BALTIC JOURNAL OF LAW & POLITICS
A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 2 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 211-235
DOI: 10.2478/bjlp-2022-001013

Legislating upon Female Genital Mutilation: Global Lessons and Localised Execution

Vershika Sharma
B.A. LL.B. (Hons.), LL.M.
Research Associate at Rajiv Gandhi National University of Law, Patiala
vershika.sharma.95@gmail.com

Kartik Chamadia
B.A. LL.B. (Hons.), LL.M.
Research Assistant at Rajiv Gandhi National University of Law, Patiala
kartikchamadia@gmail.com

Received: July 27, 2022; reviews: 2; accepted: October 28, 2022.

Abstract

The secretive practice of Female Genital Mutilation (FGM) has gained significant public attention in India during the last decade, particularly in light of a Public Interest Litigation filed by Sunita Tiwari. FGM is a deeply entrenched practice in many communities across the globe, including the Dawoodi Bohras in India. While the adverse health and medical issues that ensue the practice are undeniable and undebated, its social acceptance within certain communities has precluded the possibility of eliminating it from the roots. In these circumstances, the recent adoption of criminal laws which impose strict liability for the involved parties has not only helped in curbing the practice of FGM, but has also established significant relevance in spearheading the process of social change in many countries. While the movement against FGM has gained significant traction globally, the Indian laws have been contented with ignorance which indicate a lethargic attitude of the government regarding their participation in the said movement. In this light, the present paper tries to highlight the deteriorating situation regarding the practice, where there is inadequate protection for the aggrieved women, and social persistence to conduct FGM owing to the lack of an explicit mechanism (legal or otherwise) to address the issue. Taking cues from the other jurisdictions, particularly the United Kingdom, France, and Kenya, the authors have tried to argue in favor of a comprehensive legislation that not only imposes differential criminal liabilities on parents, clergy, and medical practitioners; but also provides for adequate compensatory mechanisms, preventative protection orders, reporting duties, extra-territorial application and many other clauses that extensively seek to abolish the

practice of FGM. Analysing the social acceptance of the practice, the paper also suggests that the government must undertake a multi-pronged strategy focused upon criminal legislation, human rights framework, health risk approach, training of health workers, institutional development, awareness programmes and the usage of comprehensive social development to abolish the practice of FGM that renders many women physically, mentally and psychologically scarred, for life. However, the scope of this paper is predominantly limited to the legal framework. In addition, the authors have conducted a short empirical study to highlight the problems pertaining to FGM, and the need for bringing accountability for the involved parties.

Keywords

Criminalisation, Female Genital Mutilation (FGM), Human Rights, Liability, Legislation.

1. Introduction

Female Genital Mutilation (hereinafter referred to as "FGM") is a deeply entrenched practice in many cultural, regional and religious communities.[1] Some scholars believe that the practice might even be older than the existence of certain religions like Islam and Christianity.[2] Owing to its widespread yet reticent nature, it has been acknowledged as a significant threat to basic human rights including the right to life and liberty, right to live with dignity, basic rights of children, amongst others, by the international Human Rights watchdogs.[3] As per the World Health Organisation, FGM entails any general injury to the genitalia or cutting a part or entire external female genitalia without any medical inevitability.[4] While the definitions and the categories of FGM have been uniformly defined in the existing literature, the debate regarding the cultural relativism reflects the pejorative criticism that the western view on cultural practices often face.[5]

The primary regions where the practice occurs include Africa, Asia and the Middle East, however, the mass global migration in the recent decades has brought along the practice of FGM to otherparts of the globe including American and European civilisations.[6] The cultural clash has resulted in law facing serious challenges, particularly in the Western nations which has ultimately brought forth novel legislative measures that can be utilised to tackle the problem of FGM. While

[1] J. Muteshi et. al., "The Ongoing Violence against Women: Female Genital Mutilation/Cutting", *Reprod Health* 13, 44 (2016) // https://doi.org/10.1186/s12978-016-0159-3.
[2] E. Gruenbaum, *The Female Circumcision Controversy: An Anthropological Perspective* (Philadelphia: University of Pennsylvania Press, 2001).
[3] *The United Nations Convention on the Rights of the Child* (1990), United Nations International Children's Emergency Fund (UNICEF) // https://www.unicef.org/child-rights-convention; World Health Organisation, "Female Genital Mutilation: Facts Sheet" (2003) // https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation.
[4] World Health Organisation, *Ibid.*
[5] L.M. Healy, "Universalism and Cultural Relativism in Social Work Ethics", *International Social Work*, 50 (11) (2007): 11-26 // https://doi.org/10.1177/0020872807071479.
[6] United Nations Population Fund, "Demographic Perspectives on Female Genital Mutilation" (2015) // http://www.unfpa.org/sites/default/files/pub-pdf/1027123_UN_Demograhics_v3%20%281%29.pdf.

the statistical data has highlighted the fact that nearly three million females are at the gunpoint of being mutilated in the name of culture, religion, or community practice,[7] the social acceptance that it receives within certain communities has abased the problem to a private one. The instances are persistent in India as well. This can be seen from the fact that one of the religious heads of the Dawoodi Bohra Community, Syedna Mufaddal Saifuddin, after the heavy criticism of FGM in India stated that the "practice must continue discreetly for the girls."[8]

While people are using advocacy, art, drama, music, and literature to educate communities about FGM and to try to stop families from putting girls and women through this medically unnecessary procedure, the problem has not abated yet. Even though the United Nations has called forth for the united efforts to eradicate the threat of FGM[9], it continues to remain an active risk to the safety, equality, and dignity of women.[10]

In this background, it becomes important that specific legislations are being drawn to address FGM issue that is strongly anchored in cultural beliefs and norms. While history tells us that law alone cannot change social behaviour, the recent adoption of criminal laws prohibiting FGM in many African and Western nations presents a significant role of law in propelling social change against FGM. For instance, in 2015, the United Kingdom in a remarkable step passed a new legislation to prevent FGM which not only imposed parental liability but has also urged for a greater accountability on medical practitioners.[11] The said law is not an arrant enactment on paper but has seen results on the ground, and has been fairly successful in combating FGM in the country. Legislations such as these can become basis and provide a beacon for the criminalisation of FGM in India and steer the country in a right direction to tackle the problem in adequate manner. In the present paper we focus on the need to impose parental responsibility to protect their daughters from harm and the subsequent imposition of criminal liability in case of failure to take adequate action to prevent the genital mutilation. Secondly, we try to establish accountability on medical professionals to mandatorily report any case pertaining to FGM in case they encounter any such instance of FGM. We explore the persisting socio-legal setting in India, the gaps in the Indian law, and

