

FEMALE GENITAL MUTILATION UNDER INTERNATIONAL LAW

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Introduction:

Female genital mutilation is a violation of the human rights of women and girls as recognized in numerous international and regional human rights instruments. It is a barbaric practice which inflicts a great deal of pain on the girls who go through it, this practice has no known medical benefits and also as it is performed in most cases without the girl's consent, it needs to be stopped.

What is Female genital mutilation?

Female genital mutilation (FGM), also known as Female genital cutting (FGC) or female circumcision is a cultural and ritualistic practice which involves the removal of either a part of or whole of external female genitalia. It is predominantly performed in the Sub-Saharan countries and north eastern countries of Africa as well as in the middle eastern countries and some parts of Asia. It is a medieval ritual which is deeply ingrained in the societies which practice it and has an everlasting effect on the person who goes through it. The procedure is commonly performed upon girls anywhere between the ages of four and twelve as a rite of passage. In some cultures, it is practiced as early as a few days after birth and as late as just prior to marriage or after the first pregnancy.

The Procedure

The procedure is often performed by midwives who in most cases use tools like razors, scissors, knife, shards of glass and a piece of cloth. In most of the cases the woman or the child is not given any anesthesia. There are even health professionals who perform it. According to the WHO Female genital mutilation is classified into 4 major types.

Type 1: Often referred to as clitoridectomy, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).

Type 2: Often referred to as excision, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision of the labia majora.

Type 3: Often referred to as infibulation, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris.

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Type 4: This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.

Historical background:

No one really knows from where or how or for what purposes the female genital mutilation originates from as it was prevalent in different cultures⁴. It has been in practice for almost 5000 years now. For the most part it was and it's still used as a cultural and ritualistic practice in socialistic tribes of Africa and as a purifying ritual in some Islamic communities. It is believed that if a woman is not 'cut' she will be promiscuous or unclean. The practice is rooted in gender inequality, attempts to control women's sexuality, and ideas about purity, modesty and aesthetics. It is usually initiated and carried out by women, who see it as a source of honour, and who fear that failing to have their daughters and granddaughters cut will expose the girls to social dangers like not getting married or ostracizing them.

The reasons for performing FGM:

FGM is practiced due to a number of sociocultural factors like the fear of ex-communication from the tribe, it is a social norm- because others are doing it we have to follow it, it is considered as a coming of age ritual for young girls to step into womanhood, it ensures the chastity of woman as it is believed that it will curb her sexual desires, though no religion prescribes FGM practitioners believe they have religious support, it is often motivated by beliefs that it ensures the premarital virginity of a woman as in some cases the vaginal opening is covered or narrowed.

The risks of FGM:

FGM has no known health benefits, on the contrary there are a substantial amount of health risks. **Immediate complications** include severe pain, excessive bleeding (hemorrhage), genital tissue swelling, fever, infections e.g., tetanus, urinary problems, wound healing problems, injury to surrounding genital tissue, shock and death. **Long-term consequences** can include urinary problems (painful urination, urinary tract infections), vaginal problems (discharge, itching, bacterial vaginosis and other infections), menstrual problems (painful menstruations, difficulty in passing menstrual blood, etc.), scar tissue and keloid, sexual problems (pain during intercourse, decreased satisfaction, etc.), increased risk of childbirth complications (difficult delivery, excessive bleeding, caesarean section, need to resuscitate the baby, etc.) and newborn deaths, need for later surgeries: for example, the FGM procedure that seals or narrows a vaginal opening (type 3) needs to be cut open later to allow for sexual intercourse and childbirth (deinfibulation). Sometimes genital tissue is stitched again several times, including after

childbirth, hence the woman goes through repeated opening and closing procedures, further increasing both immediate and long-term risks, psychological problems (depression, anxiety, post-traumatic stress disorder, low self-esteem, etc.). Almost every woman who undergoes FGM has psychological problems, she is mentally scarred for life.⁵

PREVALENCE OF FGM BY COUNTRY:

In Africa

Female genital mutilation is practiced in 30 countries in western, eastern, and north-eastern Africa like Egypt, Burkina Faso, Somalia, Sudan, CAR (Central African Republic), Congo, Ethiopia, Eritrea, Guinea, Ghana, Kenya, Libya, Mali, Senegal, Sierra Leone, Tanzania, Togo, etc.

