

## FIMA YEAR BOOKS OVER THE PAST TWELVE YEARS

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FIMA Year Book 2013



# FIMA Year Book 2013

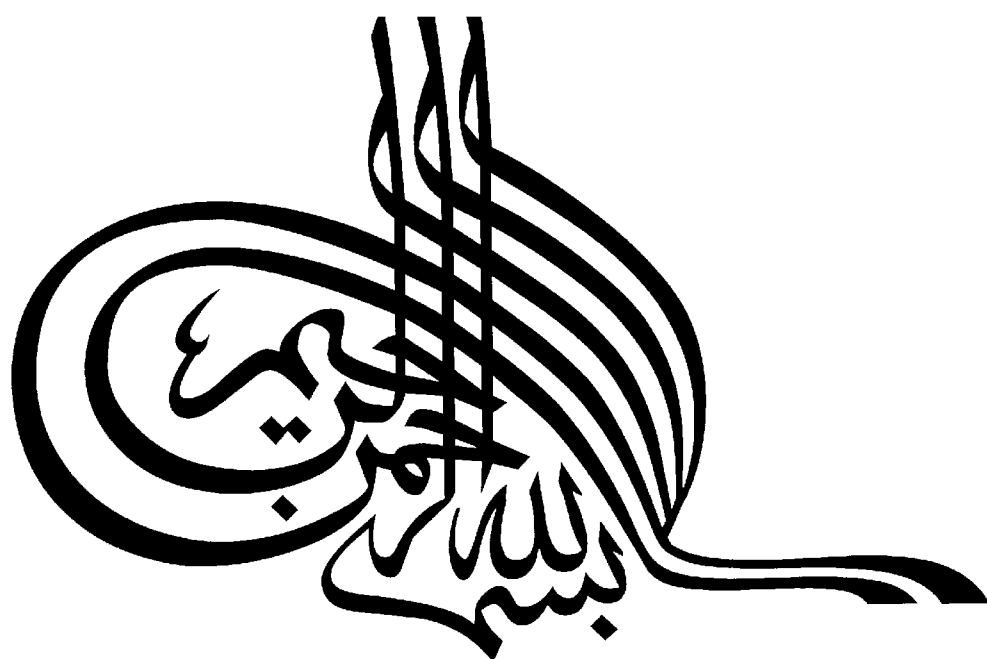
FEDERATION OF ISLAMIC MEDICAL ASSOCIATIONS الاتحاد العالمي للجمعيات الطبية الإسلامية



الجزء الأول

## ENCYCLOPEDIA OF ISLAMIC MEDICAL ETHICS

PART I



"...وَقُلْ رَبِّ زِدْنِي عِلْمًا" سورة طه: 114

*“O my lord! Advance me in knowledge”*

The Glorious Qur'an: Taha 20: 114

**FIMA**  
**Year Book 2013**  
**Federation of Islamic Medical Associations**  
الاتحاد العالمي للجمعيات الطبية الإسلامية

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# **FIMA YEAR BOOK 2013**

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**ENCYCLOPEDIA OF ISLAMIC MEDICAL ETHICS: PART I**

**موسوعة الأخلاقيات الطبية الإسلامية: الجزء الأول**

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## EDITORIAL

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Bismillah al-Rahman al-Rahim  
Assalamu Alaykum

Praise be to Allah the Most Merciful, the Most Beneficent. May Allah shower His blessings and peace on His Prophet and Messenger Muhammad (ﷺ).

I begin by thanking the FIMA Executive Committee for honoring me with the responsibility to be the Editor-in Chief again for this yearbook. I thank Allah (ﷻ) for giving me this opportunity and enabling me to accomplish this task. I pray to Allah (ﷻ) to accept my effort in His way and to reward all who participated in this effort.

Ethical standards of physicians' conduct, behavior and professionalism have deep roots in Islamic civilization since the early days of Islam. These standards were established on guidance from the Glorious Qur'an and the prophetic *Sunnah*. Rulings related to physician's morality, proper conduct, competence, as well as patient care are outlined in these two principal sources of *Shari'ah* (Islamic Law). Subsequently, with more advances and developments of medical practice, other sources of *Shari'ah* were required, namely: consensus of jurists' (*ijma'*), and qiyas (analogy) with other similar situations. Both these sources fall under the broad theme of (*ijtihad*), which represents utilization of reasoning and mental processes to reach to *Shari'ah* acceptable rulings when there is no guidance available from the Glorious Qur'an or *Sunnah*.

Since the earlier centuries of Islamic civilization, codes of proper physician's conduct and relationship with patients and society have been outlined by several pioneers, such as:

- "*Adab al -Tabib*": Practical Ethics of Physicians- by *Ishaq ibn al-Ruhawi*.
- "*Akhalq al-Tabib*": Medical practitioner's ethics- by *Abu Bakr al-Razi*.
- "*Al-Tibb al- Nabawi*": Prophetic Medicine, by *Abdul Malik al-Andalusi*.
- "*Al-Tibb al- Nabawi*": Prophetic Medicine, by *Ibn al-Qayyim*.

In the Western world, bioethical standards and codes, especially those related to scientific experimentation on human subjects, started to evolve over the past

seven decades, since the establishment of Nuremberg Code and its adoption by the United Nations General Assembly in 1948<sup>1</sup>.

Further significant steps included:

- The Council for International Organizations of Medical Sciences (CIOMS)<sup>2</sup>, founded in 1949 under auspices of the World Health Organization (WHO) and the United Nations Educational Scientific Cultural Organization (UNESCO).
- The Declaration of Helsinki, adopted by the World Medical Association (WMA) in 1964, and later updated several times<sup>3</sup>.
- In 1979, the two American bioethicists and philosophers Beauchamp and Childress developed and published their landmark reference book: *Principles of Biomedical Ethics* which was adopted throughout the Western world and has since formed the basis of most codes of bioethics. The book outlined the four bioethical principles, described as rights- based principles, namely: autonomy, beneficence, nonmaleficence and distributive justice<sup>4</sup>.

When we analyze past Islamic heritage that addressed medical ethics, we find that all these four principles are incorporated within the corpus of Islamic *Shari`ah*. The spirit of Islamic guidance is translated into various aspects of medicine, through the codification of Qur'anic verses, Prophetic *Ahadith* and outcomes of *Ijtihad* into principal regulations referred to as the *Shari`ah* or Islamic Law. Bioethics cannot be separated from either morality or *Shari`ah*.

What we call "Islamic Medical Ethics" is the same ethical standards of Muslim behavior and conduct, using medical terminology and with medical applications. Although codes of biomedical ethics have been adopted in the West over the past 7 decades, yet, unethical practices continued to proliferate. Literature is replete with various unethical deviations and misconduct in medical practice and research. Several factors contribute to this phenomenon. Modern medical practice has been intertwined with moral and religious issues as it ventured into previously uncharted territory. For example, assisted reproductive technologies and end of life care are intertwined with the issues of the beginning and end of life respectively. The breakthrough scientific and technological advances gave the false impression to some that moral and religious values were superfluous.

Furthermore, globalization and the philosophy of "big businesses" that prioritises profit, dominance and control, often devalues moral norms.<sup>5</sup> It considers health as

a commodity. It marginalizes preventive medicine, healthcare promotion and spiritual aspects of health while promoting more medical interventions, and procedures even if some of them have not been proven to be necessary, useful or effective. This often contributes towards spiralling healthcare costs and wastage of finite health resources.

The medical profession, including practitioners, researchers and healthcare leaders, became increasingly and unduly pressured by this dominance of big businesses specifically companies, equipment manufacturers and insurance firms. Unlike the Western bioethical model, the Islamic model embraces a holistic ethical system based on moral values guided by *Shari`ah* principles. The model exhibits the balanced capability and flexibility of Islamic jurisprudence. While it empowers the quest for new scientific advances and innovations, it lays out the perimeter and guidelines to prevent and mitigate its abuses and deviations. Muslim jurists receive ample explanations on various medical issues, their benefits and harms, from medical specialists, upon which they establish their rulings.

*Fatwa* (religious edict) councils, conferences, seminars with constructive and permeative consultations among scholars in *Shari`ah* and medical-scientific experts, have been very instrumental in clarifying issues that need proper ethico-religious opinions and rulings.

Such organized interactions over the past 3-4 decades, have become a cornerstone in contemporary *Fatawa* (plural of *Fatwa*) and balanced *Shari`ah* opinion. Scientific progress has been instrumental in elucidating the basis and the implications of many medical issues not clearly understood in the past. Various sources of advanced medical knowledge are currently available to Muslim jurists and *Shari`ah* researchers to enable them to utilize the methodology of *ijtihad* to address new emerging biomedical issues. Currently, we have a valuable wealth of bioethical jurisprudence, that covers almost all contemporary scientific-medical emerging issues, discoveries and innovations.

The Federation of Islamic Medical Associations (FIMA), and member Islamic Medical Associations (IMAs) have adopted medical bioethics as an integral constituent of their aims, objectives, and activities since they were established many years ago. Publications, conferences and seminars were organized in several parts of the world that covered several bioethical issues.

