

## Women Cry: Men Have Lost their Soul and We Have Lost Our Sex!

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“I felt betrayed by and angry with my mother, and humiliated too. I just could not understand how my mother could have been so cruel to put me through this horrific experience...I was told...That it is good for you. I understood that my mother had no choice. She was being a good mother because this (Female Genital Circumcision) is a practice that had been carried out for centuries and was considered essential for woman's good reputation and marriage chances. Little did I know this would affect my sexual life to such great extent that reaching orgasm would be difficult for me?”<sup>1</sup>

A letter from India (May 2007, forwarded to UNICEF)

### Abstract

It is true that the misery of woman need to be understood in the context of woman itself because her existence in itself is of great significance as it has enabled the man to weave the splendid raiment of human civilization and in the process utilized the sinew of the female folk to its full. Surprisingly, the name of woman continue to miss from epigraph of the cultural tapestry of the world because what has happened to woman in art has happened to her in literature too and not to speak about other aspects that regulate her socio-political life otherwise called the culture. A comparative study of cultures would therefore suggest that no sooner man controlled the horse, he perhaps actively thought of controlling the woman. Woman therefore trusted man and did not, ever resist being stripped off her basic rights and, or being virtually reduced to the level of bearing dependant status that too not less than that of a slave or a vassal. The worst of the whole story being that female has had no choice but to accept whatever man wished to choose for her or even what the former did to her. This paper exposes the influence of men and their lusts leading to the change in humanity of woman and womanhood. It indicates the total submission of women and the leniency of legal teeth in controlling the masculine sensibility.

**Keywords:** Female Genital Mutilation, male sadism and female masochism, Customs and Law.

### 1. Introduction

Then this is only the tip of an iceberg. In fact, the story of woman's pathos cannot be unfolded mere by, going through cultural history of mankind or/and scanning of the pages of scriptural literature and/or referring to its stray postulates of eschatological significance. The misery of woman should be understood in the context of woman itself because her existence in itself is of great significance as it has enabled the man to weave the splendid raiment of human civilization and in the process utilized the sinew of the female folk to its full.<sup>2</sup> Yet, why does the name of woman continue to miss from epigraph of the cultural tapestry of the world is known a little and also lamented the least? Then, this is not even surprising because what has happened to woman in art has happened to her in literature too and not to speak about other aspects that regulate her socio-political life otherwise called the culture.

Any reference to culture is neither unnecessary nor superfluous because the evaluation and so the examination of cultural mores and trends of people are *per se* sufficient to unravel the kind of treatment woman has retrospectively met at the hands of her equal half the man at different intervals of history.<sup>3</sup> In this regard, any

<sup>1</sup> Letter Send on May 2007 to Molly Melching, Chairperson of the Tostan, Senegal, An Organization Dedicated to Education of African Woman's Health Issues.

<sup>2</sup> Friedrich Angles, *The Origin of the Family*, (London, 1943), 79.

<sup>3</sup> Otto Weininger, *Sex and Character*, (London, 1906), 236. The author observes :

It is not only surprising but very difficult to understand why the negative attributes of female nature to the total exclusion and eclipse of her kind, benign, graceful self is over emphasised even by the great writers and literary men of the world. Even eminent writer's like William Shakespear seems to have not spared woman because be it tragedy or commode he frequently discusses transvestism wherein the wicked nature of female is projected so forcefully that it leaves behind indelible impressions of female nature on the mind of a reader.

See also, W. J. Craig, *Complete Works of William Shakespeare*, (Oxford, 1959); Similarly scholars have constructed the towering personality of woman on the basis of scientific findings which reveal the eternal truth that “Y” chromosome which is male determinant and “X” chromosome which is female determinant where the former fails to suppress the mutant gene, that is the carrier of infirmities like haemophillia. The color blindness follows the same pattern. About thirty other disorders

reference to art and literature is not even unconnected because we can understand ourselves better if we know our culture and the literature. Since it does not only mirror the political conditions of people at different intervals of time but helps to identify the topography of cultural evolution of the people. Thereby making it easy to demarcate the geographical areas where a particular philosophy sprouted that gradually regulated the life of the people at a particular point in time.

A comparative study of cultures would therefore suggest that no sooner man controlled the horse, he perhaps actively thought of controlling the woman. The former helped him to conquer the space and time and the latter enabled him to conquer the world. The control over the both emboldened man to shape his life and multiply his pleasure. He adopted trickery to control and tame the horse but *vis a vis* woman he compounded cajolery with trickery as tools to disrobe the woman. Woman liked it to hear that the Sun shines to burnish her skin and gild her hair, the wind blows only to whip up the color of her cheek; the flowers die gladly so that her skin may luxuriate in their essence, something like this whispered by man into the ears of woman that was per se sufficient to carry her away and fall to his bluff and get engaged. At the height of it she was assured of being the crown of the creation. Therefore, more than worth the attention of man. This was a very strong weapon that ultimately enabled man to win her over besides subjugate her for good.

No sooner man felt assured of having impoverished woman intellectually he projected her as the chief spender as well as chief symbol of spending ability and monetary success. Her faith in man strengthened where she felt that the latter, ransacked the depths of the sea for coral and pearl wealth to deck the woman; so was she moved to notice that man tirelessly laid open the bowls of earth so that woman might wear gold, sapphires, diamond, rubies and all other precious and priceless jewelry to beautify her. At this, man did not hesitate to batter baby seals with staves, nor felt remorse even when imposing untimely death, on unborn lambs that he ripped from their mothers, so killed foxes, chinchillas, beavers, ocelots, lynxes, squirrels and other lovely creatures to ensure that she have furs to cover her neck or the bosom. Similarly, man made the Egrets, ostriches, peacocks butterflies to yield their plumage to decorate the head gear of woman. At the height of it, he did never mind risking its own life in hunting leopards for her coats and crocodiles, poisonous vampires and cobras for her hand bags and shoes.<sup>1</sup> Woman claimed all this fortune and grandeur at the cost of being contoured by their conditioning to abandon her autonomy to man and seek guidance from him.<sup>2</sup> As a result, she has had to reconcile with surrendering her freedom both of her thought and action besides digest so graciously tolerate spanking on occasions not as *quid pro qua* but she sincerely valued the acts of man who plundered the nature for her beautification and pleasure believing that his intentions were sincere and honest.

Woman therefore trusted man and did not, ever resist being striped off her basic rights and, or being virtually reduced to the level of bearing dependant status that too not less than that of a slave or a vassal. Even violation of her inalienable rights at personal or impersonal level would take place without impunity of any kind. So much so, the shepherd was let free to devour his sheep without any remorse in the name of culturalization or indoctrination taking place at home that ultimately paved the way for justifying classification of the homo-sapiens along the lines of gender i.e., male and female divide. So had the distribution of roles become inevitable to justify the classification or culturalization. The classification fossilized to such an extent that it affected even the institutions and their constitution that otherwise should be sex-neutral and correspondingly the manning of such institutions went along the same lines.

It so happened on account of the distinct labeling that paved the way for role distribution in total disregard to choice, ability and liking of the woman. She accepted it because she perhaps continued to trust the sincerity of man and the fairness of his intentions. It happened on account of this total and unqualified trust in man that was though belied over the period of time that she was left with no choice but to find ways and means to adapt to what man desired. It is observed that:

“women are told from their infancy and taught by the example of their mothers, that little knowledge of human weakness, justly termed cunning, softness of temper, ‘outward’ obedience and scrupulous attention to puerile kind of property, will obtain for them the protection of man...”<sup>3</sup>

The things went for beyond over the period of time that the woman had to live with being even subjected to acts of bodily violence and cruelty. Man did not care about its consequences no matter such acts would risk the good health or even the life of a female. Most of these practices, truly, maybe said to have died down yet some acts of violence against female persist to survive unabated and hence the *reason deter* for the

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are to be found in the male species and seldom in female species. There is every evidence that woman is constitutionally normal unlike man and stronger than man. For further details see, W. I. Thomas, *Sex and Society*, p. 51 (London, 1907); Ashley Montagu, *The Natural Superiority of Woman*, (London, 1954), p. 76.

