiced among as many as 90% of women from Somalia, Djibouti and Northern Sudan –with consequently higher rate of complications.

As the WHO classifies the practice of FGM into four types:

- 1) Type 1 is Clitoridectomy which is partial or total removal of the clitoris and or the prepuce.
- 2) Type 2 is Excision which is partial or total removal of the clitoris and the labia majoria
- 3) Type 3 is Infibulation which is narrowing of the vaginally opening through the creation of a covering seal. The seal is formed by the cutting and reposting the inner or outer labia with or without removal of the clitoris.

2.2. UNCLASSIFIED FGM - Type 4 is the unclassified practice of FGM which comprises of all other harmful procedures to the female genitalia for non-medical purposes which includes pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissues; scraping of tissue surrounding the vaginal office (Angurya cuts) or cutting of the vagina (Gishiri cuts);introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purposes of tightening or narrowing it; and any other procedure that falls under the definition of FGM.

In 2007 UNFPA and UNICEF initiated the Joint Programme on FGM to accelerate the abandonment of the practice. As, such its elimination is a global concern. In 2008, WHO and 9 other United Nations partners issued a statement on the elimination of FGM called “Eliminating Female Genital Mutilation: an interagency statement”. In, May 2016 WHO in collaboration with UNFPA and UNICEF joint programme on FGM launched the first evidence based guidelines on health interventions for women living with FGM .Even yearly new statements and guidelines were issued⁴. As well as WHO is developing tools for frontline health-care workers to improve knowledge, attitudes and skills of health care providers in preventing and managing the complication of FGM. The predominant school of thought is that FGM is originated in Ancient Egypt and then spread to East Africa. Hence, the term ‘Pharaonic Circumcision’ coined by the Sudanese. It is believed that the practice was occurring some centuries before this however was spread by dominant tribes and civilizations as a result of tribal, ethnic and cultural allegiances.

4.[https://www.unfpa.org/sitesfiles/pub-pdf/UNICEFUNFPA%20Joint%20Programme%20AR_final_v14 .pdf](https://www.unfpa.org/sitesfiles/pub-pdf/UNICEFUNFPA%20Joint%20Programme%20AR_final_v14.pdf)

FGM is most frequently performed in rural areas by traditional birth attendants, midwives or 'Circumcision operators'. The procedure is carried out using special knives, scissors, razor blades or scalpels. Anesthetics and Antiseptics are not generally used and pastes containing herbs, local porridge or ashes are frequently rubbed on to the wound for stopping the bleeding. In urban areas however FGM is being performed more frequently in hospitals under anesthetic by trained doctors, nurses and midwives.

2.3. COMPLICATIONS OF FGM - The harmful procedures of FGM results in several complications to women and girls bodies. They can be short term, long term, sexual, psychological and may also cause pregnancy or childbirth problems⁵. Infection which is commonly occurs for a number of reasons; unhygienic conditions, the use of unsterilized instruments, applications of traditional herbs or ashes to the wound, contamination of the wound with the urine or feces or binding of the legs following infibulations which prevents wound and as a results takes longer time in recovery. Unbearable pain because the majority of mutilation procedures are performed without anesthetics and cause them severe pain. Even if the local anesthetic is used, multiple insertions of needle is required. Bacterial growth which results in urinary tract infections. Infertility also occurs due to chronic pelvic infections causing irreparable damage to the reproductive organs.

In order to prevent these serious complications WHO is developing tools for frontline health-care workers to improve knowledge, attitudes and skills of health care providers in preventing and managing the complication of FGM.

- Increasing risk of HIV transmission.
- Psychological effects including feelings of anxiety, fear, suppression, panic disorder and difficulty with body image.
- Sexual complication such as fear and pain associated with sexual intercourse.
- Childbirth complications such as miscarriage ; increased risk of bleeding and prolonged and obstructed labor due to partial or total occlusion of the vaginal.

5. *WHO, Health risks of female genital mutilation (FGM). Available at:http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/

3. HISTORICAL TOOLS OF FGM

FGM is not that well known practice but it dated back at least 2000 years. Even the religions such as Christianity, Judaism and Islam unanimously agreed that your body is a temple of significantly, it has no specific origin. It varies from different beliefs and perception of people. Such as it was believed that it was practiced in Ancient Egypt as a sign of distinction amongst aristocracy. Some researchers have traced the practice to Egypt in the fifth-century BC and argue that the geographical distribution of FGM suggests that it originated on the West Coast of the Red Sea.

