

**Flygtningenævnets baggrundsmateriale**

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| Kilde:                          | Equality Now og WeSpeakOut                                                                                   |
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Human Rights Committee Secretariat  
Human Rights Treaties Division (HRTD)  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva  
Switzerland  
Via E-mail: [ohchr-ccpr@un.org](mailto:ohchr-ccpr@un.org)

3 June 2024

**Re: Information on India for the 141<sup>st</sup> Session of the Human Rights Committee Session**  
**(1<sup>st</sup> July – 23<sup>rd</sup> July 2024)**

***Background***

1. We respectfully make this submission to the Human Rights Committee (“the Committee”) regarding India's review at its 141st Session (1 July – 23 July 2024)
2. **Equality Now** is an international human rights organization with ECOSOC status working to protect and promote the rights of women and adolescent girls worldwide since 1992, including through our network of individuals and organizations in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices, and achieving legal equality are the main areas of Equality Now’s work.
3. **WeSpeakOut** is a survivor-led Indian organization comprised of women from the Bohra community. It works to campaign for the elimination of Female Genital Mutilation/Cutting (FGM/C), also known as Khafz, within the Bohra community in India. Its founder is a party to the ongoing public interest litigation before the Supreme Court and has been leading advocacy for the Indian government to outlaw FGM/C in the country.
4. Equality Now and WeSpeakOut are writing to express our concern about the discrimination and violence faced by women and girls in India, particularly FGM/C, which violates the

equality, non-discrimination, and equal protection of the law principles and provisions (Articles 2, 3, and 26) of the International Covenant on Civil and Political Rights (“the Covenant”). In addition, passing strong and effective laws that criminalize FGM/C on a permanent and universal basis is an essential pre-condition towards meeting *Goal 5 (Achieve gender equality and empower all women and girls)* of the agreed upon sustainable development goals (SDGs) in Transforming our world: the 2030 Agenda for Sustainable Development (“Agenda 2030”), adopted by UN members states in 2015. Goal 5 includes specific targets, including target 5.3: *Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation.*

### ***Female Genital Mutilation/Cutting in India***

5. FGM/C is known to be practiced in India by the Dawoodi, Alvi, and Suleimani Bohra communities, as well as certain sections of Sunni Muslim communities. In the Bohra community, FGM/C is mainly performed on young girls around the age of seven. Within the community, the practice of FGM/C involves the cutting of the prepuce or clitoral hood, which is classified as Type I (partial and/or total removal of the clitoris and/or the prepuce) FGM/C as classified by the World Health Organization. In the Sunni communities of Kerala, it is performed within the first year after birth, and the type of cutting could be either Type I or Type IV (all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterization).<sup>1</sup>
6. There are no country-wide studies or large-scale population surveys that measure the prevalence of FGM/C in India. However, the existence of FGM/C in India has been documented through two independent research studies. The most recent study, titled *The Clitoral Hood: A Contested Site*, was commissioned by WeSpeakOut and Nari Samata Manch and released in 2018.<sup>2</sup> The study largely included participants from the Bohra community. The study found that 75% of all daughters of participants of the study sample were subjected to FGM/C, which means it continues to be practiced on little girls. 97% of women who remembered their FGM/C experience from childhood recalled it as painful.
7. Two participants from the Sunni Muslim community were also included in the WeSpeakOut study, who reported that girls from their community were usually cut as babies below the age of one. Despite some scant evidence<sup>3</sup>, it has been difficult to access and learn more about the practice of FGM/C amongst other communities in India

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<sup>1</sup> Types of FGM, World Health Organisation, available at: [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/types-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/types-of-female-genital-mutilation)

<sup>2</sup> Lakshmi Anantnarayan, Shabana Diler and Natasha Menon, *The Clitoral Hood: A Contested Site*, 2018, available online at [https://www.wespeakout.org/images/files/pdf/fgmc\\_study\\_results\\_jan\\_2018.pdf](https://www.wespeakout.org/images/files/pdf/fgmc_study_results_jan_2018.pdf)

<sup>3</sup> See survivor story on FGM/C within the Sunni Muslim community, <https://www.youtube.com/watch?v=DQZ-C4VIBCA>

(including a Sunni Muslim community in Kerala and a few other unknown ones in the South). This is mostly due to the covert nature of the practice and the extreme reluctance of all members of the affected community to speak about the same.

