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Dissecting the claims of legitimization for the ritual of female circumcision or female genital mutilation (FGM)

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ABSTRACT

This work analyses the various arguments put forward by the supporters of female genital mutilation (FGM) under Islamic law to determine whether this practice has its roots in Islam, whether it is a customary or cultural tradition, or whether it is a matter of personal preference in different parts of the Muslim world where the practice exists. The findings of this work are that the arguments given in support of FGM are either not reliable, are weak or, do not order Muslims to carry out this practice. Instead, this horrific practice is rooted in customary-cum-cultural tradition or, is a matter of personal preference for some Muslims but cannot be legitimized under Islamic law.

Keywords: rights of children, Islam, female circumcision, female genital mutilation, FGM, custom, Islamic law, schools of thought, customary practice, Qaradawi, 'Ali Juma', Tantawi

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INTRODUCTION

One of the most controversial issues of human rights in the modern Muslim world today is that of female circumcision (FC) or what is also known as female genital mutilation or cutting (FGM/C)[1] by the international nongovernmental organizations (INGOs) working for the rights and protection of children rights. Female genital mutilation involves the intentional, non-therapeutic physical modification of female genitalia. FGM has been in practice for thousands of years, but in the last 25 years or so, it has been the subject of concerted efforts to legally prohibit and eradicate the practice in many African countries. FGM is practiced in many Muslim societies in the Middle East and Africa, leading both human rights and women's and children's rights organizations to raise growing concern over it. At the same time, Muslim scholars from these areas have considered the efforts of such organizations as an attack on, what proponents of FGM consider, an Islamic tradition. Many Muslim scholars have issued *fatwas* (religious non-binding rulings) in support of FGM as an Islamic tradition. At the same time, some Muslim scholars have totally denounced this practice as completely prohibited. It is timely to thoroughly discuss, analyse and evaluate the arguments of the pro-FGM scholars to find out whether these can be accepted for the legitimization of FGM. In addition, it is pertinent to thoroughly discuss the various arguments that support and oppose this practice. This work will evaluate the views of scholars who support FGM and consider it as an Islamic tradition to examine whether these arguments are authentic, sound, and enough for the legality of this inhuman practice. Beside the various arguments used by the proponents of this practice from the Qur'an and *ahadith* of the Prophet Muhammad (PBUH), other sources of Islamic law will also be thoroughly analysed to see whether these are acceptable under Islamic law for carrying out this practice. In addition, the views of Muslim jurists of different schools of thoughts in Islam will be discussed to discover why the practice exists in some Muslim states but not in others. This article will also question why the practice is not followed by the followers of a school of thought in some parts of the Muslim states but is strictly adhered to in other parts where the same school is followed. This work will thoroughly dissect the arguments of the proponents of this practice to show that these arguments are either not reliable or are weak and cannot be accepted to legitimize FGM.

According to the World Health Organisation and other international bodies, there are four different forms of FGM: clitoridectomy (partial or total removal of the clitoris), also known as 'Sunna' circumcision; infibulation (narrowing or closing of the vaginal opening);[2] excision (partial or total removal of the clitoris and the labia minora, and sometimes also the labia majora); and other harmful non-therapeutic procedures (including pricking, nicking, incising, piercing, scraping and cauterization).[3] FGM is often conducted by people who have no medical training, without anesthesia, antiseptic or antibiotics, in unsterile environments, using implements such as razors, stones and glass.[4] FGM is widely practiced in many parts of the world.[5] Undoubtedly, FGM is very harmful to women and girls. In addition to being very painful and traumatic, the removal of or damage to normal genital tissue causes severe immediate and long term health problems for FGM victims. Moreover, babies born to women who have undergone FGM suffer a higher rate of neonatal death compared with babies born to women who have not undergone this procedure.[6] Many countries have passed

[1]The term "female circumcision" is used by almost all Muslim scholars but often is referenced in parallel with male circumcision, and as a result, creates confusion between these two distinct practices. Ben Mathews argues that "circumcision" as well as "cutting" are not adequate terms for this process as it involves more than just cutting. *See* Ben Mathews, *Legal, cultural and practical developments in responding to female genital mutilation: Can an absolute human right emerge? in* Human Rights and Shifting Global Powers 222 n.2, 207–227 (C. Sampford, R. Maguire and B. Lewis eds., 2013). The abbreviations "FGM" (female genital mutilation) and "FGM/C" (female genital mutilation/cutting) are used by international child protection organizations as well as the World Health Organization. This author will use the term "FGM" throughout this work.

[2]According to Ben Mathews, infibulation is the most invasive and serious form of FGM and is estimated to affect 10 percent of those who have experienced FGM. He argues that it is especially likely to occur in Djibouti, Eritrea, Ethiopia, Somalia and Sudan. *See id.* at 208.

[3]Office of the High Commission for Human Rights, United Nations, Eliminating Female Genital Mutilation: An Interagency Statement 10 (2008), *available at* http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf. *See also* Ben Mathews, *Female genital mutilation: Australian law, policy and practical challenges for doctors*, 139 Med. J. Australia 149 (2011).

[4]Donald Barstow, *Female genital mutilation: The penultimate gender abuse*, 23 Child Abuse and Neglect 501-10 (1999).

[5]For a good statistic about FGM in many parts of the world, *see* Mathews, *supra* note 1, at 210.

[6]Mathews, *supra* note 1, at 7.

legislation banning FGM, including: Benin, Ivory Coast, Djibouti, Egypt, Eritrea, Ethiopia, Ghana, Guinea, Niger, Nigeria, Kenya, Central African Republic, Senegal, Chad, Tanzania, Togo, and Uganda.[7]

The analysis and arguments in this work apply to all forms of FGM. Girls and even women in many Muslim states in the Middle East and parts of Africa undergo the horrific practice of circumcision. The practice has also been exported to some European countries where Muslim immigrants have sought asylum and are reported to be secretly practicing FGM.[8] Those who support this practice and consider it as one of the necessary rituals for the Muslim girls and women, invoke verses of the Qur'an,[9] *ahadith*[10] of the Prophet Muhammad (PBUH), and *ijma'* (consensus)[11] of the Muslim *mujtahidin* to justify it.

