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Is Children Circumcision anti-Child Right? Examining the Health and Religious Benefits of Circumcision from Maqasid al-Shari'ah Perspective

By

Abdulraheem, Taofeeq Abolaji*, Dr. A. Umar Alkali**, &
Folorunsho, Ahmad Hussein***

Abstract

There has always been contention between the compatibility of shari'ah and several rules of international human rights. One of the areas of contention is on child circumcision. While several international right treaties have deprecated the practice on the ground that it is harmful to the children's health, the practice is still widely practiced in many countries especially in Islamic and Muslim countries where they cite religious rulings for the continuance. This paper thus aims to examine the arguments of the pro and anti-circumcision. The paper also intends to discuss the health and religious benefits of circumcision to the child and the society. The paper wishes to argue that the Islamic ruling on circumcision of children is a means towards achieving the maqasid al-shari'ah, which in itself focuses on protection of human rights including child rights. The paper concludes that the practice of circumcision from Islamic perspective is not anti-child rights although its implementation could be improved in some areas in order for the maqasid al-shari'ah to be fully achieved. To achieve its objectives, the paper uses legal doctrinal approach and employs documentary and qualitative content analysis.

Introduction

Children's Circumcision has gained both local and global debate. The practice of circumcision which has been recognized by *Shari'ah* which forms part of the practice of Prophet especially male circumcision. Female circumcision on the other hand has not been condemned by the Prophet Muhammad PBUH, although there are a lot of arguments for and against the female circumcision under *Shari'ah*. Notwithstanding the arguments, circumcision is given recognition under the *Shari'ah* in considering the religious and health benefit of it. Despite the fact that children's circumcision is recognized under the *Shari'ah* the practice is condemned totally by the human right activists as it is harmful to children and contravenes international human right law and Convention on the Rights of Child (CRC). *Shari'ah* has laid down rules and regulations to ensure children are healthy. One of these rules is circumcision. Today people strive and struggle to unfold and uphold many of the issues that they have identified as important elements to health as a human right while *Shari'ah* had covered all these including circumcision. *Shari'ah* has advocated for the protection and promotion of health long ago before people began to acknowledge their importance.

Therefore, paper wishes to argue that the Islamic ruling on circumcision of children is a means towards achieving the Maqasid al-shari'ah, which in itself focuses on protection of human rights including child rights. The paper concludes that the practice of circumcision from Islamic perspective is not anti-child rights although its implementation could be improved in some areas in order for the *Maqasid al-Shari'ah* to be fully achieved. To achieve its objectives, the paper uses legal doctrinal approach and employs documentary and qualitative content analysis.

Meaning and definition of health under Islamic law

Health can be described as "a state of complete physical, psychological, social and spiritual well-being. It also means state of "equilibrium". Ali bn al- bass, who lived one thousand year ago in his book, *Kamil asina'ah* rightly put it to mean the body is in a state of equilibrium.¹ Health can also be described as "the state of equilibrium which a human being enjoys has a certain range with an upper and lower limit". It is, then, like a balance which moves between two extreme limit.² To maintain this health balance in the state of equilibrium protect against imbalance and restore it to its proper position every time it is disturbed, a human being must have a "health potential". This health potential may take the form of proper nutrition, or good immunity, or physical fitness which enables a person to cope well with the stress which the body may face.³ Health is normally looked upon as a natural state of our lives, while illness or disease is a sort of unnatural condition that afflict human body and can be combated and cure by the use of proper medication.⁴

Similarly, health is one of the greatest blessings of *Allah* that is bestowed on human beings which need to be preserved and protected. It is considered the greatest blessing after the oneness of *Allah*.⁵ Health is something for which human beings will account for its usefulness on the Day of Judgment⁶. It is therefore the duty and right of every Muslim to safe guard this blessing and not to allow any changes to overcome it through ill usage and any attempt to abuse this precious gift can lead to punishment for whoever mismanage it. Quran says:

*"And whoever exchanges the favour of Allah (for disbelief) after it has come to him then indeed, Allah is severe in penalty"*⁷.