8. Another study titled *Understanding Female Genital Cutting within the Dawoodi Bohra Community* was conducted by Sahiyo in 2017.<sup>4</sup> It included 385 respondents from numerous countries, all from the Bohra community. 34% of the study's participants were from India. The survey findings indicated that 80% of the survey's participants had undergone FGM/C.
9. FGM/C, including the type practiced in India, has short-term and long-term ill effects on the health and psychological well-being of the victims. The research study, *The Clitoral Hood: A Contested Site*, has documented the case of a 7-year-old girl in India who nearly bled to death after being subjected to FGM/C.<sup>5</sup>
10. A leaflet titled 'EMPOWERING HEALTHCARE PROFESSIONALS: Unveiling the Harms of Female Circumcision in Malaysia' was published by ARROW. The Asia Network to End FGM/C, and The Malaysian Doctors to End FGM/C.<sup>6</sup> According to the study, the mean length of clitoral glans/prepuce in female newborns is  $0.67 \pm 1.6\text{mm}$ . Therefore, any nicking, pricking, or cutting of the clitoral glans/prepuce in female infants can damage growing tissue with potentially serious repercussions in adulthood. It also finds that Type 1 FGM/C can cause sexual dysfunction.
11. Additionally, FGM/C has an impact on the quality of sexual life of the survivors and is often aimed at controlling female sexuality. The impact of FGM/C on the sexual life of the survivors has been documented in the research studies mentioned above. However, the traditional argument of FGM/C supporters is that there is no impact on sexual pleasure since only the clitoral hood is cut. However, in the ongoing case before the Indian Supreme Court, an affidavit has been filed by a gynecologist who has observed the cases of at least 20 women from the Bohra community who had undergone FGM/C. In his professional opinion, in most cases, the clitoris was cut or affected. Since the cutting was done at the age of seven, when the body was still developing, the clitoris would be very small, and there is a very small region between the skin and the clitoris. This leads to

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<sup>4</sup> Mariya Taher, *Understanding Female Genital Mutilation within the Bohra Community – An Exploratory Survey*, 2017, available online at [https://www.28toomany.org/static/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo\\_report\\_final-updatedbymt2.pdf](https://www.28toomany.org/static/media/uploads/Continent%20Research%20and%20Resources/Asia/sahiyo_report_final-updatedbymt2.pdf)

<sup>5</sup> Lakshmi Anantnarayan, Shabana Diler and Natasha Menon, *The Clitoral Hood: A Contested Site*, 2018, p. 43, available online at [http://wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf)

<sup>6</sup> <https://arrow.org.my/publication/empowering-healthcare-professionals-unveiling-the-harms-of-female-circumcision-in-malaysia>

immense difficulty in being able to separate the clitoris from the prepuce and being able to cut only the prepuce. So, in most cases, the clitoris gets cut /affected.<sup>7</sup>

### ***Lack of a Specific Law against FGM/C in India***

12. The practice of FGM/C has severe implications on women and girls' bodily integrity and bodily autonomy and also violates their constitutional rights to equality, non-discrimination, and privacy.<sup>8</sup> The continued existence of FGM/C in India and the failure of the Indian government to pass a law banning the practice also violates India's international obligations under various treaties in addition to the rights under the Covenant, including *inter alia* the right to life guaranteed under the Convention on the Rights of the Child (CRC); the right to non-discrimination under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the right to health under the International Covenant on Economic, Social and Cultural Rights (ICESCR).
13. The Indian Constitution guarantees a fundamental right to equality and non-discrimination based on sex (Articles 14 & 15) and the rights to life and personal liberty (Article 21). Despite its international and national obligations, India does not have a law specifically banning FGM/C. In its fourth periodic report to the Committee, the Government of India noted that FGM/C was a penal offense under existing criminal laws of hurt (Sections 319 - 326 of the Indian Penal Code) and child protection (the Protection of Children from Sexual Offences Act, 2012). However, it must be noted that the government has also failed to take any action to prevent FGM/C or raise awareness about the practice and its consequences. It has also not taken any steps to prosecute acts of FGM/C under these aforementioned general provisions.
14. However, as highlighted in a report published by WeSpeakOut, *Female Genital Mutilation – A Guide to Eliminating the Practice of FGM in India*, the lack of a specific mention of FGM/C in India's criminal laws means that the practice largely goes unnoticed since it is shrouded in secrecy and the community prefers to remain silent on the subject with members of the community even fearing ostracisation if they oppose FGM/C.<sup>9</sup>
15. Ensuring the complete elimination of the practice of FGM/C requires law reform or the passage of a separate law against FGM/C that adopts a holistic approach toward ending the practice. Such an approach needs to address the various aspects of FGM/C, including

