

**FEMALE GENITAL MUTILATION: HOW ISLAM
AND FUNDAMENTAL RIGHT TO RELIGION
STAMP OUT AND CONFUTE IT**

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Abstract

Is the abolition of female genital mutilation (FGM) another textbook feminist issue or does it merit a human rights violation perspective? Do religious crudeness and ignorance act as barriers to stamp out this practice in India? Should we continue to avoid doing anything about it on the grounds that it is a sensitive, religious issue beyond the realm of the judiciary and the Parliament? This article attempts to deal with all such questions about FGM. In India it is practiced by the Dawoodi Bohra community and according to them, FGM is a prerequisite for a woman to be truly female. But there is no valid basis for the belief that the procedure was advocated or approved by Mohammed, nor can it be considered as an essential part of the Islamic faith to that end. Hence, the research analyses the sources of Islam and substantiates that a barbaric cultural practice

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with a religious mask should not get protection under Article 25 of the Constitution. FGM causes bodily degradation, violating Article 21 of the Constitution. Additionally, FGM is classified as a “usage”, and should be held void under Article 13 to the extent it violates the fundamental rights. However, whilst there is a violation of a number of human and gender rights, both in international and national legal framework, in reality, there has been no comprehensive study of the epidemiology of FGM in India, and thus no reliable statistics is available on the number of girls mutilated. Keeping in mind the “protective discrimination” under Article 15(3), “reasonable classification” under Article 14 and the Apex Court’s discretionary power under Article 142, some propositions have been recommended.

I. INTRODUCTION

“Three women were holding down my arms and legs, and another was sitting right on my chest, covering my mouth. They try to put pressure on you, so you don’t cry for the next girl to hear..., and the emotions that they had — so empty, like they didn’t see me as a human being.”¹

¹Tatenda Gwaambuka, *Stop Butchering our Girls, Genital Mutilation is Torture*, (Jan. 10, 2019), <https://www.africanexponent.com/post/8907-ending-female-genital-mutilation>.

The label ‘mutilation’ tends to rule out communication and disregards and fails to respect the shocking experiences of girls as above.² It robs girls and women of their decision-making power, leaves an everlasting effect on them, transgresses their autonomy and controls their lives.³ This practice of circumcising a girl which affects her womanhood is a serious concern and ought to be condemned by all. The World Health Organization (hereinafter, “WHO”) defines female genital mutilation/ cutting (hereinafter, “FGM” or “FGM/C”) as “*any procedure that involves partial or total removal of the external female genitalia or other injury to the female genital organs for cultural or non-therapeutic reasons.*”⁴ This practice is segregated into four main categories:

- (i) “*partial or total removal of the clitoris and/or the prepuce (clitoridectomy);*”
- (ii) “*partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision);*”
- (iii) “*narrowing of the vaginal orifice with creation of a covering seal by cutting and positioning the labia minora and/or the labia majora (infibulation);*”
- (iv) “*Other harmful procedures to the female genitalia for non-medical purposes, for example pricking, piercing, incising, scraping and cauterization.*”⁵

²Lane SD & Rubinstein RA, *Judging the other: responding to traditional Female Genital Surgeries*, 26(3) HASTINGS CENT REP. 31–40 (1996).

³Sorcha Pollak, *End FGM website launched to warn of dangers of practice*, (Sept. 7, 2018), <https://www.irishtimes.com/news/health/end-fgm-website-launched-to-warn-of-dangers-of-practice-1.2965865>.

⁴World Health Organization, Department of Reproductive Health and Research, *Eliminating Female Genital Mutilation An interagency statement*, (July 20, 2018), <https://www.irishtimes.com/news/health/end-fgm-website-launched-to-warn-of-dangers-of-practice-1.2965865>.

⁵*Id.*

Rationalizations given by the proponents for the continuation of FGM/C include preservation of ethnic identity, femininity, female purity/virginity and family honour, maintenance of cleanliness and health, assurance of women's marriage ability,⁶ and preventing the clitoris growing long like the penis.⁷ FGM/C is regarded as making females 'clean and beautiful'.⁸ By removing genital parts, it is considered that 'masculine' parts such as the clitoris,⁹ or as also in the case of infibulations, the 'smoothness' achieved is equivalent to being beautiful. On the contrary, organizations such as the WHO have recognized FGM as a human rights violation.¹⁰ It is a violation of the rights of the child as it is also carried out on minors, and a violation of the right to the 'highest attainable standard of health'¹¹ and 'bodily integrity of a female'.¹² It is an expression of gender inequality and discrimination, "*related to the historical suppression and subjugation of women*".¹³

In India, advocate Sunita Tiwari began the fight against FGM/C in 2017 and filed a public interest litigation (hereinafter, "**PIL**") seeking

⁶Gage A.J. & Van Rossem R., *Attitudes toward the discontinuation of female genital cutting among men and women in Guinea*, 92(1) INT. J. GYNECOL. OBSTET. 92-96 (2006).

⁷Eke & Nkanginieme, *Female Genital Mutilation: A global bug that should not cross the millennium bridge*, 23 WORLD J. SURG. 1082-1086 (1999).

⁸World Health Organisation, *Female Genital Mutilation*, (Oct. 19, 2018), <https://www.who.int/en/news-room/fact-sheets/detail/female-genital-mutilation>.

⁹Talle A., *Transforming Women into Pure Agnates: Aspects of Female Infibulation in Somalia*, CARVED FLESH/CAST SELVES: GENDERED SYMBOLS AND SOCIAL PRACTICES 88(1993).

¹⁰World Health Organization, UNICEF & United Nations Population Fund, *Female genital mutilation: a joint WHO/UNICEF/UNFPA statement*, (July 5, 2018) <http://www.who.int/iris/handle/10665/41903>.

¹¹Convention on the Rights of the Child, 1989, art. 24.

¹²World Health Organization, UNICEF & United Nations Population Fund, *Female genital mutilation: a joint WHO/UNICEF/UNFPA statement*, (July 5, 2018), <http://www.who.int/iris/handle/10665/41903>.