Egyptian mummies show women infibulated and this was also supported by a Greek Papyrus in the British God and also the practice of FGM is a harmful custom that is not advocated in any holy script. Museum dated 163 BC. A Greek historian and geographer in the second-century BC reported that the group along the eastern coast of the Red Sea cut their women in “Egyptian Style” and that another group”cut off in infancy with razors the whole portion that others circumcise”. Curiously, today FGM is referred to as “Pharaonic Circumcisions” (i.e., Egyptian) in Sudan and Sudanese Circumcision” in Egypt.

While others believed that FGM started during the slave trade when black women entered Ancient Arab societies. On the other hand, it was believed that it was began with the arrival of Islam in some parts of Sub-Saharan Africa and it was believed that the practice developed independently among certain ethnic groups in Sub-Saharan Africa as a part of puberty rites. Other anthropologists believe that FGM was practiced among Equatorial African herders to protect young female herders from being raped or ”an outgrowth of human sacrificial practices or some early attempt at population control”. Even though it was highlighted that FGM was practiced in the United Kingdom and United States by the Gynecologist just to cure women so-called “Female Weakness”.

One or more types of FGM are practiced in more than 29 African countries and also by ethnic groups in the southern part of the Arabian Peninsula and along the Persian Gulf.

The World Health Organization (WHO) has also reported FGM has occurred in India, Indonesia, Iraq, Kurdistan, Israel, Malaysia and United Arab Emirates. There are also anecdotal reports of FGM occurs in several other countries including Colombia, Democratic Republic of Congo, Oman, Peru and Sri Lanka.

WHO estimates that between 100and 140 million girls and women worldwide have been subjected to one of the first three types of FGM. There are an estimated 3 million girls in Africa at risk of undergoing FGM every year.

Overall, in the history it was believed that FGM would ensure women's virginity and reduction in the female desire as a result in inhibits in sexual pleasure. Many commentators believe that the practice which is evolved from the earliest times in the primitive communities that wished to establish control over the sexual behavior of the women. The Romans performed a technique involving the slipping of rings through the labia majoria of the female slaves to prevent them from becoming pregnant and the Scoptsi Sect in Russia ensures virginity.

The practice of FGM is supported by traditional beliefs, values and attitudes which is being carried out by the communities depending upon their level of perception. In some communities it is valued as rite of passage to womanhood. (For Example – Kenya and Sierra Leone). Others value it as a means of preserving of girl's virginity until their marriage (For Example – Sudan, Egypt and Somalia). In most of these countries FGM is a pre-requisite to marriage. Therefore, marriage is vital for woman's social as well as economic survival. It was believed by some African women that if their daughters are not circumcised they would not get a husband.

The reasons why FGM is practiced today are a mix of cultural, religious and social factors within families and communities. According to WHO, they include -

- i. Where FGM is a social convention, the social pressure to conform is a strong motivation to continue the practice.
- ii. FGM is often considered necessary part of raising a girl properly and preparing her for marriage/adulthood.
- iii. FGM is often motivated by beliefs about what is considered proper sexual behavior.
- iv. FGM is associated with cultural ideals of femininity and modesty.
- v. Although no religious scripts prescribe the practices, practitioners often believe the practice has religious support. Religious leaders take varying positions with the regard to FGM; some promote it, some consider it irrelevant and other contributes to its elimination.
- vi. Local structures of power and authority can continue upholding the practice.
- vii. FGM is often considered a cultural tradition which is often used an argument for its continuation.
- viii. In some societies, recent adoption of FGM is linked to copying the traditions of neighboring groups or part of a wider religious or traditional revival movement.
- ix. In some societies, FGM is practice by new groups when they move into new areas where the local population practices FGM.

The harmful tradition of FGM has been guided by the taboos from generation to generation. As FGM is rooted in culture and some believe it is done for religious reasons, but it has not been confined to any particular culture or religion.

