



Debunking the Myth Series

Debunking the Myth that Islam Requires Female Circumcision

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I. Introductory Remarks:

In April of 2017, federal charges were brought by the FBI in the state of Michigan accusing Muslim doctors of performing female genital mutilation (FGM).¹ The charges were brought against Dr. Jumana Nagarwala alleging that she had performed FGM on two seven-year-old girls at a medical clinic in Detroit.² Congress passed a Federal Prohibition of Female Genital Mutilation Act of 1995 to prohibit and impose penalties on any act of FGM.³ A few years later, the U.S. legislature passed the Transport for Female Genital Mutilation bill, 18 U.S.C. §116 (2012), which became effective in 2013. This section of the code criminalizes any act of FGM.⁴

Dr. Nagarwala is the first Muslim doctor to face federal FGM prosecution in the U.S. The criminal complaint against her states that members of her community are known to practice

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¹ *United States v. Nagarwala*, 2017 WL 1361324 (E.D. Mich.).

² *Id.* The charges against Dr. Nagarwala involved FGM acts of Type 2, often referred to as excision. It consists of partial removal of the clitoris. See Criminal Complaint, *United States v. Nagarwala*, 2017 WL 1361324 *3 (E.D. Mich.) (hereinafter "Criminal Complaint").

³ H.R.941, 104th Congress (1995-1996). Retrieved from <https://www.congress.gov/bill/104th-congress/house-bill/941>

⁴ 18 U.S.C. § 116 (2012).

FGM on young girls “as part of their religious and cultural practice.”⁵ While it is true that this practice exists in some Muslim majority countries, it is not religiously mandated. As we shall show below, it is rooted in the ancient cultures of these countries. Unfortunately, many Muslims (as well as non-Muslims) are not aware of this fact. Therefore it is important to state very clearly the result of our study herein, namely, that Islam does NOT mandate FGM, or any practice that causes harm to a person’s health and dignity.

Before we launch into our discussion, we shall briefly discuss modern controversies surrounding the terminology used in the literature to discuss what the court referred to above as FGM, and is sometimes referred to by women as female genital cutting (FGC), or more traditionally, as female circumcision. We shall also discuss terminology used in Islamic scholarly works, ancient and modern. Based on this information, we shall then determine the most suitable terminology to be used in this paper.

II. Terminology, History and Controversy:

Khitan, or male circumcision, is a procedure practiced by both Muslims and non-Muslims around the world.⁶ While there is little argument over the obligation of *khitan* or male circumcision in the Islamic and Jewish traditions, some variations of this practice exist due to cultural differences. For example, one primary variation relates to the age at which the male child is to be circumcised. In some cultures, male circumcision is performed between the ages of 3 and 7, while in other cultures this procedure can be performed between the ages of 5 and 18.⁷

On the other hand, *khifadh*, or female *khitan*, is a controversial issue worldwide. It is increasingly condemned in many modern cultures. Despite its common affiliation with Islam, it is a fact that cultures practicing female *khitan* have always been religiously diverse. The practice itself is concentrated geographically on the African continent. Historians place the origins of these practices within two non-Muslim locales, Pharaonic Egypt and ancient Ethiopia.⁸ In the

⁵ Criminal Complaint, *supra* note 2, at 4. The community referred to is the Dawoodi Bohra community, a small Shi’i sect.

⁶ The word *khitan* (circumcision) describes the removal of excess skin at the tip of the male sexual organ for health and cleanliness reasons. See “Male circumcision: global trends and determinants of prevalence, safety and acceptability,” UNAIDS / 07.29E / JC1320E. World Health Organization and Joint United Nations Programme on HIV/AIDS, 2007. ISBN 978 92 9 173633 1 (UNAIDS), 4 at: http://apps.who.int/iris/bitstream/10665/43749/1/9789241596169_eng.pdf

⁷ *Id.* at 3-5.

⁸ Gerry Mackie has suggested that infibulation began with the Meroite civilization (800 BC – 350 AD) before the rise of Islam, to increase confidence in paternity. DeMeo, James. *The Geography of Genital Mutilations*. (Presented at the Fourth Symposium on Sexual Mutilations, University of Lausanne, Lausanne, Switzerland. August 9-11, 1996.) Published in: *Sexual Mutilations, A Human Tragedy*, (New York: Plenum Press, 1997), 37-45.

case of Egypt, the practice of female *khitan* was attributed to the aristocracy of the time. There is evidence, however, to support the view that all segments of society upheld this practice. The Islamic scholar Ibn Hajar Al-‘Asqalani [d. 1449] mentions in his book, *Fath Al-Bari*, that this practice came to the Arabian Peninsula from its origins in Egypt, through Nile river migration.⁹ Sheikh Mahmoud Shaltut [d. 1963], former grand imam of al-Azhar, also notes that circumcision is an old historical practice, and that male and female circumcision was known and performed by many peoples before Islam.¹⁰ Today, the practice continues to survive in Egypt and several neighboring countries.

Looking at this issue from a cross-cultural perspective, not everyone has been comfortable with the use of the term “FGM” or the alternative “FGS” (Female Genital Surgery). For example, according to *Harvard Human Rights Journal*, African feminists in communities where the practice is common objected to the use of these terms.¹¹ To them, they were value-laden and judgmental.¹² The terms implied intentional infliction of harm deliberately attempted by practitioners to hurt members of their families and communities. Furthermore, Tostan, an African organization that advocates against the practice in Africa, provides a surprising perspective on this issue.¹³ It notes that members of African cultures that engage in female circumcision view the procedure in a radically different way.¹⁴ Tostan concluded that using a less-judgmental term, such as “female genital cutting” would be more productive for advancing their cause.¹⁵ The international community seems to agree. Indeed, WHO and UNICEF are now using the term Female Genital Mutilation and Cutting (FGM/C, FGMC, or FGC). These terms

⁹ Ibn Hajar Al-‘Asqalani, *Fath al-Bari: Sharh Sahih al-Bukhari* [The Authentic *Hadiths* of (i.e., compiled by) Muhammad al-Bukhari, with Exegesis by al-‘Asqalani] Reprint. (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1989), vol. 1, 430-436.

¹⁰ Mahmoud Shaltut, *Al-Fatawa* [Fatwas] (Cairo: Dar al-Shuruq, 2004), 284-286. Al-Azhar is an ancient Islamic institution internationally renowned as a primary source of Islamic knowledge. It is located in Cairo, Egypt.

¹¹ Hope Lewis, “Between Irua and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide,” 8 *Harv. Hum. Rts. J.* 1, 5-7 (1995).

¹² *Id.* at 7.

¹³ Tostan: Dignity for All, *Tostan FAQ: FGC v. FGM*, (April 2, 2013). Retrieved from <https://www.tostan.org/tostan-faq-fgc-vs-fgm>

¹⁴ According to Tostan, “[I]t seems counter-intuitive, but in our experience, if there is a dominant emotion involved in FGC, it is love—because not cutting your daughter risks her entire future. As explained by a former cutter turned Tostan advocate, Oureye Sall, in communities where FGC is practiced, community members will not eat food cooked by a woman who is not cut, will not accept water from her, will not even sit with her. She will have difficulty getting married. An uncut woman is viewed as unclean and therefore unable to participate fully in the community. With these social pressures, if a family chooses not to cut their daughter, they have risked severely damaging her social status. To imply that parents are actually “mutilating” their daughters through a decision made with love and concern for her well-being is unfair to them and risks alienating and offending them rather than convincing them to abandon the practice.” *Id.*

¹⁵ *Id.*

are intended to move away from more traditional terms, such as female circumcision, which were commonly perceived as articulating a religious obligation.

Looking at this issue from an Islamic perspective, we note that the Arabic language has two different terms for circumcision. The term “*khitan*” usually refers to male circumcision, while the term “*khifadh*” refers specifically to female circumcision.

The term “*khifadh*” has fallen into disuse in modern times, perhaps because the practice itself is not as widespread as it once was. The Arabic term currently in use is “female *khitan*.” Regardless of the terminology used, female circumcision can be performed in a number of ways.¹⁶ These range from ones that cause severe harm, to ones that involve less severe cutting. We shall return to this matter later.

There has been a terminological controversy with respect to the accurate English-language translation of the terms “female *khitan*” or “*khifadh*.”¹⁷ The English terms tend to refer to one type of female *khitan* or another, thus creating confusion as to the scope of the original Arabic term being discussed. To avoid such confusion, and in recognition of the cross-cultural discussion mentioned above about the terms FGM and FGS, the Arabic term “female *khitan*” will be used throughout this paper. It will refer generally to the various types of female circumcision, unless the context otherwise requires.

III. Methodology and Discussion:

The case against Dr. Nagarwala is the first federal prosecution of female *khitan* in the US. Unfortunately, the complaint cited female *khitan* as an Islamic religious and cultural practice.¹⁸ In light of these facts and the above discussion, it has become necessary to examine the issue of female *khitan* from an Islamic religious perspective.

