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Khatna: Mutilation of Women's Rights

DEESHA VYAS[1]

ABSTRACT

Violence and discrimination against women is of universal occurrence. Most violence against women is a way of asserting dominance over women. There are certain traditions, customs, practices that exist because of the indoctrinated values of patriarchy existing in our society. One such traditional practice and form of violence is Khatna, globally known as Female Genital Mutilation which violates the basic human rights of women. Khatna is the practice of removing the clitoral hood or the clitoris of a girl child to curb their sexuality. The reasoning behind the tradition of Khatna is based on deep-rooted gender stereotypes that a woman is to remain pure and chaste before marriage and are obligated to provide to sexual desires of men. The paper presents an overview of the practice of Khatna, further analyzing the constitutional validity of the traditional practice, and in the end presents a comparative analysis of special legislations existing in other countries on Female Genital Mutilation. The paper suggests bringing into effect codified legislation banning the practice of Khatna.

Keywords: *Khatna, Female Genital Mutilation, Sexual Autonomy, Fundamental Rights, Constitutional Morality, Essential Religious Practice.*

I. INTRODUCTION

Khatna/Khafdz (hereinafter referred to as Khatna) is practiced in the Dawoodi Bohra community in India. Khatna is the practice of removing the clitoral hood or clitoris also known as "haaram ki boti" in the community to curb the sexual desire of women and preserve their purity and chastity.

Khatna is usually performed on children of age 6-7 years where the clitoral hood or clitoris is cut off by using a sharp blade or a knife by the midwives or traditional circumcisers in the community. It is a traditional practice deep-rooted in the Dawoodi Bohra community and is a pre-requirement of marriage in the community as it defines the character of women and assures their purity. The entire concept of Khatna is based on indoctrinated discrimination against women.

Khatna is Type I[2] Female Genital Mutilation. World health organization (hereinafter referred

[1] Author is a student at SVKM's Pravin Gandhi College of Law affiliated to Mumbai University, India.

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to as WHO) defines Female Genital Mutilation as "Female genital mutilation (FGM) is a traditional harmful practice that involves the partial or total removal of external female genitalia or other injuries to female genital organs for non-medical reasons."[3]

There are four kinds of Female Genital Mutilation that are identified -[4]

- Type I - Clitordictomy
- Type II- Removal of clitoris gland and labia minora along with or without labia majora. Such removal can be partial or total
- Type III- Infibulation, where the vaginal opening is narrowed by creating a seal.
- Type IV- any other injurious practices such as piercing, incising, scraping, cauterizing, and pricking the genital area.

Khatna is Type I Female Genital Mutilation and has no medical benefits for women, nevertheless, includes many harms to female health. The immediate harms include excessive pain, bleeding, swelling, wound healing problems and trauma.[5] The harms can be long term as well. Many women, who go through Khatna suffer from Post-Traumatic Stress Disorder and other mental-health related issues.[6] The entire process is overwhelming for young children of age 6-7 years. Khatna is performed mostly using a sharp blade or a knife raising concerns of hygiene as the same blades and knives are used multiple times and this can cause infection and transmit diseases such as AIDS.

The first part of the paper deals with the constitutional validity of Khatna through the prism of the doctrine of essential practice, constitutional morality, fundamental rights, and exceptions under Art.25 and Art.26 of the Constitution, further before concluding, the paper presents a comparative analysis of the laws concerning Female Genital Mutilation in the international scenario. The paper suggests a need for new specific codified legislation for banning the practice of Khatna.

II. CONSTITUTIONAL VALIDITY OF KHATNA

A) Is it an essential religious practice?

The Dawoodi Bohra Community reiterates that it is their right of religious freedom under

[2] 'Female Genital Mutilation', WHO, (3rd February, 2020) <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> accessed 28th August, 2020.
[3] Id.
[4] supra note 1.
[5] supra note 1.
[6] supra note 1.

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Article 25[7] and Article 26[8] of the Constitution of India under which the practice of Khatna is justified and as it a 'matter of religion', there should be no interference by the state or the judiciary in it. The Community has total freedom to practice, propagate and profess their religion freely under the Constitution of India. They contend that the practice of performing Khatna is essential in Islam and is protected by the Constitution of India.[9]It is interesting to note that the traditional practice of Khatna is not mentioned in any religious book.