¹³Ontario Human Rights Commission, *Policy on Female Genital Mutilation (FGM)*, OHRC 7(2000).

a ban on this practice,¹⁴ after which a three-judge bench referred it to a five-judge bench. In India, FGM is practiced by the *Dawoodi Bohras*, the largest sect in the Bohra community, which is in turn a Shia sect of Islam. Being practiced by this community specifically, the Apex Court in its first proceeding earlier this year asked for responses from the ministry, as well as governments in the states of Gujarat, Maharashtra, Rajasthan and Madhya Pradesh, where the community is largely based.

II. FEMALE GENITAL MUTILATION: THE LEGAL PERSPECTIVE

One of the biggest misconceptions about FGM/C is that it is sanctioned by Islam. However, “*there can be no link between FGM/C and Islam, as FGM predates it.*”¹⁵ In fact, Islam contradicts it as Quran says, “*touch her not with harm, lest the penalty of a great day seize you.*”¹⁶

Regardless, FGM is a deeply imbedded cultural practice. Culture is defined as “*the body of learned beliefs, customs, traditions, values, preferences, and codes of behaviour commonly shared among members of a particular community*”.¹⁷ Sometimes cultural practices, like FGM may acquire Islamic justification overtime. It was the Supreme Council of Al-Azhar, Cairo that ruled that FGM had “*no*

¹⁴Debyan Roy, With no Laws, India a Hub of Female Genital Mutilation for Expats, Foreigners: Report, News 18 (Feb. 5, 2018), <https://www.news18.com/news/india/with-no-laws-india-a-hub-for-female-genital-mutilation-on-expats-foreigners-report-1651551.html>.

¹⁵Barstow DG., *Female genital mutilation: the penultimate gender abuse*, 23(5) CHILD ABUSE NEGL. 501-510 (1999).

¹⁶*The Qur'an* 26:156 Translated by Abdullah Yusuf Ali, (King Fahd Holy Quran Printing Complex), (1987).

¹⁷WHO, *FGM programmes to date: what works and what doesn't, a review*, WHO/CHS/WMH 99 (1999).

*basis in core Islamic law or any of its partial provisions, it is harmful and should not be practiced,*¹⁸ when a teenage Egyptian girl died during the procedure. Besides this, for an action to be religious under Islam, it needs to have a basis in the fundamental sources of Islamic guidance¹⁹ that are, the Quran, *Sunnah*, *Ijmah* and *Qiyas*. It is thus discussed herein that due to the lack of mention of FGM in these sources, it fails to be a religiously sanctioned practice and is hence void of protection provided under Article 25 of the Constitution.

A. No protection under Article 25 and 26 of the Indian Constitution

Although *Dawoodi Bohra* is a religious denomination,²⁰ it has to pass the subjections of “public order, morality and health”²¹ or get protection of “essential religious practice” under Article 25 and “religious denomination” under Article 26 under the Constitution. Besides this, Article 25 is explicitly subjected to other provisions of Part III. Although Article 26 is not, it does not lead to the conclusion that the freedom of a religious denomination exists as a discrete element, divorced from the others.²² It was held in the *R.C. Cooper*²³ and *A.K. Gopalan*²⁴ cases that fundamental rights do not exist in water tight compartments but are open textured and fluid in nature.

The Law Commission in its report of August, 2018 has stated that “*at the same time, while freedom of religion must be protected in a*

¹⁸*Fresh progress toward the elimination of female genital mutilation and cutting in Egypt*, UNICEF (June 11, 2018), <https://www.unicef.org/media/40168.html>.

¹⁹AYATULLAH MURTADHA MUTAHHARI, JURISPRUDENCE AND ITS PRINCIPLES 11-14 (2014).

²⁰*Sardar Syedna Taher Saifuddin v. The State of Bombay*, (1962) Suppl. 2 SCR 496.

²¹INDIA CONST. art. 25; INDIA CONST. art. 26.

²²*Indian Young Lawyers Association v. State of Kerala*, 2018 SCC OnLine SC 1690.

²³*R.C. Cooper v. Union of India*, (1970) 1 SCC 248.

²⁴*A.K. Gopalan v. State of Madras*, 1950 SCR 88.

secular democracy, it is important to bear in mind that a number of social evils take refuge as religious customs. To seek their protection under law as religion would be a grave folly. For these practices do not conform to the basic tenets of human rights nor are they essential to religion. While even being essential to religion should not be a reason for a practice to continue if it is discriminatory.”²⁵

Although under Article 25(1) of the Indian Constitution, every person has the right to free exercise of religion, it will be subjected to any law made by the State in furtherance of social welfare and reform of all, under clause (2)(b) of the same article.²⁶ Articles 25 and 26 do not give the absolute or unfettered right to religion, but are subject to reform or social welfare by appropriate legislation of the State.²⁷

No fundamental right can exist in isolation.²⁸ One fundamental right of a person may have to coexist in harmony with the “reasonable and valid” exercise of power by the State with respect to the directive principles, in the interests of social welfare as a whole.²⁹ Herein, the practice of FGM in fact conflicts with Article 47³⁰ of the Constitution that speaks of the “*duty of the State to raise the level of nutrition and the standard of living and to improve public health*” and Article 39³¹ that speaks of certain policies to be followed by the State. Therefore, it is clear that the directive principles mandate the State to do away

²⁵Law Commission of India, *Consultation Paper on reform of family law*, 6 (31 Aug. 2018).

²⁶State of Bombay v. Narasu Appa Mali, AIR 1952 Bom. 84.; Sanjib Kumar v. Saint Paul’s College, AIR 1957 Cal. 524.

²⁷A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548.; Sri Venkataramana Devaru of Venkataramana Temple v. State of Madras, 1956 SC OnLine Mad. 137.

²⁸Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. The State of Gujarat, 1975 SCR 317.

²⁹Church of God in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773.