IS FGM ISLAMIC?

In accordance with Islamic law, every Muslim male baby is required to be circumcised. There is no disagreement on the male circumcision among the schools of thought. However, the question of whether girls should also be circumcised is very controversial among the schools of thought. The proponents of this practice cite various verses of the Qur'an, many *ahadith*, and the opinions of many Muslim jurists to support the argument that FGM is based on Islamic law. Below, we will try to analyse the various Qur'anic verses, various *ahadith* of the Prophet Muhammad (PBUH), and *ijma'* (consensus of Muslim *mujtahidin*) before surveying the opinions of the jurists of various schools of thought to prove that FGM is not legitimate under Islamic law.

THE QUR'AN AND FGM

There is no direct evidence in the Qur'an to support FGM. However, those Shafi'i jurists who consider FGM obligatory attempt to derive evidence from Al-Nahl verse 123 which says: "Then We revealed to you: "Follow the way of Abrahim with exclusive devotion to Allah. He was not one of those who associated others with Allah in His Divinity."[12] They argue that circumcision is the way of Prophet Abrahim because it is mentioned in authentic *ahadith* of the Prophet Muhammad (PBUH) that the Prophet Abrahim was circumcised when he was eight years old.[13]

Interestingly, they mention while interpreting this verse that since Abrahim was circumcised, therefore all Muslim girls and women should also be circumcised. However, the argument is misplaced as following the way of Abrahim does not mean that girls and women should be circumcised. It means that Muslims should follow his model in establishing and preaching monotheism, refusing to surrender to the tyrant ruler, and calling others to the oneness of God with wisdom and arguments, as can be seen when the Prophet Abrahim called his father and his people.

His calling and arguments with his father and his people were about the oneness of Allah and there is no mention of any secondary issue. The Qur'an mentions the way of Abrahim in another verse when Allah said, "Say: "As for me, my Lord has guided me on to a Straight Way, a right religion, the way of Abrahim who adopted it in exclusive devotion to Allah, and he was not of those who associated others

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[7] *Kenya: Female Genital Mutilation Banned*, Child Rights Information Network, Sept. 12, 2011, http://www.crin.org/en/library/news-archive/kenya-female-genital-mutilation-banned.

[8] According to the Independent newspaper, many people are prosecuted for committing FGM in France, Spain, Italy, Sweden and the United Kingdom. *See The French way: a better approach to fighting FGM?*, The Independent, Mar. 30, 2014, http://www.independent.co.uk/news/world/europe/the-french-way-a-better-approach-to-fighting-fgm-9006369.html.

[9] The word "Qur'an" applies to the Book of God as a source of Islamic Law. Muslim theorists generally use the word *al-kitab* for the Qur'an, holding it to be the primary source of Islamic Law. Al-Bazdawi has given the following definition of Qur'an: "As for the Book, it means Qur'an revealed to the Messenger of Allah (PBUH), recorded in the copies transmitted, in a constant manner, from the time of the Prophet without any doubt. It applies both to the word and to meaning, according to the opinion of the scholars in general." *See* 'Ali b. Muhammad b. Al-Husain al-Bazdawi, Usul al-Bazdawi, printed on the margin of its commentary: 1 'Abd al-'Aziz al-Bukhari, Kashf al-Asrar 21–23, (1974).

[10] The *Sunnah* is defined as, "A word spoken or an act done or a confirmation given by the Holy Prophet Muhammad (PBUH)." *See* Muhammad Taqi Uthmani, The Authority of Sunnah 6 (1993). The term *Sunnah* conveys three different meanings: in language, in law, and in legal theory (*usul al-fiqh*). For a detailed discussion of many definitions taken from classical sources, *see* Ahmad Hassan, Sunnah *as a Source of Fiqh*, 39 Islamic Studies 3 (2000). The *Sunnah* is an original source of Islamic law second only to the Qur'an.

[11] Literally, "*ijma*" means "agreement upon a matter." In technical sense, *ijma'* is defined as: "The consensus of *mujtahids* (independent jurists) from the *ummah* of Muhammad (PBUH), after his death, in a determined period upon a rule of Islamic law (*hukm shar'i*)." Imran A. K. Nyazee, Outlines of Islamic Jurisprudence: Usul al-Fiqh 131 (2d ed. 2002).

[12] Qur'an 16:123.

[13] See the *hadith* in Muhammad Ibn Isma'el al-Bukhari, Sahih, hadith no. 3356; Muslim b. Hajaj Al-Nisahpuri, Sahih Muslim, hadith no. 2370; Ahmad b. Hanbal, Musnad, hadith no. 9408 from Abu Hurayrah.

with Allah in his Divinity."[14] In another verse about the religion of Abrahim, Allah addresses Muslims, saying that, "You have a good example in Abrahim and his companions: they said to their people: 'We totally dissociate ourselves from you, and from the deities that you worship instead of Allah. We renounce you and there has come to be enmity and hatred between us and you until you believe in Allah, the One True God.'"[15] One thing that is common in all three of these verses is the oneness of God. On the other hand, the supporters of FGM mention that since Abrahim was circumcised and we have to follow his religion, Muslim men and boys should be circumcised. Thus, the verse does not detail anything about FGM, therefore, their argument from the Qur'an is out of place as it does not order Muslims to circumcise women or girls.

