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## THE ETHICS OF NON-THERAPEUTIC MALE CIRCUMCISION UNDER ISLAMIC LAW: A LESSON FOR EDUCATIONAL PROSPERITY IN MUSLIM COMMUNITIES

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Received: 27<sup>th</sup> September 2017; Revised: 28<sup>th</sup> November 2017; Accepted: 28<sup>th</sup> December 2017

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### Abstract

This qualitative research is a philosophical review about analyzing how circumcision can (cannot) be morally justified. It is typically assumed among Muslims that circumcision is mandatory according to Islamic law (*Sharia*). However, in this paper, I will argue that this is not clear in Islamic texts. Because firstly there is no textual evidence in the Quran about this matter and secondly permissibility of circumcision is not an agreed topic among Muslim scholars. This entails that circumcision is not a necessary part of being a Muslim. Although this idea seems idiosyncratic according to the majority of Muslims, I'm inclined to emphasize that we should not marginalize this idea, rather we have to support it for educational prosperity in Muslim communities. But perhaps more importantly this paper helps to introduce new Muslim intellectuals' argument that moral reasoning is independent from (and even superior to) Islamic law. Since we do not have ultimate and decisive secular reason (e.g., medical reason) against male circumcision in every occasion, therefore, morally speaking, I believe it is not reasonable to say that male circumcision is always wrong. Muslims who support male circumcision still can find some secular reasons to defend this from their cultural identity.

**Keywords:** male circumcision; islamic *sharia* law; moral reason; medical reason; educational prosperity

### Abstrak

Penelitian kualitatif ini merupakan tinjauan filosofis yang bertujuan menganalisis bagaimana sunat dapat atau tidak dapat dibenarkan secara moral. Ummat Muslim beranggapan bahwa hukum sunat adalah wajib menurut hukum Islam (Syariah). Akan tetapi, dalam tulisan ini, saya akan berargumen bahwa belum ada penjabaran yang pasti perihal asal hukum wajib pada sunat ini dalam Islam. Argumen ini memiliki dua alasan. Alasan pertama adalah tidak ada bukti tertulis dalam Al Qur'an tentang asal hukum wajib sunat ini dan alasan kedua adalah pembolehan sunat bukanlah topik yang disepakati di antara para cendikia Muslim. Atas dasar tersebut, keadaan yang mensyaratkan seseorang untuk sunat bukanlah hal yang wajib untuk menjadi seorang Muslim. Meskipun gagasan ini tampaknya idiosynkratik menurut mayoritas umat Muslim, saya menekankan bahwa kita tidak boleh menyisihkan gagasan ini, tetapi kita harus mendukungnya untuk kemakmuran pendidikan di komunitas Muslim. Kendati demikian mungkin yang lebih penting lagi bahwa tulisan ini membantu untuk memperkenalkan argumen intelektual Muslim yang baru bahwa penalaran moral adalah independen dari (dan bahkan lebih tinggi dari) hukum Islam. Karena kita tidak memiliki alasan kuat dan alasan sekuler (seperti alasan medis) terhadap sunat pada laki-laki didalam setiap keadaan. Kendati demikian, secara moral, saya percaya bahwa tidak beralasan untuk mengatakan bahwa sunat laki-laki itu selalu salah. Muslim yang mendukung sunat pada laki-laki masih dapat dilakukan dengan menemukan beberapa alasan sekuler untuk mempertahankan kegiatan sunat dari identitas budaya umat muslim.

**Kata kunci:** khitan laki-laki; hukum syariah islam; alasan moral; alasan medis; kemakmuran pendidikan

**How to Cite :** Dabbagh, H. (2017). The Ethics Of Non-Therapeutic Male Circumcision Under Islamic Law: A Lesson For Educational Prosperity In Muslim Communities . *TARBIYA: Journal of Education in Muslim Society*, 4(2), 216-223. doi:10.15408/tjems.v4i2.6017.