³⁰INDIA CONST. art. 47.

³¹INDIA CONST. art. 39.

with FGM. Additionally, Article 25(2)(b) allows the State to enact social welfare legislation to the derogation of religious freedoms.

The paper further discusses how the aforementioned conditions are not met by FGM and thus, the practice cannot be protected under the Constitution.

B. *The essential religious practices (hereinafter, “ERP”) test*

To be treated as a part of the right to religion, the pre-requisite is that it should be regarded as an essential and integral part by the said religion.³² The Supreme Court, in answering what constitutes as an ERP of a religion in the case of *Commissioner vs. Acharya Avadhuta*³³ held that “*essential parts of religion means the core beliefs upon which a religion is founded. Essential religions practices mean those practices that are fundamental to follow in a religious belief. It is such permanent essential parts which are protected by the Constitution.*” “*Any religious practice which is not an integral part of the religion is not protected under Art. 25.*”³⁴ In order for an activity or practice to be deemed an ERP, it must be treated by the particular religion as an essential or integral part of its profession or practice.

The Supreme Court in the *Sri Shirur Mutt*³⁵ judgment held that an “*essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself.*” To determine this, the court takes into consideration the conscience of the community and the tenets of the religion concerned. “*In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by*

³²M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1431 (2015).

³³Commissioner of Police v. Acharya Jagdishwarananda Avadhuta, (2004) 12 SCC 770.

³⁴Javed v. State of Haryana, AIR 2003 SC 3057.

³⁵Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005.

*a blind application of the formula that the community decides which practice in an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.”*³⁶

Lastly, it is the court’s duty as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by the majoritarian view or popular perception.³⁷ It must do so keeping in mind the principle stated in the *Sabarimala* judgment, “*the Constitution is not merely a static document containing a set of rules or laws through which the state governs its people, it is much more. The Constitution is a phenomenon, dynamic and ever evolving in its contours. The Constitution was born with a task of radical transformation of the position of an individual as the focal point of a just society, a task of protecting individuals who have been subordinated by the society in innumerable ways, be it by patriarchy, casteism, communalism or classism. It tends to raise them to an equal pedestal so as to ensure an egalitarian society governed by rule of law.*”³⁸ It is only through a transformative vision that the cherished principles of the Constitution are sustained.

³⁶*Id.*; *Durgah Committee Ajmer v. Syed Husaain Ali & Attorney- General for India*, (1962) 1 SCR 383.

³⁷*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³⁸*Supra* note 22.

C. FGM cannot be an ERP

The Quran is the “*religious text of Islam, which Muslims believe to be a revelation from God*”³⁹ and it was “*verbally revealed by God to Muhammad through the angel Gabriel*”.⁴⁰ FGM is not mentioned in the Quran.⁴¹ There are many verses that strongly criticize an act that affects the human body in a negative way, and hinders this creation without validation. For example, verse 16:64 says “*and We sent down the Book to thee for the express purpose, that thou should make clear to them those things in which they differ, and that it should be a guide and a mercy to those who believe.*”⁴²

Sunnah refers to “*the traditions and way of life of Prophet Muhammad which are obligatory for Muslims*” which are of high importance, as Allah himself ordered Muslims to follow him. It has three categories⁴³ consisting of his approvals, deeds and words. The first two categories find no evidence of FGM/C; rather, they talk about male circumcision. For example, “*there is proof, that his two grandsons, Al-Hassan and Al-Hussein, were circumcised when they were 7 days old.*”⁴⁴ It is the *Hadiths*, which fall under the third category of *Sunnah*, that have a mention of FGM.

Although *Hadiths* are a part of *Sunnah*, they lack authenticity. Not everything attached to the Prophet should be considered at face value, but must be first confirmed to ascertain their authenticity. Scholars

³⁹NASR SEYYED HOSSEIN “QUR’ĀN”, ENCYCLOPÆDIA BRITANNICA ONLINE, (2007).

⁴⁰GRAY LAMBERT, THE LEADERS ARE COMING! 287 (WEST BOW PRESS, 2013).

⁴¹BARBARA CRANDALL, GENDER AND RELIGION: THE DARK SIDE OF SCRIPTURE (2012); Abdulrahim A. Rouzi, *Facts and controversies on female genital mutilation and Islam*, 18(1) EUR. J. CONTRACEP. REPR. 10-14 (2013).

⁴²*The Qur’an* 16:64 Translated by Abdullah Yusuf Ali, (King Fahd Holy Quran Printing Complex), (1987).

⁴³Ibrahim Lethema Asmani Maryam Sheikh Abdi, *De-linking Fe male Genital Mutilation/Cutting from Islam*, *Frontiers in Reproductive Health*, USAID 7 (2008).

⁴⁴AL-BAIHAQQY & SUNAN-AL-KUBRA, THE MAJOR TRADITIONS (9th ed.).

with proficiency look at the content and chain of transmitters⁴⁵ to ascertain the authenticity. The Grand Mufti of Egypt (who holds the title for the highest religious legal figure in a country practicing Sunni Islam) Muhammad Sayyid Tantawi declared that *Hadiths* on FGM were unreliable,⁴⁶ and the same was held by a foremost expert in Islamic jurisprudence (*fiqhi*), Ash-Shaukany, in his book, *Nail-al-autwar*.

Hadiths, like *Hadith of Ummu-Attiya* and *Hadith of Al-Hajjaj ibnu Arta* have been declared weak as their chain of transmitters (*sanad*)⁴⁷ is weak and there are conflicts in their meaning. According to the science and history of a *Hadith*, the Prophet does not use unclear words on any sensitive matter.⁴⁸ In the first aforementioned *Hadith*, the Prophet told Madina, a woman called Ummu-Attiyah, “*O Umm Attiyyah, ashimmi and do not exaggerate; as doing so will preserve the fairness of the woman’s face and satisfy the husband.*”⁴⁹ The term “ashimmi” has multiple meanings. However, proponents of FGM take it to mean cutting a small part of the clitoris, although no such meaning is attached to it.⁵⁰ In the second one, the Prophet said, “*alkhitaanu (‘circumcision’) is sunnah for men and an honour (makrumah) for women.*”⁵¹ Here, regardless of its authenticity, the *Hadith* has dual interpretations for the word “*makrumah*”— the first being of the supporters of FGM who consider female circumcision an honour for women and the second meaning adopted by scholars who

⁴⁵Those who received from the Prophet (PBUH) and transmitted the Hadith to the recorder.