THE *SUNNAH* OF THE PROPHET AND FGM

The proponents of FGM have produced some *ahadith* in support of their view. The most important *ahadith* given by the supporters are:

1. The first *hadith* given in support of FGM is "إِذَا الْتَقَى الْخِتَانَانِ وَجَبَ الْغُسْل" i.e. when the private parts meet, bathing becomes obligatory (irrespective of discharge).[16] Ibn Qayyam al-Jawziyah of the Hanbali school of thought, one of the strongest supporters of FGM, instead of taking the figurative meaning of the Arabic word 'الْخِتَانَان', i.e. the sexual organs, takes the word literally to mean 'circumcised (sexual organs)' and rules that both boys and girls should be circumcised as described in the *hadith*).[17] This argument cannot be accepted to support FGM because it is argued by some jurists that the Arabic word الْخِتَانَانِ (two circumcised organs) is used to mean men's circumcision and that *two* are used because of the predominance of the male organ, which is circumcised, during sex. It is the same case in the Arabic language when speakers use the Arabic word الابوين to mean both the father and the mother. Similarly, the Arabic word العمرين is used to mean Abu Bakr and 'Umar b. Al-Khattab. In addition, according to Jamal al-Din b. Muhammad Zayla'I, the narrators of this *hadith* are very weak (*da'ef*)[18] and a weak report cannot legitimize such an inhuman practice.
2. Another *hadith* cited by the supporters of FGM is the one narrated by Umme 'Atiyah, a female companion of the Prophet, who says that there was a lady in Medina who used to circumcise girls. The Prophet said to her, "do not cut off too much as it is a source of pleasure for the woman and more liked by the husband."[19] However, this argument cannot be accepted as the *hadith* is not authentic. Abu Dawud opined that Muhammad b. Hassan, one of the narrators, is unknown and the *hadith* is thereby *da'ef* (weak).[20] Thus, a weak report cannot legitimize such a practice because it amounts to torturing girls and women. It is also hypothesized that, instead of Muhammad b. Hassan, the narrator of this report may be Muhammad b. Sa'eed b. Hassan who was crucified by Caliph Al-Mansur Al-'Abasi for fabricating *ahadith*. Either way, this is a very weak *hadith* and cannot be used as a source of law for such an inhuman practice. Arguendo, the *hadith* does not make FGM either obligatory or the *Sunnah* of the Prophet Muhammad (PBUH). In addition, the *hadith* mentions that too much should not be cut off because what is cut off is a source of pleasure for the woman and appreciated by the husband. The point is that if it is a source of pleasure for the woman and gives pleasure to husband during sex, then it should remain intact. As mentioned above, this *hadith* is *da'ef* and cannot be considered as a law-creating source on a social issue that involves inflicting great pain on females.
3. The third *hadith* given by the supporters of FGM is "الختان سنة للرجال ومكرمة للنساء", i.e. circumcision is a *Sunnah* for men and a source of respect for women."[21] However, there are numerous questions that must be answered regarding this report: First, who narrated this *hadith*: "الختان سنة للرجال ومكرمة للنساء"?; Second, is it an authentic one?; Finally, what is the meaning of the

[14] Qur'an 6: 161.
[15] Qur'an 60:4.
[16] Shamsuddin Muhammad b. Abi Bakr b. Qiyam al-Jawziya, Tuhfatul Mawdud fi Ahkam al-Mawlud 132 (Muhammad 'Ali Abul 'Abbas ed., n.d.).
[17] Muslim b. Al-Hajaj Al-Nisapuri, Sahih Muslim 1:272 (Muhammad Fu'ad 'Abdul Baqi ed., n.d.).
[18] *See* Jamal al-Din b. Muhammad Al-Zayla'i, Nasb Al-Ra'yah Li Ahadith al-Hidayah 1:84 (Muhammad 'Awamah ed., 1997).
[19] Abu Dawud, Sunan, hadith no. 5271.
[20] *Id.*
[21] Ahmad b. Hanbal, Musnad (Shu'aib al-Arnawut, 'Adil Murshid et al. eds., hadith no. 20994). Baihaqi has reported it with slightly different words, i.e. "الختان سنة في الرجال مكرمة في النساء" ("circumcision is a *Sunnah* for men and a source of respect for women") but regards it as a *da'ef* (weak) *hadith*. *See* Ahmad b. Al-Husain Abu Bakr Al-Baihaqi, Al-Sunan Al-Kubra 8:325 (Muhammad 'Abdul Qadar 'Ata ed., 2003).

word مكرمة in the *hadith*? The *hadith* is narrated by Imam Ahmad b. Hanbal in his Musnad[22] from Abi Al-Mulih b. Osama from his father. But in its chain appears Hajaj b. Artat who is described as a fabricator of *ahadith*. Therefore his report cannot be accepted and a rule of Islamic law cannot be based on it. The *hadith* is also reported by Abu Bakr Al-Baihaqi with slightly different words, i.e. "الختان سنة في الرجال مكرمة في النساء" but he regards it as a *da'ef* (weak) *hadith*.[23] Baihaqi also narrates it from 'Akramah from Ibn 'Abbas but describes it as *da'ef* or weak. Thus, this *hadith* is *da'ef* (or weak) and cannot be a sound argument to legitimize this inhuman practice and make it Islamic.[24] Thus, if the *hadith* is considered authentic, what is meant by the phrase مكرمة للنساء? It only means that it is a source of respect for a woman. Consequently there is no 'نص قطعى ' or definitive text from the Lawgiver to make FGM either obligatory or a *Sunnah* for Muslims. Therefore, FGM cannot be said to be legalized by the Qur'an or the *Sunnah* of the Prophet. The supporters of FGM could only take refuge in custom or culture but not religion, especially the two primary sources of Islamic law, i.e. the Qur'an and the *Sunnah* of the Prophet Muhammad (PBUH). However, this custom is not rooted in Islamic law. There is unanimity among Muslim jurists, *muhadithin* (compilers of *ahadith*), and experts of *usul al-fiqha* (the principles of Islamic jurisprudence) that the rules of Islamic law cannot be based on weak *ahadith*. Consequently, what is mentioned above does not make FGM either obligatory or a *Sunnah*. The rules of Islamic law, especially the prohibited and the permissible cannot be based on weak reports.

4. The proponents of FGM also cite the following *hadith*: "Five things are a part of human nature: circumcision, the use of a blade (for the removal of the hair beneath the navel), the removal of armpit hair, the cutting of nails and the trimming of moustache."[25] However, these things are specific to men and not women. This *hadith* does not make FGM legal at all. To sum up this section, there is not a single authentic *hadith* of the Prophet that supports Muslims who choose to circumcise women or female children. All *ahadith* put forward by the proponents of FGM are extremely weak and their connection to true *Sunnah* very spurious; they therefore cannot be accepted for legalizing this inhuman and cruel practice.