In the Middle East

Female genital mutilation is practiced in parts of the middle east like Iraq, Iran, Jordan, Kuwait, Oman, Palestinian territories, Saudi Arabia, Syria, United Arab Emirates, Yemen.

In Europe

With the recent influx of immigrants to Europe FGM has been introduced in various European countries, but almost all of the European countries have criminalized the FGM in any form and taking a person abroad for the procedure is also an offence in most of the European countries.

In North America:

FGM is considered as child abuse and it is prohibited in Canada. The procedure is considered illegal in the U.S, most of the U.S states have specific laws against FGM and if a state doesn't have any specific law it can take the offence under a general statute like assault or battery or child abuse, knowingly transporting a girl out of the U.S for the purpose of undergoing FGM is prohibited as well.²³³

In Asia

FGM is prevalent in Afghanistan, Brunei, Maldives, Indonesia, Malaysia, in some parts of Pakistan, Maldives, Tajikistan and it is also practiced in the Bohra Muslim community of India in which almost 90% of the females in the community go through the procedure⁶.

FGM under International law:

Sources of international human rights law for FGM

Three of the earliest and most authoritative human rights instruments are the

4.<http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>.

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

6. <http://www.hindustantimes.com/static/fgm-indias-dark-secret/>

- **The Universal Declaration of Human Rights, 1948**, provides a broad foundation for the protection of women against the practice of FGM. Article 3 states that “Everyone has the right to life, liberty and security of person.” Under Article 5, “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law.”
- **The International Covenant on Civil and Political Rights (ICCPR) (1966)** prohibits discrimination on the basis of sex, and mandates states parties to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” (Article 2) In addition, the ICCPR protects individuals from “torture or cruel, inhuman or degrading treatment” and arbitrary or unlawful interference with his or her privacy. (Articles 7 and 17).
- **The International Covenant on Economic, Social and Cultural Rights (1976)** acknowledges that human rights “derive from the inherent dignity of the human person.” Article 3 declares that the state parties must “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” Article 12 protects the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Apart from these instruments there are **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**, and **The Convention on the Rights of the Child (CRC), 1989**, focus on the rights of women and girls and also provide a basis for the elimination of FGM as a human rights violation. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 defines discrimination against women as:

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1)

OTHER DECLARATIONS AND RESOLUTIONS

- **Article 1 of the UN General Assembly Declaration on the Elimination of Violence Against Women**, defines violence against women as “any act of gender-based violence

that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Article 1) Article 2 explicitly identifies FGM as such a form of violence against women. Article 2(a).

- The **1993 Vienna World Conference** on Human Rights was a landmark event in which two important developments occurred. First, ‘female genital mutilation’ became classified as a form of violence against women (VAW); second, the issue of VAW was for the first time acknowledged to fall under the purview of international human rights law.
- Furthermore, the United Nations General Assembly has repeatedly called for more attention to the practice of FGM and more efforts by states for its elimination and protection of women and girls from the practice. **GA Resolution 61/143 (2007)** reminded states that they must not use customs, traditions, or religious beliefs as excuses for avoiding their obligation to eliminate violence against women and girls
- In 2010, the **Commission on the Status of Women** adopted a resolution entitled Ending Female Genital Mutilation. This resolution recognizes that female genital mutilation is a human rights violation that results in irreparable harm and constitutes a serious threat to the health of women and girls. The resolution sets forth specific multi-level State recommendations in order to eliminate FGM. The resolution calls on States to condemn the practice, enact and enforce legislation prohibiting FGM as well as penalties for violations of prohibitions.
- On December 20, 2012, the United Nations General Assembly passed a unanimous resolution condemning FGM. The resolution urges all countries to condemn the practice of FGM, to implement and enforce legislation banning FGM, and to establish programs raising awareness about FGM. The resolution further calls for all countries to allocate the necessary resources to protect women and girls from FGM, including refugee women and women migrants.