Before embarking on this investigation, we should explain a basic requirement of Islamic law. Promulgating religiously mandated laws and regulations requires evidence derived primarily from the Qur’an, if available, or secondarily from the *sunnah* (i.e., words, actions and behavior

¹⁶ Female circumcision may take one or more of the following forms: *clitoridectomy*, which is the partial or total removal of the clitoris, *excision*, which refers to the partial or total removal of the clitoris and labia minora, *infibulation*, which refers to tightening the vaginal opening by either cutting and repositioning the labia minora or stitching it with or without removing the clitoris, or *any* harmful procedure performed on the female genitalia for non-medical purposes such as, piercing, incising, or scraping the genital area. World Health Organization, Female Genital Mutilation. 2017 <http://www.who.int/mediacentre/factsheets/fs241/en/>.

¹⁷ Lewis, *supra* note 11, at 4.

¹⁸ Criminal Complaint, *supra* note 2, at 4.

of the Prophet Muhammad).¹⁹ Other sources of legislation include *qiyas* (reasoning by analogy), and *ijmaa'* (consensus of opinion).²⁰ Therefore, scholars who would like to cloak a cultural practice with religious sanctity must rely in their efforts on the above mentioned sources.

In the case of female *khitan*, proponents of this practice rely on (a) a single verse in the Qur'an and (b) a number of *hadiths* attributed to Prophet Mohammed (peace be upon him). This study will show that the cited Qur'anic verse is inapplicable to the issue at hand, and that the various quoted *hadiths* are either weak, or do not establish the desired result. Furthermore, we shall establish that there is neither a valid use of *qiyas* nor consensus that would mandate female *khitan*. These facts together suffice to reject the argument that female *khitan* is required in Islam. However, our conclusion is further bolstered by the Islamic worldview and the basic principles of Islamic ethics. These are clearly articulated in the Qur'an and *hadith*.

By adopting this comprehensive approach, we signal our refusal to view the issue of female *khitan* as an isolated issue unrelated to the overall Islamic architecture of human rights and gender relations. Instead, we place the question of female *khitan* in its proper context within the overall Islamic value system. This comprehensive approach leads us to conclude with added confidence that Islam does NOT require female *khitan*.

In the next few sections, we shall present four different arguments to support our conclusion. In the:

- **first section:** we address claims that the Qur'an mandates female *khitan* for women.
- **second section:** we address a group of *hadiths* used to assert the same thing.
- **third section:** we address the two major juristic principles (*qiyas* and *ijmaa'*) to show that they do not support the argument that female *khitan* is mandated.
- **fourth section:** we address briefly other considerations, including the interaction of American and Islamic law. We then conclude with a restatement of our opinion about female *khitan* in Islam and the U.S., based on our jurisprudential analysis and the laws of this country.

First: The Qur'an does not mandate female *khitan*

There is no explicit statement in the Qur'an that establishes *khitan* as mandatory even for males. However, proponents of the view that female *khitan* is religiously mandated support their position by citing *ayah* 123 of *Surat An-Nahl* in the Qur'an. This *ayah* simply states:

Then we revealed to you "Follow the way of Abraham, the true in faith, and he joined not gods with God." [16:123]

¹⁹ Wahbah Al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* [Islamic Jurisprudence and its Evidence] (Damascus: Dar al-Fikr, 1984), vol. 1, 30-31.

²⁰ *Id.*

"لَمْ أَوْحَيْنَا إِلَيْكَ أَنْ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ"²¹

This verse commands Muslims to follow the way of Abraham. In light of the second part of this *ayah*, scholars understood the way of Abraham to refer to his deep belief in monotheism. This is the most intuitive interpretation of the *ayah*. However, some scholars went further and extrapolated from Abraham's life and actions other matters that they deemed to be part of his "way." These included *khitan* because Abraham was circumcised. Under this extended interpretation, circumcision becomes obligatory on every Muslim male.²²

Notwithstanding this latter interpretation, it is unclear how this verse supports an argument in favor of female *khitan*. For, while we all know that Abraham was circumcised, there is no mention anywhere of Sarah being circumcised. The only mention of female circumcision in the House of Abraham is based on ancient reports about Sarah circumcising Hagar out of jealousy.²³ Even if we were to accept these reports, it only reveals female circumcision as a harmful and vengeful act, not as a rule or *sunnah* of Prophet Abraham to be followed by Muslims, as some scholars argued.

More importantly, as a unique guide, the Qur'an explains carefully rules about various matters that Muslims face on a daily basis, often on the micro level. For example, it addresses the etiquettes of trading, socializing, eating, bathing and interacting with others. Yet, there is no mention of female *khitan* in the Qur'an at all. Had it been a requirement, one would expect an explicit mention of it. The *ayah* about the Prophet Abraham, if it is about *khitan* at all, can only be about male *khitan*. To argue that it also includes female *khitan* is to overreach, especially in light of the above discussion about Abraham's family. In short, the All Compassionate God of Islam does not require of Muslims a behavior without making the requirement very clear either in the Qur'an or through the Prophetic *hadiths*. For, it is only fair to give Muslims sufficient notice of the law. Yet, there is no explicit requirement of female *khitan* in the Qur'an nor, as we shall see later, in the *hadith*.

Second: The *Sunnah* discourages the practice of female *khitan*

²¹ Qur'an, *An-Nahl*, 16:123.

²² Al-Bukhari narrated that Abu Hurayrah said: The Messenger of God (PBUH) said: "Abraham (PBUH) circumcised himself when he was eighty years old." See Al-'Asqalani, *supra* note 9, vol. 11, 93, no. 6298. See also, Shihab al-Din Al-Alusi [d. 1854], *Ruh al-Ma'ani* [The Spirit of Meanings] Reprint. (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994), vol. 7, pp. 484-85. See also, Muhammad Fakh al-Din Al-Razi [d. 1209], *Tafsir al-Fakhr al-Razi* [The Exegesis of al-Razi] Reprint. (Beirut: Dar al-Fikr, 1985) vol. 20, pp. 136-137.

²³ Mohammed Ibn Jarir al-Tabari [d. 923], *Tarikh Al-Tabari* [The History of al-Tabari], (Egypt: Dar Al-Ma'arif, 1967) vol.1, 308-311.

There are four *hadiths* (sayings of the Prophet) that have been interpreted or understood as providing support for the practice of female *khitan*. As we shall show below, none of these *hadiths* actually provides the necessary support for this practice.

A *hadith* consists of two elements: *matn* (the content/substance of the *hadith*) and *sanad* (or *isnad*, its chain of narration). In *hadith* science, usually both elements are critically examined for a proper evaluation of the *hadith's* reliability, and for understanding its meaning and the legal rules that may be derived from it. Thus, examining the *matn* and *sanad* of the *hadiths* used to support female *khitan* is necessary to determine whether female *khitan* is encouraged by the *sunnah*.

Hadith No. 1:

(a) Understanding the matn of the hadith:

The first *hadith* was addressed to a woman who was performing female *khitan* in Madinah. It has three versions which will all be discussed below. In the first, the Prophet (PBUH) said to the woman engaged in *khifadh*:

“Oh Umm ‘Attiya, *ikhfidhi* [do *khifadh*], but go lightly, for it is more wholesome for the face [of the women] and more desirable for the husband.”²⁴

"يا أم عطية اخفضي ولا تُنهكي، فإنه أسرى للوجه، وأحظى عند الزوج"

Another version of this *hadith* simply states:

“Go lightly, for it is more favorable to the woman, and better liked by the man.”²⁵

"لا تُنهكي، فإن ذلك أحظى للمرأة، وأحب إلى البعل"

The above *hadith* must be understood in the context in which it took place. Female *khitan* was customary and entrenched in the Arabian Peninsula before and at the time of the Prophet. As in the case of other rulings that profoundly transformed existing traditions, the prohibition of female *khitan* also required the use of the wise Qur’anic approach for social change, namely that

²⁴ Al-Bayhaqi, *al-Sunan al-Kubra* [The Major Work of the Prophet’s *Sunnah*] Reprint. (Beirut: Dar al-Fiker, 2005), vol. 13, 140. Another version of this *hadith* was reported by Muhammad Ibn Ya’qub Al-Kulayni [d. 941], *Al-Kafi* [The Sufficient Book] Reprint. (Beirut: Manshurat Al-Fajr, 2007), vol. 6, 25.

²⁵ Abu Dawud, Sulayman al-Sijistani [d. 889], *Sunan* [*Sunnahs*] Reprint. (Beirut: Dar al-Jil, 1988), vol. 4, 370.

of gradualism and transformation through education.²⁶ In teaching people about their religion, the bridge between culture and religion was never severed abruptly unless it supported practices that were in clear violation of core principles of Islam, such as the unity of God or female infanticide.