Circumcision under Shari'ah

Circumcision, also known as " *Khitan*" in Arabic, is the term used for male circumcision that is carried out as a religious duty. It is considered as a sign belonging to the wider Islamic community. The female circumcision on the other hand can be referred to as " *Khafid* in some part of the world.⁸ Islam strongly emphasizes cleanliness and purification both spiritual and physical. The mental and spiritual purification cleanses the heart while the social and physical purification cleanses the body as in the case of circumcision.⁹ Circumcision in Islam can be understood through the jurisprudential positions of Scholars regarding the issue. This is because there is no direct provisions from the holy Quran that place emphasis on the issue and the Hadith regarding the issue are considered weak. The

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¹ Muhammad Haytham Al-Khayat. 1997. *The Right Path to Health: Health Education through Religion*. Egypt: World Health Organization. Alexandria. P.12

² Ibid. P.12.

³ Ibn Sina. *Al-qanoon*. 1093. A.D.

⁴ Abu Fadl Mohsin Ebrahim. 1989. *Abortion, birth control & surrogate parenting: An Islamic perspective*. America: American Trust Publication. P. 4

⁵ Muhammad Haytham Al-Khayat. 1997. *The Right path to Health: Health Education through Religion*. Egypt: World Health organization. Alexandria. P.15

⁶ Ibid.

⁷ Al-Quran. Baqarah 2 v.211.

⁸ [www.wikipedia.org/wiki/khitan\(circumcision\)](http://www.wikipedia.org/wiki/khitan(circumcision)). Assessed 1/21/2014.

⁹ Converting.to/islam.com/circum..html.

majority opinion is that circumcision for male child is compulsory but they differ in the case of female circumcision and rated it to be *Mukramat*(Honor) and not obligatory for the female child.¹⁰

Furthermore, the origin of circumcision especially Male circumcision was traceable to Prophet Ibrahim. This position was gathered from the interpretation of a verse¹¹ from the holy Quran by those who knowledgeable in the field of interpretation of Quran such as Quritabi and Tabarani¹² as reported by Ibn Abass. Quran says:
*"And [mentioned, O Muhammad], when Abraham was tried by his Lord with words [i.e. commands] and he fulfilled them. [Allah] said, Indeed, I will make you a leader for the people. Abram said, and of my descendants [Allah] said my covenant does not include the wrongdoers."*¹³

According to Ibn kathir ' And he fulfilled them' in the above verse means prophet Ibrahim had acted in accordance with the covenant between him and his Lord by doing all things required of him to exhibit or perform.¹⁴ Qurtubi¹⁵ notes that Prophet Ibrahim was commanded to do ten acts of purity. Five on his head and five in the rest of his body and of such command was for him to circumcise himself of which he did.¹⁶

Health and Religious Benefit of Circumcision under Shari'ah.

Male circumcision has been recognized by the majority of Islamic jurists as compulsory.¹⁷ However, Shawkani is of the opinion that male circumcision is regarded as commendable act in Islam.¹⁸ There is no direct verse from the holy Quran that describes the male circumcision. However, some of the proponents of male circumcision among the Islamic jurists heavily relied on one of the verses of the Quran where Allah commanded the holy prophet Muhammad to follow the example of prophet Ibrahim. Quran says:
*"Then we have revealed to you, [O Muhammad] to follow the religion of Abraham, inclining towards truth, and he was not of those who associate with Allah."*¹⁹

Benefits of male circumcision has been experimented by Dr Muhammad Ali al- Baar in his book al-Khitaan (circumcision) to the effect that circumcision of new born boys (i.e. within the first month of life) brings numerous health benefits including; protection against local infection in the penis, which may result from the foreskin, causing tightening of the foreskin which may lead to retention of urine or infections of the glen(tip) of the penis, infections of the urethra. Many studies have proven that uncircumcised boys are exposed to infection of the urethra. In some studies the rate was 39 times more among uncircumcised boys. In other studies the rate was ten times more. Other studies showed that 95% of children who suffered from infections of the urethra were uncircumcised, whereas the rate among circumcised children did not exceed 5%, protections against

¹⁰ Female_circumcision_and_its_standing_in_islam.1/21/2014.