4. FEMALE GENITAL MUTILATION LAWS IN INDIA

FGM in India is practiced mainly in the Dawoodi Bohra community which has its major adherents in India. It is commonly known that Muslims are divided into two sects: Sunnis and Shias. The Bohras belong to the Shia sect. They are found in many parts of India, notably in Gujarat, Rajasthan, Maharashtra and Madhya Pradesh. Their total population in the world is estimated at about one million. Dawoodi Bohras belong to the Islamic branch, the word 'Bohra' is a Gujarati word meaning traders. The seat of power of the High-priest of the Bohras shifted from Yemen to Gujarat hundreds of years ago. In Gujarat, it was shifted from place to place until it became established at Surat where it remained for more than 150 years. It is now located in Mumbai. The Bohras have a reputation for being successful businesspeople with a strong focus on education. The women in the community are highly educated. However, it is thought to be the only Muslim sect in India that practices khatna, while the Dawoodi Bohras are the largest sect among Bohras, the other Bohra sects such as Sulemani and Alvi Bohras all practice FGM. Dawoodi Bohras says the practice of FGM violates the bodily "integrity" of the girl's child. (FC) may not be life threatening but there is a permanent mental, emotional and physical scarring of a woman.

4.1 LEGAL FRAME WORK - Laws play a very essential role in bringing about social change. the practice of female genital mutilation in the Dawoodi Bohra Muslim community is violative of Article 21⁶ of the Constitution as it puts the female child to the trauma of female genital mutilation," besides Article 21, it is also violative of Article 15⁷ guaranteeing protection discrimination on grounds of religion, race, caste, sex or place of birth. The FGM violates the preconditions of public order, morality and health imposed under Articles 25⁸ and 26⁹

6. Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing.

7. Article 15 and Prohibition of Discrimination, Article 15 (1) and (2) prohibit the state from discriminating any citizen on ground of any religion, race, caste, sex, place of birth or any of them From article 15(3) onwards, the constitution starts protective discrimination.

8. Article 25 Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess.

9. Article 26 guarantees collective freedom of religion, subject to some limitations. It guarantees to every denomination or a **section** of it the right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs in matters of religion.

In Manoj Narula v. Union of India¹⁰ SC of India has interpreted “constitutional morality” as follows: “The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society...“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic. The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such a morality; Commitment to the Constitution is a facet of constitutional morality.”

The principle of gender sensitivity is entrenched in the Constitution a practice (FGM) which is engaged in solely to make a woman more appealing to her husband cannot be constitutional in view of the numerous health hazards associated with it. The Dawoodi Bohra community in India, infringes the Right to Privacy, recognized as a Fundamental Right **in Justice K. S. Puttaswamy (2017)**¹¹ Judgment “one has supreme authority over genitalia .it is central to one’s dignity, identity and autonomy. Article 39 of the Constitution of India being directive principles of state policy and the chapters and clauses of UN Convention on the Rights of the Child, UN Universal Declaration of Human Rights of which is India is a signatory, and against the abuse of girls as well as women of this community, and also against the serious violation of the female body thereby causing permanent deformity/ disfiguration to the body of a girl child and subsequently when she becomes an adult woman.

The practice under the garb of the ‘Essential Practices’ doctrine, indicating that the practice of FGM attracts provisions of the IPC as well as the POCSO Act - “something that is declared criminal cannot be an ‘essential practice. Section 3¹² of the POSCO that addresses penetrative sexual assault by any person on any child, inter alia defines it as insertion of any object into the vagina of the girl. It is established precedence that penetration in sexual offences need not be complete penetration vagina of a child, read with Explanation1of section 375, IPC which includes the labia majora in the use of the term ‘vagina’, she suggested that ‘vagina’ must be understood to mean any part of the female anatomy.

10. 2014 (9) SCC 1

11. Writ petition (civil) no 494 of 2012

12. **Section 3(b) of POCSO:** “Penetrative sexual assault.- A person is said to commit "penetrative sexual assault" if-(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person”

There has been a long history of social reform within the Dawoodi Bohra community the state of Maharashtra had passed the Maharashtra Prohibition of People from Social Boycott¹³ of Excommunication Act as a redressal for some boycotted members of the community (which was held to be unconstitutional by the majority opinion of the apex court in Sardar Syedna Taher Saifuddin Saheb V. The State of Bombay¹⁴ (the reconsideration is pending before the court) A majority judgment regarded excommunication as a legitimate practice of a community protected under Article 26¹⁵ of the Indian Constitution.