IS THERE *IJMA'* AMONG THE *MUJTAHIDIN* ON THIS ISSUE?

Ijma' or consensus of the *mujtahidin* (those who are capable of exercising *ijtihad* to derive the rules of Islamic law from its sources) is the third primary source of Islamic law after the Qur'an and the *Sunnah* of the Prophet Muhammad (PBUH). As discussed above, Muslim jurists are never unanimous on the issue of FGM. Those who consider it obligatory or permissible or a source of respect have used extremely weak and spurious reports of the Prophet in support of their view.

IS *QIYAS* OR ANALOGY HELPFUL IN THIS CASE?

Qiyas is among the secondary rational sources of Islamic law. *Qiyas* literally means measuring, weight, quality or length of something. Technically, it is the extension of a rule of Islamic law from an original case to a new case because the new case has the same cause as the original case. *Qiyas* consists of four elements: the original case, the new case, the effective cause, and the ruling in the original case. The question now is: Can male circumcision be considered as the original case and FGM be based on it because of *qiyas*? But what is the underlying cause between the original case (male circumcision) and the new case (FGM)? In this case there is no *'illah* or effective cause between the two cases. Rather the two cases are very different from each other or to use the technical language of *usul al-fiqha*, this is *qiyas ma'a al-fariq* or *qiyas* with a discrepancy which is invalid. First, there is no common cause or *'illah* between male circumcision and FGM. Second, there is a big difference between the two cases: male circumcision is very beneficial whereas circumcision is harmful for a woman. Third, it is prohibited to disfigure or change God's creation or cut off any part of the human body. The only exception is male circumcision whereas the rule is applicable to the rest of human body according to the general principle, i.e. whatever is mentioned as an exception is preserved and cannot be extended by analogy.

[22] Ahmad b. Hanbal, Musnad (Shu'aib al-Arnawut et al. eds., hadith no. 20994).
[23] *See* Al-Baihaqi, *supra* note 22. Al-Sunan Al-Kubra Muhammad 'Abdul Qadar 'Ata ed., 8: 325 (2003).
[24] 'Abdullah Nasih 'Ulwan, Tarbiyatul Awlad fil Islam 113, 1 (1992).
[25] Bukhari, Sahih al-Bukhari, hadith no. 5889.

SCHOOLS OF THOUGHT AND FGM

As discussed above, the proponents of FGM differ on the issue: Some regard it as obligatory, others consider it as a *Sunnah*, and still others treat it as *mustahab* (permissible) while some regard it as a source of respect. There is even disagreement on the issue within the same school of thought. For example, jurists of the Hanafi school of thought are split on the issue. Some regard it as a *Sunnah* while others consider it as a source of respect or a noble deed for a woman but not a legal requirement for her. Both groups of jurists cite the *hadith*, "الختان سنة للرجال ومكرمة للنساء", i.e. circumcision is *Sunnah* for a man and a source of respect for a woman"[26] when discussing the issue. Burhanuddin Mahmood b. Ahmad (d. 616 A.H./1219 C.E.) in his treatise *Al-Muhit al-Burhani* mentions the difference of opinions among Ahnaf. He says,

> There are differences in reports [from Hanafi jurists] about FGM. Some reports mention that it is a *Sunnah*; this is how it is reported from some of the classical [Hanafi] jurists. The supporter of this view gave as proof what is said by Muhammad [b. Al-Hassan Al-Shaybani], May Allah be Pleased with him, in the chapter on hermaphrodite: that a hermaphrodite is circumcised [in Islamic law], he would not be circumcised if it was a source of respect; [this is] because of the possibility that a hermaphrodite may be a woman. On the basis of this [analogy] it is not allowed for a woman to do that [i.e. a woman should not circumcise a hermaphrodite because it is also possible that he may be a man]. Thus, it [circumcision] is excused because of the absence of the reason [i.e. it may not be carried out if a woman is not available to circumcise a woman]. And it is mentioned by *Shamsul A'ima* (the sun of the Imams) Al-Halawani in *Adabul Qadi* by Khassaf, [that] 'female circumcision is a source of respect or a noble deed (مكرمة)' [for woman].[27]

While original text is not very clear, it is clear that there was disagreement among the Hanafi jurists on this issue.

Muhammad b. Muhammad Al-Bazzazi (d.819 A.H./1424 C.E.) of the Hanafi school of thought supports the view that FGM is a *Sunnah*. He makes the same argument attributed to Imam Muhammad above, that is, since a hermaphrodite is circumcised in Islamic law, this supports the view that female circumcision is not just a source of respect (مكرمة). In other words, a hermaphrodite is considered a woman but is circumcised. However, Muhammad Amin Ibn 'Abidin (d.1252 A.H./1836 C.E.) – the leading Hanafi jurist, rebuts the view that female circumcision is a *Sunnah*. He reverses the same argument given above and argues that a hermaphrodite is circumcised because of the possibility that he may be a man "and circumcision of the man is necessary, thus it [circumcision of a hermaphrodite] is considered a *Sunnah* due to care but it does not mean that it [circumcision] becomes a *Sunnah* for a woman [too]."[28]

The view of Ibn 'Abidin that FGM is not a *Sunnah* is extremely important because the *fatwa* (legal non-binding ruling) by Hanafi *muftis* (religious scholars who have got qualification to issue *fatwa*) is based on the opinions of Ibn 'Abidin. It is pertinent to note that male circumcision, but not FGM, is a *Sunnah* according to the Hanafis.[29] However, the followers of Hanafi school of thought never circumcise their girls and the practice is completely unknown in areas where the followers of the Hanafi school of thought live, such as South and Central Asia and Turkey.