REGIONAL INSTRUMENTS:

- **The African Charter on Human and People’s Rights (the Banjul Charter), (1981)**, generally addresses the protection of the fundamental human rights of women and girls. Articles 4 and 5 recognize the respect for life, integrity of person, and the “right to the

respect of the dignity inherent in” every individual. Article 16 ensures the right of every individual “to enjoy the best attainable state of physical and mental health.”

- **The African Charter on the Rights and Welfare of the Child (African Charter) (1990)** follows the standard established by the CRC, that the “best interests of the child shall be the primary consideration” by an individual or authority in addressing issues related to children. (Article 4(1)) The Charter protects against discrimination and children’s rights to survival, protection, privacy, and physical, mental, and spiritual health.
- The more recent Protocol **the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003)** (The Maputo Protocol) mandates states parties to “adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.” (Article 4) This Protocol also specifically directs states parties to prohibit and eliminate harmful practices, explicitly including FGM.
- **The Cairo Declaration for the Elimination of FGM**, 2003, explicitly calls for governments to recognize and protect the human rights of women and girls in accordance with the aforementioned human rights documents and implement legislation to criminalize and prohibit FGM.
- **The Council of Europe Resolution 1247 on Female Genital Mutilation (2001)** calls on member states to enact “specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity” and to prosecute the perpetrators “including family members and health personnel, on criminal charges of violence leading to mutilation, including cases where such mutilation is committed abroad.”
- In June 2012, **the European Parliament Resolution of 14 June 2012** on ending female genital mutilation (2012/2684(RSP) called on “Member States to continue to ratify international instruments and implement them through comprehensive legislation that prohibits all forms of female genital mutilation and provides effective sanctions against the perpetrators of this practice.” The Resolution also noted “that legislation should also mandate a full range of prevention and protection measures, including mechanisms to coordinate, monitor, and evaluate law enforcement, and should improve the conditions permitting women and girls to report cases of female genital mutilation.”

International human rights violated under FGM

Subjecting girls and women to FGM violates a number of rights protected in international and regional instruments. These rights include the right to be free from all forms of gender discrimination, the rights to life and to physical integrity, the right to health, and children's right to special protections.

1. 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 CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) takes a broad view of discrimination against women, defining it 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.” FGM is a practice aimed primarily at controlling women's sexuality and subordinating their role in society. When a woman undergoes FGM, she is a victim of discrimination based on sex that compromises the recognition and enjoyment of her fundamental rights and liberties⁶.

2. The Rights to Life and to Physical Integrity

The rights to life and to physical integrity are considered core human rights. The right to life is protected by a number of international instruments, including the Civil and Political Rights Covenant. The Human Rights Committee, the body that monitors implementation of the Civil and Political Rights Covenant, interprets the right to life as requiring governments to adopt “positive measures” to preserve life. FGM can be seen to violate the right to life in the rare cases in which death results from the procedure. The right to physical integrity, while often associated with the right to freedom from torture, encompasses a number of broader human rights principles, including the inherent dignity of the person, the right to liberty and security of the person, and the right to privacy. Acts of violence that threaten a person's safety, such as FGM, violate a person's right to physical integrity.

3. The Right to Health

Under Article 12 of the Economic, Social and Cultural Rights Covenant, individuals are entitled to enjoy “the highest attainable standard of physical and mental health.” The

complications associated with FGM often have severe consequences for a woman's physical and mental health. But even in the absence of complications, where FGM results in the removal of bodily tissue necessary for the enjoyment of a satisfying and safe sex life, a woman's right to the "highest attainable standard of physical and mental health" has been compromised.

4. The Rights of the Child

Because children generally cannot adequately protect themselves or make informed decisions about matters that may affect them for the rest of their lives, international human rights law grants children special protections. The right of the child to these protections has been affirmed in the Children's Rights Convention. Article 1 defines a "child" as a person below the age of 18 unless majority is attained earlier under the law applicable to the child. Article 3 affirms that "the best interests of the child shall be a primary consideration." The international community has generally regarded FGM as a violation of children's rights because FGM is commonly performed upon girls between the ages of four and twelve, who are not in a position to give informed consent.