¹¹ Al-Quran. Al Baqarah: 2v124

¹² Nasir al Khuwaidat. 2011. *Asas Taribbiyat al Tifl fi il Islam*. Urduni: Darul bidayah al urdun. P.63.

¹³ AL Quran. Al Baqarah : 2V124.

¹⁴ Ibn Kathir. I. 1999. *Tafisr Quranal Azim*, (KSA: darul tarribiyatul wal tawzi. P.405.

¹⁵ Qurtabi M.A. 1935. *Jamiul Ahkamul Qur'an*. Egypt: Darul al-kutub al- Misriyah. P.93.

¹⁶ Ibid.

¹⁷ Sabiq S. 1973. *Fiqhu as Sunnah*. Beirut: daru al kutub.p37.

¹⁸ Ibid.

¹⁹ Al Quran. An Nahl:123.

cancer of the penis: the studies agree that cancer of the penis is almost nonexistence among circumcised men, whereas the rate among uncircumcised men is not insignificant, which require circumcision in order to treat these problems. In chronic cases, the child may be exposed to numerous diseases in the future, the most serious which is cancer of the penis. Sexually transmitted diseases (STD). Researchers found that STD spread more among those who are not circumcised, especially herpes, soft chancres, syphilis, candida, gonorrhea and genital warts. It also protects of wives against cervical cancer. Researchers have noted that the wives of circumcised men have less risk of getting cervical cancer than the wives of uncircumcised men.

Female circumcision on the other hand involves a tiny cut on the clitoris that does not amount to mutilation and does not pose a threat to the health and well-being of the girl child.²⁰ Female circumcision has been a matter of discussion among secularists, human rights activists and health practitioners in recent years on the ground that it has adverse effect on the health of young children and considered it as Female Genital Mutilation.²¹ Female circumcision has been criticized on the ground that it can cause diseases or create problem for the female child. It is likened to surgical operation performed on a woman during the childhood, puberty or during first pregnancy which comes with possible health hazards like infections, severe shock and hemorrhage which are conditions surrounding the operation. The effect of this operation include difficulty in passing urine and menstrual blood, genital infections which may lead to infertility and severe problem during birth child.²² According to Shafi's school of law, circumcision is compulsory for both males and females children.²³ This rule is inferred from one of the prophetic traditions which says:

*"The practices related to fitrah (that is pure correct human nature) Are five; circumcision, shaving the pubic hair, trimming the mustache Cutting the nails, and removing the underarm hair."*²⁴

An Nawawi commented on the above Hadith that circumcision is obligatory according to the Shafi'i and many scholars. According to Malik School and the majority of them it is *Sunnah*. In furtherance to this Shafi'i equally make the circumcision obligatory for males and females children.²⁵ Circumcision is therefore, an important of *Taharah* (purity and cleanliness) which is strongly emphasized in Islam for when foreskin is not removed or is done by non-Muslim physicians, only partially removed, urine and other secretions can collect under the folded skin.²⁶ It is clear from the above verse that majority of Quran interpreters are of the view that circumcision can be inferred this is because Prophet Abram performed or circumcised himself in this wise the verse is applicable to this issue.

²⁰ Fried, S, et. al, "out patients" Perspectives on Needs Related to Female Genital Mutilation/Cutting : A Qualitative Study from Somaliland." 2013. Vol.3. Obsterics and Gyneacology International.p.4

²¹ This is not unconnected with the development and concern about the issue of child's rights following the coming on board of the CRC and the media's role in exaggerating the issue of Female Genital Mutilation and the attempt to identify the cruel practice in Islam.

²² Afonji S. The Right to Health, in The Rights of child in Nigeria, Ayua I.A. (ed).Nigerian Institute of Advanced Legal Studies, Lagos(1996). P. 107.

²³ Nurdeng Deuasah. Opcit. P. 101.