⁴⁶SHEHABUDDIN, ELORA (ED.), “FATWA”, IN SUAD, JOSEPH AND AFSANEH, NAJMABADI: ENCYCLOPEDIA OF WOMEN AND ISLAMIC CULTURES: FAMILY, LAW AND POLITICS, VOL. II, (2005).

⁴⁷*Id.*

⁴⁸Abdi MS, *A religious oriented approach to addressing FGM/C among the Somali community of Wajir*, NAIROBI POPULATION COUNCIL 24 (2007).

⁴⁹Ibrahim Lethome Asmani Maryam Sheikh Abdi, *De-linking Fe male Genital Mutilation/Cutting from Islam*, *Frontiers in Reproductive Health*, USAID 7 (2008).

⁵⁰*Supra* note 43.

⁵¹Sunan Abu Dawud, Adab 167 (translated by Yaser Qadhi) (2014).

are against this practice, that circumcision is sunnah for men, and when a woman is married to a circumcised man, it is an honour for her. Hence, the meaning of the word “*makrumah*” is not clear.⁵² Therefore, risking fundamental human rights of an individual, that too a class provided with protective discrimination under Article 15(3) of the Constitution, on such basis does not stand.

Another *Hadith* which talks about circumcision uses the words “*al-khitaan*” and “*al-khifaad*”. There is no mention of female circumcision in this *Hadith*⁵³ as “*al-khitaan*” is not the term used for female circumcision. Moreover, it also states some things apply to only men. *Hadith* of *Sunan Abu Dawud* which mentions FGM,⁵⁴ lacks authenticity as Abu Dawood, the compiler himself, has commented that its chain of transmitters is not strong.⁵⁵

The *Hadith* of *Ibn Qudamah* said, in the book *al-Mughni*:⁵⁶ “*Circumcision is obligatory for men, and it is an honour for women, but it is not obligatory for them.*” This is the opinion of many scholars. For example, (Imam) Ahmad said, “*for men it is more strictly required, but for women it is less strictly required*”, thereby stating that it is not mandatory. Further, it has been held by the Indian Supreme Court that in order to get the protection of Article 25(1), the ‘practice’ in question must be *essential*,⁵⁷ or mandatory as distinguished from *optional religious practice*.⁵⁸

In Islam, the expression “*ijma’a*” refers to the “*consensus of the views of scholars of the time*”. It is only when this consensus is achieved or harmony obtained on a particular religious issue, and there is no

⁵²FIQH AL-ISLAM WA ADILLATIHI 3/741.

⁵³Sahih Muslim 3:684 (translated by Hafiz Abu Tahir Zubair Ali Zai).

⁵⁴Sunan Abu Dawud, Book 41, Number 5251 (translated by Yaser Qadhi) (2014).

⁵⁵*Id.*

⁵⁶Ibn Qudamah, *Al-Mughani*.

⁵⁷Quareshi v. State of Bihar, AIR 1958 SC 731.

⁵⁸State of W.B. v. Ashutosh, AIR 1995 SC 464.

conflict with the holy book Quran, that it becomes a foundation for backing the issue. Some scholars have forbidden it.⁵⁹ But some have supported it.⁶⁰ Also, many Muslim scholars believe that FGM is non-Islamic.⁶¹ Therefore, a consensus cannot be formed and FGM cannot be read within this source of Islam.

Lastly, *Qiyas* references “*analogical reasoning as applied to the deduction of juridical principles from the Quran and the Sunnah.*”⁶² However in the present scenario, no analogy can be accepted as the Quran and *Sunnah* do not provide for the same.⁶³

Hence, it is concluded that FGM cannot be protected under Article 25 of the Indian Constitution as mere fact of its association with the practice of a religion, even if honoured since time immemorial, is not conclusive test of its essential character.

Islamic law prohibits clitoridectomy, infibulations and any genital mutilation which ruins the woman’s sexual relations. All the verses strongly support the contention that the Quran condemns any harm done to Allah’s creation. The practice of FGM is very harmful to the female body and mind.⁶⁴

Since the following subsections are fulfilled, FGM/C fails to get protection under Article 25 and 26 of the Constitution.

⁵⁹In *Mauritania, progress made in ending female genital mutilation/cutting*, MIRIAM AZAR (Aug. 19, 2018), https://www.unicef.org/infobycountry/mauritania_66159.html; Bob Trevelyan, *Mauritania fatwa bans female genital mutilation*, B.B.C. NEWS (Jan. 18, 2010), <http://news.bbc.co.uk/2/mobile/africa/8464671.stm>.

⁶⁰Mordechai Kedar, *Islam and ‘Female Circumcision: The Dispute over FGM in the Egyptian Press*, MED. LAW 403–418(2002).

⁶¹El-Damanhoury, *Editorial: The Jewish and Christian View on Female Genital Mutilation*, AFJU127–129 (2013).

⁶²MORLEY, DIGEST OF INDIAN CASES 217 (1850).

⁶³Dr. Mohamed Selim Al-Awa, *FGM in the context of Islam*, International Federation of Islamic Chambers 2.

⁶⁴WHO, *Sexual and Reproductive Health*, (July 16, 2018), http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/.