Over the past 5 years, more concerted discussions and consultations amongst concerned medical-scientific specialists and jurists have emphasized the urgency and importance of compiling a comprehensive reference of contemporary medical issues in the light of Islamic *Shari`ah*. This endeavor is intended to be a best practice guideline to physicians, medical educators, researchers, students and trainees in medical institutions, as well as to *Shari`ah* scholars and students (*tullab al-`ilm*). A FIMA biomedical resource center was established in Amman-Jordan specifically to serve this endeavor.

In 2010, the FIMA Council assigned this major responsibility to Dr. Aly A. Misha'l, then FIMA Executive Director and past-president of FIMA.

Since then, contacts and consultations proceeded regularly with more than 15 experienced scholars in medical sciences, bioethics and medical jurisprudence, nominated from various IMAs and senior FIMA professionals from different parts of the world. A general framework and scope of this reference guide was discussed and agreed upon.

Medical-scientific material for each topic was derived from consultations with concerned specialists, and also acquired from recent medical literature. Meetings and consultations with the FIMA Committee on Bioethics has been underway ever since its formation in 2010. However, several members of this committee did not contribute to the final versions of these chapters, and therefore they are not necessarily responsible for all the stated opinions or rulings in these chapters.

The title of this project was narrowed down to two options, namely:

- 1) A Comprehensive Jurisprudence Resource on Islamic Medical and Health Ethics,
- 2) Encyclopedia of Biomedical and Health Ethics. The latter was preferred by most of the experts.

A list of more than 80 contemporary biomedical topics for which jurisprudence opinion is required and is available was compiled and divided into 7 chapters. The tabulation of the various topics by either alphabetical or topic-related was discussed. A previous successful effort published in Arabic, by Dr. Ahmad M. Kana'an in 2003, and reprinted in 2010 represented a pioneering and unprecedented work and provided a model and guide for other workers to prepare an English language reference. It followed the alphabetic system<sup>6</sup>. However, we decided to follow a topic related system.

A methodology of topic discussion and preparation of chapters, to ensure uniformity, was circulated and discussed. Chapters addressing contemporary medical-scientific topics followed contemporary recognized standards of preparation of scientific manuscripts, with concise scientific definitions and outlines. Medical procedures were clearly defined with their possible advantages and complications, to enable jurists to evaluate benefits and harms. Several medical experts were recruited to write the scientific background of each topic. Jurisprudence opinion were derived from available, compiled decisions, rulings, *fatawa* (religious edicts) and opinions posited by *Fiqh* academies, *Fatwa* councils, conferences and seminars. Local country jurist and individual scholar jurist opinion were also sought.

It should be noted that there may be other *fiqhi* opinions from other Muslim *fiqhi* and *fatwa* councils or by scholars in other countries that were not available to the authors at the time of preparation of these chapters.

Authors have been careful to document various *fiqhi* opinions, and to refrain from injecting their own opinion.

Because of the vast number of topics and the large effort needed to complete any one chapter it was decided to publish the Encyclopedia in different parts.

The means of publication of completed chapters of the encyclopedia was discussed. In addition to the usual publication in a print form it was decided to publish them online on FIMA and IMAs websites. This was believed to be necessary in view of the expected continuous changes and additions of new emerging issues. This allows future adjustments or changes in the contents of these chapters after this initial publication, to take place online on as needed basis. This best fulfills the aims and objectives of the Encyclopedia.

Thus far, five chapters have been completed. These have been thoroughly scrutinized, adjusted and edited by the Editorial Board over the past several months. With support from the FIMA Executive Committee, the Editorial Board decided to publish these topics in the 2013 FIMA Year Book as a prelude to other topics expected to be received in the future, insha' Allah. The 5 chapters will be placed on FIMA and other IMAs websites, under the heading FIMA Encyclopedia of Biomedical Ethics-Part I, which will be the first step of this long-awaited work. More contacts and efforts are needed to expedite the completion of this important and much needed project.

In Chapter One, Professor Abul Fadl Mohsin Ebrahim and his co-authors address the very pertinent issue of Muslim Physicians Ethics, obligations and liabilities.

The authors reviewed jurist opinions, rulings and *fatawa* of past and contemporary scholars, *fiqh* councils and individual jurists. With his experience and publications in the area of Islamic bioethics, Professor Ebrahim expressed his own opinions in certain areas where there is a paucity of jurisprudence.

The sources of Islamic medical jurisprudence, primary, secondary and tertiary, which form the framework of bioethics, were clearly and concisely outlined. In view of emerging contemporary medical issues, not addressed previously by primary sources, the role of intellectual deliberation (*ijtihad*) has been clearly outlined.

Issues of principles of medical practice, obligations of the Muslim physician towards his profession, his patients and society, were addressed within the framework of Islamic ethical standards, which consider the treating medical practitioner as a guardian of his patients' interests, including the financial aspects. The long standing Islamic system of liability of Muslim physicians in regards to medical errors, negligence and compensation for damage was outlined and classified by past Muslim jurists. This system is still approved by contemporary scholars, but requires to be updated to stand in comparison, and sometimes in harmony with current Western standards. Unlike modern day laws, Islamic *fiqh* distinguishes between error and negligence, with applicable legal consequences. A competent, accredited and authorized physician is not immune from medical error. He/she, however, should be amendable to be corrected and to atone for his/her mistakes. Unlike several other medical issues, pregnancy, fetal development and abortion or termination of pregnancy (TOP) were addressed in many Qur'anic verses and prophetic *Ahadith*. Based on these, Muslim jurists addressed these issues early on and continue to do so currently. In Chapter Two, together with my co-authors, I discuss this topic in detail.

New technologic advances such as in vitro fertilization, pre-implantation genetic diagnosis, antenatal diagnosis of fetal malformations, in utero fetal surgery, etc. were unknown to our predecessors. They created the need for more Islamic guidelines that are usually complex and sometimes controversial. For example TOP has been generally prohibited, but with the new information, TOP is deemed acceptable under certain circumstances such as in the presence of documented lethal fetal anomalies. The techniques of pre-implantation genetic diagnosis (PGD),



performed in assisted reproductive centers, are used in efforts to minimize the risk of pregnancies with certain genetic or chromosomal disorders. New interpretations of original texts from the Qur'an and prophetic *Ahadith*, were considered, in view of recent scientific-medical discoveries and advances.

Not only medical practitioners became concerned about these new developments, but also Muslim jurists, became interested and involved in new studies, analyses and pertinent publications, that became instrumental in adjusting or even changing some past rulings.

In general, contemporary Islamic *Shari'ah* rulings and *fatawa* have been based on a sound foundation of principles derived from the Glorious Qur'an, *Sunnah* and past jurists' opinions, but with significant modifications and additions that came as fruits of scientific innovations, and combined medical-jurists consultations in seminars and conventions.

The issue of fetal sex pre-selection is not a new one. Throughout human history, people utilized traditional means based on general observation, in trials to increase chances of the desired baby sex, usually males. Early Muslim jurists did not object to such "natural" means primarily because their success rates was small and in no way guaranteed and also because they do not cause discernible side effects. It is only when contemporary medical techniques were utilized; that jurists, as well as medical professionals, showed concerns because their results are almost completely guaranteed which will make their utilization more popular and widespread.

In the Islamic world, many seminars and conventions were held, with the participation of Muslim jurists and medical practitioners. In addition, several Muslim jurists provided individual opinions in presentations, or publications. Some members of the FIMA committee on Bioethics embarked on studying and analyzing various jurists' opinions, rulings and *fatawa*. These analyses included all published materials, personal meetings with scholars, and actual participation in jurisprudence-medical seminars or conventions. Dr. Misha'l and co-authors addresses this issue in Chapter Three.

The main concerns evolved around two significant concepts: The first is fear of disturbance of the well maintained balance of male-female ratios in societies all over the world and throughout human history. The second consideration, from the



Islamic point of view, is to be careful and committed to Islamic *fiqh* (Jurisprudence) principles, specifically as it relates to the discarding of "healthy" embryos and the implied preference of one sex over the other.

Currently, there is consensus of opinion that fetal selection is prohibited if undertaken as a general policy in a society. Also there is consensus to allow fetal sex pre-selection in situations of therapeutic necessity, in case of sex-linked inherited diseases such as hemophilia A that affects only one fetal sex, males.

In other situations, where the selection is based solely on individual preference, there are significant differences of jurist opinions that include complete rejection, approval or abstention.

Plastic and reconstructive surgeries and procedures have been recently expanded and developed into distinct surgical specialties. This topic is addressed by Dr. Misha'l and co-authors in Chapter Four. Beautification practices had been addressed by Muslim jurists in past Islamic heritage. Jurists established *Shari'ah* ordained guiding principles of observing human dignity, maintaining organ functions and restoration of human features to the "original creation" which was created in the "best of moulds" with divine designs of variation in different images, that should not be changed or replaced, unless there are acceptable justifications. These procedures should be avoided if there is harm involved, or if their purpose is psychological deviation, desire for a more beautiful body image, imitation of celebrities or for commercial marketing motives.

The issue of psychological harm, as a motive for correction of certain physical features, especially facial ones, was addressed by jurists.