In most cases of social change, society was educated about higher moral principles and incentivized to embrace them. By embracing and implementing these principles, individuals could experience the desired internal and external transformation. The Prophet employed tact and patience so as not to alienate people whose objectionable practices were deeply ingrained in their cultural identities. This is best illustrated in the Qur'anic approach to the prohibition on drinking of alcohol. Since drinking alcohol was prevalent, prohibition was enforced gradually, limiting the possibility of a volatile clash between Islam and the very strong and resilient ancient Arab culture.²⁷

Absent knowledge of the social context and the Qur'anic approach to change, it is possible to reach the wrong conclusion about this *hadith*. One could argue that since the Prophet said to the women “*ikhfidi* but go lightly” in performing this cultural rite, it follows that he tacitly gave the practice his nod of approval. However, the structure of the prophetic statement can also properly lend itself to the following interpretation: “*ikhfidi* [if you must] but go lightly.” This interpretation is supported by another version of this *hadith* which states:

“If you choose to perform *khifadh*, go very lightly and not severely, for it is more wholesome for the face [of the women] and more desirable for the husband.”²⁸

"إذا خففت فأشمي ولا تنهكي ؛ فإنه أسرى للوجه ، وأحظى للزوج ."

This interpretation would then indicate the Prophet's disfavor of the practice and his knowledge of the fact that it is deeply ingrained in the culture. For this reason, he resorted to the Qur'anic approach for cultural transformation and development that is a gradualist one. Had the Prophet wanted to support the practice, he would have stated this explicitly. Instead, the Prophet followed his statement of admonishment by educating the woman about the benefits of diminishing female *khitan*.

²⁶ For more on the gradualist approach of the Qur'an, see Azizah al-Hibri, *The Islamic World View*, (Chicago: ABA Publishing, 2015), vol. 1, 38-40. See also, *Islamic Law in Practice*, edited by Mashood A. Baderin. (New York: Routledge, 2014), vol. 3, 220-229.

²⁷ Al-Hibri, *supra* note 26, at 38; Baderin, *supra* note 26, at 220-229.

²⁸ Al-Bayhaqi, *supra* note 24, vol. 8, 324; see also Al-Kulayni, *supra* note 24, vol. 6, 25 (slightly different wording of this *hadith*).

Given the significant variation in reporting this *hadith*, one might properly ask: “what did the Prophet really say?” This matter will be addressed in the discussion of the *sanad* of the *hadith*, but we point out that often such variation indicates that the reporters were not quoting the Prophet *verbatim*, but rather communicating the “substance” of the *hadith* as they understood it. Consequently, such reports, which are often colored by the reporter’s worldview (patriarchal or otherwise), can distort the actual intended meaning of the *hadith*. In this case, we point out that all three *hadiths* become consistent if we take them to be reporting the meaning in the third variant. Otherwise, they would seem contradictory, something the Prophet did not fall into.

In fact, examining this *hadith* more carefully, the argument against utilizing this *hadith* (in any version) as proof for requiring the practice of female *khitan* can be found in the body of the *hadith* itself. When the Prophet asked the woman to go lightly, he was concerned about the harmful effects that would result from the usual female *khitan*. He explained that “going lightly” was more beneficial for the woman and more desirable for her husband. The reference here was to health and sexual pleasure. The parts of the female genitalia that are commonly adversely affected, namely, the clitoris, the labia and the vaginal opening, are important for a woman’s sexual satisfaction during intercourse. Unfortunately, it is precisely for this reason that female *khitan* has been popular in communities that are threatened by female sexuality.

The Prophet, however, was explicitly supportive of women’s sexual rights. He insisted in various *hadiths* on the importance of the husband satisfying his wife sexually. For example, Khalifah ‘Umar Ibn Abdul-Aziz [d. 1320] reported the following *hadith* by the Prophet:

“Do not have intercourse with your wife unless she has the same level of desire that you have, so that you do not reach orgasm before she does.”

The Prophet was then asked, “How do we know?” The Prophet answered:

“Well! You kiss her, touch her and caress her, till you notice that she has the same desire that you have, and then you engage in sex with her.”²⁹

Anas Ibn Malik, who was a companion of Prophet Muhammad, also reported that the Prophet said:

“When one of you has sexual intercourse with his wife, he must always be conscious of her needs. If he finishes before her, he then must not rush her and must wait for her until

²⁹ See Muwaffaq al-Din Ibn Qudamah [d. 1223], *Al-Mughni*, [The Enricher/or Sufficient] Reprint. (Beirut: Dar al-Kitab al-‘Arabi, n.d.) vol. 8,136. See also, A. al-Hibri and R. al-Habti section on Islam, in *Sex, Marriage, and Family in world Religions*, ed. Don S. Browning, M. Christian Green, and John Witte Jr. (New York: Columbia University Press, 2006), 206 – 211.

she is satisfied, because that frustrates her and prevents her from enjoying her sexuality.”³⁰

There are many more *hadiths* in this vein. It is clear, however, from the above *hadiths* that the Prophet would not protect Muslim women’s sexual pleasure and their dignity, and yet encourage a practice that defeats both. This is especially true in light of the following Prophetic *hadith* (the *dharar hadith*) articulating a basic rule in Islam:

" لا ضرر ولا ضرار "

“There should be neither *dharar* (harm) nor *dhiraar* (reciprocating harm).”³¹

This *hadith* prohibits inflicting harm, even in retaliation. Considering the harmful health and other effects mentioned above, it is clear that female *khitan* does significant harm to women. The explicit warning to go “lightly” illustrates the concern of the Prophet about this harm. So, it stands to reason that the Prophet would not warn against the harm of female *khitan*, and then require or even encourage it.

While some would argue that female *khitan* could be performed safely, we do not share this view. The practice is designed to stunt the woman’s sexual experience. The resulting psychological harm from the procedure itself and from these later effects, without more, is sufficient to meet the standard of harm in the *dharar hadith* above.

(b) Determining the authenticity of the hadith:

The above discussion addresses only the substance of the *hadith*, or its “*matn*.” A discussion of the *matn* of a *hadith* is important to check its meaning and validity in light of the overall Islamic worldview as articulated in the Qur’an, other *hadiths* and prophetic practices. If that meaning turns out to be inconsistent with these other sources, especially the Qur’an, then we have sufficient grounds for rejecting the *hadith* as unreliable or even false. Otherwise, we must also examine the *sanad* of the *hadith* to determine its reliability.

So, as important as our above *matn* discussion is for clarifying the meaning of the *hadith* and its consistency with other major sources, it is not sufficient for establishing its authenticity. At best, it provides *prima facie* support for that authenticity. For a conclusive determination, we must

³⁰ Ibn Qudamah, *supra* note 29, vol. 8, 136.

³¹ Abu ‘Abdullah Ibn Majah [d. 887], *Sunnan Ibn Majah* [*Sunnahs* of Ibn Majah] Reprint. (Beirut: Dar Al-Ma’rifah, 1996), vol. 3, 106. See also, Al-Kulayni, *supra* note 24, vol. 5, 292; and Muhammad Ibn al-Hasan Al-Hurr al-‘Amili [d. 1693], *Wasa’il al-Shi’a*, [Book of *hadith* for Shi’a] Reprint. (Beirut: Dar Ihya’ al-Turath al-‘Arabi, 1983), vol. 18, 32.

confirm the authenticity of the *hadith*. This means that we have to examine its *sanad*. “*Sanad*” refers to the chain of attribution, i.e. the chain of narrators who attributed this *hadith* to the Prophet. The chain begins with a narrator who reported it from its original source and then transmitted it to other narrators. It ends with the last narrator who heard it from those before him. The chain must be unbroken, historically accurate, and consisting of reliable narrators not known for memory lapses, inaccuracies or fabrication.

We have established that the *matn* of this *hadith* does not indisputably support the conclusion derived from it by scholars favoring female *khitan*. In fact, we provided strong arguments in support of the conclusion that, in this *hadith*, the Prophet’s instructions were aimed at significantly reducing the harm caused by the procedure as a step towards phasing it out. Now, we must go further and examine the *sanad* of this *hadith* to determine its authenticity. For, even if we had concluded that the *hadith* indisputably supported female *khitan*, we would not be able to use it as a jurisprudential basis for requiring or advocating the practice unless this *hadith* is authenticated.

As it turns out, the well-known Islamic scholar Ibn ‘Abd al-Barr al-Maliki [d.1071] opposed female *khitan* because he concluded that all *hadiths* about female *khitan* contained weaknesses or deficiencies in their chain of attribution to the Prophet.³² Another famous scholar, Ibn Qudamah al-Maqdisi [d. 1223] rejected the requirement of female *khitan*, but nevertheless favored the practice in light of *hadith* no. 2 discussed below.³³

Incidentally, contemporary Islamic scholars, such as Mohamed Salim El-Awa, have also opposed female *khitan*, arguing that it is not an Islamic practice and is not supported by a careful analysis of Islamic sources.³⁴ He argues that the Qur’an contains no references to female *khitan*; moreover, there is no consensus of scholars on the issue, and no *qiyas* can be extracted. El-Awa adds that among the various *hadith* narrations, there is not a single narration with a *sahih sanad* [authentic attribution] that would allow us to extract from it a rule regarding such an important issue.³⁵ El-Awa concludes: “[female *khitan*] is not one of the laws of religion [Islam], but it is one of the customs of people”.³⁶

³² Ibn ‘Abd al-Barr al-Maliki, *Al-Tamhid* [The Introduction] Reprint. (Morocco: Ministry of Endowments and Islamic Affairs, 2010), vol. 21, 59.