D. *Violation of other provisions of Part III*

FGM violates Article 14, 15 and 21 of the Indian Constitution, along with various international conventions. It violates Article 14 and 15 as the United Nations High Commissioner for Refugees (hereinafter, “UNHCR”) considers FGM to be “*a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution*”.⁶⁵ Article 21 being the most fundamental of all rights, is discussed herein in detail.

a) *Right to life*

In *Venkataramana Devaru*,⁶⁶ Venkatarama Aiyar J. observed that the meaning of the phrase “*subject to the provisions of this Part*” in Article 25(1) and concluded that the other provisions of the Part would “prevail over” and would “control the right conferred” by Article 25(1).

“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the

⁶⁵UNHCR, *Guidelines on International Protection No. 1: Gender-related persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, (July 18, 2018), <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

⁶⁶*Sri Venkataramana Devaru v. State of Madras*, 1958 SCR 895.

*Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”*⁶⁷

Article 21 of the Constitution provides that, “*no person shall be deprived of his life or personal liberty, except according to procedure established by law.*” The Supreme Court in *State of Punjab v Ram Lubhaya Bagga*,⁶⁸ observed “*the right of one person correlates to a duty upon another, individual, employer, government or authority. Hence, the right of a citizen to live under Article 21 casts an obligation on the state.*” “*The sanctity of human life is probably the most fundamental of the human social values. It is recognized in all civilized societies and their legal system and by the internationally recognized statements of human rights.*”⁶⁹

The right to life includes the right to live with human dignity.⁷⁰ Although no exact definition of dignity exists, it refers to the inherent and inseparable value of every individual, which is to be duly appreciated. It cannot be taken away. “*Every human being has dignity by virtue of his existence.*”⁷¹ Moreover, a “*hygienic environment is an integral part or facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.*”⁷²

The duty of the State does not only extend to protecting human dignity, but also in facilitating it by taking positive steps in that direction, and securing the welfare of the people.⁷³

⁶⁷*Bandhua Mukti Morcha v. Union of India*, 1984 AIR 802.

⁶⁸*State of Punjab v. Ram Lubhaya Bagga*, AIR 1998 SC 1703.

⁶⁹*R(Pretty) v. DPP*, (2002) 1 All ER 1.

⁷⁰*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁷¹*M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

⁷²*Virendra Gaur and Ors v. State of Haryana And Ors.*, (1995) 2 SCC 577.

⁷³*Paschim Banga Khetmazdoor Samity v. State of West Bengal*, (1996) 4 SCC37.

In Article 21, the term “life” means something more than mere animal existence.⁷⁴ The provision “*prohibits the mutilation of the body by amputation of leg or the pulling out of eye, or the destruction of any other part of the body by which the soul communicates with the outer world.*”⁷⁵ But in order to constitute “deprivation of life”, there must be some “direct, overt and tangible” act that threatens the life of members of a community, as against “vague or remote acts” that threaten the quality of life of people at large. This requirement is satisfied in the present case.⁷⁶

The Supreme Court in a landmark judgment⁷⁷ held that the “*right to life included the right to lead a healthy life so as to enjoy all the abilities of the human body in their prime conditions.*” According to WHO, “*health is a state of complete physical, mental and social wellbeing and not merely the absence of disease.*”⁷⁸

Articles 2, 3 and 5 of the Universal Declaration of Human Rights, 1948 (hereinafter, “UDHR”) and Articles 6 and 9(1) of the International Covenant on Civil and Political Rights, 1966 (hereinafter, “ICCPR”) state that everyone has a right to life, liberty and security. UDHR, under Article 25(1) also ensures a standard of living, adequate health, including medical care, and notes that persons shall not be discriminated or subjected to torture or to cruel, inhuman or degrading treatment or punishment.

b) Right against discrimination

⁷⁴Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

⁷⁵*Id.*

⁷⁶DR. DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA (LexisNexis, 9th ed. 2016.)

⁷⁷Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

⁷⁸Preamble to the Constitution, 1948 of the World Health Organization as adopted by the International Health Conference, New York.

FGM violates Article 14 and 15 of the Indian Constitution which provide for equality before law and prohibition of discrimination on the basis of sex, respectively. “*FGM/C, ranging from Type 1 to infibulations, i.e., Type 4 results in violence against women and is a form of gender-based discrimination.*”⁷⁹ Equality before law declares everyone to be equal before law, and no one can claim special privileges.⁸⁰ This is violated as there exists a marked differentiation between males and females. FGM/C is done to prevent women from having sexual pleasure⁸¹ and women not performing FGM/C, are perceived as not worth being married to.⁸² Further, men have preferred chaste women in order to ensure their paternity.⁸³ The UNHCR considers “*FGM to be a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution.*”⁸⁴

The Convention on the Elimination of All Forms of Discrimination against Women, 1979 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*

⁷⁹Shweta Sengar, *With no Laws, Extensive Female Genital Mutilation Among Muslim Bohra Community in India is Scarring Women for Life*, (Sept. 15, 2018), <https://www.indiatimes.com/news/india/with-no-laws-extensive-female-genital-mutilation-among-muslim-bohra-community-in-india-is-scarring-women-for-life-339205.html>.

⁸⁰State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125.

⁸¹Michael Owojuyigbe, *Female genital mutilation as sexual disability: perceptions of women and their spouses in Akure, Ondo State, Nigeria*, (Sept. 15, 2018), <https://www.tandfonline.com/doi/full/10.1080/09688080.2017.1331685>.

⁸²Omer-Hashi, Kowser, H. & Entwistle, *Female Genital Mutilation; Cultural and Health issues, and their implications for Sexuality counseling in Canada*, CJHS 137-147 (1995).

⁸³DALY & WILSON, SEX, EVOLUTION & BEHAVIOUR (1978).

⁸⁴UNHCR, *Guidelines on International Protection No. 1: Gender-related persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, (July 12, 2018), <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

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.” It calls on countries to “embody the principle of equality”, to adopt appropriate legislation “prohibiting all discrimination against women” and for the modification of social and cultural patterns to attain this view.