**Permalink/DOI:** <http://dx.doi.org/10.15408/tjems.v4i2.6017>

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## Introduction

In most Islamic countries the laws and regulations with regards to circumcision are based on Islamic *Sharia* law. Islamic law has four main sources: (i) Quran which is the primary source of Islamic law. (ii) the *Sunnah*, which is what the prophet (and *Imams* in the *Shiite* school) said, did or agreed to. (iii) *ijma*, which is consensus of Islamic scholars, and (iv) *'aql*, which is the power of reason or the rational mind (although *'aql* is not a source of Sunni *usul al-fiqh*). In Islamic countries such as Iran, Indonesia, Egypt, United Arab Emirates, Malaysia, Pakistan, Afghanistan, Saudi Arabia, Jordan, Libya, Tunisia etc., government is inclined to facilitate for parents who want to circumcise their boys. For example, some of these governments subsidize circumcision financially so as parents can do circumcise free of charge under government's support. However, in non-Muslim countries such as US and Canada male circumcision is permitted but it is not usually free for the family.

Most Muslims in these countries think that circumcision is obligatory (*wajib*). As a result, in Islamic societies circumcision is very common (Thomas, 2003; Hull and Budiharsana; Kelly et al., 1999; Nnko et al., 2001). However, while circumcision is mostly understood as a religious order, there are some even non-religious tribes which consider circumcision as something cultural and related to their identity (Shweder, 2000).

### Non-Therapeutic Male Circumcision in Islamic *Sharia* Law

Although it is a shared belief among Muslims that circumcision is obligatory under Islamic *Sharia* law, there is a disagreement whether circumcision is permissible all the time among Muslim scholars. This entails that there is not one united judgment over this issue (Najafi,

Vol. 31, pp. 260-263 and 257). The key reason is that the issue of circumcision is not mentioned directly in the Quran. In fact, since within *usul al fiqh* methodology there are plenty of judgments (*ahkam*) not grounded in Quran but rather they derived from *Sunnah* or *ijma*, there are many debates and peer disagreements around these *ahkam*.

In the case of circumcision, on one interpretation, based on jurisprudential texts, male circumcision before the age of seven is not obligatory in Islam and it is merely preferred (*mustahab*), favoured or a kind of custom according to Muslim scholars (Najafi, Vol. 41, p. 672; Tusi, Vol. 8, p. 67; Khomeini, Vol. 2, p. 310). Furthermore, people who become Muslim are not *required* to be circumcised. The only position that the Muslim scholars emphasize is that circumcision is required in Hajj (Najafi, Vol. 19, p. 274; Ameli, Vol. 8, p. 118). Muslims who want to go to Mecca for Hajj (*Tawāf*) *should* be circumcised before, since this is one of the Islamic rituals of pilgrimage. But since Hajj is not compulsory (*fardh*) for those who cannot afford it financially, one might argue that circumcision is not *fardh* at all time for everyone.

Understood so, we can conclude from the above that circumcision is not *necessary* part of being a Muslim. One can be a Muslim and does not practice circumcision ritual at the same time. However, this idea might raise controversies as it seems idiosyncratic according to the majority of Muslims. Should we ignore and marginalise this idea because it is idiosyncratic? Well no, we should still support, consider and tolerate such idea, for this tolerance is a significant key in Muslim communities to prepare environment for educational prosperity.

In the following, I begin by arguing that when moral reasoning and religion (e.g., Islamic jurisprudence) come into conflict, we should prefer moral reasoning. I, following new Muslim intellectuals, argue that morality *should* not be

based on religion (or *Sharia*), since the consequence of such basing is problematic. Thus, if moral and jurisprudential judgments have different and opposing normative content, only reason or rationality has the authority to make a claim. I, then, will discuss abortion as an application to such conflict and argue that even if we decide to rely on our “moral reasoning” (rather than religion) we still do not have a clear answer in this case, because the “correct” moral outcome depends upon how we frame the case (i.e., how we balance the rights of the parents vs. the fetus). Then I move on to apply these insights to the case of male circumcision. I conclude that even if we use our moral reasoning and not simply relying to religion or Islamic law (which is not clear on circumcision) we might not have a clear answer because the moral permissibility of circumcision depends on how we weigh different considerations.