While determining Religious Freedom under the Constitution of India, the Judiciary has always relied on The Doctrine of Essential Religious Practice.

The Doctrine of Essential Religious Practice was promulgated in 1954 in the ***Shirur Mutt***[10] Judgement, where the question was raised whether essential religious practices can be controlled by state intervention and what constitutes essential religious practice.

The Supreme Court positively held that Article 25 and Article 26 of the Constitution provides for religious freedom and religious dominations have the right to manage religious affairs & total autonomy in deciding what constitutes essential religious practice. The State has no right to decide what constitutes essential religious practice and such intervention by the state would result in the abrogation of fundamental rights.

This principle of 'complete autonomy' in deciding what practices are essential religious practices was followed in a few more cases. The doctrine was based on narrow facts of the case where only the relation between state and religious practices was taken into consideration. There was no delving into other aspects of freedom of religion which may affect other sections of society and maybe against constitutional values and a holistic approach was not adopted.

There was a development in the above view while deciding the case of ***Sri Venkataramana Devaru v State of Mysore***[11], where temple entry was prohibited to Dalits and this exclusion of Dalits was justified by taking a defence under Article 25 and Article 26 of the Constitution of India. The Temple Authorities contended that this was a matter of religion and Gowda Saraswat Bhramins which form a religious denomination had 'complete autonomy' in matters of religion. The Temple Authority relied on the doctrine of Essential Religious Practices set out by the court in Shirur Mutt case. However, their contention was rejected, and rather than

[7] INDIA CONST.art.25
[8]INDIA CONST. art.26
[9] Sunita Tiwari v Union of India, 2018 SCC OnLine SC 2667.
[10] Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, (1954) SCR 1005
[11] Sri Venkataramana Devaru v State of Mysore,(1958) SCR 895

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giving complete autonomy to religious denominations to decide what constitutes essential religious practices, the court relied on ancient scriptures, literature to determine whether the exclusion of certain people from entering the temple was '*essential to religion'*.

There was a major shift in approach towards the doctrine from 'essential religious practices' to 'essential to religion'. Previously, the judicial approach towards the doctrine was only limited to state intervention in religious matters, however the judicial approach now incorporated the rights of other citizens into essential religious practice doctrine and asserted its power by deciding constitutional protection will only be provided to such religious rights that are essential to religion.

The 'essential to religion' approach was asserted by the judiciary in ***Mohd. Hanif Qureshi v State of Bihar***[12] where slaughtering of cows and offering a sacrifice on Bakri-Id was not considered an essential religious practice. The Islamic texts and scriptures were taken into consideration and it was observed that the practice of scarifying a cow, although followed for many years, was not obligatory.

The Supreme Court in ***Anand Margis***[13] case went a step further and associated essential practice with the 'fundamental character' of religion. The Court held that only such practices are essential to the religion that are integral part of religion and form the core basis of the religion. The practice is said to be essential when it is associated with the fundamental nature of religion. If the abrogation of such practice does not alter the primordial basis of religion, then such practice is not essential.

And finally in ***Shayara Bano v Union of India***[14], the Supreme Court reiterated the above opinion and held that Triple Talaq was not an essential religious practice as there was no mention of Triple Talaq in the first and most important source of Muslim law that is the Quran, and without the practice, the fundamental character of Islamic religion would not change.

The Supreme Court held that just because a practice or tradition is observed for a long time, it does not mean it is essential to religion.

Khatna is a tradition only practiced in the Dawoodi Bohra Community and as mentioned before, there is no mention of Khatna in any religious book. It is just a tradition that is going on for a long period of time. Islamic religion isn't based on such derogatory views against women. Applying the evolved test of "Essential religious practice", it is very clear that the

[12] Mohd. Hanif Qureshi v State of Bihar, AIR 1958 SC 731
[13] Commissioner of Police v. Acharya Jagdishwarananda Avadhuta, (2004) 12 SCC 770
[14] Shayara Bano v Union of India, (2017) 9 SCC 1

fundamental character of Islamic Religion would not be affected if the practice of Khatna is abolished.

B) Khatna through the prism of Constitutional Morality and Fundamental Rights.

The notions of morality are ever changing. Morality is a subjective concept and is subject to change from time to time. What maybe moral for one person may be immoral for another person.What constitutes the basis of morality in one part of the society may differ in other part of society. Sometimes, the morality of the society is based on values of institutionalised discrimination and inequality and in the struggle to maintain this societal morality, which does not differentiate between right and wrong and is only based on discrimination which is ingrained in the society, there can be a violation of basic human and fundamental rights of certain classes of individuals.