<sup>1</sup> Thorstein Veblen, *The Theory of the Leisure Class*, (London, 1899).

<sup>2</sup> Naomi Weisstein, “Kinder, Kuche, Kirche as Scientific Law: Psychology reconstructs the Female” *Motive*, March – April (1969)78 – 85.

<sup>3</sup> Mary Wollstonecraft, *The Vindication of the Rights of Women*, (London, 1792), p. 33.

study like the one under hand.

## 2. The Problem

Freud, it seems was moved by the violence against women that he once identified “*masculinity with aggressiveness and femininity with masochism*”<sup>1</sup> and observed “*We can not survive in the environment of male sadism and female masochism, a universe of aggressors and victims*”.<sup>2</sup> The worst of the whole story being that female has had no choice but to accept whatever man wished to choose for her or even what the former did to her. In order to please his masculine sensibility, a variety of choices were imposed on her by man only to ensure her greater acceptability to man albeit man as master and woman as his *dependant* an expression deliberately chosen to show the magnanimity of man as a supporter of woman! Looking at the same retrospectively, it may be said that some of the dictates were pronounced aiming at keeping her cool so that she remains faithful and loyal to man and/or aimed at making woman to add to her bodily attraction, even if it involved modification and alteration of her physical self.

In this context the practice like ‘foot binding’ as was practiced in China survived the viscititude of times from the Confucian period down to 1950 when it was finally abolished by the Revolutionary Government of China.<sup>3</sup> The instant practice was supported, on account of its merits, as being a beautifying measure that pleases the male sensuality. Pleasing figure of a female attracts the attention of man towards woman. Even today women undergo surgeries to build and shape their breasts so as to make their personality look pleasing and possess the sex appeal.<sup>4</sup> Similarly, it has been of the masculine liking to observe the outward curves of the breasts and buttock of female so have women been made to wear special apparatus to enforce it, and, in much the same way that a heap of brass rings really does elongate Bantu ladies’ necks and helps the waist to come to exist.<sup>5</sup>

It is similar to the custom of Burmese *Kanyan* tribe whose women practice to stretch their necks in order to add to their beauty so that they become more attractive and acceptable to men.<sup>6</sup> Even in nineteenth century Europe, the belles even went to the extremity of having their lowest ribs removed so that they could lace their corsets tighter.<sup>7</sup> One native tribe of New Guinea uses tight girdles so that flesh tends to swell above and below ligature so that hourglass curves appear.<sup>8</sup> All this is done because the tiny waist is chiefly valued by men, as a point of frangibility for the female frame. At same time, it gratifies sadistic sensibility of masculine fantasy.<sup>9</sup> On the other, hand the deep sense of possession and control of man over woman has given rise to certain inhibitions which the female should exhibit to save herself from the prying eyes of the lascivious men. To put it other way round the female, according to man’s liking, is supposed not to bring her emotions and related drives on her face. In this regard, some scholars have observed that:

Sharp distinction is established between the masculine and feminine characters. From that time on (puberty), this contrast has a more decisive influence than any other on the shaping of human life. It is true that masculine and feminine dispositions are already easily recognizable in childhood. The development of the inhibitions of sexuality namely shame, disgust, pity etc., takes place in little girls earlier and in fact of less resistance than boys...<sup>10</sup>

The practice like breast ironing or breast beating used by people on their female wards/ daughters should be looked at in the afore-stated background as a measure to protect the modesty of their wards. For the same reason, the breast of the pubescent girls is flattened by their mother’s in most of the parts of Cameroon, by ironing or beating it down with the help of tools like grinding stones, pestles, belts and heated objects so that body modification affected to the body of the girl so that she appears less attractive to men. It is looked at as a measure to prevent rape and early marriage of the pubescent.<sup>11</sup>

The practices of body transformation or beautification like the above certainly undermine female dignity and cause bodily injury to women but the same have survived even at the cost of threat to life and dignity of females. This is true even today as it was true the yester year. The story is quite old and points at the kind of disciplines the man has retrospectively imposed on woman on account of self coined pretexts and the woman too

<sup>1</sup> S. Freud, *Three Essays on Theory of Sexuality*, (England. Nd.), p 219.

<sup>2</sup> Norman O. Brown, *Life Against Death*, p. 121 citing S. Freud, op cit.

<sup>3</sup> <http://www.Who.int/mediacentre/factsheets/fs241/en/>

<sup>4</sup> The instant practice has rendered the health of as many as 50 thousand women vulnerable to cancer. CCTV News, 6-01-2012

<sup>5</sup> Thorstein Veblen, *The Theory of the Leisure Class*, (London, 1899), pp. 141-146

<sup>6</sup> Ibid

<sup>7</sup> Id.

<sup>8</sup> Ibid.

<sup>9</sup> Pauline Reage, *The Story of “O”* (Travellers Companion, Paris, 1965), p 18; Thorstein Veblen, *The Theory of the Leisure Class*, (London, 1899), pp. 141 – 146.

<sup>10</sup> S. Freud, *Three Essays on the Theory of Sexuality* (London, 1949), p. 219.

<sup>11</sup> <http://www.Darpan Cool Pics: Female Genital Mutilation.>

eschewed to lodge protests of any kind which is never strange, since woman is historically shown to have consciously surrendered her autonomy and authority to man and accepted masculine subjugation. If anything ever bothered her, hence onwards, it was how to attract the attention of man after pubescent age. The same has been summed up by a famous writer W. I. Thomas a crusader of the women rights as he observes:

“when through man’s social and economic organization she became dependent, and when in consequence he began to pick and choose .... Woman had to charm for her life; and she not employed the passive arts inmate with her sex, but flashed forth in all the glitter that had been one of man’s accessories in court ship, but which he had dispensed with when the superiority acquired through occupational pursuits enabled him to do so. Under new stimulation to be attractive, and with the addition of ornament to the repertory of her charms, woman has assumed almost aggressive attitude towards courtship...”<sup>1</sup>

One can easily understand that the practices that aim at body modification were not practiced without reason. These practices were adopted either to protect modesty of female or else were deemed to promote her attractiveness to the male gentry apart from polygamous man covering up his weakness or inability to meet the biological needs of women under his control. In this regard it may not sound amazing to hear or read that certain practices like Female Genital Mutilation (FGM) that is enough to send shivers down the spine of any civilized being, is practiced throughout the world invariably.<sup>2</sup> That too, in the third Millennium, in the teeth of constitutional guarantees regarding upholding basic human rights like right to life and dignity and the promises made under the International conventions and other related documents that aim at protecting the rights of women and children.<sup>3</sup> The practice is in particular exuberantly followed in African continent in general and in the East African countries in particular.

### 3. Female Genital Mutilation: Meaning and Nature

Female Genital Mutilation or Female circumcision as it was earlier called is not identifiable with any particular people, culture, race or religion as it has been practiced since times immemorial by people invariably through out the world. When and how did the practice of Female Genital Mutilation raise its head cannot be answered with exact certitude? Except, it being reported that Genital Circumcision was practiced as early as 450 BCE and was widely performed through out Egypt and many other societies and cultures performed it on their females.<sup>4</sup> As such, it has no religious basis nor is there any authority supporting female circumcision among the peoples of the Book like Jews<sup>5</sup> and Muslims.<sup>6</sup> So any attempt to trace it to any religion would be farce and futility notwithstanding the fact both Judaism and Islam permit male circumcision.<sup>7</sup> Female circumcision on the other hand may involve the partial or complete removal of the external female genitalia, or cause an injury to the female genital organ for non-medical reasons.