1. Other legal rights available to the victims
 - (a) Torture and inhuman, degrading and cruel treatment and punishment grossly violate human dignity and under Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, each state party shall undertake to prevent such acts in its jurisdiction. The UDHR (although not justiciable) and the ICCPR prohibit such acts in Articles 5 and 7 respectively.
 - (b) The state party under the Convention on the Rights of the Child, 1989 (hereinafter, “**CRC**”) is not only obliged to respect the rights of a child under this convention but also take “*appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse.*” Moreover, in all of a state party’s actions, the best interests of a child should be its primary concern. Furthermore, Article 16 of the CRC provides for the right to privacy and right to protection of law against arbitrary interference with such right. The Quran clearly states that Allah favours children over many of the creations⁸⁵ and thereby children of the Bohra community must be granted protection.
 - (c) Besides this, Sections 320 (causing grievous hurt), 323 (punishment for voluntarily causing hurt), 324 (voluntarily

⁸⁵*The Qur’an* 2:122 Translated by Abdullah Yusuf Ali, (King Fahd Holy Quran Printing Complex), (1987).

causing hurt by dangerous weapons or means) and 325 (punishment for voluntarily causing grievous hurt) of the Indian Penal Code, 1860 (hereinafter, “IPC”) are also violated by the practice of FGM.

Thus, violation of Part III of the Indian Constitution results in the law in force being void under Article 13 of the Constitution. Herein, FGM is a “usage”. As according to the Black’s Law dictionary, a “usage” is merely a habitual practice. “Usage” denotes something that people are accustomed to do. A particular usage may be more or less widespread. It may prevail throughout an area, and the area may be small or large – a city, a state or a larger region. A usage may prevail among all people in the area, or only in a special trade or other group.”⁸⁶ It is a practice long continued.⁸⁷ Therefore, FGM being a practice accustomed amongst the *Dawoodi Bohras*, in continuation before the advent of Islam very well classifies as a usage. Lastly, FGM as a usage falls within the ambit of “laws in force” as was held in *Narasa Appa Mali*⁸⁸ that the definition of “laws in force” in Article 13(1) also includes within its ambit customs and usages.

Hence by virtue of Article 13(1) of the Constitution, FGM would stand void as it violates Part III of the Indian Constitution.

E. It is inconsistent with public order, morality and health

The practice of FGM is a very barbaric and derogatory practice against the women. Not only does FGM have no health benefits but also there can be detrimental long-term and short-term physical, sexual and psychological ramifications as a result of removing and damaging, or interfering with the healthy and normal female genital

⁸⁶BRYAN A. GARNER, BLACK’S LAW DICTIONARY 1680 (2004).

⁸⁷Commr., Hindu Religious & Charitable Endowments (Admn.) v. Vedantha Sthapna Sabha, (2004) 6 SCC 497.

⁸⁸State of Bombay v. NarasaAppa Mali, AIR 1952 Bom 84.

tissue.⁸⁹ Traditional doers, with slight to no medical training use a variety of tools like “*blades and knives, and do not use anesthesia. An estimated 18% of all FGM is done by health-care providers, who use surgical scissors and anesthesia.*”⁹⁰ Studies show that FGM is carried out without anesthesia, antiseptics or antibiotics⁹¹ and surgery is carried out using sharp rocks, razor blades, broken glass.⁹² We also need to realize that male circumcision does not negatively affect the human body, unlike female circumcision⁹³ and is also religiously justified.⁹⁴

In December, 2012, the UN General Assembly unanimously banned the customary female mutilation which is now dubbed a “harmful traditional practice” rather than a “heathen custom”.⁹⁵ The American College of Obstetricians and Gynaecologists⁹⁶ and the College of Physicians and Surgeons of Ontario, Canada,⁹⁷ after opposing FGM, instructed their members to refrain from performing the procedure of mutilation. In 2006, the Council on Scientific Affairs of the American

⁸⁹*Sexual And Reproductive Health*, WHO (May 7, 2018), http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/.

⁹⁰*Global strategy to stop health-care providers from performing female genital mutilation*, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, FIGO, ICN, IOM, MWIA, WCPT, WMA, (Sept. 15, 2018), http://apps.who.int/iris/bitstream/handle/10665/70264/WHO_RHR_10.9_eng.pdf;sequence=1.

⁹¹James Whitehorn et al., *Female genital mutilation: cultural and psychological implications*, (Aug. 25, 2010), <https://www.tandfonline.com/doi/abs/10.1080/14681990220121275>

⁹²*Id.*

⁹³*Technical Report: Male Circumcision*, PEDIATRICS (Sept. 10, 2018), <http://pediatrics.aappublications.org/content/pediatrics/130/3/e756.full.pdf>.

⁹⁴*Id.* at 9.

⁹⁵Richard A. Shweder, *THE GOOSE AND THE GANDER: THE GENITAL WARS* (Routledge, 2013).

⁹⁶American College of Obstetricians and Gynaecologists, *Committee Opinion: Female Genital Mutilation*, DC ACOG (1995).

⁹⁷College of Physicians and Surgeons of Ontario, *New Policy: Female Circumcision, Excision and Infibulation*, CPSO (1992).

Medical Association reaffirmed that “*all physicians in the United States strongly denounce all medically unnecessary procedures to alter female genitalia and promote culturally sensitive education about the physical consequences of FGC.*”⁹⁸

The “medicalization” of FGM may mitigate a number of the instantaneous outcomes in certain circumstances, though there may be no proof that the obstetric or other long term headaches associated with the practice are averted or appreciably decreased.⁹⁹ As Baasher noted, “*it is quite obvious that the mere notion of surgical interference in highly sensitive genital organs constitutes a serious threat to the child and that the painful operation is a source of major physical as well as psychological trauma.*”¹⁰⁰

F. *Physical consequences*

Although instant bleeding and pain are common consequences of all types of FGM, the risk and gravity of the consequences rises when the extent of cutting increases.

a) *Long-term consequences*

The long-term consequences of FGM include infections such as HIV¹⁰¹ or Hepatitis B, which in young girls can also lead to infertility and recurrent miscarriage. Studies indicate “*the risks of the possibility of losing the child during or immediately after birth increases with more extensive type of FGM.*”¹⁰² There are prenatal risks to infants

⁹⁸Council on Scientific Affairs, *Female genital mutilation*, 274(21) JAMA 1714–1716 (1995).