## Method

This study is a qualitative one, in the sense that I will analyze rationally some of the claims for and against male circumcision. I mainly use the method of “reflective equilibrium” according to which different judgments from different angles might come into conflict however we can weight them to reach a conclusion.

In his seminal work, *A Theory of Justice*, John Rawls discussed the methodology of intuitionism (i.e. the method of “reflective equilibrium”). What he means by this is to make an equilibrium between different intuitions in different fields, and to work back and forth between different considered intuitions. Rawls believed that to make a judgment in the area of morality we have to consider other intuitions, principles and rules in other areas, e.g. science and religion, and then by reflecting and revising them, an acceptable coherent judgment can be

achieved. As Scanlon says, in practical contexts, this deliberation may help us have a conclusion about what we must do when we had not at all been *sure* earlier (Scanlon, 2002).

Using the method of reflective equilibrium in discussing the current issue i.e., Islamic perspective of circumcision, I believe, can be helpful since we have different intuitions in morality, religion and science about this issue. Hence, I evaluate the arguments and reasoning, morally speaking and conclude, based on my criticism and evaluation, by arguing which account is defensible, i.e. whether male circumcision is always wrong or not.

Since I argued so far that, based on one charitable reading of some jurisprudential texts, male circumcision before the age of seven is not obligatory in Islam and it is merely preferred, favored or a kind of custom, I will switch from *Sharia* discussion into secular moral discussion. I close this paper with the conclusion that our final moral decision about circumcision rests with our perceptions: to shore up male circumcision in some cases seems sensible. Although female circumcision cannot be right since we have strong reasons for not doing it, in male circumcision we can think of some cases that harm is not evident, and we do not have strong reason for not doing that.

## Result and Discussion

We can make a distinction between two different moral questions in circumcision debate. Here are two sorts of moral issues we are dealing with. In the next couple of paragraphs, I run through these two moral issues: 1) Is circumcision, *per se*, morally harmful? (Argument from harm). 2) Do parents have intrinsic right to circumcise their child or should they wait for everything hinges on their child’s decision? (Argument from right)

According to new Muslim intellectuals such as Abdulkarim Soroush, although Islamic law may have moral content, we can think of a distinction between moral judgments (judgements based on secular moral principles) and jurisprudential judgments (judgments by virtue of *Sharia* law). They believe that if our moral (or non-moral such as scientific) claims or reasons are in conflict with jurisprudential claims we *should* decide based on the moral reasons rather than the jurisprudential ones (Soroush, 2000; Arkun, 1994; Al-Jaberi, 2008; Zayd, 2006; Iqbal, 2000. For having a general picture on this topic see e.g. Pojman and Rea, 2008, Part 10. Although the relationship between secular ethics and religion is an old-aged discussion in the philosophy of religion and to some extent is related to our discussion, in the interest of brevity I do not delve into it here).

Here is my argument in favour of their position: suppose that a Muslim believes that “promise keeping is right” since God says this through the Prophet’s words. However, for example, because of severe accident she lost both her legs. She deeply disappointed by God and thinks that He is not helping her in difficult situations. Then, she gradually becomes agnostic about God and His religion. Since she no longer believes in the authority, independability and reliability of morality, she no longer believes that it is right to keep promises. In other words, people might lose their faith in God, and so if their commitment to being moral derives from their belief in God, then society is at risk of having immoral people (who have lost their faith). Hence, at least pragmatically speaking, morality should be based on something that is independent of individuals’ belief or participation in a particular religion. Following these new intellectuals, we can argue that it would be dangerous to have such immoral people who might threaten the well-being of others around them. Thus, although morality is

rooted in religion, we *should* not base morality on religion or people’s faith in particular religion (Tabatabaie, 2006).