³³ Ibn Qudamah, *supra* note 29, vol. 1, 70. In general, the *Hanbali* sect to whom Ibn Qudamah belongs, recognizes female *khitan*, but does not believe that it is mandated in Islamic jurisprudence.

³⁴ Mohamed Salim El-Awa (Former General Secretary of International Union of Muslim Scholars), “*Bara’atu el-Islam min Khitan el-‘Enath*” [Islam is innocent of female *khitan*], *Sudaress Journal* (Sudanese Electronic Journal), (2011), at <http://www.sudaress.com/sudanile/24763>.

³⁵ *Id.*

³⁶ *Id.*

In other words, major scholars have already examined the authenticity of *hadith* no.1 in all its versions. They deemed it “weak,” and hence unreliable.³⁷ Consequently, this *hadith* cannot provide a sound basis for imposing or advocating a religious requirement, or to justify legislation or a legal ruling. Based on this fact, we could have omitted the *matn* analysis and simply declared this *hadith* weak and unreliable from the outset. However, it was important for us to illustrate to the few who hold it reliable, that even if they were correct, the *matn* of this *hadith* raises its own interpretational challenges to their claims.

We now turn to *hadith* 2, quoted by Ibn Qudamah in his argument favoring female *khitan*.

Hadith No. 2:

(a) *Understanding the matn of the hadith:*

The second *hadith* scholars rely on in arguing in favor of female *khitan* is the following:

“*Khitan* is *sunnah* for men, [and] *makrumah* (an honorable act) [towards/for] women.”³⁸

"الختان سنة للرجال، مكرمة للنساء"

The plain meaning of the first part of this *hadith* is that *khitan* is *sunnah* for men that must be followed. However, the second part of the *hadith* can be interpreted in more than one way. First, most scholars understood it to mean that *female khitan* is an honorable act. However, the Arabic word used in this *hadith* is *khitan* and not *khifadh*, which is the Arabic word used at that time for female *khitan*. A clear statement about *khifadh* would have been that “*khitan* is a *sunnah* for men [and] *khifadh* is an honorable act [towards/for] women.” But that is not what the Prophet said. Therefore, in examining the plain meaning of the *hadith*, we must take this fact into account. Note that even the weak *hadith* no.1, discussed above, used the term *khifadh*, because that was the ancient terminology for female *khitan*.

Second, given these facts, we must take the Prophet at his word when he used the term *khitan*, and conclude that he is referring to male *khitan*. Therefore, we should not try to extrapolate a rule

³⁷ For example, al-Bukhari did not include it among the *sahih* (reliable) *hadiths* his *Sahih al-Bukhari* [The Authentic *Hadiths* of (i.e., compiled by) al-Bukhari]. Neither did Muslim in his *Sahih Muslim* [The Authentic *Hadiths* of (i.e., complied by) Muslim]. Furthermore, Abu Dawud deemed the *hadith* weak. See Abu Dawud, *supra* note 25, vol. 4, 370.

³⁸ Al-Bayhaqi, *supra* note 24, vol. 13, 141; see also Al-Kulayni, *supra* note 28, vol. 6, 25.

from this *hadith* about female *khitan*. Under this logical plain language interpretation of the *hadith*, we now have a radically different meaning. The *hadith* is now understood to say that male circumcision is a *sunnah* to be followed by men, and that this act of male circumcision is also an honorable act towards/for women. In other words, the “honorable act” towards women is not that of performing *khifadh* on them, but rather that of having the men circumcised.

But why would this be the case? There are many reasons in support of this statement. Among them for example, is the belief that circumcising men prevents infectious diseases that might be transmitted to women during intercourse.

Grammatical analysis of the *hadith*. Our linguistic analysis of the meaning of the Prophetic *hadith* is based not only on the ancient meaning of the word *khitan*, but also on the Arabic grammatical structure of the *hadith*. In Arabic grammar, it is not unusual to have verbless sentences. These are referred to as nominal sentences, and this *hadith* consists of a nominal sentence. The verb “to be” was introduced in the translation to convey the meaning of the *hadith* in English, but there is no corresponding verb in the original Arabic *hadith*.

The parsing of this nominal sentence becomes something like this: In the first part of the *hadith*,

“*Khitan* [is] *sunnah* for men...”

“*khitan*” serves as the *mubtada’* (subject) and “*sunnah* for men” serves as *khobar* (adjective phrase that acts as a predicate to the subject). However, the second part of the *hadith*,

“... an honorable act [towards/for] women.”

is missing both a subject and a verb. More accurately, the subject is implied or understood. So, we need to determine what that subject is. The implied subject of the dependent sentence is the very subject of the first sentence, namely “*khitan*”. The honorable act [towards/for] women is tied to male circumcision and the related *sunnah*, but not to female *khifadh*.

Ancient scholars, steeped into the cultural tradition of female circumcision, unfortunately used this *hadith* to advocate for women’s *khifadh*. Furthermore, some English translations of the *hadith* read simply: “*khitan* is *sunnah* for men and it is an honor for women.” Absent knowledge of the historical linguistic tradition, this translation fails to convey the accurate meaning of *khitan*. More importantly, it gives the English-language reader the inaccurate impression that the practice of female circumcision is what is being described as honorable.

Moreover, even if we were to accept the traditional over-inclusive interpretation of this *hadith*, then by its own words the *hadith* does not require *khitan* for women. It only describes it as “an honorable act [towards/for] women”.

(b) Determining the authenticity of the *hadith*:

Having clarified the meaning of the *hadith*, we now consider its authenticity. Various ancient scholars noted that this second *hadith* suffers serious defects that make it unreliable. For example, Mohammad Baqer Majlesi classified this *hadith* in *Malaath al-Akhyaar* as “*mursal*”.³⁹ Also, Al-Bayhaqi [d. 1066] who narrated this *hadith* exposed a weakness in its chain of attribution (*sanad*).⁴⁰ In other words, he pointed out that the chain of narrators attributing this *hadith* to the Prophet suffered from certain discrepancies, rendering the *hadith* defective.⁴¹ His reasoning was as follows: this *hadith* was narrated on the authority of al-Hajjaj bin Artah. However, al-Hajjaj is known to use ambiguous terms in conveying his chain of transmission. Moreover, he is inconsistent in his narration. Additionally, in his book *Al-Tamhid*, Ibn ‘Abd al-Barr says: “This *hadith* depends upon the narration of al-Hajjaj bin Artah whose narrations cannot be used as evidence for anything.”⁴² Given that major scholars from various schools of thought have deemed this *hadith* weak, it cannot be used to support the claim that the practice of female *khitan* is commendable, let alone to claim that it is mandated in Islam.⁴³

Having pointed out serious problems with both the *matn* and *sanad* of this *hadith*, we reject the claim that it establishes the requirement of female *khitan*. In summary, our reasons are as follows: (1) by its own terms, the *hadith* does not address female *khitan*, (2) even if we waive this objection, the *hadith* speaks of *khitan* for women as an “honorable act,” and not as a requirement, and finally, (3) this *hadith* is weak, and hence cannot be the basis of a ruling or a religious requirement.

The following *hadith*, that is somewhat similar to the one above, has been attributed to Imam Muhammad Al-Baqir [d. 733], the fifth Shi’i imam. It states:

³⁹ Mohammad Baqer Majlesi, *Malaath al-Akhyaar* [The Shelter of the Upright People] Reprint. (Qum: Maktabat Ayatollah al-Mar’ashi, 1986) vol. 12, 429. “*Mursal*”, as defined by the Imamite jurists, is a *hadith* whose chain of transmission goes only as far back as the *tabi’i* (follower) of the Prophet Muhammad. Thus, there is a break in the chain of transmission with one or more persons missing. Imamite jurists classified a *mursal hadith* as having ‘*adam al-hujjiyah*’ (inadequate as proof); it cannot be used as a proof for deriving an Islamic law. See Zayn al-Din Ibn ‘Ali al-‘Amili [d. 1558], *Al-Bidayah fi ‘Ilm Al-Dirayah* [An Introduction to the Science of *Hadith*] Reprint. (Qum: ‘Intesharat Mahalati, 2000), 35-36.

⁴⁰ Al-Bayhaqi, *supra* note 24, vol. 13, 141. See also, Muhammad Nasser al-Albani, *Silsilat al-Ahadith al-Dha’ifah wa’l Mawdou’ah* [Chain of Weak and Fabricated *Hadiths*] (Riyadh: Maktabat al-Ma’arif, 2000), vol. 4, 407.

⁴¹ For more on weak *hadiths*, see ‘Uthman bin ‘Abd al-Rahman al-Shahrazuri [1245], ‘*Ulum al-Hadith* [Studies of Narration of *Hadith*] Reprint. (Damascus: Dar al-Fikr, 1986), 41.

⁴² Ibn ‘Abd al-Barr al-Maliki, *supra* note.32, vol. 21, 60.