Traditional beautification procedures were discussed as a prelude to address the many various contemporary plastic procedures, in an effort to find similar basis for jurisprudence opinion (analogy).

The issue of the recent utilization of "injectable soft tissue fillers" to improve facial features induced by age or disease was addressed adequately from the medical-scientific aspects, but still needs more clarifications from jurisprudence viewpoints. More jurist-medical interactions are needed to reach more clear rulings.

With major advances in organ transplantation, there is a growing gap between demand and supply of organs by ethically approved means. This topic is addressed by Dr. Misha'l and co-authors in Chapter Five.

Significant related issues have been addressed by ethics -jurisprudence councils, and seminars over the past 3-4 decades. These issues included advances in diagnosing brain death, to be able to secure organs following lethal accidents or other terminal conditions. Living wills and proper counseling of family members are other helpful means in this regards.

The issue of incentives for donors, and sale of human organs has been addressed by *fatwa* councils, seminars and individual/jurists. In general, sale of organs is prohibited. Reimbursing the donor for any incurred expenses or loss of income during the time of donation, as in surgical donation of a kidney, is permissible. Incentives can be acceptable in certain situations. The problems of organ trafficking, commercialism and transplant tourism are significant global concerns. In Islamic countries, combined jurists-medical specialists conferences, as well as *fatwa* councils have been instrumental in elucidating *Shari`ah* rulings, principles and guidelines relating to the various types of organ transplantation. These rulings and principles included making use of cells or organs from aborted fetuses, surplus zygotes and stem cells.

I conclude by thanking the authors who contributed to this issue. I especially thank members of the Editorial Board; Drs Aly Misha'l, Abul Fadl Mohsin Ebrahim, and Musa Nordin for their valuable help and guidance. I sincerely appreciate the work done by Dr Misha'l's staff for copy editing and proofreading of the manuscripts, especially Ms Elham Mohammad Swaid.

I pray that Allah ﷻ accept and bless our efforts in His service and forgive any shortcomings or mistakes which occurred because of our limited knowledge and were unintended. May Allah ﷻ guide us to the right path and have mercy on us. Amin.

**Wassalam**

**Editor-in-Chief**

Hossam E Fadel, M.D., Ph.D., F.A.C.O.G  
Clinical Professor, Obstetrics and Gynecology  
Maternal Fetal Medicine  
The Medical College of Georgia,  
Georgia Regents University  
Augusta, GA, USA

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## **Federation Of Islamic Medical Associations ( FIMA ) in Brief**

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- Established at the outset of the 15<sup>th</sup> Hijrah century, December 1981, in Orlando, Florida, USA, where senior leading medical professionals representing ten Islamic medical organizations, from various parts of the world, convened and laid down the foundation of the Federation.
- Subsequently, in March 1999, FIMA was incorporated in the State of Illinois as a non-profit organization, then acquired the special consultative status with the United Nations Economic and Social Council (UN-ECOSOC).
- Since that time, FIMA membership progressively expanded to include 29 full members, 13 associate members, and more than 15 prospective and collaborating organizations from all over the world.
- Most FIMA activities and achievements are based on the endeavors of its member Islamic Medical Associations (IMAs), in constructive mutual cooperation, and harmonious understanding.
- Islamic medical activities of FIMA have a holistic nature. Leadership, mutual cooperation and innovation are prerequisites for the welfare of our communities, our Ummah and humanity at large.
- These activities include, but are not limited to:
  1. Cooperation in humanitarian medical relief work, where and when needed in disaster stricken countries, regardless of ethnicity, religion or race. The FIMA Save Vision Program was initiated in early 2005. To date more than 100,000 eye surgeries, performed by volunteer ophthalmologists and teams from IMAs in several countries, in Africa, South and Southeast Asia, where visual impairments are rampant. The program included training of local medical professionals to continue and widen this activity by qualified local talents. The program also included establishment of local eye hospitals or eye sections in existing general hospitals, in deprived communities. This activity qualified FIMA for a distinguished award from the American College of Physicians ( ACP ), designated for outstanding humanitarian medical achievements.

Over the past two years, two new humanitarian activities were launched: The cleft lip/palate, and the vesico-vaginal fistula projects, both highlighted as significant medical and psychosocial problems in several needy communities.

2. Scientific, professional and ethical jurisprudence related conferences, seminars and publications.

3. Establishment of the Consortium of Islamic Medical Colleges ( CIMCO ), to foster cooperation in improvement of curriculum, training, research, administration, and up-bringing of model medical practitioners.
4. Establishment of the Islamic Hospitals Consortium ( IHC ), to pursue cooperation and coordination among medical professionals and hospital administrators in areas of experience exchange, benchmarking, improvement of health care delivery, ethical, administrative and operational activities, to meet the most advanced international standards, in the context of Islamic principles.
5. Publication of FIMA Year Books, which address biomedical, ethical, scientific and other related issues that are needed for medical practitioners, educators as well as Jurists.
6. Medical students activities, including conferences, seminars, publications, camps, Umrah and Ziarah programs.
7. Collaboration to extend a helping hand to Muslim medical practitioners in underprivileged countries, to work together and organize professional medical societies, to serve their communities.
8. Establishment of resource centers. The HIV/AIDS Resource Center has been functional in prophylactic, social and therapeutic activities in several countries for the past two decades. The Biomedical Ethics Resource Center has been functional for the past decade. Action in preparing a comprehensive Encyclopedia of Bioethics and Medical Jurisprudence is underway.

### **For Correspondence:**

- ❑ FIMA President: Dr. Tanveer Zubairi- Pakistan  
E-mail: [pmalikmd@gmail.com](mailto:pmalikmd@gmail.com)
- ❑ FIMA General Secretary: Prof. Abdul Rashid Abdul Rahman- Malaysia  
E-mail: [rashid@cybermed.edu.my](mailto:rashid@cybermed.edu.my), [arashid\\_16150@yahoo.com](mailto:arashid_16150@yahoo.com)
- ❑ FIMA Executive Director: Dr. Aly A. Misha'1 – Jordan  
E-mail: [fimainfo@islamic-hospital.org](mailto:fimainfo@islamic-hospital.org)
- ❑ FIMA Executive Director in USA: Dr. Parvaiz Malik  
E-mail: [pmalikmd@gmail.com](mailto:pmalikmd@gmail.com)

**FIMA WEBSITE:** [www.fimaweb.net](http://www.fimaweb.net)

## CHAPTER ONE

### MUSLIM PHYSICIANS ETHICS, OBLIGATIONS AND LIABILITY

*Abul Fadl Mohsin Ebrahim\*, Aly A. Misha'l  
Hossam E. Fadel and Musa M. Nordin*

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#### **Introduction:**

The scope of Islamic Medical Jurisprudence is akin to what is termed as Medical Ethics in the West<sup>1</sup> and covers an array of issues such as:

- Doctor-patient relationship.
- Medical confidentiality.
- Medical negligence.
- The management of infertility and childlessness.
- The control of fertility.
- Abortion.
- Prenatal screening.
- Health resources and dilemmas in treatment.
- The diagnosis of death.
- The donation of organs and transplantation.
- Euthanasia.

Muslim physicians should perceive themselves as commissioned or conscripted by Allah ﷻ to project Islamic values in the pursuit of their vocations. These values are embodied in the Glorious Qur'an and *Hadith* which equally serve as adequate guidance for the ethics, obligations and liabilities of Muslim physicians as well their relationship with their patients.

---

\*Abul Fadl Mohsin Ebrahim  
Professor Emeritus  
School of Religion, Philosophy and Classics  
University of KwaZulu- Natal  
Durban- Republic of South Africa  
E-mail: ebrahima@ukzn.ac.za

The sources of Islamic Medical Jurisprudence are basically three:

- Primary Sources.
- Secondary Sources.
- Tertiary Sources.

### Primary Sources:

The primary sources are<sup>2</sup>:

- The Glorious Qur'an.
- The *Sunnah*.

These two sources are the embodiment of what is known as the *Shari'ah* (Divine Law).

### The Glorious Qur'an:

The Glorious Qur'an is the Sacred Scripture of Muslims which is regarded to be the verbatim Word of Allah ﷻ revealed to Prophet Muhammad ﷺ over a period of approximately 23 years. It embodies the Divine Commandments which encompass all facets of human life. Muslims are required to uphold and implement these Divine Injunctions. This is evident from the following verse:

"...إِنَّ الْحُكْمَ إِلَّا لِلَّهِ..."

"The *hukm* (jurisdiction) rests with none but Allah"<sup>3</sup>.

It is further stated:

"...وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ"

"....Those who do not judge in accordance with what Allah has sent down, verily they are the deniers of the Truth"<sup>4</sup>.

"...وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ"

"....Those who do not judge in accordance with what Allah has sent down, verily they are the wrongdoers"<sup>5</sup>.

From the above Qur'anic verses, it is evident that within the Islamic system, Allah ﷻ is regarded to be the only Law-Giver (*al-Shari'*) and that in Him ﷻ alone rests the supreme legislative power<sup>6</sup>.

The Glorious Qur'an is described as:

"...لِّلَّذِينَ آمَنُوا هُدًى وَشِفَاء..."