The practice prevails in African continent, middle-east, South east Asia but the West and the Europe is never free from it, may be that the people in the west have succeeded to cover up this activity under the guise of technical and sophisticated labels like “hymen reconstruction”<sup>8</sup> or “Love Surgery” etc or else throwing the practice into the account of immigrant population is a genuine conclusion.<sup>9</sup> Whatever the case, it is performed on girls between few days after birth to the age of puberty. According to estimates of the World Health Organization (WHO), 100 to 140 million girls the world wide are living with the consequence of the Female

<sup>1</sup> W. I. Thomas, *Sex and Society*, (London, 1907), pp. 18, 51.

<sup>2</sup> FGM is practiced by and large in all the continents of the world in one context or the other. Although it is stated that in West and Europe it has spread on account of immigration but fact remains that the Gynecologists in England and United States would remove it during 19<sup>th</sup> century to cure insanity, masturbation and nymphomania. The first reported case of clitoridectomy was carried out in 1822 on a teenage girl regarded an imbecile who was asturbating. For details see, Mohmoh 2005 (<http://books.google.com/books?id=dVjIPORfVAMC&pg=PA5>, p. 5. Also See, *Supra note*, 9; <http://web.archive.org/web/20080113175522/http://www.state.gov/g/wi/rls/rep/crfgm/>

<sup>3</sup> See Universal Declaration of Human Rights, 1948; The Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Social and Political Rights, 1966; Convention on Elimination of All Forms of Discrimination Against Women, 1981; African Charter on Human and Peoples Rights, Against Women, 1979.

<sup>4</sup> It is reported that circumcised females have been found among Egyptian mummies, and that Herodotus (c. 484 BCE - c. 425 B C E) referred to practice when he visited Egypt. There is reference on Greek papyrus from 163 BCE to the procedure being conducted on Girls in Memphis, the ancient Egyptian Capital and Greek geographer, reported it when he visited Egypt in 25 BCE. See Generally: Barstow D. G., “Female Genital Mutilation: the Penultimate Gender Abuse,” *Child Abuse Neglect* (1999) 23: 501 – 510; see also Kouba, L.J., op cit.

<sup>5</sup> Generally see Werblowsky et.al, Ed., *The Oxford Dictionary of the Jewish Religion* (Oxford University 1997).

<sup>6</sup> Gruenbaum, Ellen, *The Female Circumcision Controversy* (University of Pennsylvania Press, 2001), p. 63.

<sup>7</sup> Ibid.

<sup>8</sup> Roberts H., “Reconstructing Virginity in Guatemala.”, *Lancet* (2006) No: 367: p. 1227 – 1228: *Abstract*

<sup>9</sup> Mencimer S., “Casualties of Medicine,” *Legal Affairs*, (2006) Available on, [http://www.legalaffairs.org/issues/May-June/story\\_mencimer\\_mayjun03.msp](http://www.legalaffairs.org/issues/May-June/story_mencimer_mayjun03.msp).



Genital Mutilation among them in Africa an estimated 92 million girls from 10 years and above have undergone this procedure. The highest incidence is reported in Guinea with 98.6%, Egypt with 97%, Somalia between 90 – 97%, Eritrea with 90%, Mali with 93.3 % Sudan with 90%, Gambia with 60 – 90% and more than 50% in Kenya. In the countries like Congo, Niger, Uganda, Togo, and in Tanzania it varies 5% to 18% per cent respectively.<sup>1</sup> The WHO has successfully shown that female circumcision is practiced by people through out the world in varied degree and proportion notwithstanding the fact that different people adopt different procedures in the course of their attempt to circumcise their female folk. On account of this variation in procedures Female Genital Mutilation is categorized into four categories.

#### 4. Classification of the Practice of Female Genital Mutilation

The term “Female Genital Mutilation”, as defined by the World Health Organization includes “all procedures that involve removal of external female genitalia or other injury to the female organs for non –medical reasons”.<sup>2</sup> But the same is not enough to explain this practice because a reader may be surprised to read something like Roman “Circumcision” or Pharaonic “circumcision” or Sudanese “Circumcision” or *Sunnah* circumcision. The invariable labeling of such acts i.e., of circumcision, should not sound intriguing to readers since it simply points at the kinds of circumcision performed on females under different cultures. The former preferred closing around the vaginal hole where as the latter practiced infibulations that was caused by piercing the outer labia with a fibula, or brooch.<sup>3</sup> As such Female Genital Mutilation term apart, the other equivalent terms are generally used to describe this practice that includes female cutting, female genital surgeries, female genital excision, and female genital modification.<sup>4</sup>

Furthermore, whatsoever reasons behind this practice but one thing is for sure clear that the instant practice has conveyed an assurance to man that the woman he intends to claim is untouched and pure or the woman he leaves behind at home does not go stray or else. If the man has more than one wife, she does not bother him thus remains cool because she having lost vigor for sex. It ensures pre-marital virginity of the female since circumcision instills a fear of pain in the mind of circumcised woman, whose vagina remains sealed, may not desire or attempt to break this conventional seal. The circumcised woman is thus deterred to allow the opening of the vagina for illicit intercourse so keeps away from indulging in erratic sexual acts. Besides, no woman would under these conditions with- stand any kind of humiliation of having been discovered to have opened the vaginal seal, again illicitly, prior to any formal marriage.<sup>5</sup> Circumcision was, therefore, preferred because it reduced women’s libido and protected her virginity.

It seems that the *pharaonic* culture, apart from protecting the modesty of the females, also took care to ensure and promote the emotional pleasure that the man generally derives in the course of copulation. Perhaps for this reason circumcision varied from people to people and place to place. Though varied justifications for practicing Female Genital Mutilation are offered naturally the circumcision practice differ in procedure from people to people. For the same reason circumcision is being classified into different categories and the same should be understood in their proper context. The World Health Organization, as early as 2001 observed that the Female Genital mutilation includes all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons.<sup>6</sup> The definition is inclusive therefore for the purpose of understanding the nature of the practice calls for the elaboration so that a vivid picture is drawn as to the kind of procedures generally followed in this regard. The definition so given is enough to point at the variety of practices followed the whole world over and the same has been classified into four different categories:

The type one category “circumcision” is variedly described in different geographical and/or cultural areas of the world. All the same, why it is described as circumcision simple, ritualistic circumcision, and clitoridectomy respectively? The reason may be that it involves the removal of the clitoral hood or partial or total removal of the clitoris, called clitoridectomy.<sup>7</sup> The practice is similar to male circumcision that consists of

<sup>1</sup> See Generally Individual Country Reports: (<http://web.archive.org/web/20080113175522/http://www.state.gov/g/wi/rls/rep/crfgm>).US Department of State, 1 June 2001.

<sup>2</sup> World Health Organization, Female Genital Mutilation, Feb. 2010; see for details: <http://www.who.int/medicare/factsheets/fs241/en/index.html>

<sup>3</sup> James, *The Oxford Encyclopedia of Women in World History* Stanlie M., Ed., “Female Genital Mutilation” in Smith Bonnie G., (Oxf. University Press, 2008), pp. 260 – 262.

<sup>4</sup> Boyle, Elizabeth Heger, *Female Genital Cutting: Cultural Conflict in Global Community*, (Hopkin University Press, 2002), p. 60.

<sup>5</sup> Kouba, L. J., et. al., “The Female Circumcision in Africa: An Over view”, *African Studies Review* (1985) 28, 1 pp. 95 – 110.