⁴³ Another scholar who deems this *hadith* weak is Muhammad al-Shawkani [d.1834], *Nayl al-Awtar: Sharh Muntaqa al-Akhbar* [The Obtainment of the Objective: A Commentary on the *Hadith* Collection of Ibn Taymiyyah al-Kabir] Reprint. (Beirut: Dar al-Jil, 1973), vol. 1, 138- 139.

“The *sunnah* [applies to] the *khitan* of men; it [the *sunnah*] does not apply to women.”⁴⁴

أَمَّا السُّنَّةُ فِي الْخِتَانِ عَلَى الرَّجَالِ وَ لَيْسَ عَلَى النِّسَاءِ”

The following *hadith* has also been attributed to Imam al-Hussain [d. 680], the third Shi’i Imam,

“The *khitan* of boys is *sunnah*, and the *khifadh* of girls is not *sunnah*.”⁴⁵

”خِتَانُ الْغُلَامِ مِنَ السُّنَّةِ وَ خَفْضُ الْجَوَارِي لَيْسَ مِنَ السُّنَّةِ”

Both these *hadiths* are deemed *sahih* (authentic) by Shi’i scholars, and they are consistent with our analysis in this section.⁴⁶

Hadith No. 3:

The third *hadith* has several versions, but only one of them contains a reference to *khitan*.⁴⁷ This is the version we shall address in this report. Since this version of the *hadith* has been deemed *sahih* (authentic) by scholars and we find no error in their conclusion, we shall restrict our discussion to the *matn* of this version of the *hadith*.

(a) *Understanding the matn of the hadith:*

The third *hadith* scholars rely upon to support female *khitan* is the following:

⁴⁴ Al-Kulayni, *supra* note 24, vol. 6, 25.

⁴⁵ *Id.*.

⁴⁶ See Mohammad Baqer Majlesi [d. 1699], *Mir'aat al-Uqul* [The Mirror of Intellects: Explanation of *Al-Kafi*] Reprint. (Tehran: Dar al-Kutub al-Islamiyyah, 1987) vol. 21, 65 - 66. See also, Mohammad Baqer Majlesi, *supra* note 39, vol. 12, 429.

⁴⁷ For example, 'Aisha reported that the Prophet said: "Ten are the practices of *fitrah*: clipping the moustache, letting the beard grow, using the tooth-stick (*siwaak*), snuffing water up the nose, cutting the nails, washing the finger joints, plucking the hair under the armpits, shaving the pubic hairs and cleaning one's private parts with water." The narrator said: 'I have forgotten the tenth, but it may have been rinsing the mouth. See Abu Dawud, *supra* note 25, vol. 1, 14. Also, ‘Abdullah bn ‘Umar, companion of Prophet Muhammad, reported that the Prophet said: Acts characteristic to *fitra* are: Clipping the nails, trimming the mustache and shaving pubic hair.” See An-Nasa’i, *Sunan An-Nasa’i* [An-Nasa’i’s *Sunnahs*] Reprint. (Beirut: Dar al-Kutub al-‘Ilmiyyah, n.d.), vol. 1, 15.

"Five practices are characteristics of *fitrah*: circumcision, shaving the pubic hair, trimming the moustache, clipping nails, and plucking the hair under the armpits."⁴⁸

عن أبي هريرة - رضي الله عنه - أن النبي - صلى الله عليه وسلم - قال :
"خمس من الفطرة : الختان، والاستحداد، وقص الشارب ، وتقليم الأظافر، ونتف الأباط"

To understand this *hadith*, we must first understand what the word "*fitrah*" means. Scholars have interpreted this word, which linguistically refers to the natural or instinctive state of a human being, in different ways. For example, Ibn Daqiq al-'Eid [d. 1302], one of the great Muslim scholars in the fundamentals of Islamic law, explains that *fitrah* reflects a state of nature, primitive or instinctive, that people are inclined towards.⁴⁹ Based on this interpretation, the *hadith* is clearly descriptive about the underlying impetus for these hygienic activities; it is not prescriptive. Therefore, it cannot be claimed that this *hadith* establishes that *khitan* is obligatory.

Some scholars interpreted "*fitrah*" to mean *hady al anbiyaa* ' (the prophets' way).⁵⁰ In particular, they understood the word *khitan* in this *hadith* to refer to the way of Prophet Abraham who was circumcised. Therefore, they concluded that as part of following the Prophet Abraham's path, Muslims should be circumcised. However, even if we were to accept this interpretation, the *hadith* remains non-prescriptive. This is clear from the fact that none of the other items mentioned, such as clipping nails, and plucking the hair under the armpits, are viewed by scholars as obligatory. Furthermore, as pointed out earlier, Sarah was not circumcised, and even if the story about Hagar is true, then it only shows that her circumcision was done as a punishment to harm her. Therefore, it cannot be generalized as a requirement for all Muslim women, because the Qur'an and the *hadith* prohibit harmful practices.⁵¹

Other scholars associate *fitrah* directly with the *sunnah* of the Prophet Muhammad himself.⁵² This interpretation suffers from the same deficiencies discussed in connection with the previous interpretation. Like the Prophet Abraham, Prophet Muhammad did not require that his wives and daughters be circumcised. Although we know a great deal about the private lives of Prophet Muhammad's family, there is no record of any of the females in his family having been circumcised. However, if the Prophet were to legislate female *khitan* as part of the *sunnah*, he

⁴⁸ Al-Bukhari, *supra* note 9, vol. 10, 411, no. 5889. See also, Muhammad Ibn al-Hasan Al-Hurr al-'Amili, *supra* note 31, vol. 2, 133.

⁴⁹ See, for example, al-Shawkani, *supra* note 43, vol. 1, 133.

⁵⁰ For example, Nasir al-Din Al-Baydawi [d. 1286] , *Anwar al-Tanzil wa-Asrar al-Ta'wil* [The Lights of Revelation and the Secrets of Interpretation] Reprint.) Cairo: Dar al-Kitab al-'Arabi, 1910), vol. 4, 206.

⁵¹ Qur'an, *Surat Al-Baqarah*, 2:195. As for prophetic *hadith*, see *dharar hadith* in *Hadith* No. 1.

⁵² Muhyi al-Din Abu Zakariya al-Nawawi [d. 1277], *Sahih Muslim bi Sharh al-Nawawi*, [The Authentic *Hadiths* of (i.e., compiled by) Muslim, with Exegesis by al-Nawawi] Reprint. Dar Ihya' al-Turath al-'Arabi, n.d.), vol. 3, 148.

would have had the female members of his family undergo this procedure to reflect at least its desirability under Islam.⁵³ In short, whether proponents claim female *khitan* as part of the *sunnah* or *fitrah*, there are no grounds for requiring this practice under either interpretation.

A point worth repeating is that this *hadith* uses the word “*khitan*” and not “*khifadh*,” hence it is reasonable to conclude that it does not refer to women. This conclusion is supported by the context. The *hadith* refers to “trimming moustaches,” clearly a reference to men. Some scholars argued that this *hadith* was directed to both men and women, but parts of it applied only to men. There is no basis for this selective interpretation, given the other evidence to the contrary. Furthermore, if the Prophet wanted to promulgate an important rule with this *hadith*, such as the imposition of female *khifadh*, he would not have done so through a linguistically ambiguous and grammatically descriptive statement. He would have been very clear.

Finally, the *hadith* lists five intuitive practices that are beneficial to hygiene. It is established, however, that *khifadh* is harmful to women. So, not only is there a linguistic objection to interpreting “*khitan*” in the *hadith* as applicable to women, there is also a substantive objection, namely that all the listed items are beneficial practices, while *khifadh* is harmful, as reported in modern medicine and health sciences, and even by *hadith* no.1 which we deemed weak.

(b) Determining the authenticity of the *hadith*:

As mentioned above, this version of the *hadith* has been deemed *sahih* (authentic) by scholars and we find no error in their conclusion. Therefore, its authenticity will not be re-examined here.

Hadith No. 4:

The fourth *hadith* is one that is used by female *khitan* proponents to support their argument that Islam requires female *khitan*. This *hadith* has also been deemed by scholars as *sahih*

⁵³ Al-Shawkani, *supra* note 43, 133.

(authentic).⁵⁴ Since we find no error in their conclusion, we shall restrict our discussion to the *matn* of this *hadith*. The *hadith* states:

“If the two circumcised parts meet, *ghusl* (ritual bathing after intercourse) becomes obligatory.”⁵⁵

"إذا التقى الختانان فقد وجب الغسل"

(a) Understanding the *matn* of the *hadith*:

This fourth *hadith* is used as an indirect proof that both men and women are required to be circumcised. The *hadith* is reported in a conditional form. The condition (or antecedent) is:

“If the *khitanaan* (two circumcised parts) meet,”

The consequent of this conditional is:

“ ... *ghusl* becomes obligatory.”

Since the *hadith* refers to “the *khitanaan*,” i.e., the two circumcised parts, proponents of female circumcision argued that it implies that female circumcision is required.