Khatna is the traditional practice of removing the 'clitoral hood' or the 'clitoris' of the women to curb the sexual desire felt by a woman. The sole purpose of the practice is to ensure the sexual fidelity and purity of a woman. The idea is to restrain a woman's sexual autonomy based on the gender stereotype that women are passive and need not have any sexual autonomy and the only purpose of sexual activity for women is recreational and to serve their husbands. It is based on the notion that sexual autonomy is the right of a man. The entire concept is extremely discriminatory and derogatory towards women.

Khatna is practiced to ensure that women are 'pure' and 'chaste' before marriage. It is based on the notion that "women like chattels are property of men"[15]. It furthers the stereotype that women are inferior to men and their autonomy is to be controlled by men. The whole institution of marriage is based on this control towards women where codes for women are defined and based on those codes they are to be labelled 'pure' and chaste'.

In our society, there have always been two sets of moral standards regarding sexual autonomy, one is a set of standards that applies to men, where they are free to express their desires and fantasies freely, it is assumed that men have a right of sexual desire and it is the most natural bodily urge they possess, however, there are different set of standards that govern the life of women when it comes to sexual autonomy.[16]Women are considered a passive being who should not have sexual autonomy because such autonomy would cause danger to the sanctity of a society. The substance of control is sustained by coding rules on the most basic bodily urge of women. These codes of morality that are based on ingrained

[15] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676
[16] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676

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patriarchy in our society have always existed.

The question is does our Constitution allow discrimination between different genders for the sole purpose that they are the morals of the public and society at large? This question has been answered negatively by introducing the 'Doctrine of Constitutional Morality'.

Constitutional morality though is a relatively new term used by the courts in the recent judgements of ***Joseph Shine v Union of India***[17], ***Navtej Singh Johar v Union of India***[18] and ***Indian Young Lawyers Association v State of Kerala***[19] but it has always existed in our constitution.

In recent judgements pronounced by the Supreme Court of India a new term of "Constitutional Morality" has been used as a threshold of constitutional validity. Constitutional Morality has been derived from the most vital principles of human dignity, liberty & equality. The term constitutional morality is not explicitly defined by the court, however, it has been used in two different ways. In one context it refers to the soul, conscience and spirit of the constitution of India. The soul, conscience and spirit of Constitution is based on principles of human dignity, liberty, equality and justice. Constitutional Morality has also been used to differ from public/societal morality. Public / societal morality cannot restrict any individual's fundamental rights. The two different views cognate, it can be safely inferred that the doctrine of constitutional morality is to guide towards the fact the fundamental rights of an individual are above the notions of public/societal morality.

The practice is of Khatna is not only painful and traumatic for the women who go through the process of such genital mutilation, it is also a direct attack at their identity. It violets the postulates of dignity, equality and liberty. Khatna is based on deep rooted discrimination which has always existed in our society. It intrudes on the privacy of women, risks the health of the women to conform to the notions of "pure" and "impure" women, and takes away their liberty. Khatna is thus a violation of Art.14, Art.15 and Art.21 of the Constitution of India.

Sexual Autonomy is a reflection of choice.[20] Nobody can take decisions for another person's body. This choice towards sexual and bodily autonomy cannot be separated from the existence of a human being. Denying choice to a particular gender deprives them of their liberty to express and determine one's action.

[17] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676
[18] Navtej Singh Johar v Union of India, (2018) 10 SCC 1
[19] Indian Young Lawyers Association v State of Kerala, (2019) 11 SCC
[20] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676

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Bodily Autonomy is a facet of human dignity.[21] The practice of cutting a part of genitals without a person's consent and without any medical justification is an intrusion of their privacy and bodily autonomy, which is an inextricable facet of human dignity. Any law, religious practice and custom based on paternalism and patriarchy which takes away this right is against the Constitutional Morality and violates the fundamental rights under Article 14, 15 and 21 of India cannot prevail in our country.

In ***Joseph Shine v Union of India***[22], Justice Chandrachud held thus:

"It needs no iteration that misogyny and patriarchal notions of sexual control find no place in a constitutional order which has recognised dignity as intrinsic to a person, autonomy being an essential component of this right."