⁹⁹*Supra* note 3.

¹⁰⁰Baasher T., *Psychological aspects of female circumcision in traditional practice affecting the health of woman 1979*, 2 PAUSA 75 (1979).

¹⁰¹Margaret Brady, *Female Genital Mutilation: Complications and Risks of HIV Transmission*, 13(12) AIDS PATIENT CARE ST 710 (2000).

¹⁰²*Management of pregnancy, childbirth and the postpartum period in the presence of female genital mutilation*, WHO (July 11, 2018), http://www.who.int/gender/other_health/en/manageofpregnan.pdf.

born to ladies who have undergone female genital mutilation, that is, they suffer higher rate of neonatal death when compared with ladies who have not undergone this practice.¹⁰³ Besides this, long-term medical complications also include infertility, urinary retention, hematomas, and the formation of stulae.¹⁰⁴ Legs of infibulated women are bound together for several days or weeks subsequently.¹⁰⁵

*“Depending on the type and severity of the procedure performed, women may experience long-term consequences such as chronic infections, tumors, abscesses, cysts, infertility, and excessive growth of scar tissue, increased risk of HIV/AIDS infection, hepatitis and other blood-borne diseases, damage to the urethra resulting in urinary incontinence, [fistula], painful menstruation, painful sexual intercourse and other sexual dysfunctions.”*¹⁰⁶ According to the WHO,¹⁰⁷ *“an increased risk for repeated UTIs is well documented in both girls and adult women who have been a victim of FGM/C.”*

b) Short-term consequences

Short-term consequences include haemorrhage and infection.¹⁰⁸ However, instant outcomes, including infections, are generally only reported while women seek hospital treatment. Therefore, the true extent of immediate complications is unknown.¹⁰⁹ Nearly all individuals who are subjected to FGM experience extreme pain,

¹⁰³*Supra* note 3.

¹⁰⁴*Supra* note 30.

¹⁰⁵*Supra* note 35.

¹⁰⁶*Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment*, HUMAN RIGHTS COUNCIL (Oct. 9, 2018), <http://www.unhcr.org/refworld/docid/47c2c5452.html>.

¹⁰⁷World Health Organisation, *Health Risks of Female Genital Mutilation (FGM)*, (Nov. 15, 2018), https://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en.

¹⁰⁸*Id.* at 61

¹⁰⁹Carla Makhoul Obermeyer, *The Consequences of Female Circumcision for Health and Sexuality: An update on the evidence*, (Sept. 27, 2018), <https://doi.org/10.1080/14789940500181495>.

amongst which many are tormented by persistent ache syndrome and mobility impairment.¹¹⁰

G. *Sexual consequences*

Removing or harming such a sensitive tissue, namely the clitoris, may have dire effects including “*sexual issues, along with reduced sexual choice and satisfaction, ache in the course of intercourse, difficulty in the course of penetration, decreased lubrication during sex, reduced frequency, absence of orgasm, dyspareunia, orgasmic delay and an orgasm*”.¹¹¹ Orgasmic difficulties are more likely to be reported in groups that undergo the process after adolescence and get involved in sexual activities or before childbirth.¹¹²

H. *Psychological consequences*

Among the mental effects of FGM/C, many contributors in the study mentioned emotions of anger, guilt, shame or inadequacy,¹¹³ incompleteness, helplessness, inferiority and suppression, which have an effect on the rest of their life. They reflect signs of post-traumatic stress disorder¹¹⁴ and report, persistent irritability, problems trusting humans¹¹⁵ and nightmares and fear of reliving the process. The psychological complications because of FGM “may be submerged

¹¹⁰Lightfoot-Klein, *Disability in Female Immigrants with ritually inflicted Genital Mutilation*, 14 WOMEN THER.187-194 (1993).

¹¹¹*Sexual And Reproductive Health*, WHO (July 6, 2018), http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/.

¹¹²Uriel Elchalal et al., *Ritualistic Female Genital Mutilation: Current Status and Future Outlook*, 52 OBSTET. GYNECOL. SURV. 643-651 (1997).

¹¹³Bo mills & Gordon Turnbull, *Broken hearts and mending bodies: the impact of trauma on intimacy!*, 19 UK Sexual and Relationship Therapy 266 (2004).

¹¹⁴Steffen Moritz & Alice Behrendt, *Posttraumatic Stress Disorder and Memory Problems after Female Genital Mutilation*, (Aug. 8, 2018), <https://doi.org/10.1176/appi.ajp.162.5.1000>.

¹¹⁵*Supra* note 9.

deep in the infant's subconscious and may trigger behavioural disturbances."¹¹⁶

Besides this, Verse 3:182 of the Quran mentions, "*Allah never harms those who serve Him.*"¹¹⁷ FGM/C is in contradiction with the teachings of Prophet Mohammad concerning the welfare of the human body, whereas male circumcision is in total compliance with religious teachings.¹¹⁸ Thereby, the practice of FGM goes against the Quran and the teachings of Prophet Mohammad.

III. RECOMMENDATIONS

At present, India has no law recognizing female genital mutilation. This is in contrast to other countries like the USA, the United Kingdom, Australia and around 27 African countries which have banned this practice. Hence, the authors, by the medium of this article want to provide some recommendations which can help protect the legal and human rights of the victims and also solve their psychological and social problems.

A. *Psychological recommendations*

Since FGM has a number of psychological consequences, comprehensive therapies of human behaviour such as Cognitive

¹¹⁶R. Abdelhady & A. Elnashar, *The impact of female genital cutting on health of newly married women*, (July 10, 2018), <https://doi.org/10.1016/j.ijgo.2007.03.008>.