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<sup>7</sup> See Intervention Application No. 43032 of 2017, in WP (Civil) No. 286 of 2017, available online at <https://cdn.theleaflet.in/wp-content/uploads/2018/08/Read-the-Written-Submissions-by-Senior-Advocate-Indira-Jaising-on-behalf-of-intervenor-Masooma-Ranalvi.pdf>

<sup>8</sup> Articles 14, 15 and 21, Indian Constitution

<sup>9</sup> WeSpeakOut & Lawyers Collective, *Female Genital Mutilation – A Guide to Eliminating the Practice of FGM in India*, available at: <https://www.lawyerscollective.org/wp-content/uploads/2012/07/Female-Genital-Mutilation-A-guide-to-eliminating-the-FGM-practice-in-India.pdf>

abetting or aiding the practice, propagating the practice, prevention of FGM/C, regulations on medical/health professionals who carry out this practice, duty to report, support and rehabilitative provisions and awareness building with appropriate budgetary support.

16. In recognition of this, a public interest litigation seeking a legal ban on the practice of FGM in India was filed before the Supreme Court.<sup>10</sup> However, the case has now been tagged with other cases relating to the right to religious freedom under the Constitution and referred to a Nine-Judge Bench to decide on the larger issue of the scope and ambit of the right to religious freedom under Article 26 of the Constitution of India and balancing the right to religion with other fundamental rights. Before the referral, the judges on the bench made oral remarks stating that FGM *prima facie* appears to be a violation of the right to privacy guaranteed by the Constitution and the right to bodily integrity of the child.<sup>11</sup> The Court also noted that there seems to be no scientific or medical basis for the practice of FGM, which is likely to cause a significant amount of trauma, pain, and bleeding.<sup>12</sup>
17. Despite the pending case before the Indian Supreme Court, the Indian government still retains the primary responsibility to take action and pass a law banning FGM/C in India, given that this practice is a harmful practice that undermines the dignity, human rights, and well-being of women and girls.
18. The lack of a legal prohibition on FGM/C in India has also made India a destination country for “vacation cutting,” a practice where Bohra families living in other countries transport their children to India during vacations to subject them to the practice of FGM/C.<sup>13</sup> The presence of laws against FGM/C in countries like the U.S. and Australia has resulted in local religious authorities or Dawoodi Bohra trusts, which administer and manage the affairs of the community, issuing edicts against FGM/C within those countries. For instance, the Resolution passed by the Anjuman-e-Burhani Sydney dated 9<sup>th</sup> February 2016 forbids the practice of FGM/C/Khafz by Bohra communities in Australia, noting the presence of anti-FGM/C laws in the country. These official resolutions are often accompanied by unofficial advice from Jamaat leaders (local religious leaders) for Bohra families living abroad to take their girls to India to be subjected to FGM/C/Khafz since

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<sup>10</sup> *Sunita Tiwari v. Union of India*, Writ Petition (Civil) No. 286/2017 (Public Interest Litigation).