### Moral Reasoning about Circumcision: Argument from Harm

Now let’s return to the discussion of circumcision. It seems that for example in the severe case of female circumcision, we have a strong medical reason showing that this is harmful and so not morally permissible (Frisch, Lindholm & Grønbaek, 2011). Since most clinical experts believe that women who are circumcised *severely* (severe form of female genital mutilation) cannot experience good and pleasurable sexual relations. I say “severe” because it is said that Female Genital Mutilation (FGM) *may* cause physical damage or lead to reduced sexual pleasure, or bear other complications, but that milder forms of FGM likely do not reduce sexual functionality and are much less invasive than male circumcision yet are nevertheless condemned as violations of human rights. Even small cuts on the hood of the clitoris are prohibited, and yet such cuts do not even remove any tissue (The Royal Dutch Medical Association’s report on “Non-therapeutic circumcision of male minors”. For an alternative view see Shweder, 2000). This implies that, by doing circumcision, we impose on them a kind of pain (*undue harm*) and this is not morally permissible. Therefore, given what new Muslim intellectuals have argued, we have an independent secular moral reason not to do female circumcision even if it is ordered in the *Sharia* (for more on this style of reasoning in rule-utilitarian school, see e.g. Hooker, 2000). As a result, even if Islamic law states that it is acceptable to circumcise women, it can be argued that due to the strong *countervailing* medical reason, which is discussed in science, this action shall be stopped as it is not morally permissible or and reasonable.

The case of male circumcision, however, is not as clear as the case of female circumcision (Jacobs, 2013). There is strong evidence that male circumcision reduces the risk of HIV and penile cancer (Larke et al. 2011). The World Health Organization (WHO), for example, states that male circumcision can be considered as part of a comprehensive HIV program in areas with high endemic rates of HIV, such as sub-Saharan Africa (Uthman et al. 2010; see also WHO and UNAIDS recommendations from expert consultation on male circumcision for HIV prevention, 2007. For an alternative view see e.g. Boyle and Hill, 2011). However, it is worth mentioning that two propositions of “there may be a medical benefit to performing a circumcision” and “it is permissible to remove healthy body parts to reduce the chance that they will one day become infected or otherwise diseased” for example, can have the same meaning, however it depends on our moral normative theory. This means that the first “medical” fact can entail the second, “ethical” position, however, not necessarily. Because male circumcision procedure produces unnecessary pain (*undue harm*). It is argued that saying that practice of male circumcision involves no harm, unlike female circumcision, is based on a false hypothesis and misunderstanding (Earp, 2013&2015). So, this assumption is erroneous, and evidence suggests that according to the criteria of sexual diminution, like Female Genital Mutilation, which employed pain and coercion, Male Genital Mutilation can also be viewed as a harmful act (Darby & Svoboda, 2007; Fox & Thomson, 2008; Johnson, 2010).

Hence, I believe, it is acceptable to support the conclusion raised by Bolnick and Katz that it is hard to find a major medical organisation that recommends either universal circumcision for all infant males or banning the procedure forever. It might be permissible in some occasions such as sub-Saharan Africa but not permissible in other

occasions because of undue harm (Bolnick & Katz, 2012, Ch. 1; Buckle, 1988).

### Moral Reasoning about Circumcision: Argument from Right

So far so good. We explored argument from harm for and against circumcision. Now, at this stage we can discuss the argument from *right* and explore ethical concerns in terms of having *right* to do something. In fact, as well as talking about harm, we can argue about male circumcision in the moral domain by introducing the notion of rights (Caga-anan & Thomas, 2011; Pinto, 2012). When ethicists argue that circumcision is morally wrong, what they probably have in mind is that, by doing circumcision in the childhood, we close our eyes to the *right* of child to make a decision. It is possible that when our child grows up, he might ask why you circumcised me without asking my permission. Moral philosophers think that it is not morally permissible not to take into account the rights of our little boys.

This idea is very close to the discussion of abortion in medical ethics (Thomson, 1971). For example, in Islamic bioethics, based on convincing interpretation of the Quran and hadith, most of Muslim scholars do not recognize right to abort fetus. According to Islamic teachings, life is a divine gift and cannot be terminated, *ceteris paribus*, by any form of voluntary active intervention. Majority of Muslim scholars believe abortion is forbidden or *haram*, and the *Sunni* and *Shiite* scholars are in agreement on this matter (Sachedina, 2012, ch. 4). However, some Western philosophers think that one of the reasons that abortion is morally wrong is that fetus has equal right to that of the parents. So, parents cannot make such an important decision (i.e. decision about terminating life) in the absence of that *person*, i.e. fetus. In another camp, other philosophers who defend abortion argue that we can make a

distinction between *potential* and *actual* beings and these two categories do not have the same contribution to our moral judgments (Bigelow & Pargetter, 1988; Buckle, 1988). Therefore, parents who have actual right can make a decision for one (child) who has potential right without making moral threat.