¹¹⁷*The Qur'an* 3:182 Translated by Abdullah Yusuf Ali, (King Fhd Holy Quran Printing Complex), (1987).

¹¹⁸*Id.*

Behavioral Therapy¹¹⁹ and Rational Emotive Behavioral Therapy¹²⁰ can be provided to victims.

B. *Social recommendations*

Public bodies and the central statistical organisation can help in implementing government policies on gender equality at the regional level. Hospitals can help in the promotion of reproductive health in India, and both private and public hospitals can assist the victims of FGM.

C. *Legal Recommendations*

The law in Africa penalizes the causing of harm to the physical integrity of the female genital organ, provides for a punishment of life imprisonment in case of death due to FGM. Australia¹²¹ has delved into the concept of a model law, in case of an unavailability of a law on FGM. USA¹²² categorises FGM as a criminal offence. In light of this, recently, a 44-year-old Indian-origin woman doctor has been arrested and convicted for performing FGM on girls aged 6 to 8.¹²³ France¹²⁴ also takes torture as well as barbarity into consideration.

¹¹⁹AARON BECK et al., ANXIETY DISORDERS AND PHOBIAS: A COGNITIVE PERSPECTIVE (Basic books, 2005).

¹²⁰WAYNE FROGGATT, A BRIEF INTRODUCTION TO RATIONAL EMOTIVE BEHAVIOURAL THERAPY (5th ed. 2005).

¹²¹*Review of Australia's Female Genital Mutilation Legal Framework*, AUSTRALIAN GOVERNMENT (Oct. 17, 2018), <https://www.ag.gov.au/publications/documents/reviewofaustraliasfemalegenitalmutilationlegalframework/review%20of%20australias%20female%20genital%20mutilation%20legal%20framework.pdf>.

¹²²18 U.S. Code § 116.

¹²³*Indian Doctor charged with Genital Mutilation on females in the US*, (Dec. 20, 2018), <https://www.thehindu.com/news/international/indian-origin-doctor-in-us-arrested-for-performing-genital-mutilation-on-girls/article18013877.ece>.

¹²⁴Prohibition of Female Circumcision Act, 1985.

Furthermore, countries like the United Kingdom¹²⁵ and Kenya¹²⁶ also provide for a special legislation on the subject.

Ms. Maneka Gandhi, Minister of Women and Child Development, stated that it is a crime under Sections 320 and 324 of the IPC and Sections 3, 9, 13 and 19 of the Protection of Children from Sexual Offenses Act, 2012 (hereinafter, “POCSO”). Sections 3, 6 and 9 of the POCSO Act, 2012 talk about “sexual assault.”¹²⁷ FGM is not committed with a ‘sexual intent’ but for other cultural and non-therapeutic reasons.¹²⁸ Hence making FGM illegal under POCSO is erroneous.

1. A separate legislation is duly required as it will not only streamline the law on the matter but also deal with various ways in which FGM is performed, for example, aid and abetment of a third person, commission by a foreign national in the territory of India, the types of FGM and their gravity. Referring to legislations passed by various countries, India also needs to deal with specifics such as definitions, exceptions, abuse of females not undergoing the process, non-reporting of the crime, etc. The need of the hour is to provide for a legislation which classifies offences and provide punishment for the various types thereof, as done under POCSO for sexual assault, aggravated sexual assault, non-reporting of the crime, etc. The formulation of a separate legislation would not be arbitrary as the conditions for reasonable classification, namely, “(1) that the classification must be founded on an intelligible differentia which distinguishes those that are

¹²⁵Female Genital Mutilation Act, 2003 (U.K.).

¹²⁶Prohibition of Female Genital Mutilation Act, 2012 (Kenya).

¹²⁷§ 7, POCSO Act, 2012. “ ‘Sexual Assault’ :Whoever with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with Sexual intent which involves physical contact without penetration is said to commit Sexual Assault.”

¹²⁸*Supra* note 8.

grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act”¹²⁹ are fulfilled as the females have to suffer from as the consequences of their genital mutilation, unlike the males and the object of the act would be to provide a safeguard against this harm. Thus, there is a rational nexus between the proposed legislation and object to be achieved.

2. Secondly, while considering the punishment to be provided for FGM, it was held by the Apex Court that, “*the rationale for advocating the award of punishment commensurate with the gravity of the offence and its impact on society is to ensure that a civilised society does not revert to the days of ‘eye for an eye and tooth for tooth’.* Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted.”¹³⁰ In another judgment of the Supreme Court,¹³¹ it was held that “*it will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts.*”
3. The Supreme Court should invoke Article 142 of the Constitution. “*The phrase ‘complete justice’ engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology.*”¹³² The Court is expected to provide alternative legal protection till a legislation is passed. The same had happened in the *Vishaka* matter.¹³³ Based on such precedent,

¹²⁹R.K. Garg v. Union of India, (1981) 4 SCC 675, ¶ 17.

¹³⁰State of Madhya Pradesh v. Bala alias Balram, (2005) 8 SCC 1, ¶13.

¹³¹Mahesh v. State of Madhya Pradesh, (1987) 3 SCC 80, ¶ 6.

¹³²Ashok Kumar Gupta v. State of U.P, (1997) 5 SCC 201.

¹³³Vishaka v. State of Rajasthan, (1997) 6 SCC 241, ¶ 2.

the Supreme Court has the power to make laws in situations when there is either a lacuna left by the Parliament or justice has not rightfully delivered.

4. Physicians and non-physicians should bear criminal and civil responsibility for any transgression from the rule against FGM. They should realize that the female genitals are not a disease and no tampering by way of surgical intervention is required.
5. Apart from scholars, physicians and other persons in authority, the prime duty to stop this dreadful deed lies with individuals. Parents should realize that their obligation is to save their daughters from any harm and their actions should be governed by this fundamental principle. Besides this every person must make the responsible decision to prevent FGM/C in their families, in their neighbourhood and society. With collective cooperation, we can help eradicate this atrocious crime.