"a healing and mercy to those who believe"<sup>7</sup>.

Imam Ibn Qayyim al-Jawziyyah (d. 1350 C.E.) holds the view that the objectives of medicine are threefold, namely, protection of health, getting rid of harmful things and safeguarding against harm<sup>8</sup> and interestingly, the Glorious Qur'an complements these objectives as discussed hereunder:

Healthy living depends upon having a balanced diet comprising of wholesome food and drink and avoiding the intake of anything that may prove injurious to one's body. In this regard, the Glorious Qur'an stipulates:

"يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا..."

"O humankind! Eat of what is lawful and wholesome on earth"<sup>9</sup>

and:



"يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ  
وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ  
فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ"

"O you who believe! Khamr  
(Intoxicants)... are an abomination of  
Satan's handiwork. Eschew such  
(abomination) that you may  
prosper....."<sup>10</sup>

Feelings of insecurity and helplessness  
may lead to mental depression which  
could result in suicide. In order to  
circumvent that, the Glorious Qur'an  
exhorts humankind to seek refuge in  
their Creator:

"...أَلَا بِذِكْرِ اللَّهِ تَطْمَئِنُّ الْقُلُوبُ"

"...for verily in the remembrance of  
Allah hearts do find rest"<sup>11</sup>.

The Glorious Qur'an even goes to the  
extent of relaxing certain rules as  
concessions for the sick, thus  
safeguarding them from endangering  
their lives. This is evident from the fact  
that although Muslims are required to  
fast during the holy month of  
*Ramadan*<sup>12</sup>, those who are ill are  
allowed not to fast, but to make up the  
fasts missed later on when they would  
have recovered from their particular  
illnesses. This is evident from the  
following citation:

"...وَمَن كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ..."

"But if anyone is ill or on a  
journey, the missed period  
(should be made up) later"<sup>13</sup>.

### The Sunnah

*Sunnah* is regarded as *wahyun khafi*  
(minor revelation) and includes all that  
has been reported on the authority of  
Prophet Muhammad ﷺ and as such  
incorporates his ﷺ authentic sayings  
(*sunnah qawliyyah*), his ﷺ actions  
and personal habits (*sunnah fi'liyyah*),  
and finally, his ﷺ tacit approval and  
explicit disapproval (*sunnah  
taqririyah*)<sup>14</sup>.

By virtue of the fact that Allah ﷻ  
chose to reveal the Glorious Qur'an to  
Prophet Muhammad ﷺ, it, therefore,  
becomes binding upon Muslims to  
follow his ﷺ explanations and  
interpretations of the Divine  
Commandments. In other words,  
Prophet Muhammad ﷺ explained,  
interpreted and demonstrated how the  
Divine Law ought to be applied<sup>15</sup>. The  
Glorious Qur'an substantiates this as  
follows:

"...وَأَنزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ  
وَلَعَلَّهُمْ يَتَفَكَّرُونَ"

"And We have sent down the  
Reminder (Message) to you (O  
Muhammad) so that you can  
make clear to humankind what  
has been sent down to them so  
that hopefully they will  
reflect"<sup>16</sup>.

The Six Authentic Collections of  
*Ahadith* (*Al-Sihah al-Sittah*) which  
guide the life of Muslims are:



1. *Al-Jami` al-Sahih* compiled by Imam Muhammad ibn Isma'il al-Bukhari (d. 870 C.E.).
2. *Al-Jami` al-Sahih* compiled by Imam Muslim ibn al-Hajjaj Naysaburi (d. 875 C.E.).
3. *Jami` al-Tirmidhi* compiled by Imam Abu `Isa Muhammad ibn `Isa bin Sawrah (d. 892 C.E.).
4. *Sunan al-Nasa'i* compiled by Imam Abu `Abd al-Rahman Ahmad ibn Shu'ayb (d. 915 C.E.).
5. *Sunan Ibn Majah* compiled by Imam Abu `Abd Allah Muhammad ibn Yazid (d. 887 C.E.).
6. *Sunan Abi Dawud* compiled by Imam Abu Dawud Sulayman ibn al-As'ab (d. 888 C.E.).

The *Sunnah* serves to complement the Glorious Qur'an in the absence of a categorical Qur'anic statement on a particular issue in question. For example, the Glorious Qur'an is silent on the issue of the permissibility or non-permissibility for Muslims to take certain precautionary measures for the purpose of frustrating pregnancy. On the other hand, there are a number of *Hadith* reports which allude to the fact that during the time of *Sayyiduna* Muhammad ﷺ, some of his *Sahabah* (RA) (Companions) resorted to 'azl (coitus interruptus)<sup>17</sup>. What is important to note here is that Allah ﷻ did not reveal any injunction to censure

this practice as is evident from the report of *Sayyiduna* Jabir (RA):

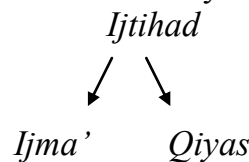
حدثنا علي بن عبد الله، حدثنا سفيان، قال عمر وأخبرني عطاء، سمع جابراً، رضي الله عنه، قال: كنّا نعزل والقرآن ينزل"

"We used to practice 'azl during Prophet Muhammad's ﷺ lifetime while the Glorious Qur'an was being revealed"<sup>18</sup>.

This then serves as justification for Muslims to make use of modern contraceptive devices.

### Secondary Sources:

The secondary sources are:



### *Ijtihad* (Intellectual Deliberation):

The justification for including *Ijtihad* as a secondary source is based upon the fact that when Prophet Muhammad ﷺ ordered Mu'adh ibn Jabal (RA) to proceed to Yemen, he ﷺ put the following question to him:

أن رسول الله (ﷺ) بعث معاذاً إلى اليمن، فقال كيف تقضي؟، فقال: أقضي بما في كتاب الله، قال: فإن لم يكن في كتاب الله؟ قال: فبسنة رسول الله (ﷺ)، قال: إن لم يكن في سنة رسول الله (ﷺ)، قال: اجتهد رأيي، قال: الحمد لله الذي وفق رسول رسول الله (ﷺ).

"According to what will you judge?" "According to the Book of Allah," replied Mu'adh (RA). "And if you find nothing therein?" "According to the

*Sunnah* of the Prophet of Allah.” “And if you find nothing therein?” “Then I will exert myself (exercise *ijtihad*) to form my own judgment.” Prophet Muhammad ﷺ was pleased with this reply and said: “Praise be to Allah Who has guided the messenger of the Prophet to that which pleases the Prophet”<sup>19</sup>.

*Al-Ijtihad* is derived from the root verb *jahada*, which means to endeavour, strive, etc<sup>20</sup>. Its technical legal connotation implies the exertion of the jurist’s intellect to determine the proper application of the teachings of the Glorious Qur’an and *Sunnah* to a particular situation with the aim of finding a solution for a case of law<sup>21</sup>. In other words, the ruling of the *mujtahid* (i.e. the scholar who engages in *ijtihad*) would be inferential and thus probable (*zanni*)<sup>22</sup>. Thus, all bioethical issues which are not addressed by the primary sources, namely the Glorious Qur’an and *Sunnah*, would be resolved on the basis of *ijtihad*.

The two branches of *Ijithad* are *Ijma`* and *Qiyas*<sup>23</sup>.

#### (a) *Ijma`* (Consensus of Juristic Opinion)

*Ijma`* is derived from the root verb *jama`a* which means to collect or bring together<sup>24</sup>. As a legal term, it is defined as agreement of the jurists among the followers of Prophet Muhammad ﷺ in a particular age on a question of law<sup>25</sup>. In practice, Muslim jurists congregate and deliberate upon any particular problematic issue which affect Muslims and try to resolve it by

agreeing and uniting in opinion. Once consensus has been reached, the *ijtihad* of Muslim jurists shift from the realm of probability to that of certainty and becomes the basis for new cases to be solved<sup>26</sup>. In other words, when *ijma`* is obtained on a case of *ijtihad*, the issue in question does not remain at the level of opinion (*zann*), but gets elevated to the position of a *hujjah* (a decisive verdict), thereby making it unlawful for Muslims to disregard it<sup>27</sup>.

#### (b) *Qiyas* (Analogical Deduction):

*Qiyas* is derived from the root verb *qayasa*, which means to measure<sup>28</sup>. As a juridical term, it is defined as a process of deduction by which the law of a text is applied to such cases which, though not covered by the language of the text are covered by the reason of the text on the basis of the *`illah* (effective cause)<sup>29</sup>. For example, the Glorious Qur’an<sup>30</sup> censures murder or killing of human beings. In the past, killing was carried out in the form of poisoning someone or stabbing a person to death, etc. The modality varied, but the *`illah* (effective cause) was similar, i.e. it ended in death.

Thus, today, if an attending physician deliberately chooses to administer a lethal injection to the terminally ill, it would in effect cause death and the physician would be liable for the crime of murder on the basis of the common *`illah*.

#### Tertiary Sources:

The tertiary sources are:

- *Al-Qawa'id al-Fiqhiyyah* (legal maxims).
- *Qararat Majma' al-Fiqh al-Islami* (resolutions of the Islamic Juridical Academy).
- *Al-Fatawa* (formal legal opinions).

implementation of extraordinary means in the treatment of the terminally ill if such means would in effect place a burden on others.