[7] *Ibid*
[8] M. Das, "Bohra cleric urges female genital mutilation?", *Times of India* (2016) // http://timesofindia.indiatimes.com/city/mumbai/Bohra-cleric-urges-female-genital-mutilation/articleshow/52031699.cms.
[9] United Nations, "Intensifying Global Efforts For The Elimination Of Female Genital Mutilations", GA/RES/67/146, GAOR UN Doc A/67/450 III (December 2012) // https://www.unwomen.org/en/digital-library/publications/2020/07/a-75-279-sg-report-female-genital-mutilation.
[10] United Nations International Children's Emergency Fund (UNICEF), "Female Genital Mutilation/Cutting: A Global Concern" (2016) // https://data.unicef.org/resources/female-genital-mutilationcutting-global-concern/; Archana Pyati & Claudia De Palma, "Female Genital Mutilation In The United States: Protecting Girls and Women in the U.S. from FGM and Vacation Cutting", *Sanctuary For Families* (2017) // https://sanctuaryforfamilies.org/wp-content/uploads/sites/18/2015/07/FGM-Report-March-2013.pdf.
[11] *United Kingdom Serious Crimes Act*, (2015).

the need to impose a greater accountability on those involved in the practice. To draw parallels on the accountability front, we look at certain countries that have enacted such provisions and have succeeded in curbing the menace of FGM.

2. MEDICAL CONDITIONS AND OTHER ADVERSE HEALTH EFFECTS OF FEMALE GENITAL MUTILATION

The medical literature is currently steeped with the information on the adverse effects of the FGM, which, in certain adverse circumstances, not only results in physical difficulties but even the death of the victim.[12] The paper briefly discusses these effects in order to emphasize the magnitude of the FGM issue. Perhaps the most common yet supremely significant general consequence of FGM is the perpetual suffering in the form of hurt, disfiguration, and even hemorrhage which not only physically harms the women but also mentally scars them for life.[13] In fact it has been found that the psychological pressure involved in the process of FGM results in women developing Post Traumatic Stress Disorder due to the shock and pain involved in the process.[14] The study by E. Banks *et.al.* compares the death rate of infants born to females who have endured the FGM procedure with the ones who have not, and concludes that the death rate in the former case is much higher due to a range of obstetric complications.[15] In certain scenarios such a birth may also adversely impact the baby in the long term (Özigci, 2020; Peci & Gashi, 2021).[16]

Medical experts have reached the conclusion that a particular group of cells might become inelastic or less elastic which pose hindrances in the birthing procedure causing the baby to get adversely obstructed in the process.[17] The elevated chances of postpartum hemorrhage,[18] is another fatal consequence that may be resultant of birth by a female who has undergone FGM in the past. Immediate and temporary medical repercussions include haemorrhage, hemorrhagic and neurogenic shock, unruly urine retention, bone displacement, injury to organs, inflammations and contaminations, other physical complications (which may include sudden demise of the victim).[19] Sometimes, irreversible urine retention may lead to cancerogenic tendencies in the victims and increase the chances of cervical cancer.[20] Long-lasting repercussions may also include strained

[12]Priedie Ed *et. al., Female circumcision in the Anglo-Egyptian Sudan* (McCorcodale Printing Press: 1945), 6-51.
[13] E. Banks et.al., "Female genital mutilation and obstetric outcome: WHO collaborative prospective study in six African countries", *The Lancet* (2006) // https://doi.org/10.1016/S0140-6736(06)68805-3.
[14] *Ibid.*
[15]*Ibid.*
[16]*Ibid.*
[17] Roxanne Khamsi, "Female Genital Mutilation Complicates Birth", *The Lancet* (2015).
[18]*Ibid*
[19]Elliot Klien *et. al.,* "Female Genital Mutilation: Health Consequences and Complications—A Short Literature Review", *Obstetrics and Gynecology International* (2018): 1-6 // https://doi.org/10.1155/2018/7365715.
[20]A.L. Osterman et. al., "Female genital mutilation and noninvasive cervical abnormalities and invasive cervical cancer in Senegal, West Africa: A retrospective study", International Journal of Cancer, 144(6), (2019): 1302-1312 // https://doi.org/10.1002/ijc.31829.

urination, elevated instances of infections, continual pelvic inflammations, infertility, keloid scar, menstrual complications, adverse impacts on maternal well-being,[21] amplified hazards like HIV/AIDS,[22] vulva abscesses,[23] problems pertaining to sexual intercourse,[24] neurinoma etc., to name a few (Prabowo & Sinaga, 2020).[25]

While the above physical harms have been medically tested, the psychological impacts of FGM on the mental health of the female are harder to examine empirically than the patent bodily harms.[26] A few specialists propose that the gravity and ordeal of the procedure may be responsible for the conduct depicted as 'quiet' and 'tame', believed to be constructive in social orders that propagate FGM.[27] Regardless of the absence of evidentiary proof, individual records of FGM uncover sentiments of nervousness, fear, mortification and disloyalty from their own confidante, which might probably be elongated adverse impacts for the lifetime of the victim.[28] The above mentioned medical complications have been sufficiently established and consequently, medicalisation of FGM has become prevalent in many communities as it is believed that medicalisation can reduce the medical risks involved in the procedure.[29] Here, it becomes important to highlight the fact that the health hazards and the violative nature of FGM are inherently problematic and do not change with the medicalisation of the issue, which begs the next question: *Does Medicalisation do away with the violative nature of the practice?*

The conventional FGM is practiced by traditional circumcisers[30] but, due to the criticism and blatant medical hazards of FGM, many proponents have suggested medicalised FGM— a shift towards health-care professionals performing the FGM in a sterile environment.[31] In India, there are specific doctors assigned for the purpose and it has been reported that all the circumcisions take place in the medical facilities.[32] This general perspective shift, however, is not entirely based on the right reasons. Medical circumcisions or medically supervised circumcisions are backed by the need for severing the initial pain and discomfort accompanying such

[21] Elliot Klein *et.al*., *supra* note 17.
[22]S.I. Rahlenbeck & W. Mekonnen, "Growing Rejection of Female Genital Cutting among Women of Reproductive Age in Amhara", *Journal of Culture, Health & Sexuality*, 11 (4) (2009): 443-452 // https://doi.org/10.1080/13691050802711293.
[23]*Ibid*
[24]R. Berg *et. al.,* "Psychological, Social and Sexual Consequences of Female Genital Mutilation/Cutting (FGM): A Systematic Review of Quantitative Studies", *Report from Norwegian Knowledge Centre for the Health Services (NOKC)*, 13 (2010) // PMID: 29320049.
[25]E. Banks et.al., *supra* note 13, 22.
[26]T. Baasher, "Psychological Aspects Of Female Circumcision", WHO/EMRO1979 (July 22, 1979): 71-105 // https://www.sciencedirect.com/science/article/pii/S1110570413000246.
[27]*Ibid,* 76.
[28]*Ibid,* 79.
[29] E. Leye *et al.,* "Debating Medicalization of Female Genital Mutilation/Cutting (FGM/C): Learning from (Policy) Experiences across Countries" *Reprod Health,* 16 (2019) // https://doi.org/10.1186/s12978-019-0817-3.
[30]Laxmi Anantnarayan *et. al.,* "The Clitoral Hood: A Contested Site Khafd or Female Genital Mutilation/Cutting (FGM) in India", *We Speak Out & Nari Samata Manch Report* (2018) // https://www.sabrangindia.in/tags/female-genital-mutilation.
[31]*Ibid,* 42.
[32] *Ibid,* 43.