²⁴ Buhari 7.77

²⁵ Nawawi. 1995. Sahih Muslim bi sharh al- Nawawi. Beirut:Darul Kutub al- Ilmiyyah, 3: p 126.

²⁶ Norma Tarazi. 1995. *The Child in Islam*. America: American Trust publications 745 Mc Clintock Drive site 114. America.

Conversely, Yusuf Al-Qardawi argues that female circumcision is not a religious obligation and whoever refrains from doing it is not committing any sin.²⁷ However, he states that he personally support moderate Islamic female circumcision (removal of the prepuce, or covering of the clitoris) and whoever finds it serving the interests of his daughters should do it. He said further that female circumcision (the removal of only the prepuce), which was being practiced before Islam is permitted because it is better for a woman's health and improves her conjugal relation with her husband. He added that "I personally support this under the current circumstances in the modern world."²⁸ Oba²⁹ is of the opinion that female circumcision has religious significance notwithstanding the negative publicity as being canvassed by the west.

Female circumcision has a lot of advantages one of it is that it reduces the risk of HIV infection for women.³⁰ It can also be added that another health benefit of female circumcision is that secretions of the labia minora accumulate in uncircumcised women and turn rancid, so they develop an unpleasant odour which may lead to infections of the vaginal or urethra.³¹ It also reduces excessive sensitivity of the clitoris which may cause it to increase in size to 3 centimeters when aroused, which is very annoying to husband.³² It also prevents stimulation of the clitoris which makes it grow large in such a manner that it causes pain and it prevents spasms of the clitoris which are kind of inflammation.³³ Similarly, female circumcision has huge benefit for women psychologically in places where is high entrenched and considered part and parcel of womanhood. It can be a source of personal and collective identity, as well as power in their daily affairs.³⁴ This is illustrated by a Sudanese woman: "it gives women a lot of power in the household."³⁵ When girls and families conform to the practice they acquire they acquire social position and respect. Conversely, failure to conform leads to difficulty in finding a husband for the girl, shame, stigmatization, as well as loss of social position, honour and protection, resulting in the family's social exclusion in the community.³⁶ Additionally, it is justified that female circumcision lessen woman's libido. It is argued that if that is achieved, the possibility of the girl indulging in anti-social activities will be greatly reduced. Preservation of chastity is a fundamental principle of Islam and if that can be achieved by simple circumcising a woman, the society will be saved from vices and as such the end justifies the means.³⁷ It is equally argued that women even voluntary accept circumcision

²⁷ Azizah Mohd& Alhaji Umar Alkali.2014. 'Female circumcision or Female genital mutilation? An Islamic perspective.' *International Conference on Law and Society* 111.p.7.

²⁸ Abu Dawood.Sunan Abu DAwood. Vol.4. Beirut:Darul kitab Al-Arabiyyah.n.d. p.135. hadith 4200.

²⁹ AbdulMumin A. Oba.2008. "Female Circumcision as Female Genital Mutilation: Human Rights or Cultural Imperialism?", *Global jurist: Vol.8.Iss.3(frontiers)* Article 8.Available at://www.bepress.com/gj/vol8/iss/art8.

³⁰ Stallings RY Karugendo E. 2005. Female circumcision and HIV infection in Tananzania: For better for wors?.Paper presenred at 3rd International AIDS Society Conference, 2005 24-27 july; Rio de Janiero, Brazil.

³¹ Khawabi H.cited in infant Circumcision and Health benefits part 11, available at <http://mondofoownblogspot.com/2012/06/female-circumcision-health-benefit-05.html>.assessed on 12th April,2014.

³² S.A. Aldeeb Abu Sahlieh. "Muslims Genitalia in the Hand of the Clergy: Religious Arguments about Male and Female Circumcision". Male and female circumcision, medical, Ethical, and legal Consideration in Pediatric practice, George C.Denniston et al (ends) USA: Kluawer Academic. 1999. p.156.

³³ *Ibid*

³⁴ Kunns kapssenteret (Norwegian Knowledge Centre for the Health Services), *Psychological, social and sexual Consequences of Female Genital Mutilation/Cutting: A Systematic Review of Quantitative Studies*.(Oslo: Norwegian Knowledge Centre for the Health Services, 2010).p.22.