The maxim (harm must be eliminated, but not by means of another harm) is a rewording of the *Hadith*:

### Legal Maxims:

Legal maxims are theoretical abstracts, usually in the form of short statements, that are expressive, often in a few words, of the goals and objectives of the *Shari'ah*. The actual wordings of the maxims are occasionally taken from the Glorious Qur'an or *Hadith*, but are more often the work of leading jurists<sup>31</sup>. It is to be noted that some of the maxims are basically a reiteration of some of the broad principles that are found either in the Glorious Qur'an or *Hadith* compilations. For example, the maxim *hardship begets facility* is a rephrasing of the Qur'anic verse:

"...يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ..."  
 "Allah intends for you ease and He does not intend to put you in hardship"<sup>32</sup>.

Muslim jurists have used this particular maxim as evidence in support of the many concessions that are granted to the disabled and the sick in the sphere of religious duties. The rules are relaxed to allow them to perform the *salah* (obligatory five times daily prayer) in a sitting or reclining posture.

This very maxim can also be used in the context of justifying the non-

"الضرر يزال ولكن ليس بضرر مثله"

"Harm may neither be inflicted nor reciprocated in Islam"<sup>33</sup>.

A practical manifestation of this maxim is the validation not to opt for overzealous treatment and to allow death to take its natural course. However, the aim should never be to hasten death, and all necessary steps ought to be taken to ascertain that basic needs which are necessary to sustain the life of the patient should also not be discontinued.

Mention is made in a *Hadith* that:

"كسر عظم الميت ككسر عظم الحي"  
 "Breaking the bone of a dead person is equal (in sinfulness and aggression) to breaking it while the person is alive"<sup>34</sup>.

In other words, it would be an act of aggression, tantamount to mutilation of the human corpse, to remove any of its organs for the purpose of transplantation. However, in this particular context, the maxim: (الضرورات تبيح المحظورات) (Necessity makes the unlawful lawful) can be used as justification for the removal of the cornea from the dead for the purpose of

transplanting it into another person whose vision could be restored through corneal transplant.

The maxim: (أخف الضررين) (Lesser of the two evils) serves to sanction the carrying out of a Caesarian section on a pregnant mother who has passed away in order to try to save her baby. In other words, this maxim would justify “desecrating” the dead mother’s body to save the life of her baby on the grounds that it would be better to save one life than to risk losing two.

The famous Hadith, namely:

"إنما الأعمال بالنيات.."

“Actions are valued in accordance with their underlying intention”, is the rewording of the maxim (actions are judged by the intention behind them).

This maxim reinforces the fact that the element of intent does play a crucial role in differentiating between the deliberate withholding of treatment due to poor prognosis and allowing nature to take its course.

A dilemma doctors often face is whether they are obliged to consult the guardians and/or relatives of their patients or whether they ought to do what they think is best for their patients without consulting their patients’ kith and kin. This dilemma may be resolved on the basis of the maxim:

(الولاية الخاصة أقوى من الولاية العامة)

(Private authority is stronger than public authority) which implies that consent of the spouses, parents and/or

guardians of the patients is paramount and cannot be overlooked by the attending physicians.

### **Qararat Majma` al-Fiqh al-Islami (Resolutions of the Islamic Juridical Academy):**

Over the past four decades, contemporary scientific medical progress has been instrumental in clarifying basis and implications of many issues facing jurists. Proper consultations and interactions between scholars in *Shari`ah* and medical-scientific experts, through seminars, conferences and *fatwa* councils, have become one of the cornerstones in formulation of contemporary *Fatawa* and *Shari`ah* opinions. Hence, Islamic Juridical Academies have been established in a number of countries, for example, in Saudi Arabia, Jordan, India, etc. Muslim scholars who form part of these academies meet at regular intervals in order to deliberate on a variety of issues affecting Muslims in their social, political and economic spheres of life. In Saudi Arabia, there are two such academies, one based in Makkah and the other in Jeddah. The academy in Makkah functions under the auspices of the Muslim World League. Its resolutions are published in its bi-annual journal, namely, *Qararat al-Majma` al-Fiqhi al-Islami*. The academy in Jeddah is the organ of the Organization of Islamic Conference (OIC). Its members are drawn from member-states and some other countries. Its resolutions are also collated and published. Insofar as the Islamic Juridical Academy of India is

concerned, it was founded by the late *Qadi* Mujahid Islam. The academy is based in Bihar and holds at least two seminars on Islamic juridical issues every year in different cities in India. Its proceedings are published in its quarterly Urdu journal, namely, *Bahth-o-Nazar* (Research and Studies).

### **Fatawa (formal legal opinions):**

*Fatwa* is derived from the root verb *fatiya*, which means to be youthful, to furnish with information and to expound<sup>35</sup>. Its evolution as a legal term emanate from two citations in the Glorious Qur'an, where the word is used in its 10<sup>th</sup> and 4<sup>th</sup> verbal forms:

"وَيَسْتَفْتُونَكَ فِي النِّسَاءِ قُلِ اللَّهُ يُفْتِيكُمْ فِيهِنَّ..."

"They seek your *fatwa* (*yastaftunaka*) regarding women. Say Allah does instruct you (*yuftikum*) concerning them....."<sup>36</sup>

"يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ..."

"They ask you for a (*fatwa*) legal decision (*yastaftunak*). Say: Allah directs (thus) (*yuftikum*) about those who leave no descendants or ascendants....."<sup>37</sup>

*Fatwa* is defined as a formal legal opinion given by an expert in Islamic Law<sup>38</sup>. An expert in Islamic Law is known as a *mufti*, an inquirer (i.e. one who seeks the legal opinion of a *mufti*) is known as a *mustafti*, and the act of issuing *fatwa* is known as *ifta'*.

*Muftis* are usually consulted by members of the Muslim community to give their legal opinions on the new developments in the fields of economics, politics, science, technology and even on bioethical matters pertaining to family planning, abortion, cloning, euthanasia, organ transplantation, etc. It is to be noted, however, that the *fatwa* of a particular *mufti* is not binding and hence one has the option to approach another *mufti* for a second opinion. Moreover, one ought to realize that there are a number of conflicting *fatawa* (sing. *fatwa*), for example, on organ transplantation and other bioethical matters and thus, in light of this, Muslims thus have the liberty to uphold such legal opinions which best appeal to their conscience without any qualm. After all, whatever legal verdicts they finally choose to follow would in essence be the *ijtihad* of the *muftis*.

### **Enforcement in Islamic Law:**

One ought to recall here that Islamic Medical Jurisprudence, as was mentioned earlier, is the extension of the *Shari'ah* (Divine Law). Insofar as the Islamic world view is concerned, the *Shari'ah* embodies the Will of Allah ﷻ Who is The Sovereign and Source of law and this is evident from the following verse of the Glorious Qur'an:

"وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ"

"To Allah belongs the dominion of the Heavens and the Earth



and Allah has power over all things”<sup>39</sup>.

From the above verse, it is evident that the *Shari`ah* does not recognize the liberty of legislation, for that would be incompatible with the ethical control of human actions and, ultimately, of society. Law, therefore, does not grow out of, and is not moulded by society as is the case with the Western system.

According to Islamic teachings, human thought alone cannot discern the true values and standards of conduct - such knowledge is complemented by Divine Revelation. Likewise, human actions are considered to be either good or evil depending on what has also been made known to humankind through Divine Revelation. Moreover, fear of punishment in the life hereafter, depending on the strength of one's faith, serve as a deterrent for one not to indulge in such actions that are deemed prohibited by the *Shari`ah*<sup>40</sup>.

The *Shari`ah* has laid down the penal code for perpetrators of crime<sup>41</sup>. For example, the proviso for paying the *diyyah* (blood money) for the unintentional killing of a human being is on the basis of the following imperative of the Glorious Qur'an:

"وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَاً وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ..."

*"Never should a believer kill a believer, but (if it so happens) by mistake (compensation is due): If one so kills a believer, it is*

*ordained that he should free a believing slave and pay compensation (diyyah) to the deceased's family...."*<sup>42</sup>.

At this juncture, it is important to note that in light of Islamic Medical Jurisprudence, ensoulment of the fetus occurs after the fourth month of pregnancy on the basis of the following *Hadith*:

حديث عبد الله بن مسعود- رضي الله عنه قال: حدثنا رسول الله - صلى الله عليه وسلم- وهو الصادق المصدق، قال: إن أحدكم يجمع خلقه في بطن أمه أربعين يوماً، ثم يكون علقه مثل ذلك، ثم يكون مضغة مثل ذلك، ثم يبعث الله ملكاً، فيؤمر بأربع: برزقه وأجله وعمله وشقي أو سعيد، ثم ينفخ فيه الروح ...

"Each of you is constituted in your mother's womb for forty days as a *nutfah* (drop of semen), then it becomes an *'alaqah* (something that clings) for an equal period, then a *mudgah* (chewed-like lump) for another equal period, then the angel is sent, and he breathes the soul into it"<sup>43</sup>.