<sup>6</sup> See for detailed discussion: <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>7</sup> Nussbaum, Martha Craven, “Judging Other Cultures: The Case of Genital Mutilation” *Sex and Social Justice* (Oxf. University Press 1999) pp. 119 – 120; also see: Body J. “Womb as Oasis: The Symbolic Context of Pharaonic Circumcision in Rural Sudan”, *American Ethnologist*, Vol.9 no: 4 (1982), pp. 682 – 698.

removal of the male prepuce from the penis, and for women removing of the prepuce of the clitoris might be based on analogy perhaps being something superfluous therefore needed alike both in males and females. But there are scholars who argue that the practice is not all analogous to non-mutilating male circumcision, in which only forsaken skin is cut off from the tip of the penis without damaging organ itself.<sup>1</sup> Contrary to this female circumcision does not only injure and alter the female organ but registers an adverse impact on sexual and emotional life of women therefore deserve close scrutiny for its existence or elimination from the social life of girls and women alike.<sup>2</sup>

Category two circumcision involves the excision of the clitoris with partial or total excision of the labia minora or the inner or outer labia or it may even involve removal of both the inner and outer labia. The other terms used for this kind include clitoridectomy, excision or circumcision and infibulation.<sup>3</sup> It is (mistakenly) even termed as Sunna excision because it involves removal of the male part as they call it from the vagina of the female as such who is purified only after circumcision.<sup>4</sup>

The type three circumcision involves the excision of part or all of the genitalia commonly called *infibulation* or *Pharaonic* or *Somalian* or *Sudanese* circumcision. In this the inner and outer labia are cut away with or without the excision of clitoris. The girl's legs are tied together from hip to ankle for about 40 days to allow the wound to heal. The immobility causes the labial tissue to bond, forming a wall of flesh and skin across the entire vulva, apart from a hole of the size of a match stick for the passage of urine and menstrual blood, which is created by inserting a twig or rock salt into the wound.<sup>5</sup>

A variety of other practices like pricking, piercing or incising of the clitoris and /or labia; stretching of the clitoris and/or labia; cauterization by burning of clitoris and surrounding tissue or scarring the genitals, or introducing harmful substances or herbs into vagina to stop bleeding and for tightening or narrowing it.<sup>6</sup> This ranges from the ritual nicking of the clitoris – the main practice in Indonesia – to scraping of tissue surrounding the vaginal orifice (*angurya* cuts or cutting of vagina (*gishiri* cuts) a practice in which the vagina's anterior wall is cut with knife to enlarge it,<sup>7</sup> or hymenotomy that involves the removal of hymen regarded as too thick.<sup>8</sup> A survey of the practice has genuinely prompted the scholars studying the problem to rightly observe that “women, in countries that practice female genital mutilation, call it one of the “three feminine sorrows”: the first sorrow is the procedure itself, followed by the wedding night when the women with type three has to be cut open, then childbirth when she has to be cut again.”<sup>9</sup> It may not be out of place to mention that 15 percent out of the total women, who have undergone the procedure, account for third type of circumcision but it being found that up to 80 – 90 percent women account for such procedure in Sudan, Somalia and Djibouti.<sup>10</sup> Again it is worth attention that out of 140 million, Africa account for about 92 million women and girls having undergone the procedure.

## 5. Female Genital Mutilation and Its Effects

The saying goes that selfishness is nothing but the imposed madness which on one hand blinds the eyes and seals the ears, and on the other hand closes down the window of logic that otherwise differentiate human species from other living organism. Looking at the practice like Female Genital Mutilation, it undoubtedly, is the creation of masculine man who has retrospectively been trying to maximize sensual pleasures so have successfully devised ways and means to lure the woman and impose on her biological infirmity that would further increase her dependence on man. In line with this strategy the masculine man busied himself in constructing reasons and arguments in favor of practices that in real belittle womanhood and compromise the autonomy, dignity and sense of self respect of women. This has been achieved in the name of culture, modesty, social cohesion, group solidarity, custom and the like. Where all these factors fail to realize the results the last and most effective

<sup>1</sup> Nahid Toubia, *Female and Genital Mutilation: A Call for Global Action* (1993) pp. 9 – 15.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Nassbaum, Martha Crave, *op cit.*; also see Generally Reports of the World Health Organization, *Female Genital Mutilation* (2008) and WHO : *Eliminating Female Genital Mutilation*, (2010) pp. 4, 22 – 28.

<sup>5</sup> Elmusharaf, S., *et. al.*, “Reliability of Self reported form of Female Genital Mutilation and WHO Classification: Sectional Cross Study,” *British Medical Journal*, (2006) Vol.333. pp. 106—107, 123 – 124; also see: *U.S. Aepartment of State*, *Female Genital Mutilation/Female Genital Cutting: Individual Country Report*, (2001, June 1<sup>st</sup>) p. 14; Momoh, *op cit.*, at pp. 22 – 24; Pieters, G. *et al.*, “ Infibulation in the Horn of Africa,” *N. Y Journal of Medicine*, Vol. 77 No. 5 p. 730 – 31; Gollaher, David. , “Female Circumcision” in: *Circumcision: A History of the World's Most Controversial Studies* (Basic Books 2001) pp. 187 – 191.

<sup>6</sup> World Health Organization, *Eliminating Female Genital Mutilation*, (2008) pp. 4, 22 – 28, in particular see *Annexure 2*, p. 24.

<sup>7</sup> James, Stanlie M., “Female Genital Mutilation,” in: Smith Bonnie G., *op cit.*, pp. 260 – 262; See also Fourcry J. L., “Female Circumcision,” *American Family Physician*, (August, 1999).

<sup>8</sup> *Ibid.*

<sup>9</sup> Fourcroy Jean L., “The Three Feminine Sorrows,” *Hospital Practice*, 33 (7): pp. 15 – 16, 21.

<sup>10</sup> Nussbaum Marth Craven, *op cit.*, at p. 119 – 120.

weapon namely religion has been pressed into service to achieve the desired results.

Female Genital Mutilation popularly known as female circumcision is one of such practice's that has been perpetrated by the masculine man through its supportive arm namely woman albeit wife or mother whom he, once upon a time, successfully impoverished intellectually, economically and socially ever since the social evolution became reality. Therefore, in case of female circumcision elaborations around it have so lucidly been organized that ever since its inception it is observed without any shame and any break. The sense of guilt and shame is taken away from such a heinous act. The mothers who have their daughters to undergo genital mutilation believe they are doing the right thing and violating women's right of physical control over their bodies the least. They do it to up hold social convention and perpetuate social cohesion. The culture of impoverishment should survive, no matter it may endanger the life of the beloved one, and is a kind of sensibility espoused by the masculine male.

So the social pressure behind it has been a major motivational force that has helped to perpetrate this practice to such an extent that those who ever attempted to ban and prohibit this practice were confronted both by women and men as it amounted to total invasion of the cultural identity of the people. Not that the girl who does not undergo this procedure virtually breaks the social bond but she becomes object of social ridicule and may even suffer castigation since such girl or woman is branded as unclean. For example, the *Masai* people in Tanzania do not eat from the hands of a woman who has not undergone the circumcision procedure, hence meticulously ensure that the practice is not abandoned. So much so that an uncircumcised mother is not called mother when she has children thus remains deprived of the noble title which every married woman craves to receive.<sup>1</sup> As such this practice has emerged as a source of social cohesion and solidarity against a heavy price like female not only risking her health but sacrificing her sexual desire through allowing the mutilation of her sex organ and or allowing the modification of her sexual organ. Social cohesion is the most convincingly pleaded else where by those who keep the instant practice living.

Again, the imitation is the primary tool that has helped social evolution, naturally in some societies the practice is followed because of imitation by other groups.<sup>2</sup> Whether or not the Genital Mutilation is the best way of raising a girl and preparing her for the adulthood is debatable but the most convincing philosophy behind it has been that it is a practice that assures and re-assures the masculine male that the girl has not enjoyed sensual pleasures prior to marriage that would otherwise become the source of psychological torture to him as father, brother of the woman he concerns with. In most of the societies such apprehensions become the source of perpetrating the practice of honor killing or may sow the seeds of discord otherwise in a family that may be difficult for the husband to reconcile with.