³⁵ *Ibid*.

³⁶ Kunnskapssent. Opcit.

³⁷ <http://light-of-life.com/emg/reveal/r540efc/htm>. Viewed on 14 february, 2015.

because they hate to see their skin that reduce the enjoyment of their husbands.³⁸ Circumcision has a religion benefit as far as Islam is concerned. It is the essence of fitra (innate disposition) and mark of Islam, it completes the unswerving uprightness that is ordained by Allah, it distinguishes Muslim from non-Muslim, it is an acknowledgement of bondage to Allah, submission to His orders and acceptance of His judgment, it also brings about cleanliness and it is physical precaution that helps to avoid many disease such as cancer and incontinence.³⁹

International Human Rights response to Child Circumcision

Child circumcision has been critically looked into by the International human rights and thereby conclude that it violates the fundamental rights of the children as contained under the Convention on the Rights of Children and other instruments that protect the rights of children. Both the male and female Circumcision have been argued by the human rights activists that act of circumcision is harmful and detrimental to the children. For instance, male circumcision has been classified to form part of torture and this is against the provision of Universal Declaration of Human Right⁴⁰ and the Declaration on the right of children that prohibit children against torture and inhuman treatment.⁴¹ Similarly, male circumcision is also conceived by human rights activists as threat of right to life. The operation can lead to medical complications which occasionally result in death. Therefore, child's right to life can be jeopardized through the act of circumcision. It is an obligation of the state and that of parents to ensure the child's right to life is adequately protected. Protection of children's life means practical steps must be taken by the state to ensure that every child is protected from aggression and all other actions either from the agents of the state, groups or private individuals that could threaten the child's right to life.⁴²

Furthermore, male circumcision has also been criticized on the ground that it violates child's right to health. A number of the documents on international human rights, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, contain provisions which lay down the right to health. If one adheres to the opinion that male circumcision is medically unnecessary, and that consequently the procedure carries an unnecessary danger of complications, certainly where this takes place under unhygienic conditions, it can be argued that the procedure forms a threat to the health of the child. Because of the procedure, without any necessity the natural anatomy and physiology of the child is changed, and this can lead to life-threatening health problems.⁴³

From a legal perspective, parents carry the primary responsibility for the health of their child, and must take decisions in these matters on the basis of the fact that the child is not yet capable of doing so because of his "diminished capacity."⁴⁴ Parental consent is required for all forms of medical treatment. However, there is also the parental right to

³⁸ Ibid.

³⁹ n.a. 24 March 2014. "Child Education in Islam." www.allahsword.com. p. 24

⁴⁰ See Article 5 of Universal Declaration of Human Rights

⁴¹ See Article 19 (1), 17, and 24 (1) of the CRC

⁴² Reisoglu, s. "Right to Life." *Journal of International affairs*. Vol.111. No.4. p.52

⁴³ Ibid

⁴⁴ Article 24 of CRC

refuse medical treatment, on religious grounds, for example. Just as in the case of male circumcision, the parents are, in refusing medical treatment of the child on religious grounds, convinced that their decision is in the interest of the child. In this latter case, it is argued that the decision to adhere to a religion and to accept the consequences thereof suggests a degree of intellectual adulthood. Children are not in a position to take this decision, so parents take this decision for them. When the health consequences of refusing medical treatment are, for instance, threatening the life of a child, in practice it can happen that parents are divested of their parental authority during the period of the medical procedure.⁴⁵ One of the arguments for this action is that the child has no choice in a matter which concerns his health, welfare and physical existence. The child has no say in the matter. This argumentation is also employed by various authors in respect of male circumcision and female genital mutilation.⁴⁶ According to them, the decision to undergo the operation can better be postponed until the individual is able to make its own choice, that is, when it has reached adulthood. The situation changes when an adult, after having been informed of the consequences, decides to follow tradition and undergo the operation.⁴⁷ It is also advocated that parents should be fully informed about the functions of the foreskin,⁴⁸ the pain, complications and possible disadvantages of the procedure, in order to be able to make a more carefully considered decision on whether or not to circumcise their child.⁴⁹ When the necessary information is given, it is ultimately the responsibility of parents to knowingly put their children at risk.