Again in ***Navtej Singh Johar v Union of India***[23], it was held that:

"*The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them*"

The above statement clearly differentiates between public morality and constitutional Morality and holds that constitutional morality prevails over public morality.

Khatna is based on gender stereotypes and institutionalized discrimination towards women. In ***Navtej Singh Johar v Union of India***[24], Justice Chandrachud held thus:

"A discriminatory act will be tested against constitutional values. A discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1) that cannot establish a permissible reason to discriminate. Such a discrimination will

[21] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676
[22] Joseph Shine v Union of India, 2018 SCC OnLine SC 1676
[23] Navtej Singh Johar v Union of India, (2018) 10 SCC 1
[24] Navtej Singh Johar v Union of India, (2018) 10 SCC 1

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be in violation of the constitutional guarantee against discrimination in Article 15(1)"

Even Article 25 and Article 26 of the Constitution of India, uses the word 'morality'. The question that was raised in the **Sabarimala Verdict**[25] was whether the use of morality in Article 15 and Article 26 is synonymous with Constitutional Morality? The question was answered positively in the Sabarimala verdict. The nature and scope of religious freedom, even "essential religious practice" are subject to constitutional morality.[26]

Thus, though the concept of constitutional morality is relatively new, it is not a stranger to the Constitution of India. As mentioned above it is based on the existing essence of the constitution. It is embedded in the Constitution of India through the various provisions of Fundamental Rights.

The practice of Khatna not only violates the fundamental rights of women but is also against constitutional morality. And even if the practice of Khatna is an essential religious practice, it still does not receive protection of the constitution because religious rights are to be viewed from the prism of constitutional morality and are not above any person's fundamental rights.

C) Exceptions under Article 25

Article 25 and Article 26 of the Constitution of India confers upon people of India to practice, propagate and profess their religion and also confers upon religious denominations freedom to manage religious affairs respectively[27]. However, these rights are not unfettered under the constitution of India. Art 25(1)[28] provides for restrictions on religious practice if it is counter to public order, morality, health and other provisions of Part III of the constitution of India and the same restrictions are to be applied to Art. 26 of the Constitution of India.

In ***State of Bombay v. Narasu Appa Mali***[29], the court held that: *"If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."*

Thus, the practice of Khatna falls within the restriction provided by Art. 25 and Art.26 itself.

III. ACROSS FRONTIERS

The traditional practice of Khatna is not only prevalent in India within the Dawoodi Bohra Community, but it is also prevalent in the other parts of the world. Khatna is Type I female

[25] Indian Young Lawyers Association v State of Kerala, (2019) 11 SCC
[26] Indian Young Lawyers Association v State of Kerala, (2019) 11 SCC
[27] INDIA CONST.art.25 & INDIA CONST.art.26
[28] INDIA CONST. art.25.cl.1
[29] State of Bombay v. Narasu Appa Mali, AIR 1952 BOM 84

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genital Mutilation.[30] Female Genital Mutilation is most prevalent in African Countries and it also exists in other western countries such as the UK, the USA, Australia and Canada.

Female Genital Mutilation is an abhorrent practice existing in the world. And to abolish this abhorrent practice certain countries have taken proactive measures by making specific legislation to deal with the practice of Female Genital Mutilation so that more awareness is created about the Female Genital Mutilation and its repressive objectives. The Specific legislation further creates a dialogue and not only prosecutes the offenders but prevents, educates and builds awareness of such practice. And if not abovementioned points, it nevertheless creates a fear within the minds of the wrongdoer.

Some of the countries having specific codified legislations or codified laws for Female Genital Mutilation are-

A) United Kingdom: Female Genital Mutilation Act, 2003[31] bans all types of FGM categorized by International law. The act defines the term Female Genital Mutilation in accordance with the International laws. It also casts a duty upon the health care professionals a duty to report to the authorities about any transgression related to FGM. Not only people personally involved in the act but also abetting such an act are to be held liable under the act. The act also recognizes "Vacation Cutting" in and out of the UK and all the persons involved in the mutilation/cutting are liable under the act.

B) United States of America: The practice of Female Genital Mutilation was banned in the United States in the year 1966 by passing a federal law. Section 116[32] of the U.S Criminal Code defines Female Genital Mutilation and "vacation cutting" and the prescribed punishment for the felony is fine or imprisonment up to 5 years or both. As of now, 38 states have made specific laws to prohibit FGM.