But whatever the arguments presented in favor of this practice the same has certainly been putting at risk otherwise the sound health of the circumcised female. The adverse effects registered on the female are worth attention too. The psychological and psychiatric effect apart it would adversely affect the sexual life of the circumcised female. Since the practice is carried out by traditional practitioners, without anesthesia, using unsterile cutting devices such as razors, knives, scissors, cut glass, sharpened rocks and finger nails and applying suturing material such as agave or acacia thorns consequently it gives rise to consequences that may on occasions be very fatal.<sup>3</sup> It includes the consequences like urinary retention, urinary infection, wound infection, septicemia, and tetanus and in case of unsterile and reused instruments, hepatitis and HIV.<sup>4</sup> The late complications depend on the type of FGM performed on or by the female. The formation of scars on vagina may lead to the fistula formation of the urinary tract. Urinary tract sequelae include damage to urethra and bladder with infections and incontinence. It may also include vaginal and pelvic infections, dysmenorrhea, dyspareunia, and infertility.<sup>5</sup> Apart from complete obstruction of vagina that results in hematocolpo and hematometra, the other complications associated with the practice include formation of epidermoid cysts involving nerves that supply the clitoris and become a source of pelvic pain.<sup>6</sup> Such women also complain about sexual dysfunction and dyspareunia or painful sexual intercourse.

On the other hand women having undergone 3<sup>rd</sup> category circumcision develop recto-vaginal fistulae i.e., holes that allow urine and feces to seep into the vagina thus making it difficult to get urine samples making the diagnosis of prenatal care making conditions difficult besides impeding the cervical evaluation that prolong the labour pains. Also that, the third degree laceration, and anal sphincter damage, and emergency caesarean

<sup>1</sup> Boyle Elizabeth Heger, *Female Genital Cutting: Cultural Conflict in Global Community*, (John Hopkin Press, 2002) 37.

<sup>2</sup> See *Supra note*, 32.

<sup>3</sup> Abdulcadir, J., *et. al.*, "Care of Women with female Genital Cutting," *Swiss Medical Weekly*, doi: 10.4414 (<http://dx.doi.org/10.4414%2Fsmw.2011.13137>).

<sup>4</sup> Abdulcadir, J., *et. al.*, *op cit*.

<sup>5</sup> Kelly Elizabeth, *et al.*, "Female Genital Mutilation., *Current Opinion in Obstetrics and Gynecology* (2005) vol.17 (5), pp. 490 – 4.

<sup>6</sup> Dave, Amish J., *et al.*, "Female Genital Mutilation: What Every American Dermatologist Needs to Know," *Dermatologic Clinic* (2011) Vol. 29(1), pp. 103 – 109.

section are more common in FGM women.<sup>1</sup> Researchers have come out with various details regarding the Neonatal mortality risks associated with FGM. A study sponsored by the WHO shows that all types of FGM were found to pose threat to the life of new born babies. For example, among type 1<sup>st</sup> it was found that 10 – 20 babies died per thousand deliveries as a result of FGM. This ratio of death put at 32 percent higher for type 2<sup>nd</sup> and mortality rate was put 55 percent for type 3<sup>rd</sup> category.<sup>2</sup>

Although very little research seems to have been done to measure the relationship between FGM and HIV, yet some studies have shown greater relationship between the two as such the circumcised females have shown increased risk of HIV among women than the women who had not undergone FGM.<sup>3</sup> The instant practice, in nutshell produces some immediate and the late consequences. The incidence of HIV, for example, was found associated with it and its incidence increased where the marriage partner of the woman was younger or of the same age of the female who having undergone the procedure. However the rate decreased where the marriage partner was older than the woman in marriage.<sup>4</sup> For example it has been shown that in Tanzania the odds of being HIV positive was roughly twice among women undergone FGM than those women who had not undergone any FGM.<sup>5</sup> As such the instant practice does not appear to be in any way beneficial to woman or her off springs except that it poses a great risk to the life of a woman and even to her child in her womb.

## 6. Policy of Law and FGM

The practice like FGM is only a tip of the iceberg that in fact may help to reveal the painful story of woman. It being only one of the practices that would help to read the impression-less face of woman compounding the problem namely to assess that how does a woman feel about environment around her and what do her experiences mean to her? Yet why did she play mute, has been more intriguing? It may be difficult to find an answer to these questions in some definite and categorical terms. Has woman been wise in keeping her association with man going unobstructed? She supported the masculine desire to undergo circumcision as being an act of *tahara* as Egyptians put it; *tuhur* or *bolokoli* as Sudanese and people of Mali respectively call it because like a hypnotized subject she would argue:<sup>6</sup>

“By allowing...genitals to be removed [it is perceived] you are heightened to another level of pure motherhood – a motherhood not tainted by sexuality and that is why woman gives it away to become matron, respected by every one. By taking on this practice, which is a woman’s domain, it actually empowers them.”

This idea has percolated into her bone and blood that is why she did not respond to the pleadings of the Missionaries in Kenya who in 1920’s and 1930’s called upon the adherents of Christianity to give up the practice of clitoridectomy. Ignoring the benign call, women joined hands with tribal men and together fought and launched an independence movement. The Kikuyu of Kenya who perceived the call to abandon the circumcision practice as a cultural imperialistic attack. This was taken to its logical conclusion by Kenyan’s when British rulers prohibited the procedures in 1950’s as the same strengthened the *Mau Mau guerrilla* resistance against British.<sup>7</sup> Similarly else where also woman has preferred to stand by the man no matter what the price! Why did she construe the acts that have been otherwise most perilous to her physical health, dignity and integrity, in most constructive way least realizing that the same would not only breed cruelty but promote inequality against female folk to the extent of denial of its basic rights like right to life, right to equality and right to her privacy and dignity? Does it reflect upon her timid nature or it be construed as her extra-ordinary courage and wisdom? These are the questions that would always demand an answer since the practice like FGM essentially violate the same.

Whatever be the case it has to be admitted that the attitude of woman has been bold and courageous in the course of taking her journey with man. She has remained patient and has never been temerarious in her response to the kind of treatment met to her at the hands of masculine man yet, instead of revolting she seems to have preferred to play mute so that the march of mankind is not stalled and the cultural evolution of mankind is not arrested at all costs, least caring about its deleterious consequences that did retrospectively stifle her body and soul, virtually reducing her to an empty voice and pitiful shadow. All this treatment and tyranny she

<sup>1</sup> *Supra note*, 41.

<sup>2</sup> *Ibid*.

<sup>3</sup> Banks, E., *et al.*, “Female genital mutilation and obstetric outcome: WHO collaborative prospective study in Six African Countries,” *Lancet*, Vol. 367 (9525), pp. 1835 – 41. In the instant study the delivery wards at 28 obstetric centers at Burkina Faso Ghana, Kenya, Nigeria, Senegal and Sudan were monitored and as many as 28393 women attending delivery wards studied.

<sup>4</sup> *Ibid*.

<sup>5</sup> *Id*.

<sup>6</sup> <http://www.Female genital mutilation—Wikipedia, the free encyclopedia>, pp. 1 – 22 at p 5.