4.2 RECOMMENDATION FOR GOVERNMENT - To curb the practice of FGM government of India feels necessary safeguard are available in existing laws. But these laws are not enough to prevent from the practice of FGM. It is the time now Government must draft new laws addresses the issues of FGM practices in India .stopping the practice of FGM involves a sea change in social and individuals thinking. To effect such profound social change, government action should take multiple forms and should be part of a long-term process of promoting social justice for all, particular women. Government ensure legal measures to implement the resolutions passed in December, 2012 by United Nations General Assembly regarding rights of the child banning FGM or Khatna or Female Circumcision or Khafd, of which India is also a signatory and has also ratified UN Convention on the Rights of the Child, UN Universal Declaration of Human Rights, and issue appropriate guidelines to this effect. Government recommends to place a complete ban on the illegal and inhuman practice of FGM as the same being violative of the fundamental rights.

Rights including Articles 14¹⁶ & 21 and Article 39¹⁷ (directive principles of state policy) of the Constitution of India. Declaring Khatna or Female Genital Mutilation, throughout the territory of India, as illegal; Directing the government to declare FGM as a serious violation of child rights and human rights and also a violation of the fundamental rights of a girl child and a woman (right to equality).

13. Prevention, Prohibition and Redressal Act, 2016

14. AIR 1962 SC 853

15. Supra note 7

16. Article 14 – Equality before the Law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

17. Article 39 states that State shall, in particular, direct its policy towards securing,

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

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

NEED OF NEW CRIMINAL LEGISLATION - In the cases of Female Genital Mutilation under the existing laws of IPC till such time that the appropriate and stricter laws ,) and declare the same to be a criminal offence which shall be cognizable, non-compoundable and non-bailable, and anyone found involved in performing, aiding, abetting and perpetrating this practice be punished with maximum punishment and penalty , and the Police be allowed to arrest the wrongdoers/ offenders immediately without a warrant. When the government decides to apply criminal sanctions, it should consider two possibilities: enacting a law specifically prohibiting the practice of FGM or applying an existing criminal law that is broad enough to prevent FGM in the both cases, the purpose is to characterize FGM as a criminal offence.

5. INTERNATIONAL HUMAN RIGHTS LAW: A FRAME WORK FOR SOCIAL JUSTICE

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. These rights are essential for all the individuals as they are social and spiritual welfare and also necessary as they provide suitable conditions for the material and moral uplift of the people. In the absence of social rights [are called ‘freedom to’] the existence of human beings is likely to be endangered. Human rights belongs to human beings and State has the corresponding duty to protect the rights of human beings

5.1 BACKGROUND - The modern human rights era can be traced to struggles to end slavery, genocide, discrimination, and government oppression. After World War I, many scholars, activists, and some national leaders called for a declaration and accompanying international system—the League of Nations—to protect the most basic fundamental rights and human freedoms. Most contemporary human rights are based on international treaties, signed by governments in the post-World War II era. In general, these treaties sought to establish universal standards by recognizing fundamental rights and requiring government to take action to ensure

that such rights are respected. The standards set by governments around the world in their own countries are key to development of human rights norms. Despite the expansion of the human rights field to address social concern, the means by which to enforce human rights remain limited. To create accountability at the international level, the United Nations human rights system set in the place procedure for reporting on current human rights conditions in nations around the world.

5.2 SOURCES OF INTERNATIONAL HUMAN RIGHTS - International human rights law has been developing extensively since the creation of the United Nations. The most fundamental point about human rights law is that it establishes set rules for all the people of all the states. These human rights law derives from the variety of sources which are as follows -Three of the earliest and most authoritative human rights instruments are the Universal Declaration of Human Rights¹⁸ (the Universal Declaration), the International Covenant on Civil and Political Rights¹⁹ (the Civil and Political Rights Covenant) .Covenant on Economic, Social and Cultural Rights²⁰ (the Economic, Social and Cultural Rights Covenant).

18. Universal Declaration of Human Rights, adopted 10 December 1948

19. International Covenant on Civil and Political Rights, adopted 16 December 1966 (entry into force, 23 March 1976

20. International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966 (entry into force, 3 January 1976

Strong legal support for the right of women and girls to abandon FGM is also found in more recent treaties, such as the Convention on the Elimination of all Forms of Discrimination against Women²¹ and the Convention on the Rights of the Child (Children's Rights Convention. the Committee Against Torture²² and the Human Rights Committee have addressed FGM in their reports to specific governments and recommended actions that can feasibly be taken to help end this harmful practice. United Nations special reports have also made specific recommendations to governments in countries where FGM is common and recommended specific actions to help eradicate FGM, whether legislative or programs to combat the practice. UN agencies such as the World Health Organization, UNICEF and the UNFPA have issued statements against FGM. They have also published documents that contain specific recommendations for policies and programs to help eradicate FGM.