As regards to Female circumcision, it has been criticized by the human rights activists on the ground that it endangers children lives because it is tantamount to Female genital mutilation. It is their contention that the practice of female circumcision violates children's rights as defined in the CRC in particular, the right to be free from discrimination,⁵⁰ right to be protected from all forms of mental and physical violence and maltreatment,⁵¹ the right to highest attainable standard of health,⁵² and freedom from torture or other cruel, inhuman or degrading treatment.⁵³ Female genital mutilation is also associated with a series of health risks and consequences. Almost all those who have done female genital mutilation experience pain and bleeding as a consequence of the procedure. The intervention itself is traumatic as girls are usually physically held down during the procedure.

Circumcision, Child Rights and Maqasid al-Shari'ah: The Links and the Debates

Throughout the Muslim World, there are calls for re-Islamisation of the legal systems, either for the strict application of the Shari'ah in its traditional form based on imitation (taqlid), or for a return to the roots or the principles of the Shari'ah (Maqasid al-Shari'ah), a re-opening of the door to independent reasoning (ijtihad), or even for a move towards the practice of Islam in a secular state or a combination of some of these - yet even amongst

⁴⁵ Les Haberfield. 1997. "Responding to Male Circumcision: Medical or Ritual?" *Journal of Law and Medicine*. Vol.4 No 4.pp 378-385

⁴⁶ Ibid

⁴⁷ Asma El Darear. 1982. Woman, why do you weep: *Circumcision and its Consequences?* London. Zed press .p 181

⁴⁸ Ibid

⁴⁹ Philip E.V. 1992. *The Rights of the Child and the changing image of childhood*. Dordrecht. Martinus Nijhoff.p 184

⁵⁰ Article 2

⁵¹ Article 19 (1)

⁵² Article 24

⁵³ Article 37

Islamic scholars there is no agreement on the path to be taken. Such disagreements are exacerbated by the differences in interpreting primary sources of law between the Shi'a and Sunni schools of thought.⁵⁴

Protection of child's Rights as part of Maqasid al-Shari'ah

Maqasid al-Shari'ah is a divine secret of Allah derived behind most of His Laws which guide towards the end and goals of the *Shariah*, which can either be general or specific. Commonly, *Maqasid al-Shari'ah* is also described as the objectives of *Shari'ah*.⁵⁵ The objective of *Shari'ah* is to protect the well-being of the people irrespective of gender and without any discrimination as to sex, colour, tribe and religion and it lies in the safeguarding of their faith (*deen*), lives (*nafs*), intellect (*aql*), posterity (*nasl*) and their wealth (*mal*). The underlying theme is the realization of the benefit of the people (*Maslahah*) or public interest.⁵⁶ Thus, where a *shari'ah* rule does not have a direct legislation from the Quran and *Sunnah* of the prophet, the scholars could apply *ijtihad* to deduct the appropriate rulings by considering what would be the best interest of the Muslims and Islam within the prevailing global trend.⁵⁷ Scholars have stated that the principles and rules of *Shari'ah* are basically underlined with the objective of compassion and must be applied in manners that will reflect the compassion in the daily affairs of the citizens.⁵⁸ This objective is deduced from the verse where the Quran describes itself as "a healing to the (spiritual) ailments of the hearts and a guidance and mercy for the believers and mankind".⁵⁹ Similarly, Allah said of Prophet Muhammad (PBUH) that "We have not sent you but as a mercy to the worlds".⁶⁰ This principle has been reinforced in the Islamic legal maxim (*qawaidul fiqhiyyah*) that says "hardship must be eradicated" (*addararu yu'zal*).⁶¹ Thus, the primary objective of *Shari'ah* is to establish mercy and justice while eradicating prejudice, hardship, injustice and lack of freedom in the society.⁶² This, therefore, justifies the need to protect the rights of the children, especially their right to healthy living and health facilities. This is because, while the adults, who are regarded as *mukallaf* (adults with full legal capacity and responsibility) can legally enforce their rights, the children cannot.