We first note that the *hadith* describes a state of affairs (the meeting of the *khitanaan*), which, if it obtains, would require *ghusl*. This means that the condition or antecedent of the *hadith* is purely descriptive. Given the fact established in *hadith* no.1, namely that male and female circumcision were practiced during the time of the Prophet, the antecedent describes a likely state of affairs at that time. The consequent prescribes the resulting obligation in case the antecedent obtains. To confuse the grammatical character of the antecedent (descriptive part) of the *hadith* with that of its consequent (obligatory part) leads to serious error.

The claim that the antecedent of the above *hadith* provides indirect proof that Islam requires female *khitan* is also weakened by established interpretational principles laid down by Muslim

⁵⁴ Abu Hatim Muhammad Ibn Hibban [d. 965], *Sahih Ibn Hibban* [The Authentic *Hadiths* of Ibn Hibban] in *Al-Ihsaan fi Taqrib Sahih Ibn Hibban* [The Proficient Facilitation of Sahih Ibn Hibban], ed. ‘Ala al-Din ‘Ali bin Bilban al-Farisi. Reprint. (Beirut: Mu’assassat Al-Risalah 1987) vol. 3, 456-7; the *hadith* is classified as *sahih*. A longer version of this *hadith* is reported by Muhammad Ibn Isa Al-Tirmidhi [d. 892] said that ‘Aisha’s *hadith* is *hasan sahih* (a lower degree of authenticity). See Muhammad Ibn Isa Al-Tirmidhi, *Al-Jami’ al-Sahih: wa Huwa Sunan al-Tirmidhi* [Comprehensive Compilation of the *Sahih* (*hadiths*), and it is *Sunnahs* of al-Tirmidhi] (Beirut: Dar al-Kutub al-‘Ilmiyyah, 2000), vol. 1, 88. See also, Muhammad Idris Al-Shafi’i [d.820], *Al-Umm* [The Mother (of Knowledge)] Reprint. (n.p.: Dar al-Wafa’, n.d.), vol. 2, 80.

⁵⁵ Ibn Hibban, *supra* note 54, at vol. 3, 456-7. See also, Al-Shafi’i, *supra* note 54, vol. 2, 80. See also, Abu Jafar Muhammad Ibn Hassan al-Tusi [d. 1067], *Al-Istibsar* [*Hadith* collection book] Reprint. (Beirut: Dar al-Adhwa’, 1992) vol. 1, 186.

scholars themselves. Scholars agree that an indirect proof such as the one claimed here is generally problematic because it requires a greater degree of interpretation.⁵⁶ An important religious requirement is usually announced directly and clearly. There is no such announcement here, or elsewhere, with respect to the requirement of female *khitan*.

Additionally, to evaluate this *hadith* properly, the examination would have to be within the context in which the situation occurred. The following context was actually provided by Abu Musa al-Ash'ari [d. 935], who was a companion of Prophet Muhammad. Abu Musa mentioned that a difference of opinion had cropped up in the society of Madinah.⁵⁷ It was between a group of *Muhajirs* (immigrants from Makkah) and a group of *Ansar* (supporters from Madinah). The *Ansar* argued that *ghusl* becomes obligatory only in case of sexual discharge or ejaculation but the *Muhajirs* disagreed. They argued that once intercourse takes place, *ghusl* becomes obligatory, whether discharge or ejaculation occurred or not.

Abu Musa consulted Aisha, one of the wives of the Prophet, about this matter. Aisha responded: “Do not feel shy asking me about a matter that you would ask your own (biological) mother about; for I am your mother too.” She then explained: “The Messenger of God (PBUH) said: “If he [the male] sits amidst her [the female’s] four parts [possible reference to her limbs], and the *khitan* touches the *khitan*, then *ghusl* becomes obligatory.”⁵⁸

"إذا جلس بين شعبها الأربع ومسّ الختان الختان فقد وجب الغسل"

This version of the *hadith* is widely quoted by classical and modern authors to establish that men and women were circumcised in Prophet Mohammed’s time. We agree that circumcision existed in the days of the Prophet. But the central issue here is whether female *khitan* is religiously mandated. The fact that this practice was part of a culture that witnessed the birth of Islam does not make it religiously mandated.

Since circumcision was acceptable at the time for both genders, it is understandable for the Prophet to refer figuratively to parts of the genitalia as “*khitan*.” After all, the Prophet was known for his polite use of language in discussing delicate subjects, such as sexuality. In this case, he did so by utilizing the Arabic literary style of *kinayah* (metonymy) to refer politely, not

⁵⁶ See Mahmoud Shaltut, *supra* note 10, at 286-287. See also, Mohamed Salim El-Awa, “FGM in the context of Islam”, United Nations Population Fund & International Federation of Islamic Scholars (May 2012), 5.

⁵⁷ Al-Nawawi, *supra* note 52, vol. 4, 80.

⁵⁸ Al-Nawawi, *supra* note 52, vol. 4, 41-42. The reference here to the four parts of the woman has been interpreted in several ways, including that it is a reference to her limbs.

to circumcision, but to both male and female circumcised genitalia.⁵⁹ So, rather than naming these parts, whether they were circumcised or not, the Prophet resorted to *kinayah*.

Thus, this reference without more does not establish a requirement that both genders must be circumcised. Furthermore, as pointed out earlier, by referring to a practice as it existed at the time does not impose or even suggest an obligation to continue the practice. Therefore, it makes no sense to interpret the Prophet's mere reference in this fourth *hadith* to "circumcised parts" as advocating for female *khitan*, let alone requiring it.

Additionally, even if one were to argue that this *hadith* does in fact endorse female *khitan*, major scholars have upheld the principle that if a *hadith* is mentioned but never practiced, it will not be practiced.⁶⁰ None of the Prophet's wives and daughters were circumcised, and these were the examples for the community. In other words, the *hadith*, in its expansive interpretation, was not practiced at the House of the Prophet with respect to female *khitan*. Therefore, according to major scholars, such as Imam Malik Ibn Anas [d. 795], it cannot be a religious requirement.⁶¹

This explanation is also consistent with the fact that there are different versions of this *hadith*. Some of these versions do not mention the term "circumcised parts" at all. However, they still assert the need for *ghusl* in case either intercourse or contact takes place.

There are other serious considerations in support of our view that this *hadith* is actually irrelevant to a discussion about female *khitan*. The *hadith* occurred in the context of answering a question about *ghusl*. As such it cannot be properly used to establish a rule about female *khitan*. Imam al-Shafi'i [d. 820] noted in explaining a foundational rule of jurisprudential interpretation (*'ilm al-'usul*), that "speech encompasses unintended meanings when it is general, but has an intended meaning when it is specific." This principle is akin to the principle regarding *dicta* in American court opinions. It is incorrect to use a *hadith* narrated in the context of explaining a general rule about *ghusl*, as the basis for a ruling on the specific topic of female circumcision. That would attribute to the *hadith* an unintended meaning.

A final important observation should be included here. All these *hadiths* mentioned above were addressed to the general public, which included the Prophet's family. Yet, as we observed

⁵⁹ See Ahmad El-Sharif, *A linguistic Study of Islamic Religious Discourse: Conceptual Metaphors in the Prophetic Tradition* (2011) (unpublished Ph.D. dissertation, University of London) (on file with Queen Mary: University of London), 105-106.

⁶⁰ See for example, Ibrahim bin Musa Al-Shatibi [d. 1388], *Al-Muwafaqat fi Usul al-Shari'ah* [Concordances in the Fundamentals of Shari'ah] Reprint. (Beirut: Dar al-Ma'rifah, n.d.), vol. 3, 56 & 71. See also *infra*, note 54.

⁶¹ *Id.* at 71-75. Also, the unique aspect of Imam Malik's methodology in *fiqh* was his reliance on the practices of the people of Medina as a source of law. Malik believed that the practices of the people of Medina have priority over *hadiths*. See Al-Shatibi, *supra* note 60, vol. 3, 66.

repeatedly, the Prophet did not circumcise his daughters, nor is there mention of this practice regarding his wives. This is another strong indicator that female *khitan* is not required in Islam.

Linguistic analysis of the two versions of hadith no. 4. There are important linguistic observations relating to the Arabic wording of *hadith* no. 4 that relate to arguments we made in other parts of this paper. Both versions of this *hadith* mentioned above appear to use the term *khitan* to refer to female as well as male circumcision. We have argued throughout this paper that *khitan* generally refers to male circumcision, while *khifadh* refers to female circumcision. We have interpreted the relevant *hadiths* accordingly. So we would like to study the usage of the words *khitan* or *khitanaan* in *hadith* no. 4, and see if we can distinguish it from the general rule. The distinction, in each version, turns out to be linguistic and literary par excellence.

(i) The first version of hadith no. 4.

This version states in relevant part:

“...إذا التقى الختانان”

which means: “if the *khitanaan* (i.e., the two *khitans*) meet...”

The word “*khitanaan*” is the “dual form” (*muthanna*) for the word “*khitan*.” In other words, it refers to exactly two *khitans*, namely those of the man and the woman engaged in an intimate relationship. If this is the case, then this *hadith* could constitute a counterexample to our arguments above because it uses the word *khitan* instead of *khifadh* to refer to female circumcision.