The same story can be applied to male circumcision cases. Two opposing views then can be articulated in this way: some moral philosophers would argue that parents have actual right with respect to child's potential right. Thus, morally speaking circumcision could be defended. However, some other philosophers would argue that parents and child's right are the same and equal and parents cannot circumcise without the child's permission.

Nevertheless, I believe, the second view is *problematic*. Because, if we accept that parents do not have right to circumcise, we can proceed this line of argument to say that parents do not have a number of other rights in the absence of the child. Because children can argue, when they grow up, for example, we did not want to be an educated people. So, they can say, why did you send us to school? It seems to me that this line of argument is not justified. Or at least although the argument can be justified, implication of the argument is not warranted. For example, one implication against such reasoning is that one might argue that the whole concept of circumcision changes from being painless procedure to something that perhaps is more painful/more increased risk of infection/psychological damage, etc. as one gets older. So, there might be an actual medical difference in doing it younger vs. older.

However, it might be objected that if this is the case, in fact we are saying that parents have a right to take *any* action with their children, for example, rape, torture or killing. And, this is obviously wrong. It is apparent that parents have limits on what they can do with their children.

Indeed, we have to bear in mind about the actual limits of parental authority.

As a response we can say that although parents have rights to do some actions on behalf of their children, for example, sending them to school or forcing them to do vaccinations, they clearly do not have right to do *self-evident* unjustified immoral principles such as "torturing babies for amusement" (Audi, 1999). Such self-evident principles are not disputed by any philosophers. So, when we say that parents have rights to do some actions, this entail that actions which most of rational people would accept them as self-evidently permissible, reasonable and moral ones. Although there are some self-evident principles, it is possible that moral philosophers have disagreement about some issues such as abortion or surrogacy motherhood. The reason is that these topics are complicated and need further reflection. However, having said that would not imply that for any practice about which there is any sort of moral disagreement, parents should be allowed to take that action (Stratton-Lake, 2002, Introduction).

Given what is argued, we can conclude that in the case of male circumcision, Islamic law and secular ethics say something similar. That is, both of them permit parents to make a judgment in accordance with their intuition or as the moral philosopher W. D. Ross says: "the decision rests with perception" (Ross, 1939, 2002, 42; Aristotle, 1925, 1109 b 23, 1126 b 4). This implies that they can choose what it *seems* rationally to them right. Even if clerics have said that male circumcision is finally and ultimately wrong (or *haram*), we had moral reason that this is not straightforward, and people can have different equal persuasive reason in this respect.

Our moral intuitions say that if we have strong reason to think that doing A imposes *undue harm*, then it would be morally wrong to do A (such as female circumcision). However, in cases which our reason is not final and actual,

other considerations such as cultural or religious ones might be taken in account. In other words, in cases which harm is assured and definite, we are not entitled to do that action. However, in cases which harm is not evident, and we have some secular reason (i.e., scientific) for doing A, it is possible to think about other reasons such as religious or cultural ones.

To wrap up, although there are some reasons to think we have medical reason that circumcision is *undue harm*, countervailing reasons still can be found. Therefore, I believe to the extent that there is a debate between physicians whether circumcision is harmful or not we have moral reason to say that male circumcision CAN BE morally permissible.

## Conclusion

I started by saying that circumcision is not necessary part of being a Muslim, according to *Sharia* law. I then emphasized that we should not marginalize such idiosyncratic idea, rather we have to support it for educational prosperity in Muslim communities. However, I argued that male circumcision *can be* morally permissible in some cases. Although the severe form of female circumcision *cannot* be right since we do not have any positive reason to carry it out, and we have strong reasons for *not* doing it, in male circumcision, we can think of some cases that harm is not evident, and we do not have strong reason for not doing that. Religious people can appeal to this line of argument to justify their action which is rooted in their tradition..

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