<sup>11</sup> The New Indian Express, Female genital mutilation violative of constitutional rights: Supreme Court, 30 July 2018, available online at <http://www.newindianexpress.com/nation/2018/jul/30/female-genital-mutilation-violative-of-constitutional-rights-supreme-court-1850779.html>

<sup>12</sup> Press Trust of India, SC questions rationale behind female genital mutilation, says it can't direct doctors to perform procedure, 31 July 2018, available online at <https://www.firstpost.com/india/sc-questions-rationale-behind-female-genital-mutilation-says-it-cant-direct-doctors-to-perform-procedure-4862561.html>

<sup>13</sup> Mariya Taher, 'Understanding Female Genital Cutting In The Dawoodi Bohra Community: An Exploratory Study' (Sahiyo 2017) <[https://sahiyo.files.wordpress.com/2019/05/sahiyo\\_report\\_final-5.21.19.pdf](https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf)> accessed 14 March 2021; Lakshmi Anantarayan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<[http://wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf)> accessed 14 March 2021; See Also, *The Queen v. A2, Kubra, and Vaziri*, [2019] HCA 35.

India does not prohibit the practice. This is taking place despite the laws in many countries, such as the U.K., U.S., and Australia, which also specifically prohibit sending a girl overseas to be subjected to FGM/C.

### ***Lack of Action against FGM/C***

19. Despite these alarming rates of prevalence of FGM/C amongst the Bohra community, the Indian government has refused to acknowledge the prevalence of FGM/C in India, except on one occasion in [2017], where the Minister of Women and Child Development publicly announced the government's intention to pass a law banning FGM/C if the Bohra community did not voluntarily abandon the practice, in response to a meeting with activists and survivors who highlighted the impact of FGM/C and the data on the practice.<sup>14</sup> Unfortunately, no progress has been made since then. In 2022, India also received a recommendation during its Universal Periodic Review (UPR) to criminalize FGM and adopt a national action plan to address FGM. Disappointingly, the Indian government merely 'noted' this recommendation in its response.<sup>15</sup>
20. The failure of the government to take action or even acknowledge the existence of FGM/C within the country is despite the efforts of survivors and civil society organizations to raise awareness on the issue since 2015 when an online [petition](#) on Change.org titled 'End Female Genital Mutilation in India' was started by WeSpeakOut. This petition has received over 211,000 signatures from around the world. The petition was submitted to the then National Commission for Women (NCW) Chair, Ms. Lalitha Kumaramangalam, on 6 February 2017, who pledged support to Speak Out On FGM (now WeSpeakOut) in their campaign to end FGM/C in India and acknowledged the need to eliminate a practice like this which is steeped in patriarchy.<sup>16</sup> However, since then, no action has been taken by the NCW.
21. Societal efforts against FGM/C are limited to a few NGOs trying to create awareness and advocating for legal bans. Consequently, academic resources on FGM/C in India are scarce and come from non-governmental sources. The lack of national-level prevalence data on FGM/C in India means that the issue often goes unnoticed and unaddressed by government authorities, despite evidence provided to them by NGOs in the form of small-scale studies or anecdotal evidence. A key challenge that needs to be addressed on a priority basis is to,

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<sup>14</sup> Lakshmi Anantaryan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018) [http://wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf) accessed 14 March 2021.

<sup>15</sup> Report of the Working Group on the Universal Periodic Review - India; and Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/52/11/Add.1, 27th February 2023

<sup>16</sup> Nita Bhalla, India Women's Commission chief backs ban on "barbaric" female genital mutilation, Thomson Reuters Foundation, 7 February 2017, <https://www.reuters.com/article/india-women-fgm-idINKBN15M0FZ?edition-redirect=in>

at the outset, map the national prevalence of FGM/C in India, including its prevalence in communities other than the Bohras that are yet to be studied. The Indian government needs to take responsibility for addressing these research gaps and collect data on FGM/C in the country instead of using the lack of national-level data as a reason to ignore the existence of this harmful practice.

22. The lack of holistic action against FGM/C also means that there is an acute lack of awareness amongst the community members who practice FGM/C as to the medical, sexual, and psychological impact of this harmful practice. Studies reveal that most people hesitate to broach this matter, even when they are assured of complete anonymity.<sup>17</sup> Information is not even shared with family and friends.<sup>18</sup> The secretive nature of the practice, combined with a lack of awareness, has further aggravated the widespread prevalence of this practice in the community. There is a need for the Indian government to take steps to spread awareness and educate the community, especially youth, on the practice and the harm it can cause.
23. In recent years, especially in metropolitan cities like Mumbai, there has been a growing trend in the “medicalization” of the practice and procedure of FGM/C. The WeSpeakOut study titled ‘Clitoral Hood: A Contested Site’ has brought out the involvement of nurses, general practitioners, and gynecologists. Recognizing this trend, in February 2020, the Federation of Obstetric and Gynecological Societies of India (FOGSI) published a policy statement on FGM/C, which “directs all its member gynecologists and all other health care professionals to desist from performing or participating in any procedure of female genital mutilation.”<sup>19</sup>