procedures only. Even when medicalisation assures acclimatisation to procedural discomfort the deep wounds that such a demeaning process digs into the psychological and sometimes physical realm of the human body- in the long term- are absolutely neglected and set aside.[33] Not to mention the impact that such a process might have on the private life of the woman and the resultant low self-esteem and self-worth. Moreover, the medicalisation of the issues rather than solving the problem results in perpetuating gender-based violence. Despite the shift towards medicaliation, emphasis needs to be laid on the fact that some communities, including the Bohras, believe that circumcision done in any medicalised manner defeats the whole purpose of the practice and the grace of God that is to be received on such circumcision may not be achieved.[34]

This shortcoming of the health framework has paved the way for the legislative framework. While this framework has invited criticism on the grounds of cultural relativism and universal values, it does not make gender rights ineffective in an unsecular and misogynistic atmosphere. It is important to understand that though the legislative intervention is bound to attract dissonance from certain sections of the society, the law must take on a prescriptive role in case the social constraints prioritize faith over people themselves. In the next section, we explore the legislative enactments which have been successful in curbing the practice, if not entirely eliminating it. We focus on the legal frameworks in the United Kingdom, France, and Kenya which may provide useful insights for finding holistic interventions for the problem of FGM.

3. IMPOSING LEGAL ACCOUNTABILITY ON PARENTS AND MEDICAL PRACTITIONERS: SCRATCHING THE SURFACE BY LOOKING ELSEWHERE

In the year 2012, the United National General Assembly passed an indicative resolution intensifying the "global efforts for the elimination of FGM" which led to several states enacting the FGM laws and some to amend their existing laws, all to counter the cultural traditions that are incompatible with basic dignity of women.[35] Some of these laws are discussed below in order to analyse the legislative interventions aim at delegitimising the practice of FGM.

3.1. The United Kingdom: Parental Liability and Mandatory Reporting

Recent studies in the United Kingdom state that the number of cases reported between January to March 2019 stood at nine hundred one (901) which

[33] Samuel Kimani & Bettina Shell-Duncan, "Medicalized Female Genital Mutilation/Cutting: Contentious Practices and Persistent Debates", *Curr Sex Health Rep.,* 10 (1) (2018): 25–34 // https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5840226/.
[34] Mariya Taher, "Understanding Female Genital Cutting in the Dawoodi Bohra Community: An Exploratory Survey", *Sahiyo* (2017) // https://sahiyo.files.wordpress.com/2017/02/sahiyo_report_final-updatedbymt2.pdf.
[35] *UN General Assembly Resolutions Eliminating Female Genital Mutilation,* Resolution A/RES/67/146 (2012).

was significantly less than the one thousand two hundred forty two (1242) reported during the same time in 2016.[36] While the numbers are nothing to be happy about, the sharp decline in the FGM cases clearly show a constant decline of numbers in the country since they have passed an explicit legislation on the practice of FGM making the practice a punishable crime under the law of the land.[37] The said legislation has increased the accountability of parents and medical practitioners involved in the process of FGM.

Initially, Female Genital Mutilation Act, 1984 (amended in 2003) was enacted and the practice of FGM was designated as a Criminal offence for both perpetrators as well as facilitators like the supporting medical staff.[38] Abetment or any kind of facilitation was also held to be a crime under the next section of the aforementioned Act.[39] Thereafter, in the year 2015, the Serious Crimes Act devolved extraterritoriality upon the said Act, which was so far applicable only to the residents.[40] From 2015 onwards the Act became applicable along with the earlier subjects to those who habitually resided in the United Kingdom.[41] Hence, the crime of FGM was made punishable irrespective of the place of the commission. Moreover, anonymity of the victim was given extreme concern and included any document, identity proof or photograph or any indirect link which can relate back to the identity of the victim, to be prevented from publishing through both print and digital media.[42]

However, one of the most important changes brought about to tackle the problem of FGM was the Parental Liability Clause which imposed liability in case of *"failure to protect"* girl from the risk of FGM under section 72.[43] The provision amended the FGM Act, 2003 by establishing a liability on those who are in a position to prevent (for instance a guardian or even the parents of the girl child) and yet fail to prevent the females from the threat of FGM.[44] It does not matter, in certain instances, whether they had the opportunity or knowledge of the procedure being performed, as it is assumed to be their prime responsibility to prevent the minor girl child from being exploited through the process of FGM.

Another unique feature of the 2015 amending scheme is the imposition of duty upon those who in the course of their work/profession, discover that "*an act of female genital mutilation appears to have been carried out on a girl who is aged under 18*".[45] This duty to notify is not only cast upon the individuals when they have knowledge of such an act taking place but also upon the belief or suspicion

[36]Department of Health and Social Care, "The Female Genital Mutilation (FGM) Enhanced Dataset", UK (2019) // https://www.gov.uk/government/statistics/female-genital-mutilation-january-march-2019.
[37]*Ibid*.
[38]*United Kingdom Female Genital Mutilation Act* (2003), sec. 1.
[39]*Ibid,* sec. 2.
[40]*Ibid,* sec. 3.
[41]*United Kingdom Serious Crimes Act*, *supra* note 11, sec. 70.
[42]*Ibid,* sec. 71.
[43]*Ibid,* sec. 72.
[44]*Ibid,* sec. 3A.
[45]*Ibid*, sec. 73(3A)(4).

that the act of FGM has been carried out against the girl.[46] It needs to be highlighted that the duty imposed upon the professionals is not merely directory in nature but obligatory as well, and the exact manner in which the report has to be made to the police has been sufficiently delineated.[47]

The 2015 amendment Act has also provided for a preventative measure wherein it the court can issue an injunction commonly known as *Female Genital Mutilation Protection Order*s (hereinafter referred to as "FGMPO") for the purpose of protecting a girl against the commission of FGM.[48] Any party associated with the victim, or the victim herself can file for the protection through FGMPO, and the same can act as a preventive measure to avoid the actual occurrence of FGM. Therefore, the UK has put in place an elaborate scheme for not only punishing the offenders but also preventing and reporting of the FGM, a scheme that India must definitely take note of while legislating on the issue.