C) Canada: Female Genital Mutilation was added in the criminal code in the year 1977 under the heading "excision" of Section 268(3) of the Canadian Criminal

[30] supra note 1

[31] Female Genital Mutilation Act, 2003 & 'FGM Prosecution Guidance', CPS, (17th October 2019) <https://www.cps.gov.uk/legal-guidance/female-genital-mutilation-prosecution-guidance> accessed 29th August, 2020.

[32] U.S. Criminal Code, Title 18, U.S.C, § 116 <https://www.law.cornell.edu/uscode/text/18#:~:text=18%20U.S.%20Code%20Title%2018%E2%80%94%20CRIMES%20AND%20CRIMINAL%20PROCEDURE&text=1970%E2%80%94Pub.> .

Code does not use the word Female Genital Mutilation but it is defined in the section.[33]

D) Africa: the Practice of Female Genital Mutilation is originated in African Countries and is also most prevalent there where majorly Type III of FGM is practiced. And curb this practice of Infibulation, nearly more than 20 countries have specific legislation relating to FGM.[34] Most recently Sudanese cabinet has approved amendments to the criminal code of the country to add Female Genital Mutilation as a specific crime against women.[35]

IV. DOES INDIA NEED SPECIFIC LEGISLATION?

In India, Khatna is not legal per se. There are different legislations in India where the crime of Khatna can be punished if reported. In the Indian Penal Code, any person performing Khatna can be charged/penalized under various sections. Chapter XVI of the Indian Penal Code elucidates offences affecting the human body. Section 319 to Section 326 of the IPC[36] deals particularly with various degrees of hurt and grievous hurt. Section 325[37] and Section 326[38] provides for penalties and punishments for 'voluntarily causing grievous hurt' and 'voluntarily causing grievous hurt through use of weapons'.

Khatna is performed on young children, mostly of age 6-7 years, thus provisions of the Protection of Children from Sexual Offences Act, 2012 [39](hereinafter referred to as POCSO Act) can also be used to file charges of Khatna.

However, despite there being legal remedies available to curb the practice of Khatna, there is not a single person in India that has been charged under the provisions for performing the act.

The main reason for the same is that most people are unaware and ignorant of such a practice existing in India. Khatna is usually performed by the women within the Dawoodi Bohra community and it is not talked about outside of the community. The young girls going through the process barely understand what is happening with them and in the later years they are conditioned to believe that Khatna is a necessary condition before marriage, besides people in the community who question such a tradition is ex-communicated, and this fear of

[33] Canada Criminal Code, R.S.C 1985, s.268(3).
[34] 'FGM and Law Around the World', Equality Now (19th June 2019)
< https://www.equalitynow.org/the_law_and_fgm> accessed 31st August, 2020.
[35] 'Sudan Criminalises FGM', BBC News (1st May 2020)
<https://www.bbc.com/news/world-africa-52502489> accessed 29th August,2020.
[36] Indian Penal Code, IPC 1960.
[37] Indian Penal Code, IPC s.325, 1960.
[38] Indian Penal Code, IPC s.326 1960.
[39] Protection of Children from Sexual Offences Act, (POCSO) 2012.

ex-communication leads to low reporting of cases.

It is necessary that people become aware of such tradition and a dialogue is created. Through discussion and communication, the myth behind the practice for purity and chastity of a woman can be broken. The indoctrination of systematic patriarchy must be questioned by the community and women of the community itself so that the problem is solved at the root. A specific legislation or specific definition of the crime in the IPC would help convey such awareness, recognition and fear in the minds of the people committing the crime.

India is signatory to various international treaties and conventions committed to protect human rights, rights of women and rights of children such as the Universal Declaration of Human Rights(UDHR) 1948, Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, Convention of Rights of Child 1989, etc.

All these international instruments cast a duty upon the signatory countries to eliminate discrimination against women, protect the rights of women and children, and protect them from violence.