Hence, any act of aggression against the fetus after the fourth month which results in the termination of its life would be tantamount to the killing of an actual person. Thus the aggressor would be liable to pay the *diyyah* (blood money) in compensation<sup>44</sup>.

In Muslim countries where the *Shari`ah* is implemented, for example, in Saudi Arabia and Iran, the *Qadi* (judge) of the *Shari`ah* Court would be responsible to

effect the appropriate punishments for the different crimes. But the primary aim of the *Shari'ah* is not restricted to the implementation of punitive measures, but rather to impress upon Muslims the fact that Allah ﷻ is watching their every action and hence they should have an element of fear for Him ﷻ at all times and not to shun His ﷻ commandments. This is evident from the following imperatives of the Glorious Qur'an, bearing in mind that the Glorious Qur'an is in essence the foremost source of the *Shari'ah*:

"يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُمْ مُسْلِمُونَ"

"O ye who believe! Fear Allah as He should be feared"<sup>45</sup>.

"...وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ"

"....And fear Allah that you may prosper"<sup>46</sup>.

From the above Qur'anic verses, it may plausibly be inferred that prosperity of society depends not so much upon the rigours of the law, but rather upon righteousness inspired by the fear of Allah ﷻ, i.e. *taqwa*. Thus while the *Shari'ah* is the code of moral conduct, *taqwa* is the standard by which human actions will be judged<sup>47</sup> as is evident from the following Qur'anic verse:

"يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَى وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقَاتُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ"

"O humankind! surely, We have created you from a single (pair) of a male and female, and made you into nations and tribes that

you may know each other. Surely the noblest of you in the sight of Allah is the one who has *taqwa* (fears Allah most)"<sup>48</sup>.

Secular laws in the modern world depend to a large extent upon public opinion and can thus be altered according to changes that take place in society. But the rulings of Islamic Medical Jurisprudence being offshoots of the *Shari'ah* (Divine Law) are upheld by Muslims worldwide, depending on the level of their Allah-consciousness, even though there is no one to enforce them.

## CHAPTER ONE: BASIC PRINCIPLES OF MEDICINE:

According to *Imam Ibn Qayyim al-Jawziyyah*, there are three basic principles of medicine, namely, preservation of health, getting rid of harmful things and safeguarding against harm. He then elucidates how Islamic Medical Jurisprudence takes into consideration the vulnerable condition of the patient and accords him/her certain concessions in matters pertaining to the *fara'id* (obligatory acts of worship). *Imam Ibn Qayyim al-Jawziyyah* asserts that concessions given to the sick are precisely for the sake of upholding the following three principles of medicine<sup>49</sup>:

### Protection of health:

The following *ayah* (verse) of the Glorious Qur'an:

"...وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ..."

*“But if any person is ill or on a journey, the missed period (should be made up) later”*<sup>13</sup> allows patients not to observe the compulsory fast on account of their sicknesses (as well as the travelers) in view of protecting their health and strength. However, the number of outstanding fasts has to be replaced upon regaining their health and/or upon returning from their journeys.

### Getting rid of harmful things:

The following *ayah* (verse) of the Glorious Qur'an:

...فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ بِهِ أَذًى مِّن رَّأْسِهِ فَفِدْيَةٌ مِّن صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ..."

*“And if any of you is ill, or has an ailment in his scalp (necessitating shaving), (he should) in compensation either fast, or feed the poor, or offer sacrifice”*<sup>50</sup> allows the patients who have any form of ailment on their scalps<sup>51</sup> not to shave their heads off while still in the state of *ihram* (i.e. while wearing the pilgrim garb).

### Safeguarding against harm:

The following *ayah* (verse) of the Glorious Qur'an:

...وَإِنْ كُنْتُمْ مَّرْضَىٰ أَوْ عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِّنْكُم مِّنَ الْغَائِطِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوْهِكُمْ وَأَيْدِيكُمْ..."

*“If you are ill, or on a journey, or one of you comes from offices of nature, or you have been in contact with women, and you find no water, then take for yourselves clean sand or earth, and rub*

*therewith your faces and hands”*<sup>52</sup> gives permission to the patients to abstain or refrain from water and instead use sand or earth for the sake of purifying themselves. This concession is given to the patient in consideration of the potential harm that water may cause to their health.

It is important to note that the relaxation of the rules pertaining to the religious obligatory practices indicates that Allah ﷻ cares for the welfare of the patient.

## CHAPTER TWO: EMBODIMENT OF SCIENTIFIC ACUMEN AND HIGH MORAL QUALITIES:

Classical Muslim physicians like Abu Bakr Muhammad al-Razi (d. 923 C.E.), Ibn Sina' (d.1037 C.E.), and others were known as *hukama'* (wise men) for they were versed in both philosophy and medicine, and did not restrict themselves to the physical prognosis of their patients' diseases. They were also equally concerned about their patients' spiritual, social and psychological well-being.

In order to be in a position to discharge their duties towards their patients, Muslim physicians are expected to combine within themselves scientific acumen and high moral qualities. Scientific acumen can be achieved only if they are prepared to continuously endeavor to further their knowledge and be willing to keep in touch with all new developments in their particular fields of specialization. The Glorious Qur'an teaches Muslims how to seek Divine assistance during their pursuit of



knowledge through the medium of this supplication:

"...وَقُلْ رَبِّ زِدْنِي عِلْمًا"

"O my lord! Advance me in knowledge"<sup>53</sup>.

Prophet Muhammad ﷺ, on the other hand, exhorts his followers never to cease in their quest for knowledge as is apparent from this *Hadith*:

"اطلبوا العلم من المهد إلى اللحد"

"Seek knowledge from the cradle to the grave"<sup>54</sup>.

Insofar as the character/conduct of the Muslim doctor is concerned, he/she should endeavor to emulate the beautiful example (*uswah hasanah*) of Prophet Muhammad ﷺ:

"لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا"

"You have in the Messenger of Allah a beautiful pattern of conduct"<sup>55</sup>.

By virtue of their professions, Muslim physicians in general occupy positions of dignity and respect in society. It is thus important for them to display humility and to safeguard themselves from pride and arrogance. After all, Prophet Muhammad ﷺ, is reported to have said:

"Simple living is the symbol of Iman (faith)"<sup>56</sup>.

As far as the Muslim physicians' expertise in the healing profession is concerned, it is necessary to note that they are merely instruments of healing while it is Allah ﷻ Who is the Ultimate Healer as Prophet Ibrahim (AS) rightly pointed out:

"وَإِذَا مَرَضْتُ فَهُوَ يَشْفِينِي"

"And when I am sick, it is He Who cures me"<sup>57</sup>.

Thus Muslim physicians should never lose sight of the fact that Allah ﷻ is the Giver of life and also the One who causes death as is evident from the following citation from the Glorious Qur'an:

"الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا وَهُوَ الْعَزِيزُ الْعَفُورُ"

"He (Allah) created death and life, that He may try which of you is best in deed: And He is the Exalted in might, Oft-Forgiving"<sup>58</sup>.

Moreover, the Glorious Qur'an emphasizes the point that death is an inevitable consequence over which none has control:

"...وَلَا يَمْلِكُونَ مَوْتًا وَلَا حَيَاةً وَلَا نُشُورًا"

".....Nor can they control death nor life nor resurrection"<sup>59</sup>.

Ibn Sina's insight on the limitations of medical knowledge is worth noting. He states: "It should be remembered that

knowledge of health preservation help neither in avoiding death nor in escaping from external afflictions. It also does not provide the means of extending life indefinitely”<sup>60</sup>.

Thus, while engaged in alleviating pain and suffering and curing illness, Muslim physicians must accept life, death and healing as the prerogatives of Allah ﷻ. This means that they should not feel despondent when, despite giving their best effort, patients cannot be cured of their ailments.

### CHAPTER THREE: OBLIGATIONS OF MUSLIM PHYSICIANS:

Allah ﷻ declares in the Glorious Qur’an that He ﷻ created humans as His *khulafa’* (vicegerents) on earth:

”وَهُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ الْأَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ إِنَّ رَبَّكَ سَرِيعُ الْعِقَابِ وَإِنَّهُ لَغَفُورٌ رَحِيمٌ”

*“It is He Who has made you (His) agents, inheritors of the earth and has raised some of you above others in ranks so that He may test you in the gifts that He has given you. Your Lord is Swift in Retributions; and He is Ever-Forgiving, Most Merciful”*<sup>61</sup>.

The provision of healthcare, in light of Islamic teachings, is considered to be a *fard kifayah* (i.e., if a few uphold this obligation, then the community as a whole is absolved from upholding it) and it is the duty of the community to ensure that the patients are able to

receive the necessary healthcare. Past Muslim jurists and scholars looked upon the medical profession as the most noble and dignified career that is only second to specialization in sciences of the Glorious Qur’an and *Sunnah*<sup>62</sup>.