<sup>7</sup> Kenneth Mufaka, “Scottish Missionaries and the Circumcision Controversy in Kenya, 1900—1960,” *International Review of Scottish Studies*, Vol. (28), 2003.



withstood believing that the grand procession of mankind may one day move from darkness to light and the shackles of woman's slavery may automatically fall down, so shall be she free to walk shoulder to shoulder with dignity and self respect alongside the so-called "man" thus contribute towards evolving a sex neutral civilization. The conjecture was yet to prove its worth that the debate about "equality" between mankind, in particular with reference to "woman" was initiated by philosophers at different intervals of history. The same was cherished by people as a novel product of intellectual genius. The thought had not sprouted yet that the Euro-English views on the subject traceable to Socrates and reproduced by his disciple Plato connected equality to meritocracy that ultimately gave birth to class stratification ending up indirectly in sex discrimination.<sup>1</sup> Although the views expressed by Plato, as observed by professor Kitto, were his personal yet the same registered their effect globally. For example Plato is reported to have observed:

"To free women to any extent from family ties is to free her to do other things; but if you expect them to do same things as men, they are likely to end up inferior to men."<sup>2</sup>

This was sufficient to neutralize any positive move towards considering equality of sexes; therefore, holding womanhood in great esteem and dealing with women with dignity and respect remained an object to be achieved. As a sequel to it nothing was achieved in this regard since man did not give up differentiating homosapiens in terms of sex but the same was being over stated and exaggerated and the mankind least caring to look at male/female divide in its natural and evolutionary sense preferred to emphasize on biological divide and stereotyping of roles or cultural conditioning.<sup>3</sup> The cry for equality of homosapiens assumed momentum as soon as Hobbes and Locke of the Aristotelian genius rekindled the interest in political philosophy. They perceived liberty to be equivalent to equality.<sup>4</sup> But contemporaneously it may be found that the followers Rousseau emphasized on "natural equality" which over the passage of time emerged as motivating factor in the interventionist evolution of the state and proved a step towards the progressive development of the people.<sup>5</sup> It influenced people in authority to bridge the gap between the haves and have not's on one hand and the men and women on other hand who were hitherto regulated by the discriminatory laws and legal tradition.

The goal of readjustment of the relations was difficult to achieve without identifying the existing levels of disparity and discrimination operating at different levels. In this regard the ideology of J. S. Mill and Jeremy Bentham assumed great significance. Their thoughts were utilized to propagate that the chances of arbitrary advantages attainable should be at the best minimized. Bentham to this effect propounded that the utility of law is to ensure "greatest good of greatest number."<sup>6</sup> But to fight inequality practically it was for the first time that Dicey introduced a formalistic view of equality. It was required that the law be equally imposed and equally administered in ordinary courts of law.<sup>7</sup> The jurists began to read more and more in this formalistic model. Hence "equality among equals" like postulate assumed meaning.<sup>8</sup> It was felt further that the formalistic ideals might prove meaningless unless the scope of this ideal was extended to cover social and economic ideas too. As a consequence efforts were organized to aggregate the indentations visible at the societal levels warranting greater intervention of the state to remove prevailing disparities and discriminations. In the post world war 2<sup>nd</sup> the events took a new turn.

Now the emancipation dawned upon mankind to fight inequalities and discrimination of all kind including the one based on sex that had threatened peace and order in the past.<sup>9</sup> Around the same period came in circulation the theory of "equality" propounded by John Rawls. Like Aristotle, he successfully had woven elaborations around "justice and expectations" and thus put his theory within the philosophical frame specifics and emphasized on redistribution of justice. He emphasized that the purpose of law is to ensure: "the least

<sup>1</sup> Plato, *The Republic*, Translated by Desmond Lee, London (1974) pp. 11, 115 – 122. For example, Plato is reported to have observed "only difference between men and women is of physical function ... one begets, the other begets children. Apart from that, both can should follow the same range of occupations and perform the same functions (though the men will on the whole perform better), they should get same education to enable them to do so. In this way the society shall get best value from both."

<sup>2</sup> Id., at 47.

<sup>3</sup> Robert Bierstedt, *Social Order*, citing Marget Mead, *op cit.*, p. 359 (1979).

<sup>4</sup> Locke directs the absolute imperative inherent in natural equality not against any kind of subordination but against that only which may authorize us to destroy one another, as if we were made for one another's use, as the inferior ranks of creatures are for ours. See, Martin Sellenger, *The Liberal Politics of John Locke*, (London, 1968) pp. 50 – 51; also see, Mcpherson C. B, *The Political Theory of Possessive Individualism* (Oxford, 1962), 231.

<sup>5</sup> Rousseau, *The Social Contract* (tr. Maurice Cranston, London, 1977), Vol. I, 56 – 57; also see, T. A. Sinclair, *Aristotle – Politics*, (tr. London, 1977) pp. 56 – 57 & 236 – 237.

<sup>6</sup> Jermy Bentham, *The Theory of Legislation* (Delhi, 1979) p. x; also see, Martin Hollis, *A Death of One's Own Philosophy and Medical Welfare Supplement to philosophy* (23<sup>rd</sup> Edn.).

<sup>7</sup> Generally see: Albert V. Dicey, *Introduction to the Study of Law of Constitution* (London, 1965).

<sup>8</sup> T. A. Sinclair, *Aristotle – The Politics*, (Tr. London, 1977) III: 127.

<sup>9</sup> See The General Assembly Resolution 217 (III) of December 10<sup>th</sup> 1948 Regarding "Universal Declaration of Human Rights."

fortunate is equally benefitted and the inequality is kept at a justifiable and minimum level.”<sup>1</sup>

Although justice and equality is the distinguishing feature of these theories and the same being the life nerve of Rule of law yet none of it has ever been deemed to be absolute, nonetheless the same have been relied upon to weed out inequalities and discriminations as the same call for more and more intervention of the state in different areas of social reality especially the one that likely threatens the right to life of the people in general and that of female folk in particular.

## 7. States of East African Union and FGM

Notwithstanding the fact that most of the member states grasped the meaning of the revolutionary ideals propounded by the philosophers and as matter of prudence adopted some of the ideals which most of the democracies of the world were already experimenting with. The same was deemed necessary to fight socio-economic inequality so as to fight discrimination of all sorts and find a place among the civilized peoples albeit nations of the world. Towards this end they have ratified the Covenant on Civil and Political Rights, 1966 and the Covenant on Economic Social and Cultural Rights, 1966, Elimination of Violence against Women, 1993.<sup>2</sup> Apart from this, the Beijing Declaration and Platform for Action, 1995 have had a potent effect to stimulate a new thinking about women and their problems. But the formation of Organization of the African Union and conclusion of the African Charter<sup>3</sup> was a major achievement since it served as the spring board of highest ideals and finds reflection in the respective constitutions of these states. In pursuance to the Protocol to the African Charter on Human and Peoples Rights, on the Rights of Women in Africa, 2003 was adopted that calls upon member states to eliminate all forms of harmful practices especially the FGM through legislative means.<sup>4</sup>

It is in the afore stated background that since early 1990 African states like Ghana, Togo and Burkina Faso, and Cote d'Ivoire adopted legislative measures imposing severe penalties as a result the practitioners it is reported stopped FGM because they were convicted by the court.<sup>5</sup> Tanzania criminalized FGM as late as 2002 by virtue of an amendment to its penal code that inter alia lays down: "... anyone having the custody, charge or care of a girl under 18 years of age who causes her to undergo FGM commits the offence of cruelty to the child.”<sup>6</sup> It is further augmented where the Law of the Child Act unambiguously declares so prohibits cruel acts or omissions, degrading and inhuman cultural practices that may cause physical harm or impair the well being of the children.<sup>7</sup> Similarly. In some states measures are adopted to sensitize the police for the effective monitoring of the violations.<sup>8</sup> These states respectively proclaim and guarantee protection of the basic human rights including the right to life which includes living with dignity.<sup>9</sup> This is in addition to the Special Provisions Act, 1998 that prohibits FGM and makes it liable fifteen years imprisonment or liable three hundred thousand Shillings fine.<sup>10</sup> But the Given this fact one may wonder how and why the practice like Female Genital Mutilation still exist in East African Countries or why adequate measures like the one India took to suppress the most awesome customs like Satti<sup>11</sup> and /or dowry prohibition.<sup>12</sup>

No doubt most of the African countries have enacted laws declaring Genital cutting punishable yet this practice keeps on flourishing than being controlled if not eradicated.<sup>13</sup> It is therefore least surprising that more than three million girls are at the risk for cutting each year in African continent alone. In this regard among East African countries Kenya has the highest FGM rate of 25.6 percent followed by Tanzania that stands at 15 percent.<sup>14</sup> At the height of it the FGM ceremonies are daringly held after every two years so much so more than

<sup>1</sup> John Rawls, *The Theory of Equality*, (N.Y 1974).