The preferred opinion of Maliki school of thought is that FGM is *mustahab* (the actor will be rewarded if he practices it but will not be condemned for not doing it).[30] According to the Shafi'is, Hanbalis, and Sahnun of the Maliki school of thought, "circumcision is obligatory for both boys and girls."[31] According to Yahyah b. Sharf Al-Nawawi (d. 676 A.H./1277C.E.) of the Shafi'i school of thought, "circumcision is obligatory for both males and females."[32] There are two opinions attributed to Imam Ahmad b. Hanbal

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[26] Ahmad b. Hanbal, *supra* note 23. Baihaqi has reported it with slightly different words, i.e. "الختان سنة في الرجال مكرمة في النساء" but regards it as a *da'ef* (weak) *hadith*. *See* Al-Baihaqi, *supra* note 22.

[27] Burhanuddin Mahmood b. Ahmad, Al-Muhit Al-Burhani fi Al-Fiqh Al-Nu'mani 5:375 ('Abdul Karim Al-Jundi ed., 2004). Abu Bakr Ahmad b. 'Umar Al-Khassaf (d. 261 A.H./874 C.E.) mentions the opinion of Al-Halawani that "the reason for its [female circumcision] being a مكرمة (noble deed) ... is stated by Al-Shaykh Al-Imam Shamsul 'Aima Al-Halawani [that] women at the time of the Prophet Peace be Upon Him used to be circumcised and it was considered as a noble deed, because it is enjoyed by men during sex." *See* Abu Bakr Ahmad b. 'Umar Al-Khassaf, Adab Al-Qadi along with commentary by 'Umar b. 'Abdul 'Aziz Al-Bukhari 4:420 (Muhyi Hilal Al-Sarhan ed., 1978).

[28] Muhammad Amin Ibn 'Abidin, Radd al-Muhtar 'Ala Al-Durr al-Mukhtar 6:750 (1992).

[29] *See* 'Abdullah b. Mahmood Al-Musili, Sharhul Mukhtar li ta'lil Al-Mukhtar 4:178 ('Abdul Latif 'Abdur Rahman ed., 2005).

[30] *See* Shamsuddin Abu 'Abdullah al-Maliki, Mawahibul Jalil fi Sharh Mukhtasar Al-Khalil 3:258 (1992).

[31] Abu al-Walid b. Sulayman Al-Baji, Al-Muntaqa Sharh Al-Muwatta' 7:232 (Matab'at al-sa'dah 1332 A.H.).

[32] Yahya b. Sharaf Al-Nawawi, Al-Majmu' Sharh al-Muhazzab & Takmilah Al-Subki wa Al-Muti'i 1:301 (n.d.).

himself: In one opinion, he considered it as a source of respect or *mustahab*, but in the second opinion he declared it as obligatory. According to Muwafaq al-Din Ibn Qudamah (d. 620 A.H./1223 C.E.) of the Hanbali school of thought, "Circumcision is obligatory for men and a source of respect for women."[33] According to the Ja'afari school, "It is not *Sunnah* to circumcise women."[34]

It is reported that the Bohras, the Shi'a Muslim community of the Tayyibi Musta'li branch of the Isma'ilis[35] mostly living in India and Karachi (in Pakistan), practice FGM. According to Jonah Blank, FGM among the Bohra community in India is occasionally mentioned in the Indian press but most of the information (at the time of writing his book) was sourced to Asghar Ali Engineer who is an opponent of *dawat*.[36] Blank, however, mentions that contacts within the Bohra community told him compelling stories of the existence of the practice but none have been willing to give their testimony in public or provide details for publication.[37] A story circulated in Pakistan on the internet by the news agency Inter Press Service (IPS), has given personal accounts of Bohra ladies who were circumcised in their childhood but who don't want their daughters to be circumcised.[38] However, at the time of writing this article, many girls from the Bohra community have petitioned the then spiritual leader of the Bohra community Syedna Mohammad Burhanuddin to demand that this ritual be stopped.[39]

The different schools of thought may be summarized as follows: some deem FGM as being a *Sunnah*, others regard it as favoured, while still others consider it obligatory. However, if this was an obligatory act or the *Sunnah* of the Prophet and was a well known social practice, it should have been reported in numerous authentic reports. Moreover, the majority of Muslims around the world do not practice it. However, in India FGM is widely prevalent among the Bohras who are concentrated in the western states of Maharastra and Gujarat.

CURRENT PRACTICES OF FGM IN SOME MUSLIM STATES

As we have seen above, there is no unanimity among the *fuqah* (Muslim jurists) regarding FGM. On the other hand, studies have revealed that FGM was practiced in Sudanese and Nubian populations before Islam.[40] As a matter of fact, the practice is also taking place in many African countries by non-Muslim populations. According to a study, between 100 million and 130 million women and girls in over 30 countries in Africa and the Middle East, many of them from Muslim states, have undergone this procedure.[41] Half of all circumcised women live in Egypt and Sudan.[42] There is overwhelming evidence that the practice is rooted in custom, culture and tradition but there is no authentic evidence from the Qur'an and the *Sunnah* of the Prophet that this practice traces its genesis to Islam. Among the Chagga of Arusha in Tanzania, the bride price for a circumcised girl is much higher than the one who is not.[43] Among the highlanders of Meru, Kenya, for example, the day of the excision is "filled with continuous dancing and singing by women, girls, and young unmarried men."[44] In parts of Nigeria, the practice is

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[33] Muwafaq al-Din Ibn Qudamah, Al-Mughni 1:65 (1968).

[34] Muhammad b. Ya'qub Al-Kalini, Alkafi min Al-Jami' Al-Furu' 6:37 (1303 A.H.).

[35] Bohras of the subcontinent are also known as the majority of the Dawudi branch of Tayyabi Bohras. They have approximately a million members worldwide. For details, *see* Tahera Qutbuddin, *Bohras*, *in* The Encyclopedia of Islam 56 (Kate Fleet et al. eds., 2013), *available at* http://media.mumineen.org/documents/Qutbuddin-EI3-Bohras.pdf.

[36] The Bohras call themselves "Mu'minin" or "Believers" and their religious institution "al-Da'wa al-Hadiya" or "The Rightly Guiding Mission." *See id.* at 57.

[37] Jonah Blank, Mullahs on Mainframe: Islam and Modernity 320 n.13 (2001).