Moreover, the concept of *fard kifayah*, as the basis of provision of medical care by Muslim practitioners, renders their medical vocation as a form of worship (*ibadah*), rather than just a career to make a living. This concept establishes a clear distinction from what is practiced nowadays, worldwide. The task of endeavoring to preserve the health of people and to alleviate their distress and suffering is indeed a great privilege and grave responsibility. Some of the obligations of the Muslim physicians are as discussed hereunder:

#### Continuing Medical Education:

Seeking of knowledge is considered to be an act of *ibadah* (worship) in Islam and Prophet Muhammad ﷺ emphasizes this in the following words:

طلب العلم فريضة على كل مسلم ومسلمة

The seeking of knowledge is incumbent upon every male and female<sup>63</sup>.

Taking note of the fact that the daily supplication of Muslims in general is:

”...وَقُلْ رَبِّ زِدْنِي عِلْمًا”

*“O my Lord! Advance me in knowledge”*<sup>53</sup>

Muslim physicians are expected to update their knowledge and skills regularly. Besides, they are required to acquaint themselves with basic

knowledge of Islamic Jurisprudence so that they may be in a position to advise their patients on such matters pertaining to *taharah* (cleanliness), how to perform *salah* (obligatory five times daily prayers) during illness, etc. as well as on medical issues in which Islamic rulings impact upon for example; contraception, abortion, organ transplantation, cosmetic surgery, and end of life issues.

### **Respect for their patients:**

The Muslim physicians' respect for his/her patients encompasses a number of responsibilities towards them. While patients' distresses and illnesses may cause them to become vulnerable, their predicament should not be exploited. Muslim physicians should carefully choose the appropriate words while conversing with them. After all, the Glorious Qur'an's imperative in this regard is:

"...وَقُولُوا لِلنَّاسِ حُسْنًا..."

"...And speak good words to people..."<sup>64</sup>

It is equally their responsibility to be punctual and to structure their patients' contact schedule efficiently. Appropriate to each specialty, adequate consultation time should be allocated per patient. While taking cognizance of the fact that some physicians are often called out of their rooms and that the duration of diagnostic and therapeutic procedures cannot always be judged precisely, it is their responsibility to ensure that their patients are not unduly inconvenienced. Overbooking of patients is not acceptable as this could compromise patient care and inconvenience the

patients. Likewise, the rooms within which the medical consultation is conducted should be pleasant and clean at all times. Prophet Muhammad ﷺ remarked:

"الطهور شطر الإيمان"

"Cleanliness is half the Faith (*al-Iman*)"<sup>65</sup>.

Moreover, the consulting rooms should be structured in such a way to ensure patient privacy so that doctor's conversation with the patient should not be within hearing distance of others. Furthermore, adequate toilet, ablution and *salah* (prayer) facilities should be made available for their patients.

### **The physician as a guardian (patron) for his patients' financial interests:**

In South Africa, a national health service, like that which is in operation in England, is non-existent. However, medical facilities are available for the lower income groups and indigent persons to receive free or semi-free medical care at State and provincial hospitals<sup>66</sup>. Moreover, the Health Professions Council of South Africa (HPCSA) makes provision for disciplinary control to ensure that physicians' fees are reasonable<sup>67</sup>.

Access to health care in the United States of America is contingent upon medical insurance and in his State of Union Address on 20<sup>th</sup> January 2004 President George W. Bush pledged to introduce health care reforms so that more Americans would be able to afford insurance<sup>68</sup>. This did not materialize. Finally an "Affordable Health Care" bill was signed by the current president

Barack Obama in 2009. Although it does not mandate comprehensive / universal coverage but at least it allows more lower income individuals either to be covered by insurance or receive government paid health services. In contrast, it is pertinent to recall here that patients who were admitted to the largest hospital that was built in Cairo in 1284 C.E., namely the Mansuri Hospital, were treated free of charge and upon discharge, were given money to support themselves during convalescence<sup>69</sup>.

Today, healthcare is considered to be a very lucrative profession and there always exist the possibility of the patient being regarded as a commodity to satisfy the desired end. However, the primary objective of Muslim physicians should be to attain the pleasure of Allah ﷻ by providing affordable healthcare.

This goal should not be diluted by monetary gain. Thus the Muslim doctor should be considerate and assess the financial resources of their patients before issuing a bill for services rendered. Since health is a basic human necessity, patients should not be denied this service, even if they cannot afford it. The Glorious Qur'an extols those who are considerate towards the needy as follows:

"يُوفُونَ بِالنَّذْرِ وَيَخَافُونَ يَوْمًا كَانَ شَرُّهُ مُسْتَطِيرًا، وَيُطْعِمُونَ الطَّعَامَ عَلَى حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا، إِنَّمَا نُطْعِمُكُمْ لِوَجْهِ اللَّهِ لَا نُرِيدُ مِنْكُمْ جَزَاءً وَلَا شُكْرًا"

*"(The truly virtuous are) they (who) fulfil their vows and stand in awe of a Day the woe of which is bound to spread far and wide, who give food - however great their own want of it – unto the needy, and the orphan, and the captive, (saying in their hearts) 'we feed you for the sake of Allah alone: we desire no recompense from you, nor thanks...'"*<sup>70</sup>.

From the above citation, one could appropriately compare the provision of food to the needy with the provision of healthcare. Moreover, it is to be noted that charity can take different forms - the provision of healthcare is one of them in that its primary aim is to alleviate suffering. One will amply be rewarded for one's acts of charity as is evident from the following citation from the Glorious Qur'an:

"مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِائَةُ حَبَّةٍ وَاللَّهُ يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ"

*"The parable of those who spend their wealth in the Way of Allah is that of a grain which produces seven ears; in every ear there are a hundred grains. Allah gives such multiplied increase to whoever He wills. Allah cares for all and is aware of everything"*<sup>71</sup>.

However, while this does not imply that the patient should not be charged a reasonable fee for services rendered, the Muslim doctor should take cognizance of the fact that **over-servicing, over-prescribing** and **exploitation** are not

acceptable. Bearing in mind the financial burdens that disease imposes on the patient, it is imperative that the physician plays a positive role as a guardian (patron) in lieu of his/her patients' financial interests. In other words, he/she is expected to uphold the following directives <sup>72</sup>:

1. Not make a decision to admit a patient into a hospital, to discharge him/her, or to engage in any diagnosis or treatment procedure, for the purpose of financial gain, and without consideration of the actual needs of the patient.
2. To prescribe medications and medical aids, equipment, or other approved therapeutic modalities, only on the basis of medical considerations, and patient's needs, and not under any type of pressure.
3. Not to accept offers from other parties (that may affect his/her management decisions).
4. The decision-making process concerning distribution of limited medical resources should be based on medical, scientific and moral criteria, applicable to patient's health condition.

#### Consideration for gender sensitivity:

A medical examination, depending on the nature of the medical problem, could necessitate a female Muslim patient to disclose her private parts to a

male physician in privacy of his rooms. This would pose two legal problems: *kashf al-`awrah* (revealing of one's private parts to someone other than one's spouse) and engagement in *khalwah* (seclusion with a stranger).

The `awrah, in legal terms, implies the parts of the body that are to remain covered. Exposing such parts would be in violation of the *Shari'ah* and therefore is *haram* (forbidden). The `awrah of a Muslim woman is explained by Prophet Muhammad ﷺ in the following *Hadith*:

"إن المرأة إذا بلغت المحيض، لم تصلح أن يري منها إلا هذا وهذا". وأشار إلى وجهه وكفيه

"After a girl attains the menstrual age i.e. puberty, nothing should be seen of her except her face and hands"<sup>73</sup>. Insofar as the `awrah of the man concerned, Prophet Muhammad ﷺ stated that a man should at least be covered from the navel to the knees<sup>74</sup>.

"عورة الرجل بين السرة والركبة"

Moreover, it is unbecoming of a Muslim to look at the `awrah of another person and that is deduced from the following *Hadith*:

"لا ينظر الرجل إلى عورة الرجل ولا المرأة إلى عورة المرأة"

"A man should not look at the `awrah of another man, nor a woman to that of another woman"<sup>75</sup>. Therefore, what is forbidden to be looked at is equally forbidden to be touched with the hands.



*Al-khalwah*, in legal terms, implies the act of a man and a woman being alone in such a place that there is absolutely no fear of their being intruded upon. In that situation, an opportunity exists for them to engage in intimate contact<sup>76</sup>.

According to the dictates of the *Shari'ah*, it is forbidden for a man and a woman who are not married to each other to be in *khalwah*. Dr. *Shaikh Yusuf al-Qaradawi* points out that the reason for this is "not a lack of trust in one or both of them: it is rather to protect them from wrongful thoughts and sexual feelings which naturally arise within a man and a woman when they are alone together...<sup>77</sup>. It is for this reason that Prophet Muhammad ﷺ said:

"من كان يؤمن بالله واليوم الآخر فلا يخلون بامرأة ليست معها ذو محرم لأن الشيطان سيكون ثالثهما"

"Whoever believes in Allah and the Last Day must never be in privacy with a woman without there being a *mahram* (i.e., any male relative with whom marriage is prohibited) with her, for otherwise Satan will be the third person (with them)"<sup>78</sup>.