However, the linguistic analysis of *muthanna* words is not this simple. There is a special rule for a subset of *muthanna* words that are called “*al-muthannayat*.” This subset refers only to words that have a “dual form” (i.e., it is about two things), and yet the word (the *muthanna*) has no corresponding singular or plural word that preserves the same basic meaning. For example, *al-jadidan* is a *muthanna* word that does not have corresponding singular or plural words having the same core meaning. Indeed, the singular and plural words that one might think of as corresponding to these forms do not convey the same core meaning.⁶² They are simply different. This is because *al-jadidan* means “the day and night.”⁶³ The singular and plural of the word both have a very different meaning, that of “being new.” Similarly, “*al-Aswadan*” means water and

⁶² Husni Abdul Jalil Yousuf, *Al-Nahu Al-Jami'* [Comprehensive Compilation of Arabic Grammar] (Cairo: Mu'ssasat Al-Mukhtar. 2014), vol. 1, 180- 183.

⁶³ Muhammad Ibn Manzur [d. 1311], *Lisan al-'Arab* [The Tongue of Arabs] Reprint. (Beirut: Dar Ihya' al-Turath al-'Arabi, 1992), vol. 2, 202.

dates, each of which has a different word in the singular and plural.⁶⁴ Not all *muthanna* words, i.e. words referring to two things, share this feature. Perhaps it would be helpful to think of *muthannayat* as idioms that apply only to some words that have a dual form.

There are additional rules that govern this form of speech. For example, “*al-qamaraan*” (literally, “the two moons”) refers to the sun and the moon.⁶⁵ In this case, the word for “moon” (*al-qamar*) was chosen over that of the “sun” (*al-shams*) to become in its dual form the representative of both the sun and moon. But note that the singular form “*al-qamar*” does not convey the proper meaning of the dual form “*al-qamaraan*” because it refers only to the moon to the exclusion of the sun. This is why “*al-qamaraan*” is considered one of the *muthannayat*.

The word “*al-khitanaan*” is categorized by grammarians as one of the *muthannayat* in the classical Arabic language.⁶⁶ In this case, the word *khitan* was chosen over the word *khifadh* to become in its dual form the representative of both *khitan* of the male and *khifadh* of the female.⁶⁷ As with “*al-qamaraan*” and other *muthanna* words, its singular form, namely *khitan*, does not convey the correct meaning of the dual form because it excludes *khifadh*. This is why “*al-khitanaan*” was categorized as one of the *muthannayat*. In other words, the word “*al-khitanaan*” is an idiom, which like all the other similar idioms, constitutes a linguistic exception to the general rule. So, it does not affect our claim about the use of *khifadh* for female circumcision.

(ii) The second version of hadith no. 4 states:

“إذا جلس بين شعبها الأربع ومسّ الختان الختان فقد وجب الغسل”

“If he [the male] sits amidst her [the female’s] four parts [a possible reference to her limbs], and the *khitan massa* [touches] the *khitan*, then *ghusl* becomes obligatory.”

The Arabic grammatical/literary structure (as opposed to the meaning) of the last part of this *hadith* is important. It is more accurately mirrored as follows:

“If *massa* the *khitan* [of] the *khitan*, then *ghusl* becomes obligatory.”

Ignoring the bracketed word “of,” which we added to clarify the meaning in English, we notice that in the Arabic original, the verb “*massa*” (or “touches”) comes before the first occurrence of

⁶⁴ *Id.* at vol. 6, 421.

⁶⁵ *Id.* at vol. 11, 299.

⁶⁶ *Id.*, at vol. 4, 26.

⁶⁷ Al-Zuhayli, *supra* note 19, vol. 1, 519.

the noun “the *khitan*,” which is the subject of the sentence. The second occurrence of “the *khitan*” that follows the first one immediately refers to the object of the sentence. Thus the Arabic grammatical structure contains a direct repetition of the term “the *khitan*,” with no intermediate words. As we shall point out below, this grammatical/literary structure is significant.

In this version, the word “*khitan*” is being used again metaphorically to refer to genitalia, but this time it does not occur in dual form. Instead, it occurs in a *repetitive* form. However, the first instance is a reference to male genitalia, while the second is a reference to female genitalia. This seems to suggest that the word “*khitan*,” in its second occurrence, is being used instead of “*khifadh*” to describe the circumcision of women.

We have argued at the outset of this paper that “*khifadh*” is the proper word generally used to refer to female circumcision. So, again, this *hadith* appears to present a possible counterexample to our thesis. In fact, it does not. It contains another one of the few exceptions to the general rule. This exception, however, is a literary one based on the use of an effective and well-recognized method called *tikrar* (repetition or reiteration). Among the functions of *tikrar* is emphasizing a thought, and attracting the attention of the listeners. *Tikrar* has many forms. One of its more sophisticated forms requires the use of the exact word twice, yet having a different meaning each time (*jinas*). While the *tikrar* in this *hadith* does not rise to the level of a true example of *jinas*, it comes close. For, the simple and unqualified word “*khitan*,” has two distinct and different meanings in this *hadith*. There is no risk of missing or misunderstanding these two meanings because the context itself makes that clear. Given these facts, it is possible to use the generic word “*khitan*” to stand for “*khifadh*,” if we decide to use the literary form of *tikrar* to attract the attention of the listeners.

We note that, while the *hadith* could have repeated the word “*khifadh*” instead of “*khitan*,” the word “*khifadh*” is quite heavy on the tongue in Arabic. Repeating the word “*khitan*” is easier and more rhythmic, something Arabs valued given their steep history in poetry. So, it is more eloquent to use the word “*khitan*.” Given these observations and the fact that *tikrar* is more effective in delivering an idea and attracting attention to it, it makes good sense that it was used in this *hadith*.

Incidentally, there is one other figure of speech involved in the second version of this *hadith*. The word “*massa*” is translated as “touch.” So, the translation becomes “if the two sets of genitals touch each other, bathing becomes obligatory.” The correct meaning of “*massa*,” however, is “penetrate.” “*Massa*” was again used here figuratively out of politeness. People understood that. Indeed another version of the *hadith* replaces the word “*massa*” with “*tajawaza*” (got beyond). This replacement conveys the meaning of the *hadith* more accurately. The linguistic difference between these two versions of the *hadith* is not uncommon in *hadith* sciences. As mentioned earlier, it has been traditionally attributed to the fact that some reporters reported the meaning of the *hadith*, as they understood it, instead of repeating its exact wording. Alternatively, the *hadith* may have been stated differently on two separate occasions.

This concludes our discussion of the four *hadiths* usually used in arguing in favor of *khitan*. As we saw, the first two were weak, and hence unreliable. The second two were descriptive in relevant part, and not prescriptive. Thus, no rule requiring female *khitan* could be extracted from them. In reaching this conclusion, we are in accord with major Sunni scholars, some of whom we have already mentioned earlier. Shi'i scholars also hold the position that it is impermissible and oppressive to subject a female to *khifadh* against her will. For, while *khifadh* is permissible, it is neither a requirement (*wajib*) nor an assured *sunnah*.⁶⁸

(b) Determining the authenticity of the hadith:

As mentioned above, this version of the *hadith* has been deemed *sahih* (authentic) by scholars and we find no error in their conclusion. Therefore, its authenticity will not be re-examined here.

Third: *Qiyas* and *Ijmaa'* do not mandate the practice of female *khitan*

We shall now debunk two further arguments proffered in support of female *khitan*.

First, some scholars employ *qiyas* (reasoning by analogy), basing their favorable conclusion about female circumcision on male circumcision. This example of *qiyas* is seriously flawed. The analogy fails *apriori* because the two sexes are anatomically different, especially with respect to sexual organs. The stated objective of circumcision is to safeguard the male against hygienic and other health problems. As some jurists noted, if the extra skin is not removed from the male organ, it could trap unclean matter, and therefore prevent the man from being clean for prayers. Modern medical authorities have added a slew of other benefits such as decreased risk of urinary tract infection, sexually transmitted diseases, and penile cancer.

There are, however, no parallel benefits for the female. To the contrary, female *khitan* can have numerous harmful effects on her health and wellbeing. It adversely impacts a woman's sexuality, her relationship with her husband, and hence her enjoyment of marital life. More recently, female *khitan* has been medically proven to be harmful even in the short term for young girls. It is also detrimental in the long term for those who become wives and mothers. Female *khitan* might result in multiple conditions causing harm, including: depression, anxiety, post-traumatic stress disorder, fever, severe pain, excessive bleeding, urinary and vaginal infections, childbirth complications and newborn deaths.⁶⁹

⁶⁸ Al-'Itra Al-Tahira Center for Studies and Research, "A Research Study on Female Genital Mutilation" 03/08/2010. <http://aletra.org/subject.php?id=101>.

⁶⁹ Lewis, *supra* note 11, at 12 – 14.