3.2. France: Punishment, Publicity and Education

The zero-tolerance policy of France towards the practice of FGM has resulted in significant reduction in the cases of FGM. The offenders can be prosecuted under the French Penal Code under which, causing mutilation/permanent disability may attract punishment upto 10 years with fine amounting to €150,000.[49] Moreover, in the cases where victim is under the age of 15 (which is generally the case in FGM) and the mutilation is performed by or under the guidance of the "*legal, natural or adoptive ascendant, or by any other person with legal authority over the minor*", the sentence is increased to 20 years.[50] Moreover, in the year 2013, the French law no. 2013/711 added two new offences, particularly related to FGM in the French Penal Code thus providing an additional protection to the minors.[51] More importantly, the prosecution can happen 20 years after the victim reaches adulthood, thus giving autonomy to the victim herself to take action against the offenders.

In France, a major role in highlighting the issue of FGM is also owed to the medical practitioners who are able to bring forth the issue because of the mandatory medical check-up requirements under free medical treatments (Female Genitalia included) of French children up to the age of six under the *Protection Maternelle et Infantile* (PMI).[52] Nijboer notes that there remains a broad consensus within the medical field regarding the nature of FGM that proves helpful in wider disclosure of FGM instances and therefore the obligation put before the PMI doctor to report the instances to procureur de la République are usually cooperative in nature.[53] Moreover, treating FGM as physical as well as psychological abuse, the

[46] *Ibid* sec. 74.
[47] *Ibid.*
[48] *Ibid*, sec. 73.
[49] *The French Penal Code* (1994), article 222-9.
[50] *Ibid*, article 222-9.
[51] *Ibid,* article 227-24-1.
[52] J. F. Nijboer, *Criminal Law Investigation And Prosecution of Female Genital Mutilation: The French Practice,* (The Hague: Boom, 2005): 113.
[53] *Ibid,* 183-184.

Art-44 of the *Code of Medical Ethics (attached to the Code of Public Health)* casts a duty on the medical practioners to report any physical/psychological abuse to the appropriate authority. In addition to this, the failure to assist the victim may invite severe penalties under the French Penal Code.[54]

Other than the liabilities attached under the penal code, the nature of the investigation and trial significantly affect the outcome of the cases. After receiving communication about any such case, the police calls for an investigative judge who has wide powers under the inquisitorial system which further smoothens the process in combination with the PMI's readiness to provide information.[55] Also a very significant aspect for the French success is the involvement of all the relevant people and institutions in the initial rounds of the legal proceedings. FGM related cases are not only tried at the highest criminal law court i.e. *the Cours d'Assises* but also include a jury trial which is not only well publicised but also brings forth a set of warning regarding the gravity of the offence.[56]

While there is still not a comprehensive law on the matter, the regular attempts in amending the law and awareness initiatives taken by the French government have been very useful in tackling the cases of FGM. Despite the lack of specific legislation, the fact that France has been successful in countering the cases of FGM shows that the co-operation between the medical practitioners and the investigative agencies can bring fruitful results.[57] Moreover, the importance of publicity and education cannot be denied.

It is to be noted that even though the English, and French criminal system have their own manner in approaching the issue of FGM, there exists a consensus within the larger community against the abhorrent practice, since the issue of FGM is an imported issue, a resultant of the influx of non-traditional cultural practices. The difference in their approaches only seem to be that of degree, with wider consensus being that the FGM should be combated with all the seriousness. As against these countries, it becomes important for us to understand the steps taken by Non-western countries in their pursuit to combat FGM. In this paper, we take a look at Kenya, whose strenuous efforts have been recognised by many international organisations, including UNICEF.[58]

3.3. Kenya: A Holistic Effort towards Abolition

Kenya has not only criminalised the FGM in 2011, but has also taken necessary steps to prevent the practice of FGM by sensitizing the people regarding the dangers and adverse effects of FGM. Other than the common provisions

[54] *The French Penal Code*, *supra* note 49, article 223-6.
[55] J. F. Nijboer, *supra* note 52, Appendix 5.
[56] Renée S.B. Kool & Sohail Wahedi, "Criminal Enforcement in the Area of Female Genital Mutilation in France, England and the Netherlands: A Comparative Law Perspective", *International Law Research*, 3, 1, (2014) // http://dx.doi.org/10.2139/ssrn.2433554.
[57] A. Guiné & F.J. Moreno Fuentes, "Engendering Redistribution, Recognition, and Representation: The Case of Female Genital Mutilation (FGM) in the United Kingdom and France", *Politics & Society*, 35 (2007) // https://doi.org/10.1177/0032329207304315.
[58] UNICEF, "A profile of Female Genital Mutilation in Kenya" (2020) // https://data.unicef.org/resources/a-profile-of-female-genital-mutilation-in-kenya/.

regarding liability, reporting, extra-territorial jurisdiction etc., Kenya has also established proper institutional mechanism in the form of *Anti-Female Genital Mutilation Board* to design, supervise, coordinate, advise upon and facilitate the awareness programmes aimed at eradication of FGM.[59] The Board has further been tasked with mobilising resources and aiding the Government in the implementation of the Act.[60] Considering the fact that in some stronghold areas, the FGM prevalence may range from 75%-98%[61], it becomes important that the community be made aware of the realities behind the practice. Mwendwa et. al. note that due to the concerted efforts in Kenya, the cultural influence behind the FGM has lessened substantially which has ultimately resulted in reducing the theat perception of FGM in several counties of Kenya.[62]

In India, the cultural approval for the practice of FGM also presents a grave problem for legislature. In such a scenario, India shall take due regard to the legislation in Kenya and not only penalise the offences, but shall also take steps to fill in the awareness gap that is present in the society. In the next section we try to uncover these possibilities by trying to find a way forward, to not only formally abolish the practice of FGM, but to also prevent its societal endorsement.