Why is FGM still in practice today?

Though there have been efforts by NGOs, missionaries, United Nations and local governments to eradicate this practice as well as banning it in many countries, it is still being followed even today. There are various reasons like:

"**The social acceptance**" factor where people are afraid of getting segregated from their community if they do not practice it and sometimes there is **religious pressure** too.

Lack of knowledge and awareness about basic human rights, law and the risks related to FGM.

As a general rule, **international human rights law governs the actions of states, not of private parties** hence the people do not follow it as there are no direct repercussions on them. There are **no regional instruments** for prohibiting the practice of FGM in some countries for example, India.

Even if there are laws prohibiting this practice, often times these **cases are not reported**⁷, the girls get too scared to report them and the family hushes up the matter.

The laws are not **implemented effectively** like most of the countries where FGM is practiced today do have laws prohibiting or regulating it like Egypt, Burkina Faso, Ghana, CAR, Guinea, Sudan, etc. but because of cultural and religious reasons sometimes even the police authorities may turn a blind eye towards this practice.

Conclusion:

In the recent past there has been a significant amount of change in the mindsets of the people, due to the awareness programs conducted by UNICEF, other U.N agencies, NGOs, etc. People are realizing the risks of FGM and in the current generation comparatively there are less number of people who are going through FGM, but still more than 200 million girls and women alive today in 2016 have been cut in 30 countries in Africa, the Middle East and Asia where FGM is concentrated⁸ and people are still going through FGM. This archaic practice which is almost 5000 years old has to be eliminated for once and all. This is a practice which makes a woman or a child go through so much pain and trauma that she cannot live her life the same way any²³⁴more, she has to endure the pain throughout her life. It's not only the physical pain a person has to go through but its psychological pain as well, she can get various kind of psychological disorders because of FGM. No woman should go through this kind of torture in the name of culture or religion.

Different type of measures can be adopted to eradicate this practice completely like:

- **More regional instruments** – There are still no regional instruments when it comes to FGM in some countries. Even in India we do not have any specific law which prohibits the practice of FGM even though it is practiced in few communities. Most countries, as parties to international human rights treaties, have acknowledged a duty to protect women and girls from practices that threaten their physical integrity. This duty should be enshrined in national-level legal instruments, including the constitution—a nation's law of highest authority.
- **Stricter compliance of laws-** Under international law, the prevailing legal standard used to assess government action or inaction is the general one of “due diligence.” Governments are required to exercise due diligence in preventing, investigating, and punishing violations of human rights by both government actors and private persons. Where governments fail to act with due diligence to ensure protected rights, they may themselves be held responsible for violations of those rights by private parties.
- **Carefully Consider any Application of Criminal Sanctions for FGM-** when one is criminalizing FGM, there should be a clear cut definition of FGM, there should not be any room for doubt in the definition and also there and people should not be given any scope for exploiting it.

7.<http://www.dailymail.co.uk/news/article-3432799/Case-FGM-reported-UK-96-minutes-5-500-instances-uncovered-year-fears-unre>

8. Female Genital Mutilation/Cutting: A Global Concern
UNICEF, New York, 2016.

- **More awareness program and health education programs** - there is a lack of information when it comes to FGM because people are afraid to talk about it, it's considered as a dark secret, most communities feel betrayed if a person talks about it, it's a 'taboo' for them to speak about it. People need to be aware about their human rights, laws, the risks of FGM, etc. So, at least in that way if they know about their rights they will come out and if you educate a girl or a woman about their rights and risks of FGM, you can save an entire generation from FGM.

Margaret Sanger who was a feminist, writer and a nurse once said "*no woman can call herself free who does not own and control her body*". Thus I think that when FGM gets eradicated from a society, we are not only removing a barbaric practice from that society but we are also giving freedom from pain and trauma to its women and girl children.