<sup>2</sup> Art 2 lays down that "Violence against women include female genital mutilation."

<sup>3</sup> *African Charter on the Rights and Welfare of the Child*, 1990 entered into force on Nov., 29, 1999.

<sup>4</sup> Art. 5(b).

<sup>5</sup> *Awaken News Letter*, December, 1998, p. 8.

<sup>6</sup> Tanzanian Penal Code, Cap.16 (R.E., 2002).

<sup>7</sup> The Law of the Child Act, 2009, section 13(i).

<sup>8</sup> *Id.*, at 1.

<sup>9</sup> For example see: *The Constitution of Peoples Republic of Tanzania*, 1977. Arts 14 and 15 *The Constitution of Zanzibar*, 1984, section 11.

<sup>10</sup> Section 169 – A.

<sup>11</sup> Satti Prohibition Act, 1987.

<sup>12</sup> Dowry Prohibition Act, 1961.

<sup>13</sup> For example see, *Sudanese Penal Code of 1925*. The practice is prohibited under the Sudanese Penal Code of 1925. Similarly Tanzanian Sexual Offences Special Provisions Act of 1998, section 169 – A, prohibits FGC and makes it liable five to fifteen years imprisonment or a fine not exceeding 300,000 shillings or both and compensation upon the to be determined by the court. Uganda has outlawed this practice and is subjected to 10 years in prison. If the life of the patient is lost during the operation a life sentence is recommended. The section 8 of the children Statute makes it unlawful to subject a child to any social or customary practice that are harmful to child's health.

<sup>14</sup> Population Reference Bureau Female Genital Cutting: Data and Trends (2010) p 5. It is worth attention that the instant data does not correspond U.S Department of State, 1 June 2001 that puts it 18% for Tanzania. See:

5000 girls to be subjected to FGM practice in 2010 alone in Tarime one of the districts of Tanzania and a fact finding mission found 770 young girls from the surrounding villages on 6<sup>th</sup> December being mercilessly pooled together and mutilated and the same was reported by the print media.<sup>1</sup> As such it shows that the states have shown concern to ameliorate the condition of females in general and to weed out discriminatory practices like FGM in particular so as to realize the dream of the makers of the constitution. Yet these states have by and large failed to adopt “nip the evil in the bud” principle to arrest the female specific discriminatory trends.<sup>2</sup>

It may be genuinely asked why the states facing such menace delay a comprehensive legislation than prefer to rely only on mere amendments to their penal codes in this regard. It has to be borne in mind that FGM is a phenomenon that needs to be dealt with sternly under a comprehensive legislation than merely being dealt with stray amendments to the penal codes as Uganda, Kenya and Tanzania did respectively.<sup>3</sup> The lack of swift response from the states is bound to encourage the potential law breakers to conduct FGM. It has to be borne in mind that due to state’s inaction or infirm dealing a small discriminatory trend may gradually spread its tentacles until it assumes the posture of an epidemic and takes over the whole society.

Looking at Female Genital Mutilation in this back drop it may be deduced that, at least, there are three main reasons for the discriminatory trends against the women spreading unabated. The first being morbid gender psychology that comes to conscious level very frequently. Man manifests it through such practices and quite often invents visible and invisible, noticeable or unnoticeable discriminatory practices to satisfy his grandeur or gender ego. On occasions the sadistic tendencies may over- power man’s humanitarian sentiment depending on the idyocency of an individual? This being exceptional, so it may be decided on the case to case basis.

The second and most important reason being the state’s failure to respond appropriately on time to a discriminatory practice. As a matter of principle the graveness of the problem would demand and so solicit immediate and appropriate attention of the state as would a patient solicit immediate and appropriate attention of the doctor. The state’s apathy, surfaces where it fails to detect and thwart commission of such practices that may otherwise wreck an unimaginable catastrophe. As a result an unhealthy and dangerous practice against woman may not only prevail but may give birth to new kind of problems. The whole phenomenon shows inactive and ineffectiveness of the agencies, organizations and groups who could bring about social change through projecting the instant practice as a great health hazard and thus high lighting dangers to life associated with FGM. This also proves that the state too has failed to publicize its dangers that could have been easily achieved through conducting conferences, seminars and workshops on the subject.

The third reason may be the disregard for the legislation or failure of the state to exercise effective vigil over the enforcement of legislation aiming at curbing a particular practice against women in its letter and spirit. The afore stated effects are discernible from the literature pointing at the states that have enacted legislation aiming at curbing the practice of Female Genital Mutilation on their statute books.<sup>4</sup> Then why is it that law enforcement agencies take note of the incidents of FGM but the same agencies fail to punish the guilty? Is it that the masculine sentiments swerve them away and hence on one pretext or the other absolve the perpetrators of crime from their criminal liability?<sup>5</sup> This kind of attitude is commonly adopted by the judiciary in the developing countries. For example, the attitude of courts in dowry death cases in India is worth attention because in these cases the courts have done a painstaking job to find pretexts to either acquit the accused or showed softness and reduced the sentence of the accused.<sup>6</sup>

It may be thus observed that “soft justice” or “no justice” formulae adopted by the custodians of law do not only put such remedial legislations at naught but the same in its turn augment the existing levels of discriminations generated through stereotyping of roles and traditional approach of the society. The Luke warm attitude of the administrative machinery be it the legislature, investigating agencies or the judiciary is bound to generate negative social reverberation sufficient to neutralize fear from the minds of potential violators and tempt them to go ahead with their intentions to flout the law that aims to protect the life and the interests of the so-called weaker section of the society. If the menace like Female Genital Mutilation is juxtaposed against the

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<http://web.archive.org/web/200080113175522/http://www.state.gov/g/wi/rls/rep/crfgm/>

<sup>1</sup> ShebeSemptapa, “Wasichana 5000 Kukeketwa Tarime” *Tanzania Daima Newspaper*, 2<sup>nd</sup> December, 2010 cited in *Tanzania Human Rights Report*, 2010.

<sup>2</sup> For detailed information with regard to legislative measures taken by African countries in particular and other States in general see: *Supra note*, 32.

<sup>3</sup> *Id.*

<sup>4</sup> For details see: <http://www.who.int/mediacentre/factsheets/fs241/en/>; <http://us.mg.yahoo.com/neo/launch?rand=6iolsf29mLj>

<sup>5</sup> It is reported that follow up action by the law enforcement agencies has remained wanted in all these countries that have floated legislation aiming at curbing the FGM practice. See, *ibid.*

<sup>6</sup> For example see: *Amarnath Gupta v. State of M.P* (1990) *Cr.L.J.*, 2163; *Wazir Chand v. State of Haryana* (1988) *SCALE*, 1477. Although it has to be admitted that trend is gradually changing but fact remains that masculine idiosyncrasies on occasions come to surface.

above mentioned variables this phenomenon becomes self explanatory.

From the same it appears that FGM is squarely rooted in the inequities existing at various levels of the African society. Consequently any people socially weak and economically deprived are always willing to follow than to lead because such a group does not possess sufficient psychological puissance to fight back the inequities. The fact remains that very idea of FGM is tolerated by female folk to please man because FGM assures women their safe place both in their household and community. They are not prepared to lose the love and the attraction of man that too in the teeth of their economic dependence and intellectual impoverishment. As a result the practice continues to survive and thrive even under a broader cover called culture which includes ideology, custom, religion, fashion, and law without any consideration with respect to basic rights like right to life and liberty, right to privacy or right to control ones own body and the dignity of woman. To deal with this problem there is need that national and international groups focus on realizing economic and intellectual empowerment of women otherwise mere persuasion and coordination with different community groups or whatever may not help much in this regard. The states should sensitize the people involved in the administration of justice towards the urgency of controlling the menace of FGM that causes a direct threat to the interests of the state.