A) Convention on Elimination of all Forms of Discrimination Against Women

- **Article 1** of CEDAW defines the term discrimination against women as *"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"* [40]
- **Article 2, Article 5 and Article 12** specifically casts a duty upon the signatories to form legislation to eliminate any kind of discrimination against women, to protect women from any acts that are a form of discrimination and to protect the health of women.[41]
- **General Recommendation no. 14** explicitly recognizes female genital mutilation and casts a duty upon the signatories to take appropriate measures.[42]

[40] Convention on all Forms of Discrimination Against Women, art.1, (adopted 18th December, 1979, entered into force 3rd September, 1981) <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

[41] Convention on all Forms of Discrimination Against Women, art. 2; art. 5; art.12 (adopted 18th December, 1979, entered into force 3rd September, 1981) <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

[42] General Recommendation No. 14, (Ninth session. 1990) <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

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B) The Universal Declaration of Human Rights

- **Article 1** of Universal Declaration of Human Rights, 1948 reassures universal existence of basic human rights and promotes universal freedom, liberty and human dignity of an individual across the world. [43]
- **Article 5** protects individuals from torture, cruelty and derogatory treatment of human beings **Article 12** protects privacy of an individual. [44] **Article 28** casts a duty upon the states to maintain individual dignity and freedom.[45]

C) Convention on Rights of Child

- The Convention on Rights of Child states various basic rights of children and confers upon the government of states' the ultimate responsibility of protecting the children.
- **Article 24(3)** confers upon the signatory states responsibility of taking active and appropriate measures to abolish traditional practices detrimental to the health of children.[46]

Currently, there isn't any law or legislation in India that recognizes Khatna or Female Genital Mutilation in India. Positive steps must be taken by India to abide by the International treaties and conventions to protect and safeguard the rights and health of children and women.

In ***Sunita Tiwari v Union of India***[47], a writ petition was filed in the Supreme Court of India to ban the practice of Khatna. Nevertheless, the petition was referred to a larger bench and the case is still pending. In the absence of any such law the judiciary has power to rely on international treaties and conventions as directed under Article 51(c) and formulate certain guidelines under Article 142 of the Constitution of India which will be binding till any legislation comes into effect.[48] The practice of Khatna is a violation of the fundamental rights of women under Article 14, 15 and 21 of the Constitution of India and thus the Supreme Court has authority under Article 32 to provide for the Constitutional remedy mentioned above.[49] Till the time new legislation is formed, such constitutional remedies could prove affective to curb the practice.

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[43] The Universal Declaration of Human Rights, art.1 (adopted 10th December, 1948) <https://www.un.org/en/universal-declaration-human-rights/index.html>

[44] The Universal Declaration of Human Rights, art.5 ; art.12 (adopted 10th December, 1948) <https://www.un.org/en/universal-declaration-human-rights/index.html>

[45] The Universal Declaration of Human Rights, art.28 (adopted 10th December, 1948) <https://www.un.org/en/universal-declaration-human-rights/index.html>

[46] Convention on Rights of the Child, art. 24(3) (adopted 20th November, 1989, entered into force 2nd September, 1990) https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf

[47] Sunita Tiwari v Union of India, 2018 SCC OnLine SC 2667

[48] Vishakha v State of Rajasthan, (1997) 6 SCC 241

[49] Vishakha v State of Rajasthan, (1997) 6 SCC 241

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On a comparative analysis of laws of the countries specifically recognizing Female Genital Mutilation as a crime and as encouraged by the International Forums (WH0,UN), herewith mentioned things must be kept in mind while formulating any laws for the same:

A) Female Genital Mutilation should be defined keeping in mind the international definitions provided.

B) Punishment should be prescribed for a person performing the act as well as abetting the act of Khatna.

C) The concept of "vacation cutting" must be recognized and people travelling to and from India for following the tradition of Khatna must be prosecuted.

D) The law should cast a duty upon every person aware of any activities related to Khatna to report such transgression.

V. CONCLUSION

On analysis, the practice of Khatna is obnoxious and derogatory to women. The entire reasoning behind the practice of Khatna is based on the deep-rooted patriarchy in the society and it promotes further discrimination against women. Khatna has harmful consequences on the health of women and takes away their rights of bodily autonomy, dignity, health and liberty. After in detail analysis of the practice, it is clear that the practice is not constitutionally valid and is not protected under Article 25 and Article 26 of the Constitution of India. It is against the fundamental rights of women under Art. 14, 15 and 21 of the Constitution of India, further it is not an essential religious practice under the Islamic religion and is against also against the Constitutional Morality of India.

Appropriately, a codified law banning the practice of Khatna can unleash women from being tormented by this obnoxious practice.

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