[38] *See* Zofeen Ebrahim, *Pakistan-India: Women Expose Secret Genital Cutting Rite*, Inter Press Service, Jan. 29, 2012, http://www.ipsnews.net/2012/01/pakistan-india-women-expose-secret-genital-cutting-rite/.

[39] *See id.*; Sijo Jose, *Uproar over Female Genital Mutilation: Bohra Muslim woman activist launches campaign on Facebook to ban practice*, Facebook (June 21, 2012, 5:38 AM), https://www.facebook.com/notes/sijo-k-jose/uproar-over-female-genital-mutilation-bohra-muslim-woman-activist-launches-campa/329191643829952. The petition can be seen online at https://www.change.org/petitions/h-h-dr-syedna-stop-female-circumcision-ladkiyon-par-khatna#share.

[40] *Tanzania FGM/C Country Profile*, UNICEF, http://www.childinfo.org/files/Tanzania_FGC_profile_English.pdf (last visited June 30, 2014).

[41] Organization of the Islamic Conference, Islamic Educational, Scientific and Cultural Organization & UNICEF, Investigating in the Children of the Islamic World 30 (2005), *available at* http://www.unicef.org/publications/index_28182.html.

[42] *See* UNFPA-UNICEF, Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change: Annual Report (2012), *available at* http://www.unfpa.org/webdav/site/global/shared/documents/publications/2013/UNICEF-UNFPA%20Joint%20Programme%20AR_final_v14.pdf.

[43] UNICEF Innocenti Research Ctr., Changing a harmful social convention 12 (Alexia Lewnes ed., 2005).

[44] Lynn M. Thomas, *Imperial Concerns and 'Women's Affairs': State Efforts to Regulate Clitoridectomy and Eradicate Abortion in Meru, Kenya, c. 1910–1950*, 39 J. Afr. Hist. 121, 121 (1998).

considered as a proof of a girl's virginity as the mother-in-law has to verify the virginity of the bride.[45] In Sudan and Somalia, FGM is performed for the purpose of making the girl clean as infibulations are carried out after the cutting.[46] Upon circumcision in Sudan, a girl receives new dresses, bracelets and other gifts. Wealthy families arrange a big party on the evening of a girl's infibulation. In other cases, an animal is slaughtered and a special meal is served.[47] In some cultures, the ritual is a test of bravery: If the girl is able to tolerate the procedure with honor, she is considered fit for the pains of childbirth.[48]

Among the Bambara of Mali, FGM is called *Seli ji*, which means ablution or ceremonial washing and is considered to make the girl spiritually pure.[49] If a girl fails to behave with courage, she risks being shamed. A common insult within this community is to refer to a woman as "uncircumcised." Few girls want to encounter this stigma.[50] It is also reported that FGM/C is correlated with ethnicity. Therefore, while some countries, such as Senegal and Uganda, have low national prevalence, a number of minority ethnic groups within these countries practice FGM/C at high rates.[51]

It is pertinent to note that the practice of FGM existed for slave girls to reduce their excessive sexual emotions. Unfortunately, some Muslims today do not differentiate between customs, culture and Islamic injunctions. This leads others to conclude that FGM existed before Islam and, "Islam adapted it from pre-existing traditions."[52] They argue that if a pre-Islamic custom was allowed by Islam, it will be acceptable in Islam today. This cannot be allowed to justify the inhuman practice of FGM because the above assertion is not supported by any authentic evidence.

FGM AND THE WAR OF *FATWAS*:

The issue of FGM has generated a war of *fatwas* in the Middle East, especially Egypt, where the proponents and opponents have given *fatwas* to justify their positions.

1. A Saudi based website supervised by Shaykh Muhammad Al-Munajjid in its *fatwa* no. 60314 categorically stated that, "Female circumcision is not an inherited custom as some people claim, rather it is prescribed in Islam."[53] The website has given many *ahadith* discussed above in support of its assertion. In addition, it has collected many *fatwas* in support of FGM such as the ruling of *Fatawa al-Lajnah al-Da'imah* (5/223) which says that, "Circumcision is one of the *Sunnah*s of the *fitrah* [nature], and it is for both males and females, except that it is obligatory for males and *Sunnah* and good in the case of women."[54] The website also mentions that Shaykh Jaad al-Haq, the former Shaykh of Al-Azhar, also considers female circumcision as part of the *fitrah* of Islam.[55] Other scholars and institutions that support FGM according to this website are: Shaykh 'Atiyah Saqr – the former head of the Fatwa Committee in Al-Azhar and *Dar al-Ifta Al-Misriyah*.[56] Unfortunately, the website neither evaluates these *ahadith* nor checks their chains of narrators. Moreover, it accepts the assertions of the above scholars as the final word and does not subject them to critical evaluation.
2. Shaykh Yusuf Al-Qaradawi has changed his position regarding FGM. Initially, he left the issue to the medical experts who could advise the legislature on the issue of whether female circumcision should be allowed. However, the Shaykh subsequently issued another *fatwa* regarding FGM, claiming that neutral experts and specialists were of the opinion that female circumcision harms women's physical and psychological state and affects their marital life: "Therefore, this practice and

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[45] *Id.*
[46] *46. Id.*
[47] *47.* Ellen Gruenbaum, *Reproductive Ritual and Social Reproduction: Female Circumcision and the Subordination of Women in Sudan*, *in* Economy and Class in Sudan 310, 308–25 (Norman O'Neill and Jay O'Brien, eds., 1988).
[48] *See* Rogaia Mustafa Abusharaf, *Unmasking Tradition: A Sudanese anthologist female circumcision and its terrible tenacity*, 38 Sciences 22–27 (1998), *available at* http://www.panix.com/userdirs/jwinters/thesciences/Abusharaf_MA98/AbusharafFrame.html.
[49] *Id.*
[50] *See* James DeMeo, *The Geography of Male and Female Genital Mutilations*, *in* Sexual Mutilations: A Human Tragedy 1–15, 8 (George C. Denniston & Marilyn Fayre Milos eds., 1997); Rosemary Romberg, Circumcision: The Painful Dilemma 20 (1985).
[51] UNFPA-UNICEF, *supra* note 44, at 11.
[52] *See, e.g.*, Geoffrey P. Miller, *Female Genital Mutilation: A Cultural-Legal Analysis*, N.Y.L. Sch. L., *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id = 206788.
[53] Shaykh Muhammad Al-Munjjid, *Circumcision of girls and some doctors' criticism thereof*, Islam QA, July 1, 2014, http://www.islam-qa.com/en/ref/60314/female%20circumcision%20in%20islam.
[54] *Id.*
[55] *Id.*
[56] *Id.*

all allowed acts that bring about damages must be stopped." The Shaykh opined that "[FGM] enters into the aspect of changing God's creation which is a work of the devil and it is not permitted by God."[57] This is a great *fatwa* from Shaykh Qaradawi and it inspires hope that his followers around the world will take this *fatwa* seriously.