4. FEMALE GENITAL MUTILATION IN INDIA AND THE WAY FORWARD

It is a lesser known fact that FGM is not only practiced but is in fact prevalent amidst certain communities in India, such as Dawoodi Bohras.[63] While there is no representative data on this issue, there have been small scale research projects [All for Izzat by Rehana Ghadially (1991)[64]; FGM in Indonesia by Islamic Relief Canada[65]; Projects by Sahiyo Co-founder Mariya Taher[66]], that have sufficiently established that the small and socially intricated families of Bohra community practice FGM covertly with a very limited knowledge about the female anatomy. According to Ghadially (1991), Khatna or FGM performed by midwives and mullanis, forms 75% of overall practice.[67] While reasons for the practice may vary across regions and cultures, the role of clergy in advocating for FGM has been noted in all the above-stated studies. In fact, in a study conducted by Srinivasan, he

[59] *Prohibition of Female Genital Mutilation Act* (2011).
[60] *Ibid*, sec. 5.
[61] Berhane Ras-Work, "Legislation to Address the Issue of Female Genital Mutilation (FGM)", Expert Paper, *United Nations Division for the Advancement of Women and United Nations Economic Commission for Africa* (2009) // https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Expert%20Paper%20EGMGPLHP%20_Berhane%20Ras-Work%20revised_.pdf.
[62] P. Mwendwa *et. al.,* "Promote Locally Led Initiatives to Fight Female Genital Mutilation/Cutting (FGM/C): Lessons from Anti-FGM/C advocates in Rural Kenya", *Reprod Health,* 17, 30 (2020) // https://doi.org/10.1186/s12978-020-0884-5.
[63]Mariya Taher, *supra* note 34.
[64] R. Ghadially, "All for Izzat", *Manushi*, 66 (1991).
[65]Reyhana Patel & Khalid Roy, "Female Genital Cutting in Indonesia", *Humanitarian Academy for Development* (2016) // https://had-int.org/e-library/female-genital-cutting-in-indonesia/.
[66] Mariya Taher, *supra* note 33.
[67] *Ibid.*

noted that while FGM is not explicitly demanded by the religion, the families have continued the tradition out of fear for their community leaders.[68] With religion playing an important role in every facet of life in India, it becomes all the more difficult to tackle the problem of FGM. In the next few subsections, we look forward to the possibilities.

4.1. FGM and the Legal Scenario in India

Because of the strict social dimensions surrounding the FGM, there are no express legislative enactments in India governing the issue. While an individual performing and aiding the FGM might be held accountable under the general legislative enactments, including the provisions relating to hurt/grievous hurt under the Indian Penal Code, 1860 (IPC) and the sexual assault provisions under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the fact that the practicing community does not see this as explicitly wrong, leads to under-reporting or no reporting of the cases at all. Moreover, since the practicing community is a small and tightly knit community, it becomes all the more hard to even find the cases where the practice of FGM was known outside the private sphere of the family and practitioner. Moreover, the practice of FGM has not been held contrary to the law which has resulted in the continuation of the practice despite its inhumane nature.

However, recently the practice was sought to be declared as unconstitutional before the Supreme Court of India on the grounds that the practice is discriminatory against women and violative of their right to equality, privacy, and personal-liberty.[69] However, the matter was referred to a larger-bench without passing any interim order, and was later clubbed with the Sabarimala Temple Case which is also under consideration for an issue that brings forth the issue of women's right when placed against the right of the religious denominations to maintain their own affairs.[70]

4.2. Empirical Analysis: Acknowledging the Gaps in Awareness and the Needs of the Society

Before we move forward to our recommendations in light of the comparative study conducted in the previous section, we will do an empirical analysis on the issue of FGM, considering that the FGM practice in India is largely a socio-political issue. For the empirical study, data has been collected through an unstructured questionnaire from 131 participants, 73 of which are from the legal fraternity. These include law students, law professors, judges, and legal researchers. 58 out of the decided sample are from the medical field since the role of the medical practitioners in the suggested recommendations is very essential to the scheme. The method of sampling selected is probability sampling (stratified random

[68] S. Srinivasan, "Behind the Veil, the Mutilation", *The Independent* (1991).
[69] *Sunita Tiwari v. Union of India*, Supreme Court of India (Writ Petition (C) No. 286/2017).
[70] Supreme Court Observer, "Ban on Female Genital Mutilation" (2021) // https://www.scobserver.in/cases/sunita-tiwari-union-of-india-ban-on-female-genital-mutilation-case-background/.

sampling) in the Kolar Region of Bhopal (due to the presence of hospitals and law colleges in the region) and the sample size consisted of respondents from Legal and Medical Fraternity owing to the demand of the topic.

Issue:1- Knowledge and Existence of Practice in India

Answers Provided	**Number of Responses**		**Total**
	Legal (73)	**Medical (58)**	
Aware	71	49	120
Not Aware	2	9	11

While the majority of the legal fraternity was aware of the persistence of the practice in India, there were more cases in the Medical fraternity who were unaware about the issue. Considering our study, it is important that the medical practitioners are made aware about such an issue considering their role and responsibility in tackling FGM.

Issue: 2- Awareness about the Laws on FGM

Answers Provided	**Number of Responses**		**Total**
	Legal (73)	**Medical (58)**	
Aware	43	34	77
Not Aware	30	24	54

While the above data shows that majority of the respondents were aware about the existence of laws to prevent the practice of FGM in India; the lack of awareness among 41 percent of the respondents paints a grim picture, especially in the Indian scenario where criminality might not be attached with the practice of FGM.

Issue: 3- Placing Accountability on the Guardians of the Underage Victims

Answers Provided	**Number of Responses**		**Total**
	Legal (73)	**Medical (58)**	
Yes	38	32	70
No	7	2	9
To a limited extent	28	11	39
Cannot Say	0	13	13

Almost all respondents in the legal fraternity believed that the guardians of the victims must be made liable as it is their primary duty to prevent the minor from coming to any harm. It is their argument that despite their natural responsibility they allow for such a practice to happen (both due to their active intervention and their passive silence), and therefore there must be legal accountability placed upon them. In the case of medical practitioners, while the majority of them believed that the guardians must be made liable, a few practitioners refrained from agreeing to such a measure for the reason that sometimes it's the community pressure that leads to such permissions from the guardians.

Issue: 4- Placing Accountability on the Medical Practitioners to Report the practice of FGM in case of any suspicion.

Answers Provided	**Number of Responses**		**Total**
	Legal (73)	**Medical (58)**	
Yes	61	39	100
No	12	11	23
To a limited extent	0	0	0
Cannot Say	0	8	8

Majority of the legal and medical practitioners believed that the duty must be imposed on the medical practitioners to report the suspicious cases. This is because it's a surreptitious practice and there is hardly any way a child can report such a practice on her own. However, a few refrained from agreeing with the said argument owing to the reasoning that there exists a doctor-patient confidentiality which cannot be breached. However, it must be realised that this duty owed by the doctor is only for the welfare of the patients and should not affect the reporting of a crime, especially when the harm is coming to their patients. It is important that the medical practitioners are made aware of the crime of FGM so that they can make right decisions while observing any such case.

Issue: 5- Legislating a separate enactment on FGM.