Circumcision as a Child Right under Shari'ah

Circumcision is a right of child under the *Shari'ah*. The justification for this is that there a lot of views of Islamic school of thought on this issue. For instance, Hanafi and Malik School placed it as *Sunnat Muakadat* that is obligatory act that must be performed.⁶³ While Safi and Hanbali school regarded it as *wajib* compulsory.⁶⁴ Male circumcision is compulsory while female circumcision is regarded as honor and prestigious for her. This

⁵⁴ Durham University, "Islam, Law and Modernity" <https://www.dur.ac.uk/ilm/> accessed 2 September 2015.

⁵⁵ Nurudeen bn Mukhtar. 2001. *Ilm-al- Maqasid al-Shariah*. Riyadh: Maktabatul aikani. p.15

⁵⁶ Ahmad al- Raisimi. 1992. *Nazariah al-maqasid 'nda al-imam al-satibi*. Riyadh: Darul-Alamiyah kitaul-islami.p41.

⁵⁷ Buba, T. M. 2014. "Role of Maqasid al-Shari'ah as a Social Welfare Concept in the interpretation of the sources of Shari'ah". *Unilorin Shariah Journal*. Ilorin: Department of Islamic Law. Vol. 2. No. 1. June. p. 61-86.

⁵⁸ Kamali, M. H. 1998. *Maqasid al-Shari'ah: The Objectives of Islamic Law*. n.pl: Islamic Studies. p. 200. www.islamicbookstore.com/b10159.html. accessed on 19 September 2013.

⁵⁹ Al-Quran. Al-Yunus. 10:57.

⁶⁰ Al-Quran. Al-Anbiyaa'. 21: 107.

⁶¹ Buba, T. M. 2014. "Role of Maqasid al-Shari'ah as a Social Welfare Concept in the interpretation of the sources of Shari'ah". *Unilorin Shariah Journal*. Ilorin: Department of Islamic Law. Vol. 2. No. 1. June. p. 61-86.

⁶² *Ibid*

⁶³ Basil Mahmud al- Hafi. 2008. *Fiqh Tufulat ahkam Nafs dirasatun muqaranat*. Suriyah : Daru Nawadir.p.

⁶⁴ *Ibid*

view was supported by some by some Jurists and placed reliance on one of the hadith of Prophet Muhammad which says:
"Males Circumcision is *Sunnah* that is the tradition and practice while females Circumcision is honor for them"⁶⁵

In case of female circumcision there are different positions of the Islamic Jurists, Hanafi school of the opinion that it is honor for her. Malik School is of the view that it is *Mustahab* or *Mandub* that is recommended. According to some of the Jurists of Imam Safii school of thought were of the opinion that female circumcision is compulsory *Sunatun Muakadat* just like that of male circumcision. The position of other jurists who are majority is that the hadiths that are dealing with the circumcision of female are weak hadiths this because female circumcision is not compulsory and not even the practice of Prophet Muhammad.⁶⁶ Similarly, Shafi and Hanmbali Shools argument on their position on male and female circumcision to be an obligatory act is predicated on the two instrument, one is what they inferred from verse of the holy Quran and the second one is their reasoning and analogical deduction. The former is based on one of the verses of the Holy Quran which says:

"The, We have revealed to you (O Muhammad) follow the religion of Ibrahim Hanif (Islamic Monotheism) to worship non but Allah and he was not of idolaters."⁶⁷