Consequently, there is no rational basis for using *qiyas* in this situation. The two practices are radically different and they lead to radically different results. In the case of the male, the practice is viewed as beneficial, while it is viewed as harmful in the case of the female. Any attempt at *qiyas* that does not take these facts into consideration will only yield false conclusions.

Second, there is no *ijmaa'* (consensus of opinion) among scholars on the legal status of female *khitan*. Nor is there *ijmaa'* on the classification of the practice. These classifications range from viewing it as a *wajib* (required), and *sunnah* (following a prophetic precedent), to *mandoub* (recommended) and *mustahab* (desirable).⁷⁰ Others classified it as merely a *makrumah* (an honorable act).

Thus, there is no consensus among traditional scholars on this issue. However, we should keep in mind that, given past cultural bias in favor of female *khitan*, and the deficient state of knowledge in the past about the various medical, psychological and other harms associated with, it is understandable that some scholars would see no problem in requiring it. It is also understandable why the practice was not prohibited. However, current cultural customs are different, and the harms of female *khitan* are now better known. This fact has led some Muslim countries to revise their views on female *khitan*. We shall now examine quickly this development and then consider what ought to be the American Muslim stance on female *khitan*, given that our American laws criminalize it.

Fourth: Other Considerations

1. Female *khitan* practice is ending in countries where it originated:

The percentage of female *khitan*s has been decreasing in many countries where it was prevalent.⁷¹ It is important to note, that the percentage of female *khitan* practiced on girls between the age of 15 and 19, in countries where the practice is common, has gradually

⁷⁰ For more detailed definition of these terms, see Wahbah Al-Zuhayli, *supra* note 19, vol. 1, 67-69. For the views of particular schools of thought, see *Kuwaiti Encyclopedia of Fiqh*, Reprint. (Kuwait: Ministry of Endowment and Islamic Affairs, 1990), vol. 19, 27; See also, Al-Kulayni, *supra* note 24, vol. 6, 25; and Muhyi al-Din Abu Zakariya al-Nawawi, *Al-Majmu' Sharh al-Muhadhdhab lil-Shirazi* [Explanation of al-Shirazi's book on al-Fiqh al-Shafi'i] Reprint. (Jeddah: Maktabat al-Irshad, n.d.), vol. 1, 349.

⁷¹ These countries include Kenya, the United Republic of Tanzania, Central African Republic, Iraq, Liberia and Nigeria. See *Female Genital Mutilation/Cutting: What might the future hold?* ©MLAS 2010 UNICEF, p. 2, at: https://www.unicef.org/media/files/FGM-C_Report_7_15_Final_LR.pdf.

decreased from 51% in 1985 to 37% in 2016.⁷² Communities in countries where the practice is predominant have been calling to end it.⁷³ Ironically, it appears that there is an increase in the estimated number of girls who have been subjected to this practice, or are at risk of being subjected to it, in the U.S. due to the increase in the number of immigrants from countries where FGM is practiced,⁷⁴

Communities in countries where female *khitan* was a common practice are realizing how harmful this practice is and are in the process of abolishing it. This suggests that they do not believe this practice to be a religious mandate, whether Islamic or Christian. For, if Islam or Christianity indeed required female *khitan* or circumcision, Muslim and Christian communities would have been reluctant to question it or to demand its abolishment.

For example, it is highly significant that Egypt passed a law in 2016, stiffening the punishment of those who perform female *khitan*.⁷⁵ After all, Pharaonic Egypt is one of the two African countries where female *khitan* originated. Furthermore, Egypt is a Muslim majority country that houses al-Azhar, an ancient Islamic center of learning. Had the anti-female *khitan* law contravened Islamic law, it would not have passed the scrutiny of the influential al-Azhar jurists or the Egyptian legislators. In fact, major Egyptian scholars have criticized the practice and called for its abolition.⁷⁶

⁷² Michelle Krupa. July 17, 2017. The alarming rise of female genital mutilation in America. <http://www.cnn.com/2017/05/11/health/female-genital-mutilation-fgm-explainer-trnd/index.html>

⁷³ “Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change”, United Nations Children’s Fund (UNICEF), July 2013, ISBN: 978-92-806-4703-7, pp. 104-108, at: https://www.unicef.org/media/files/UNICEF_FGM_report_July_2013_Hi_res.pdf.

⁷⁴ See Research on “Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012”, Public Health Reports, vol. 131, March-April 2016, pp. 2-3, at: <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Special%20Situations/fgmutilation.pdf>. See also, Lucy Westcott, “Female Genital Mutilation on the Rise in the U.S.” Newsweek 2/6/15 at <http://www.newsweek.com/fgm-rates-have-doubled-us-2004-304773>.

⁷⁵ El-Sisi passed a law stiffening the crime of female *khitan*. (2016) Retrieved September 11, 2017 from <http://www.akhbarak.net/news/2016/09/28/9450219/articles/23264131/السيسي-يصدر-قانون-تغليظ-عقوبة-جرم-الختان>. The original law to stop female *khitan* in Egypt was issued in 1996, allowing exceptional cases. Upon the death of a girl during the female *khitan* operation, the Egyptian law criminalizes female *khitan*, allowing no exceptions to the practice. Retrieved November 10, 2017 from:

http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_6251000/6251330.stm.

⁷⁶ See for example, Sayed Sabiq, *Fiqh al-Sunnah*, (Beirut: Dar al-Kitab al-‘Arabi, 1977) vol. 1, 43. See Mahmoud Shaltut, *supra* note 10, at 286-287 (stating that there are no *sahih* [authentic] narrations that can be used as foundation for jurisprudence regarding circumcision). See also, Sheikh Muhammad Sayyid Tantawy *Al-Ahram* Newspaper 10/09/1994 (the issue of female *khitan* should be left for science and specialized physicians). The views of Tantawy on female *khitan* are recently quoted in Hazim Khalid, *Circumcision*, (Cairo: Arab Press Agency, 2010), 68-72.

We shall now consider what ought to be the American Muslim stance on female *khitan*, given that existing American law criminalizes it.

2. The Islamic position on following the laws of the country in which a Muslim lives:

This is an important topic that deserves a detailed study of its own. We shall not engage in such a study in this paper but plan to address the topic separately at a later date. We can, however, summarize the Islamic position as follows:

Muslims are generally obligated to abide by the laws of the country where they live, regardless of the religious affiliation, if any, of such country. The basic controlling principles are two:

First, Muslims are required to keep their oaths and promises.⁷⁷ In this country, we have taken an oath to uphold the American Constitution and obey the Law. Therefore, we should abide by the Constitution of this country and obey its laws.

Second: A Muslim is not required by her religion to obey a law that violates a fundamental principle of that religion, such as the unicity of God or the requirement for prayer. If such a situation arises, an American Muslim can resort to the courts, the media, and the voting booth to defend her constitutionally protected freedom of belief.

On the other hand, if the controversial law does not impact the fundamentals of religion, then jurists have argued that obeying such law would be acceptable and pardonable because otherwise a greater good would be forfeited.⁷⁸

Given the variety of views on female *khitan* among jurists, it cannot be argued that this procedure is a fundamental tenet of the religion. Hence, even if a Muslim citizen disagreed with the law prohibiting it, she is required to follow the law or convince the country why the law should change. Given medical data on this subject, it is not likely that such an effort would succeed.

The defendants in the Michigan case mentioned at the outset of this article belong to the Dawoodi Bohra sect of Shi'i Islam. Their leaders in Detroit issued a statement in April, 2017, affirming their respect and commitment to the laws of the land. The full text of the statement can be found at <http://www.detroitjamaat.online/wp-content/uploads/2017/04/Anjuman-e-Najmi-Media-Statement-April-21-2017.pdf>.

⁷⁷ See for example, Qur'an 17:34, 5:1.

⁷⁸ See for example, Dr. Taha Jaber al-Alwani, *Towards A Fiqh For Minorities* (Washington: The International Institute of Islamic Thought, 2010) p. 29- 30.

IV. Conclusion:

Female *khitan* is a harmful practice that lacks a religious mandate or even encouragement. The Qur'an does not provide a single verse or instance in which female *khitan* is mentioned as obligatory or desirable. Furthermore, contrary to general belief, there is not a single authentic *hadith* of the Prophet that requires female *khitan*. Moreover, arguments from *qiyas* fail in this context, and there is no consensus of scholars on the issue. Recent statistics show a trend in which the percentage of female *khitan* procedures has fallen in recent years in countries where this practice is common. This is a clear indication that the procedure is no longer viewed as religiously mandated, and thus the tradition of female *khitan* is ending with time. Egypt's new law stiffening the punishment for female *khitan* is clear evidence of this trend.

Given the variety of views on the subject among major scholars, and the plethora of evidence presented in this paper, it can hardly be claimed that female *khitan* is a religious requirement. This is especially true in light of recent medical revelations about the harm caused by the procedure. After all, the primary argument in favor of female *khitan* is a patriarchal one that aims to cabin the woman's sexual energy by weakening her sexual drive. As pointed out earlier, this goes against the Prophetic tradition which honored and protected the woman's sexuality.

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Related Articles:

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