Answers Provided	**Number of Responses**		**Total**
	Legal (73)	**Medical (58)**	
Yes	62	26	88
No	10	17	27
Cannot Say	1	15	16

Majority of the respondents believe that there is a need for separate legislation on the matter. According to them, the existing regime does not suffice, especially owing to the fact that the practice is a secretive one, and it is difficult to bring into light the perpetrators and their heinous actions. However, some of the respondents said the existing penal regime is sufficient and a mere introduction of FGM clause may fulfil the purpose.

4.3. The Way Forward: Grounding the Slippery Slope

Need for a Separate Comprehensive Legislation

One of the major questions that we have raised in this paper is regarding the need for a separate legislation, and the adequacy of the existing legal provisions under IPC and POCSO Act to tackle the problem of FGM. Section 3 of the POCSO Act, 2012[71] which deals with the penetrative sexual assault read with the Sec-375

[71] *The Protection of Children from Sexual Offences Act* (2012), sec. 3. ["A person is said to commit penetrative sexual assault if…(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person…"]

IPC (Explanation-1)[72] is generally considered to provide protection against FGM in India. However, we believe that the gravity and complexity of the crime is not justified by the general punishment under the already existing provisions. Additionally, in the absence of a specific, clear and defined purview, FGM itself is susceptible to multiple interpretations which may result in the exclusion of certain categories of FGM both by the judges and the communities. Granted, Section 324 and 326 of the IPC[73] provide punishment for causing hurt and grievous hurt by dangerous weapons/means respectively, may to-some-extent penalise FGM, but they are devoid of the nuanced understanding on the topic, that is required to address multitudinous concerns circumscribing the offence. Most importantly, both IPC and POCSO have failed in curbing/curtailing FGM since the practice projects the deep-rooted cultural and religious beliefs of certain communities. It needs to be emphasised that FGM is not just "any bodily injury" but involves severe harm to bodily-integrity, dignity, psyche, and privacy (among many other basic human rights) of the victim, and therefore deserves a comprehensive scheme that can deal with the various complexities involved in criminalising FGM.

Most importantly, the underreporting due to the age of the victim, and the involvement of the entire community, makes it really hard to bring the perpetrators to justice. Along with the fear of ostracisation and re-victimization, there is an increased chance of exposing one's own family to the perils of the criminal justice system. In the absence of an explicit legislative framework, the legality of the practice will always remain in the grey area which will make it harder for the victims to approach the criminal justice system due to the uncertainty involved.

Regarding insertion of a mere clause or provision in the aforementioned criminal legislations, we believe that rather than remedying the substantive disabilities in the existing legal framework, providing a comprehensive scheme would be able to deal with various intricate issues involved in criminalisation of FGM, particularly involvement of various stakeholders, their differential liabilities, community approval (sometimes even insistence), necessity regarding reporting, anonymity of the victims, protective and preventive remedies, preventing extra-territorial operation, compensatory mechanisms, and many more. Therefore, owing to its furtive nature and persistence in contemporary India[74], the problem of FGM necessitates criminal sanctions along with distinctive procedures for reporting, investigation as well as trial.

Legal Recommendations

Taking note of the various novel legal provisions discussed in the previous section, we suggest that the continued practice of FGM warrants a separate legislation[75] that provides for:

[72] *The Indian Penal Code* (1860), sec. 375 (Explanation 1) [Under the said explanation, vagina is said to include the labia majora]
[73] *The Indian Penal Code* (1860), sec. 324 and sec. 326.
[74] Jyoti Shelar, "Declare India country with FGM prevalence*", The Hindu* (2016) // https://www.thehindu.com/news/cities/mumbai/%E2%80%98Declare-India-country-with-FGM-prevalence%E2%80%99/article16780276.ece.
[75] Appendix-I: Model Legislation on Female Genital Mutilation.

a. Defining FGM

Firstly, FGM must be clearly defined as a categorical crime. This definition can be in accordance with the World Health Organisation classification. This requires defining the term clearly and precisely (including the prevalent typologies of female genital mutilation and the acts that are going to be included within the same). It needs to be understood that it is very difficult to take cognitive and integrated measures to prevent a practice unless that particular practice is explained and elaborated in definitive terms. Ghadially[76] (1991) in her report noted that despite the known fact that Dawoodi Bohras "practice the sunnah variety of FGM/C" wherein the tip of the clitoris (prepuce) is cut off, the majority of the victims are not sure about what has happened to them because of their young age/anesthesia/lapse of memory due to shock and fear etc.[77] This makes it hard to gain a full understanding of what FGM really entails. Therefore, it is important that the same must be defined properly before the same has been criminalised. While a working definition has been suggested in the Model legislation[78], it is suggested that the same must be defined only after a dedicated study has been undertaken on the issue of FGM, taking into account the views and opinions of medical experts.

b. Identifying the Culprits and Imposition of Differential Liabilities

- Penalising Guardians: Resolving the "best interest" Conundrum- In the foreign legislations referred to in the previous section, not only are the parents liable in case of their involvement in the practice of FGM, but an aggravated liability is imposed on the ground that the parents have failed to take care of the girl child under their protection. However, having regards to the obligation to advance "the best interests" of the child, India ought to cautiously deliberate upon the utilization of penal enactments and provisions to criminalise the actions of the guardians of the females who undergo FGM. There are various arguments that can be offered against the imposition of penal liability on parents. For instance, it can be argued that it is not the intention of the parents to harm the girl child, and therefore the liability must be watered down until there is sufficient awareness among the communities regarding the diabolical nature of FGM. However, the fact of the matter is that irreparable injury (including physical and psychological) is a caused due to FGM. Moreover, the injury is the result due to the deliberate action of the parents. where there is clear knowledge of the harmful consequences, intended or otherwise.

There are also concerns regarding the imprisonment of parents which will result in the separation of the girl child from her family and can seriously affect the psyche of the children. Therefore, rather than providing relief to the girl child, it might actually harm her. It is noteworthy that a law that penalises guardians of the FGM victims might bring up an unusual predicament for the society and the authorities alike, especially in India. To tackle this predicament, we have suggested

[76] Ghadially, *supra* note 64.
[77] Mariya Taher, *supra* note 34.
[78] Appendix I, sec. 2(c).

a specific clause in the model legislation that proposes the liabilities to be attached on a case by case basis in the "best interests of the child".[79] Moreover, we have suggested that the existing institutional machinery with respect to the *children in need of care and protection* under the Juvenile Justice (Care and Protection of Children) Act, 2015[80], can be utilised in order for the aggrieved girl child to live in an environment which is conducive to her health and well-being.