## 8. State Interest and FGM

The protection of an “individual’s life” and the value of the “right to life” are primary interests of any state.<sup>1</sup> Although preservation of life is an abstract proposition yet it may be understood to mean anything and everything that belongs to the individual and makes its life pleasing and meaningful. This presumption works on the assumption that every person wants to continue his life even if he may not be able to adequately protect himself or herself.<sup>2</sup> But the “Life” is itself a complex proposition since it starts with a foetus in the mother’s womb as such its protection and safety is the priority concern of the state as is the protection of an individual. Life starts with a foetus and protection of the same is equally among the interest and priority goals of the state consequently, legal systems the world wide protect the child in the womb. It is true that child in womb has no existence of its own apart from that of the parent i.e., mother. It is also true that without protecting foetus we can not protect the child or the man. It is in this respect that Female Genital Mutilation should assume primacy and naturally should attract the attention of the state because FGM poses threat to both mother and the child. The World Health Organization sponsored study of 28,393 pregnant women has shown that all types of FGC were found to pose an increased risk of death to the babies at least 15 percent for type I, 32 percent for type II, and 55 percent for type III. Mothers with FGC Type III were also found to be 30 percent more at risk of cesarean<sup>3</sup> and had a 70 percent increase in postpartum hemorrhage compared to women without FGC. Estimating from these results it is further observed that an additional 10 to 20 per thousand babies in Africa die during delivery as a result of mothers having undergone genital cutting.<sup>4</sup>

This apart, that not has only the meaning of the life underwent a change but its protection too assumed a new meaning. As such it is said that protection of life does not mean only physical protection of the body of an individual. It is the recognition of the need to protect the “sanctity of life” that is utmost important in the modern jurisprudential thought.<sup>5</sup> The meaning of life was elucidated and brought home by some American Judges. In *Munn v. Illinois*,<sup>6</sup> Justice Field, dissenting from the majority, spoke of the right thus:<sup>7</sup> “By the term “life” as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm, or leg or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with other world.” The concept of right to life and personal liberty has over the period of time come to occupy the position of “brooding omnipotence in the scheme of fundamental rights.

This has become a “sanctuary for human values” and has been rightly termed as the “fundamental of the fundamental rights.” The right to life received attention of the judiciary in India and the Judges in the course of revisiting it and illuminated its grey areas stretched its meaning beyond its conventional contours and imbued it with the concepts like “human dignity” which is otherwise foundation and life nerve of all other rights. The Supreme Court of India per Justice Bhagwati elaborating right to life in Francis Caroline Mullin Vs Delhi

<sup>1</sup> See: Kate E. Bloch, Note, “The Role of Law in Suicide Prevention Beyond the Civil Commitment – A Bystander’s Duty to Report Suicide Threats,” 39 *STAN. L. Review* (1987) pp. 933 – 34.

<sup>2</sup> *Ibid*, at 936.

<sup>3</sup> Banks, E., et al., “Female genital mutilation and obstetric outcome: WHO Collaborative Prospective Study in Six African Countries,” *Lancet*, Vol. 367: no: 9525 at pp. 1835 – 1841.

<sup>4</sup> *Ibid*.

<sup>5</sup> Yorman Distein, “The Right to Life: Physical Integrity and Liberty,” in Louis Henkin, Ed. *The International Bill of Right* (N.Y 1981) pp. 114 – 115.

<sup>6</sup> 94 U.S. 113 (1877).

<sup>7</sup> *Ibid*.



Administration<sup>1</sup> observed:<sup>2</sup>

“The right to life...cannot be restricted to mere animal existence. It means something more than physical survival...*The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed....*But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that *right to life includes the right to live with human dignity and all that goes with it....*, and the right to carry on such functions and activities as constitute bare minimum expression of oneself.”

Juxtaposing the right to life with the medical consequences that flow from Female Genital Mutilation one may be prompted to argue that the instant practice does not only pose a threat to right to life but one may wonder whether or not it violates the right to dignity of the women who are made to undergo genital mutilation under the garb of culture. The short term and long term effects of this practice sufficiently reveal that the Female Genital Circumcision violate the right to life of woman since the practice is believed to reduce a woman’s *libido* so as to resist the temptation to engage in sexual activity thereby limiting their right to sexual enjoyment. Although it is reported that FGC does not eliminate all sexual pleasure for all women who undergo the procedure, but it does reduce the likelihood of orgasm.<sup>3</sup> Does not violation be it small or grave constitute violation especially when the person affected are deprived of enjoying the life to their full hence least palatable? Does it not amount to violation of privacy and denial of the control over their bodies, to them? The practice, it seems, impairs the biological being of woman and her control over the normal functioning of her sexual organ so is impaired their right to make choice as to when and with whom to mate.

It does not only amount to denial of enjoyment of right to life but the practice in question undermines the dignity of a woman too since FGC undermines the significance of the magnificent gate of life and its sanctity is desecrated once it is tempered with. Apart from that it imposes disabilities of worst kind on woman. The women having undergone FGC are likely to fall prey to HIV than those who have not undergone any such procedure. It results in biological complications that make normal life of genitally circumcised women difficult because of becoming prone to infections of various kinds.<sup>4</sup> Apart from this they are found to be stressed, anxious and aggressive thereby damage their psychological conditions of mind.<sup>5</sup> What more than this should connote the violation of right to life? Apart from that it deprives a female to claim control over her body thus results in violation of her dignity. In either case FGM is the gravest violation of the municipal and International instruments like Declaration of Human Rights Resolution, Convention on Civil and Political Rights, 1966, Convention on Social, Economic and Cultural Rights, 1966, Convention of Elimination of Discrimination Against Women, 1982; Moputo Protocol,2003.<sup>6</sup> The states are obliged to take adequate measures to curb this menace.

The right to life meets a worst twist where it comes to the female’s ability to procreate or where the life of the baby in womb suffer because of the fact that the mother had undergone the procedure.<sup>7</sup> It has been already noted that 10 to 20 per thousand babies in Africa die during delivery as a result of mothers having undergone genital cutting.<sup>8</sup> The Convention on the Rights of the Child, 1989;<sup>9</sup> does lay down law for the protection of the child so does the African Charter on the Rights and Welfare of the Child, 1990. But both these conventions under Art 1 define child as the one being below the age of eighteen years. Again Art 6 recognizes that every child has inherent right to life and Art. 6(2) of the CRC lays down that the states parties shall ensure to the maximum extent possible the survival and development of the child. But it is here that the life of a child in womb become vulnerable as the convention does not cover the foetus. The conventional penal law in this regard shall always attract attention.

## 9. Conclusion

In view of above the state’s intervention at every step is important. The Constitutions of these states should unambiguously prohibit such acts and practices that deprive women of their right to life and peaceful enjoyment of it. Pursuant to this any legislative intervention dealing with the phenomenon of FGM would become meaningful provided that the enforcement machinery is sensitized so that detection, prosecution and conviction is carried out promptly because lapse of time between prosecution and conviction dilute the significance of

<sup>1</sup> A.I.R. (1981) S.C. 746.

<sup>2</sup> Id., at pp. 752 – 753, emphasis added.

<sup>3</sup> *Supra note*, 63.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Supra note* 63.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *The Convention on Rights of the Child, 19 90* came into force on 2<sup>nd</sup> September, 1999.

punishment and its deterrence. The state in collaboration with other International and non –governmental agencies should undertake projects that may cause a change in attitudes of the tribes practicing FGM. This means establishing a close contact with the community leaders. There is need to increase and facilitate the educational opportunities of the girls in FGM practicing communities. Apart from this the measures regarding the economic empowerment of girls belonging to these communities should be ensured because economic dependence, intellectual impoverishment and bankruptcy are the root causes of female domination that is why they do not mind undergoing pain to please the masculine sensibility.

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