5.3 INTERNATIONAL HUMAN RIGHTS VIOLATED BY FGM: FGM is human rights violation. It reflects deep-rooted inequality between the sexes and constitute an extreme form of gender-based discrimination against women. The practice also violates a person's right to health,

security, and physical integrity, and the rights to be free from torture inhuman or degrading treatment. Sadly it can also violate a person's right to life when the procedure results in death and women at risk due to the practice of FGM.

THE RIGHT TO BE FREE FROM GENDER DISCRIMINATION- The right to be free from gender discrimination is guaranteed in numerous international human rights instruments. Article 1 of the CEDAW 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".

21. Convention on the Elimination of all Forms of Discrimination against Women, adopted 18 December 1979 (entry into force, 3 September 1981) Committee on the Elimination of All Forms of Discrimination against Women. General Recommendation No. 14, 1990

22. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 (entry into force, 26 June 1987*, Human Rights Committee. General Comment No. 20, 1992. Prohibition of torture and cruel treatment or punishment.

RIGHT TO HEALTH - The International Human Rights law including the Universal Declaration of Human Rights (1948) proclaims the right for all human beings, live in conditions that enable them to enjoy good health and health care. The problems associated with the procedure of FGM often have brutal consequences for a woman's physical and mental health. All types of FGC have health complications related to the procedure often being performed outside health care facilities by non-professionals using unsterile cutting instruments.²³

THE RIGHT OF THE CHILD -As it has been discussed earlier the victims of this harmful traditional practice are infants, little girls and women ranges between the ages of 7 and 8 after birth and 10-14 years-old. FGM violates the rights of child because it is usually performed on girls when they are as young as few months after birth to 17 years. This means the practice FGM contravene Article 1 defines a "child". Article 3 affirms that "the best interests of the child shall be a primary consideration." While this principle may be broadly interpreted to accommodate varying cultural views on what constitutes a child's best interest, such interpretations should be consistent with the Convention's other specific protections.

THE RIGHT TO SEXUAL AND PHYSICAL INTEGRITY -Female genital mutilation violates the rights of women and girls to sexual and physical integrity that Violations of the right to physical integrity are most obvious when girls and women are forcibly restrained during the procedure.FGM is practiced without women's and girl's full consents. An unauthorized invasion of a person's body represents a disregard for that fundamental right Women who have been infibulated may experience painful intercourse through their life and even in cases where there is no pain there is no sexual fulfillment. These are clear violations of women's right to sexuality. The rights to life and to physical integrity are considered core human rights.

23. Article 12, ICESCR "1.The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;(b) The improvement of all aspects of environmental and industrial hygiene;(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases."Full text of ICESCR available at : <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

THE RIGHT TO BE FROM THE TORTURE – Regardless of the reasons for its practice, FGM is a traditional harmful practice that violates the right to be free from torture and degrading treatment²⁴The CAT has consistently addressed FGM in their concluding comments .The CECSCR also covers FGM, and has explicitly refers to the practice as one that “constitutes cruel, inhuman or degrading treatment.”The CRC has explicitly directed state parties to enact legislation that will abolish the practice of FGM as it is a violation of the rights of children. In cases where the state fails to act with due diligence, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment may also apply.

24. Article 5, UDHR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 7, ICCPR: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” 16 Full text of UNCRC available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

7. CONCLUSION

These efforts to address this Research Paper which entails the present situation with regard to female genital mutilation: As a gross violation of human right, and the approach for eliminating FGM in India. Despite of having diversity in types and reasoning for the practicing of FGM and complications that result from it, FGM goes beyond these as far as human rights are concerned. FGM has been considered as one of the most significant human rights violation against young girls and woman. As a result of violation of girls and women rights, international human right instruments impose obligations to parties to use all measures to ensure eradication of FGM. Therefore .Criminalizing this practice only will not change people's behavior. Unless and until the governments undertake a multi-strategy approach for eliminating FGM. However, all of these activities must be guided by a respect for the human rights of women and girls. In conclusion, female genital mutilation is a criminal offence according to legislation because it causes pain, sufferance and violates the human rights by affecting the health of women and putting girls at risk. Empowering people in the community with knowledge on the subject and providing the necessary resources will help eliminating the practice.

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GO TO



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