- Crime by Community: Liability of those who Aid, Abet and Advice- The role played by the clergy and the community as a whole is very significant in India, as compared to the other countries.[81] In such a situations, it is necessary to consider FGM as a result of community pressure and societal obligations. Rather than the decision being made on volition of a single person, practice of FGM depicts the inctricate involvement of the community. In such a situation, complex issues of liability might arise especially when the origin of the "criminal act" cannot be traced. Therefore, penal provisions prohibiting the commission of FGM must also incorporate, the involvement of certain individuals who indirectly affect the commission of FGM.
- *Medical Practioners: The Key to fight FGM?***-** It is suggested that the liability of medical practitioners should be harsher in nature due to their failure to protect the aggrieved woman, despite their fundamental responsibility that merits the confidence of patients entrusted to their care. Rather than fulfilling that responsibility, their involvement not only betrays the trust of the patient but also results in further medicalisation of the issue. With regard to the policy initiatives in foreign countries, particularly France, medical practitioners can play a significant role in not only reporting the crimes, but also their prevention in the first place. Therefore, stringent criminal sanctions (including the revocation of license to practice) can be imposed upon the medical practitioners, as has been sufficiently enumerated in the model legislation.[82]

Medical practitioners can also be put under a mandatory obligation to report any case of FGM. Since, medical practitioners are one of the first contact persons in relation to the crime of FGM, an imposition of duty might not only result in bringing the crime of FGM to light but also preventing the same. While a general duty is cast upon the general public to report the crime under the model legislation, neglecting such duty in case of medical practitioners may result in the revocation of license to practice.[83] However, as can be seen from the empirical study conducted above, there are cases where medical practitioners are not well versed with what FGM entails. Therefore, it is important that the government initially publicizes the crime of FGM, so that the medical practitioners have enough

[79] Appendix I, sec. 6.
[80] *Juvenile Justice (Care and Protection of Children) Act* (2015), chapter VI.
[81] S. Srinivasan, *supra* note 68.
[82] Appendix, sec. 4 and sec. 7.
[83] Appendix, sec. 9.

knowledge in order to identify such cases. Also, some provisions might be included in the Indian Code on Medical Ethics, so that the medical practitioners do not hesitate in fulfilling their reporting duty due to the conflict that it might have with the doctor-patient confidentiality. It is important that the doctor-patient confidentiality should not affect the mandatory reporting since FGM is a violent crime that seriously underscores the rights of women (majority of whom are minors). Government can also provide incentives to medical practitioners as well as the general public in the form of public acknowledgment, and appreciation. This can go a long way in attacking the secrecy involved in the practice of FGM.

c. Aggravated Consequences should result in Aggravated Liability

The liability needs to be aggravated in certain cases that involve serious repercussions for the aggrieved woman. The same has been sufficiently delineated in the model legislation, and includes cases where the practice of FGM results in death of aggrieved woman, certain obstetric complications, serious health issues etc.[84] The maximum punishment in these cases has been set up as 14 years considering the adverse consequences of the act.

d. Compensatory Justice: Justice must not only be done but also seem to be done.

Due to the irreparable injury and harm done to the aggrieved woman, the legislation on FGM warrants inclusion of a compensation clause, which can be decided by the courts, upon their own discretion.[85] Though compensation does not tantamount to complete justice in FGM cases, it can perhaps lead to a new start for the aggrieved woman and provide her with better opportunities in the future. It is important to understand that, penal provisions fail to fulfill the objectives of restorative justice, particularly for the FGM victims who have received wounds that transcend the arrant physicality of their bodies.

Other than the above suggestions, there are additional clauses in our model legislation that deal with issues relating to the extra-territorial application[86], attempt to commit FGM[87], presumption of guilt[88], anonymity of victims[89], nature of offence[90] and most importantly FGM protection order[91] that focuses on the prevention of crime and the security of women.

5. Conclusion

Efforts to address FGM are a part of a long-term process that requires a synchronised efforts from the society, social institutions, NGOs but most importantly the Government agencies. Unidirectional efforts might not fructify into

[84] Appendix I, sec. 4.
[85] Appendix I, sec. 13.
[86] Appendix I, sec. 14.
[87] Appendix I, sec. 5.
[88] Appendix I, sec. 10.
[89] Appendix I, sec. 15.
[90] Appendix I, sec. 12.
[91] Appendix I, sec. 8.

uprooting the belief that fuels the entrenchment of FGM. Therefore, it is important that the government, along with other stakeholders, undertake a multi-pronged strategy that focuses on criminal legislation, human rights framework, health risk approach, training of health workers, institutional development, awareness programmes and the usage of comprehensive social development.

While this paper has acutely focused on the development of criminal legislation, the significance of amalgamation of aforementioned strategies with the penalisation plays an important role, particularly in India. Characterizing FGM as a violation of the human rights has significant consequences both for victims and the society at large. By invoking human rights standards, advocates can hold government accountable for their inaction in response to FGM.

When it comes to criminalisation, a defined understanding of the crime is of prime importance. Secondly, the role of parents/guardians and medical practitioners is significant not only in the prevention of the crime, but also in uncovering the secrecy around the practice. This is incorporated in the reporting liabilities associated with the medical practitioners, who must play an active role in an inter-agency co-operative effort to end the practice of FGM. Aggravated liabilities provide an additional safeguard against the worst kind of consequences that follow. Thirdly, a compensatory scheme is incorporated to provide a requisite cushioning to the harsh punishments imposed against the perpetrators of the crime in addition to providing compensatory justice to the victim. Finally, as the saying goes, *prevention is better than cure,* preventive orders could really come through as a deterrent mechanism.

Hence, the authors have provided a comprehensive scheme for the imposition of differential liabilities on the involved parties (including those who indirectly procure, counsel, abet, induce, coerce and threaten). The scheme is comprised of both punitive and preventive sanctions against the perpetrators. Learning from the experiences of anti-FGM activism around the world, mass mobilization and awareness-raising programmes become keys to abolish the practice of FGM within communities. The legislative enactments have been a significant part of the entire movement across the globe. The United Kingdom, France and Kenya present a robust example in curbing FGM through mixed efforts from all stakeholders along with an extensive legislative scheme. It is important that India does not remain on the backseat in the global momentum against FGM and therefore, it is necessary that people are educated, and made aware of the disguised realities behind FGM so that they can start questioning their blind devotion towards violative, yet unvalidated, traditions.

Considering the fact that the practice of FGM is particularly widespread in the minority community, the act should initially be revealed rather than demonised. A concentrated effort is required by the government to first undertake comprehensive social development that effectuates the awareness programmes. Thereafter, comprehensive criminal legislation must enacted for an unequivocal realisation of FGM as a derogatory, barbaric and inhumane practice.

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APPENDIX I

MODEL LEGISLATION ON FEMALE GENITAL MUTILATION

An Act to provide for the prohibition of Female Genital Mutilation, the protection of victims as well as girls and women under the threat of female genital mutilation, and for matters connected therewith or incidental thereto.