3. Shaykh Gad Al-Haq 'Ali Gad Al-Haq, former Egyptian State *mufti*, considers FGM as one of the *fitrah* of religion for both men and women and a noble deed. Shaykh Gad Al-Haq argues that responsibility for a girl's circumcision falls on her parents and those in charge of her. He opines that, "If the people of a region refuse to practice male and female circumcision, the head of the [Muslim] state can declare war on them."[58] Unfortunately, the Shaykh treats male and female circumcision as similar procedures and ignores the opinion of medical experts. However, the Shaykh has in the past cited arguments given by proponents of FGM but has not analysed the authenticity of the various *ahadith* on which the proponents have based their opinion.
4. Dr Ali Juma'a, former Egyptian State Mufti, strongly condemned FGM and has considered it as '*haram*' (prohibited). He expressed his views in a conference in Cairo and duly signed the declaration of the conference held in Al-Azhar University in Cairo on 22 and 23 November 2006. The conference issued a strongly worded recommendation stating that, "Genital circumcision is [a] deplorable, inherited custom, which is practiced in some societies and is copied by Muslims in several countries. There are no written grounds for this custom in the Qur'an with regard to an authentic tradition of the Prophet;" that female circumcision is harmful to women and "therefore the practice must be stopped in support of one of the highest values in Islam, namely to do no harm to another."[59] He was quoted by newspapers as saying, "*We have said it once, twice and ten times [that] female circumcision is haram*, *haram*, *haram* (prohibited, prohibited, prohibited)."[60] This is a very welcomed statement from the Shaykh but shows no analysis of the arguments of the proponents.
5. Former Shaykh Al-Azhar Shaykh Dr Muhammad Sayyid Al-Tantawi also declared that female circumcision has no Islamic justification. He argued that, "The Qur'an and the *Sunnah* do not mention [female circumcision]." However, Shaykh Tantawi left it to medical experts to determine whether it should be carried out in individual cases or not.[61] To sum it up, Shaykh Tantawi seems to accept the arguments of the proponents as authentic and this is why he advised others to ask medical experts. As discussed above, medical experts have warned us about the danger of FGM. It seems that Shaykh Tantawai was not aware of the opinions of medical experts on this issue. Dr Ali Juma'a who also spoke in the conference, mentioned that the Prophet Muhammad (PBUH) did not circumcise his four daughters.[62] This is indeed a great ruling by the great Shaykh.
6. To sum up this section, *Muftis* in the Middle East, especially in Muslim states where FGM is practiced, are split on this issue: those who have given rulings in favour of FGM have not evaluated the *ahadith* and arguments given by the supporters of this practice. They have also not taken into account the opinions of medical experts on the subject. On the other hand, some great *muftis* and scholars consider the practice as *haram* or prohibited under Islamic law. A third view taken by some scholars is that the issue should be left to medical opinion. If doctors consider it good, then it should be legalised and if they consider it harmful, then it should be made illegal by the legislature of Muslim states. This last argument seems to suggest that the FGM is permissible in the view of these scholars because they do not consider the severe immediate and long-term effect of FGM on the health of victims. This is unfortunate on the part of these scholars because they are supposed to have studied all aspects of this issue thoroughly before giving their verdicts. In addition, FGM cannot be regarded as permissible at all. Instead, it should be considered as prohibited because it is inhuman, torturous, degrading and harmful to human health.

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[57] Shaykh Yusuf Al-Qaradawi, *The Fatwa*, Target (Ziel), Mar. 3, 2009, http://www.target-human-rights.com/HP-08_fatwa/index.php?p=fatwaQaradawi.

[58] Sami Aldeeb Abu-Sahlieh, *Male and Female Circumcision: The Myth of the Difference*, *in* Female Circummcision: Multicultural Perspectives 59, 47–72 (Rogaia Mustafa Abusharaf ed., 2007).

[59] *See* Ali Gom'a, *Recommendations of the Conference – The Same Value as a Fatwa*, Target (Ziel), Nov. 24, 2006, http://www.target-human-rights.com/HP-08_fatwa/index.php?p=fatwaAzhar.

[60] *See Al-Misri Al-Yawm*, Arabic Daily, June 25, 2007.

[61] *See Rijal Din Muslimoon U'aridoon khitanul inath* (*Religious scholars oppose female circumcision*), BBC (Nov. 23, 2006, 12:30 GMT) http://news.bbc.co.uk/hi/arabic/sci_tech/newsid_6176000/6176364.stm.

[62] *Id*.

DISCUSSION

After analyzing the various arguments of proponents of FGM, it is clear that classical and medieval Muslim jurists considered it as permissible, obligatory, a *Sunnah* or a source of respect. As a matter of fact, FGM was practiced long before the emergence of Islam and is still practiced by many non-Muslims. Therefore, this practice seems to be based on some other custom or foreign culture but is not based on Islamic law.