It is clear from the above hadith that Prophet Muhammad was directed to follow the practices, good deeds and life style of prophet Ibrahim. To the Shafi and Hambali School from indication from the above verse it shows that the circumcision is compulsory to be practiced.⁶⁸ It is also the contention of these schools of thought that the act of circumcision particularly male circumcision is part of *fitra* which was compulsory for prophet Ibrahim. They also referred to the Hadith of Prophet Muhammad which says: "Prophet Ibrahim circumcised himself at the age 80 years with axe."⁶⁹ On their position on the issue of female circumcision the hadith of Prophet Muhammad that was reported by Abu dawood was referred to. "There was a woman in Madinat called Ummu Atiyyah that use to circumcise the neighbor female children and the prophet said to her "circumcise but do not cut deeply."⁷⁰ Despite restriction against the severity, the Prophet S.A.W. did not prohibit circumcision completely.⁷¹ Similarly, the Shafi and Hambali reference that based on reason or analogical deduction to support their stand on the obligatory and *Sunnah muakadat* of male and female circumcision respectively is that it serves as means of identification of a person as a Muslim. Maliki and Hanafi School that categorized male circumcision as *Sunnat Muakada* relied on the Hadith of Prophet Muhammad which says: "Circumcision is *Sunnah* and honor for the females."⁷²

Furthermore, *Shari'ah* makes mandatory and compulsory for circumcision to be carried out before the child reach the age of maturity that is right from the stage of infancy before

⁶⁵ Nasir Ai-Khuwailidat. Opcit p.63.

⁶⁶ *Ibid.* p.63.

⁶⁷ Al-Quran. Nahl. 16: 123.

⁶⁸ Basil Mahmud al-Hafi. Opcit.p.229.

⁶⁹ Musilim. Shahih Muslim. Babul Fadail Ibrahim Khalil.2370. vol.4.

⁷⁰ Abu Dawood. Babu ma jaha fil Khtan. 5271. Vol.4.p.368.

⁷¹ Ahmad, I. Female Genital Mutilation : An Islamic perspective available at <http://minaret.org> viewed on 14

Feburay,2015.

⁷² Imam Ahmad. Musnad Imam Hamad. 20195. vol. 6.p.73.

he reaches the stage of adulthood.⁷³ The reason is that circumcision is of the purification of child which has impact on his health, doing it at infancy stage will be convenient for the child's health and the wound will easily. The period starts immediately after the seven days of the delivery of the baby.⁷⁴ The only exception to seven days is where the baby is not strong that is the baby is physically unfit on health ground. In that regards such circumcision will be delayed till the baby is physically strong.⁷⁵ This *Shari'ah* principle is supported by the Hadith of Prophet Muhammad S.A.W. which was reported by Jabir and said:

*"Prophet Muhammad performed the Aqeeqah[naming and slaughtering of rams]for Hassan and Hussain on the seventh day after their delivery"*⁷⁶

It is clear from the above discussion that circumcision is a right of children under shariah and it must be exercised by the parents of the children in accordance with the principles of shari'ah.

Conclusion

Conclusively, considering the importance of circumcision and its benefits both religious and health to all human being it is apposite to state that the act should be encouraged for the betterment of our young generation. There must be caveat in the practice of this act especially female circumcision as directed by the Prophet Muhammad that is it should not be cut deep. By doing this, it will be cleared that Islam does not encourage Female genital Mutilation as being misconceived by the modern and human rights scholars. There is no valid justification from the opponents of circumcision for any distinction between male and female circumcision and giving priority to male circumcision. The attitude of international and non-governmental organization which discriminate one type of circumcision from the other giving legitimacy to male circumcision alone at the detriment of female circumcision should be condemned.

⁷³ Th Hanafi and Malik school are of the opinion that it should be done between the age of seven years till twelve years while Safi and Hanbali school didn't specified any age but it must be done compulsorily before the age of maturity.

⁷⁴ This is the position of Shafi School when mentioning the recommended time within which the circumcision can be carried out on a child. The relied on the the Hadith of Prophet Muhammad which says *"The Prophet SAW shaved the hair and circumcised Hassan and Hussain at seven days of their delivery."* See Al baihaqi, Sunan al- Baihaqi, Babu sultan yakrau ala l khtan.vol.8, 324.Tuhfatul maolud.p.114.

⁷⁵ Ibid. P.65

⁷⁶ Repoted by Baihaqi fi sunan.vol.8.p. 324.