### ***Recommendations***

24. We would respectfully urge the Committee to issue the following recommendations to India:
- (i) Pass a separate law that bans all forms of FGM/C in India or strengthen existing laws to explicitly make it a criminal offense for anyone who performs the procedure of FGM/C or aids, propagates, abets, or procures any person to carry out FGM/C. The law should recognize FGM/C as a human rights violation and a form of gender-based violence and

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<sup>17</sup> Mariya Taher, 'Understanding Female Genital Cutting In The Dawoodi Bohra Community: An Exploratory Study' (Sahiyo 2017) <[https://sahiyo.files.wordpress.com/2019/05/sahiyo\\_report\\_final-5.21.19.pdf](https://sahiyo.files.wordpress.com/2019/05/sahiyo_report_final-5.21.19.pdf)> accessed 14 March 2021; Lakshmi Anantaryan, Shabana Diler and Natasha Menon, 'The Clitoral Hood: A Contested Site', (WeSpeakOut and Naari Samta Manch, 2018)<[http://wespeakout.org/site/assets/files/1439/fgmc\\_study\\_results\\_jan\\_2018.pdf](http://wespeakout.org/site/assets/files/1439/fgmc_study_results_jan_2018.pdf)> accessed 14 March 2021.

<sup>18</sup> Ibid.

<sup>19</sup> FOGSI Position Statement on Female Genital Mutilation, available at <https://www.fogsi.org/fogsis-policy-statements/>

child abuse. It should prioritize prevention measures to protect girls and women from FGM/C based on an integrated framework addressing gender-based discrimination.

(ii) Until an explicit legal prohibition passed on FGM/C is introduced, or take proactive measures to prosecute instances of FGM/C as criminal offenses of hurt, grievous hurt, rape, and sexual assault under sections 319 to 325 and 375 of the Indian Penal Code and sections 3 to 9 of the Protection of Children from Sexual Offences Act, 2012; including by issuing appropriate orders/directives/guidelines to the police in all States, which provide education and information to law enforcement officials on the existence and effects of FGM/C in India, the applicability of existing criminal laws, and the need to prosecute these offenses.

(iii) Establish a national action plan to eradicate the harmful practice of FGM/C in all its forms across the country and within the Bohra community, including the dedication of adequate resources for prevention and education against the practice and the implementation of the national action plan.

(iv) Provide support for community-based programming that is nonjudgmental, rights-based, addresses harmful social and gender norms, and raises public awareness of the practice's harmful nature.

(v) Issue clear guidelines at the national and state levels that prioritize prevention measures to protect women and girls from FGM/C, including by taking action to identify girls at risk and implementing an awareness generation campaign regarding the health effects and legal status of the practice of FGM/C under Indian law. The state should take adequate steps to include religious and community leaders in the prevention and awareness generation.

(vi) Conduct research and collect data on the national prevalence of FGM/C in the country across all communities, as well as invest in qualitative research on the psychological, sexual, and health impacts of Type 1/Type 4 FGM/C/Khafz, as performed in India.

(vii) Issue zero-tolerance policies prohibiting medical professionals from carrying out FGM/C and classifying the performance of FGM/C as a form of misconduct that would result in disciplinary proceedings.

(viii) Implement gender-sensitive education and information campaigns on sexuality and sexual health and the health and legal implications of FGM/C, particularly targeted at women and girls from at-risk communities.

(ix) Build competency and awareness of healthcare professionals regarding FGM/C and its health effects, and provide education and training for students and practitioners in health professions about FGM/C and the provision of psychological and medical services to women and girls who have undergone FGM/C.

(x) Require frontline professionals, including teachers, doctors, and social workers, to mandatorily report to the police if any girl is under threat of FGM/C or if it has been performed on any girl or woman.