On the other hand, if FGM is viewed as permissible (which we have submitted it is not), then, according to *fuqah*, it should be prohibited (as some things may be) if it were proven to be harmful. Allah the Exalted has made permissible many things for human beings because they are beneficial to them. Allah says in the Qur'an, "Allah wants to lighten your burdens, for man was created weak."[63]

Since it is proven that FGM is harmful for women and girls, FGM must be prohibited through education and legislation. The legislature of any Muslim state could be based on the *hadith* and the well-known juristic maxim, "Do not harm and don't be harmed,"[64] in addition to the adverse health effects of FGM. Since most medical experts are of the opinion that FGM is harmful, then it must be prohibited because harm should be stopped. Thus, if the medical community in the past would have reached a conclusion that FGM is harmful, the scholars in the past would have likely come to a similar conclusion. Those experts who argue that FGM is obligatory because it reduces female sexuality should question why they want to reduce female enjoyment of sex in the first place. If it is said that FGM would stop women from acquiescing to un-Islamic behaviors, then is it not possible that even those who are circumcised could be involved in the same immoral practices?

Since FGM contribues to physical as well as psychological harm on the girl or woman on whom it is inflicted and takes away her right to enjoy sexual pleasure with her husband, then why shouldn't it be made illegal under Islamic law? The infliction of harm on anyone is unlawful in Islamic law. Additionally, there is a nearly unanimous opinion regarding male circumcision within the medical community that it can be beneficial to the circumcised man. The same benefits are absent in the case of female circumcision.

Instead, the medical community generally agrees that FGM is very harmful. Therefore, FGM should be totally prohibited by legislation in every country around the world. In essence, FGM amounts to disfiguring God's creation.

CONCLUSION

It is true that the practice of FGM exists in some Muslim countries as well as other states, but proponents have still tried to prove that the practice is perfectly Islamic and backed by *ahadith* of the Prophet Muhammad (PBUH). In fact, there is no direct Qur'anic injunction or authentic *Sunnah* of the Prophet in which he instructed Muslims to circumcise girls, therefore describing it as an Islamic or obligatory act in Islam is an inaccurate statement.

The supporters of FGM do not analyse the various *ahadith* they put forward to prove their point of view. As discussed previously, the Qur'anic verses do not directly shed any light on this topic and to follow the way of Prophet Abrahim, does not mean that females should be circumcised. Following the way of the Prophet Abraham literally means that we should believe in the oneness of God as he did and should not associate anyone with God. In addition, all the *ahadith* produced by the supporters of FGM are technically weak, spurious and are not reliable.

The rules of Islamic law on such an important issue cannot be based on such weak and spurious reports of the Prophet. The proponents of FGM are relatively divided on this issue: only the Shafi'i school considers it as obligatory; jurists of the Hanafi school are split: some consider it as a *Sunnah* but others, whose opinions matter, consider it only a noble deed; and the eighteenth-nineteenth century Syrian Hanafi jurist Ibn 'Abidin treats it as a noble deed. However, the followers of the Hanafi school of thought do not practice FGM. The Malikis consider it a *Sunnah* whereas the Hanbali consider it as a noble deed. Thus, some jurists consider it a permissible act but they do not agree on the degree of the permissibility. However, none of these jurists have been able to prove the legality of FGM by any Qur'anic verse or a single authentic *hadith* of the Prophet. The proponents of FGM fail to prove that a pre-Islamic custom is inherited by Islamic law.

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[63] Qur'an 4: 28.

[64] 'Ubadah b. Samit Ibn Majah, Sunan, hadith no. 2340; Ahmad b. Hanbal, Musnad (Shu'aib al-Arnawut et al. eds., hadith no. 2865).

Consequently, by analysing all the arguments of the proponents of FGM, this author is of the opinion that this practice is not Islamic at all; that all the arguments from the Qur'an in support of FGM are out of place; that all the *ahadith* given by the proponents are spurious, weak and not reliable; that the rule of FGM cannot be based on such spurious reports at all; that the proponents of FGM have failed to produce even a single authentic *hadith* of the Prophet on its legality; that there is evidence that the practice existed in Egypt and Sudan much before the emergence of Islam; that in Egypt, FGM has been practiced by Muslims as well as Christians;[65] that it was carried out to reduce the sexuality of slave women; and that under Islamic law, it is prohibited to disfigure the human body. The only exception being male circumcision on which there is unanimity among Muslim jurists and which is widely practiced in the Muslim world. In the Muslim societies where the practice of FGM exists, it is seen either as a customary-cum-cultural ritual or a question of personal preference but never a genuine Islamic obligation. Under Islamic law, only that custom which is considered valid and binding does not clash with Islamic law. There is no authentic evidence to support the view that Islam has categorically adopted this cruel practice from pre-Islamic time. Subjecting women or female children to such cruel treatment in the absence of any authentic proof from Islamic law must be condemned and strictly prohibited by legislatures in Muslim states.

For those who consider it permissible (which it is not) they should consider the opinion of medical experts who are consistently of the opinion that FGM inflicts physical and psychological harm on girls and deprives them of the opportunity to enjoy sexual pleasure. They should thereby make such practice strictly illegal and punishable by law. According to Muslim jurists of all schools of thought, such a law would be binding even on those that were against it before its enactment.

Moreover, violators of such law could be punished and the decisions of the courts will be binding on those who were against such legislation. Once such legislation is enacted, *muftis* in that country will not be able to issue *fatwas* against such law. Muslim states must stop this practice because one of the general principles of Islamic law based on the Prophetic teaching: "Do not harm and don't be harmed." Moreover, the Qur'an teaches against the disfiguring of the human body which means that FGM should not take place.

Recently, great Egyptian scholars have spoken against FGM. Dr Ali Juma'a has declared FGM as *haram* while the late Shaykh Tantawi declared that FGM has no Islamic justification. These are extremely important, much needed, and very welcomed statements for Egyptian women's rights activists who campaign against FGM. Finally, the practices of Muslims should be judged according to Islamic law, but Islamic law should not be interpreted according to the practices of Muslims. In other words, customary and cultural practices in Muslim societies should be judged according to Islamic law but Islamic law should not be judged according to custom.

[65] *See Mana' khitan al-Inath nihaiyan fi misr* ("*absolute prohibition of female circumcision in Egypt*"), BBC (June 28, 2007, 17:47 GMT) http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_6251000/6251330.stm.