BE it enacted by the Parliament in the _____ Year of the Republic of India as follows—

CHAPTER I

Preliminary

1. *Short title, extent and commencement*-

(1) This Act may be called the Female Genital Mutilation Act, 2022.

(2) It shall be extended to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires —

(1) "aggrieved woman" means— a woman, of any age whether married or not, who alleges or is alleged to have been subjected to any act considered as female genital mutilation;

(2) "best interests" means the basis for any decision taken regarding the victim or the potential victim, to ensure the fulfilment of her basic rights and needs, identity, social well-being and physical, emotional and intellectual development;

(3) "female genital mutilation" refers to all procedures that involve partial or total removal of external female genitalisa, or any other injury to female genital organs for non-therapeutic reasons, and includes—

(a) the partial or total removal of clitoris glans, and/or the prepuce/clitoral hood.

(b) the partial or total removal of clitoris glans, and the labia minora, with or without the excision of labia majora.

(c) infibulation, which involves the narrowing of the vaginal orifice through the creation of a covering seal by cutting or repositioning the labia minora, and/or labia majora, with or without the excision of clitoris.

(d) other harmful procedures to the female genitalia for non-medical reasons, for example, piercing, pricking, incising, scraping and cauterisation.

(4) "medical practitioner" means a medical practitioner who possesses any

recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled on a State Medical Register as defined in clause (k) of that section.

(5) "parental responsibility" means and includes all rights, duties, powers, responsibilities and authority which by law a parent of the child has in relation to the child and her property.

Offences and Penalties

3. Prohibition against the practice of Female Genital Mutilation-

(1) Any person, who shall conduct or cause to be conducted or aids in conducting by himself or any other person, the practice of female genital mutilation commits an offence and shall be punished with imprisonment which may extend to seven years, and shall also be liable to fine.

(2) A person who procures, counsels, abets, induces, coerces, threatens, or under any false pretence carries out female genital mutilation commits an offence and shall be punished with imprisonment which may extend to seven years, and shall also be liable to fine.

(3) Consent of the victim to female genital mutilation shall not be a defence under this Act.

(4) Any religion, culture, custom, tradition, ritual or any other non-therapeutic reason shall not be a defence under this Act.

(5) No offence is committed under sub-section (1) or sub-section (2), if the alleged act is performed for medical reasons, by a medical practitioner who considers such an action to be in the best interests of the aggrieved woman. The reasons for the same have to be recorded in writing.

4. *Aggravated Female genital mutilation-*

(1) A person commits aggravated female genital mutilation if—

(a) death occurs due to the female genital mutilation;

(b) the aggrieved woman suffers from obstetric complications resulting in the death or some permanent disability of her child;

(c) the aggrieved woman is infected with HIV as a result of the female genital mutilation; and

(d) the aggrieved woman suffers from some permanent disability;

(e) he conducts female genital mutilation despite being a medical practitioner.

(2) A person who commits the offence under this section shall be punished with imprisonment which may extend to fourteen years, and shall also be liable to fine.

5. *Attempt to carry out female genital mutilation-* Any person who attempts to commit an offence under section 3 (1) commits an offence, and shall be punished with imprisonment which may extend to three years, and shall also be liable to fine.

6. Failure to protect girl from the risk of genital mutilation-

(1) If an offence of female genital mutilation is committed against any female under the age of 18, then each person who is responsible for the girl, must be

considered to have failed the duty to protect her.

(2) For the purposes of this section, a person is considered to be "responsible" for a girl where-

(a) the person has a parental responsibility for the girl, and

(b) has frequent contact with her.

(3) In such cases, if the court believes that the responsible person is unfit to take care of her, then the procedure in relation to the children in need of care and protection under the Juvenile Justice Act, 2015 must be followed.

(4) All the decisions in such cases, regarding the investigation, trial, sentencing, custody, or any other matter incidental thereto must be based on the primary consideration that the same is in the best interest of the female and to help her develop her full potential.

7. *Liability of the Medical Practitioner*- In case, any medical practitioner is held liable under this act, then his/her license to practice shall be revoked.

8. *Protection of females who have not undergone female genital mutilation*-

(1) The court may, if satisfied that a female is likely to undergo female genital mutilation, upon an application by any person, issue a protective order in the best interests of that female.

(2) A person who threatens, discriminates or stigmatizes a female who has not undergone female genital mutilation and prevents her or her family members from participating in any economic, social, political or other activities in the community commits an offence and shall be punished with imprisonment which may extend to three years, and shall also be liable to fine.

Duty to Report

9. *Duty to Report the female genital mutilation*-

(1) A person, who knows or has reasons to believe that a person has committed or intends to commit an offence under the provisions of this Act, shall report the matter to the police authorities, or any other authority for appropriate action.

(2) In case, the failure to report pertains to a medical practitioner, who in the course of his/her work discovers the fact that an act of female genital mutilation has appeared to have been carried out against a female who is aged under 18, then his license to practice can be revoked.

(3) A disclosure made by thein an FGM notification does not breach— (a)any obligation of confidence owed by the person making the disclosure, or (b)any other restriction on the disclosure of information.

(4) A person who threatens, harms or in any way inhibits a person from reporting an offence under this Act commits an offence and and shall be punished with imprisonment which may extend to six months, and shall also be liable to fine.

Miscellaneous Provisions

10. *Presumption in the case of an act amounting to Female Genital Mutilation*- Notwithstanding anything contained under the Indian Evidence Act, 1872, the court shall presume, unless the same has been contrary proved that the woman was compelled by her parents or any other relative, as the case maybe, to undergo the

Female Genital Mutilation and such person shall be liable for the commission of the offence under section 3 or section 4, as the case maybe.

11. *Act not in derogation of any other legislation*—This Act shall be in addition to and not in derogation of any other provisions of law for the time being in force.

12. *Offence to be cognizable, non-bailable and non-compoundable*- Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

13. Compensation:

(1) Where a person has been convicted for an offence under this Act, the court may, in addition to the punishments prescribed, order such person to pay the aggrieved woman, by way of compensation, such amount as in the opinion of the court is just, having regard to the injuries suffered by the aggrieved woman.

(2) The order under this section shall be deemed to be a decree under the Civil Procedure Code, 1908 and shall be executed in the manner provided thereunder.

14. Extra-Territorial Jurisdiction- This Act shall apply to the offences under this Act committed outside India, where the aggrieved woman upon whom the offence is committed is a citizen of India. Any person liable under this act, for an offence committed beyond India, shall be dealt with according to provisions of this Act in the same manner as if such act had been committed within India.

15. Anonymity of Victims- The aggrieved woman shall have a right to protection of her privacy and confidentiality, by all means and throughout the judicial process.