Stipulations that pertain to *satr al-`awrah* (covering of the private parts) and *tahrim al-khalwah bi al-ajnabiyyah* (prohibition of seclusion with a foreign woman) are meant, as explained by *Shaikh `Abd al-Rahman al-Jaziri*: "to protect human dignity and chastity and to safeguard humans from succumbing to temptations and engaging in sinful acts"<sup>79</sup>.

The issues that pertain to *satr al-`awrah* and *tahrim al-khalwah* pose a

legitimate dilemma to the mind of a conscientious Muslim. The question that comes to his or her mind is whether it would be permissible for him/her to be examined by a doctor of the opposite sex?

The dilemma may be resolved on the basis of the practice of Muslims during the Prophetic era and certain juridical principles that intervene in order to relax adherence to the strict rules on the grounds of medical necessity.

Historical evidence exists that during the early days of Islam, a band of ladies accompanied Prophet Muhammad's ﷺ army with the aim of nursing the wounds sustained by the *Sahabah* (Prophet Muhammad's companions) (RA) during combat<sup>80</sup>.

Before shedding light on the some of the juridical principles, it is important to note that the Glorious Qur'an provides broad guidelines when confronted with specific problems. For example, it states:

"...وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ..."

"He (Allah) has not imposed difficulties on you in religion"<sup>81</sup>

"...يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ..."

"Allah intends every facility for you. He does not want to put you to difficulties"<sup>31</sup>

From the spirit of what has been stated in the above citations from the Glorious Qur'an, the following two juridical rules would justify the action of a Muslim patient to resort to being

examined by a physician of the opposite sex on the ground of medical necessity:

1. Necessity renders the prohibited permissible<sup>32</sup>.
2. Should one be impelled to choose between two disadvantages (evils), opt for the lesser in order to prevent the greater injury<sup>83</sup>.

The first principle would allow a Muslim to be examined by a physician of the opposite sex. This principle, therefore, intervenes and overrules considerations for *satr al-`awrah* and *tahrim al-khalwah bi al-ajnabiyyah*. The two disadvantages or ‘evils’ in the second principle above would pertain to:

1. The patient allowing a physician of the opposite sex to examine him/her.
2. Not seeking medical assistance because of considerations of *`awrah* and *khalwah*.

Thus opting for the lesser evil would be allowing a physician of the opposite sex to examine him/her in order to avoid a greater injury or evil, i.e. putting one’s life in danger as a result of not receiving the necessary medical attention. After all, the practice of medicine is aimed at saving lives and in this regard the Glorious Qur’an states:

“...وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا...”

“Whoever saves a life it is as if he has saved the lives of all humankind”<sup>84</sup>

Likewise, in the event of the absence of a female gynecologist in the locality where a female Muslim resides, she may seek the assistance of a male gynecologist. The norm, however, would be to recommend that the female patient be accompanied by a chaperon. In the event that the patient came without one, then a female nurse be present during the medical examination or at the time of delivery, and of course the permission of the patient concerned must be sought in this regard<sup>85</sup>.

At this juncture, it ought to be pointed out that the above two juridical principles, which permit a Muslim to be examined by a physician of the opposite sex, would be nullified by another juridical principle, namely, “whatever action is made permissible for a particular reason is negated once the justification (reason) for permissibility becomes absent”<sup>86</sup> Thus when a female Muslim becomes aware of an equally qualified female physician practicing in her locality, then it would be more appropriate for her to consult such a doctor for her medical problems. However, this negation is dependent on the specialty/qualification of the physician and the type of medical care that is being sought. For example, if the female physician is a general practitioner, this does not negate seeking treatment from a male surgeon by a Muslim female patient who needs surgery, etc<sup>87</sup>.

It is equally important for a Muslim physician to note that during the process of examining a patient of either

sex, he/she should always be conscious of the fact that Allah ﷻ is watching him/her when exposing the 'awrah (bodily parts of the patient that are meant to be kept concealed) and therefore, the 'awrah of the patient should not be exposed unnecessarily. Hence, the smallest possible area should be exposed with other parts being covered. If the entire body needs to be examined, the bodily parts should be exposed gradually and separately.

The gender question in medical examination does not arise in the Islamic Republic of Iran because it has taken the lead in urging its female citizens to study medicine and has made it mandatory for its female population to be examined by female physicians, but it is not clear whether offenders are penalized<sup>88</sup>.

### **Professional secrecy/confidentiality:**

It is important to note that in the United States of America, the physician has the right to remain silent in a court of law and safeguard the privacy of his/her patient. Professional privilege, in the context of South African law which has its precedent from English law, is recognized only in the case of legal practitioners<sup>89</sup>. That is why in *Parkes vs Parkes* the court ruled that the physician had to disclose whether the husband whose wife<sup>90</sup> was suing him for divorce for adultery had contracted venereal disease from other than his wife. In this particular case then the disclosure was made in compliance with a court order. There are, however, other instances, as enumerated below,

where on the basis of statutory authority the doctor's disclosure would not be regarded as breach of confidentiality:

1. Disclosures concerning suspected child abuse in terms of the Child Care Act 74 of 1983<sup>91</sup>.
2. Disclosures concerning mental patients who are dangerous to others in terms of the Mental Health Act 17 of 2002<sup>92</sup>.
3. Disclosures of notifiable diseases in terms of the National Health Act 61 of 2003<sup>93</sup>.

Muslim physicians are expected not to disclose patients' information to inappropriate parties in view of the fact that the Glorious Qur'an describes the believers as those

وَالَّذِينَ هُمْ لِأَمَانَاتِهِمْ وَعَهْدِهِمْ رَاعُونَ"

"who faithfully observe their trusts and their covenants"<sup>94</sup>

Likewise, on the basis of the following clause in the Oath of The Muslim Health Care Professional:

"To keep people's dignity, to cover their privacies, and lock up their secrets"<sup>95</sup>

It thus follows that all persons who, out of necessity, have access to patients' information should adhere to this code of professional secrecy. However, it is important to point out that patient confidentiality may be breached when the interest of others is at stake. The Islamic juridical principle of *al-maslahah* (the common good) provides



justification for the breach of this confidentiality as in such a case where the disease may be transmitted to spouses, for example, HIV/AIDS. Insofar as the disclosure of a patient's HIV status to the spouse or sexual partner is concerned, the precursor of Health Professions Council of South Africa (HPCSA), namely, South African Medical and Dental Council (SAMDC), as far back as 1989 was inclined towards the view that it would be justified to do so in order to protect such a person from the risk of a fatal infection<sup>96</sup>.

It was resolved at the Eight Islamic *Fiqh* Academy (India) Seminar held at the Aligarh Muslim University over a three-day period, 22-24 October 1995 that the Muslim physicians could breach confidentiality of their patients on the following grounds:

1. If the eyesight of a person who is employed as a driver is impaired, it will be necessary on the part of the physician to inform the employer of that. Likewise, if a pilot or a bus driver is so addicted to alcohol which may jeopardize the safety of passengers, the doctor is obliged to disclose that information to the concerned department.
2. In the event that a physician is aware of an offence having been committed by any of his/her patients, and someone else is being prosecuted for that offence, then the physician is required to make that fact known so as not to

allow an innocent person to be convicted.

3. If one of the physician's patients is suffering from a certain disease or sexual deficiency proposes to a woman and the woman or her legal guardian contacts the physician in the context of the impending marriage proposal, it is incumbent upon the physician to state the factual position. However, if neither the woman nor her legal guardian contacts him in that regard, it would not be necessary for him, out of his own accord, to disclose that information to the party concerned<sup>97</sup>.

### **Therapeutic privilege:**

In most cases, Muslim physicians generally disclose to their patients the nature of their ailments. However, on the basis of what is termed therapeutic privilege, medical practitioners may withhold information. As for example, in the case of cancer diagnosis that could result in the patient becoming despondent thereby undermining treatment<sup>98</sup>. That is why in the United States of America, the courts have recognized that it is not legally required for the attending physicians to disclose what may not be medically sound to their patients.

In other words, "therapeutic privilege" for the non-disclosure would actually be in the interest of the patients themselves<sup>99</sup>.

Islam compels Muslims in general to be truthful in all their dealings at all times

and it is precisely in this context that Prophet Muhammad ﷺ states:

"أية المنافق ثلاث: إذا حدث كذب وإذا وعد أخلف وإذا أؤتمن خان"

"The signs of a hypocrite are three: he lies when he speaks, he breaks his promise and he betrays when confided in"<sup>100</sup>.

This would mean that Muslim physicians should disclose to their patients the nature of their illnesses, fatal or otherwise. However, an exception may be made for the justification of therapeutic privilege on the basis of the legal maxim:

"الضرورات تبيح المحظورات"

"Necessity makes the unlawful lawful" if disclosure of diagnosis could result in aggravating their conditions and/or making them lose hope of recovery.

### **Preparing patients for death:**

Muslim physicians who are attending terminally ill patients should give them as much care as possible. They should be comforted, encouraged to remember Allah ﷻ and reminded that death is destined for all living beings. The Glorious Qur'an is replete with references to the inevitability of death. For example, it asserts:

"كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ..."

"Every soul shall taste death"<sup>101</sup>

It is thus important that the Muslim doctor discusses with their patients some of the practical issues such as

enlightening them on artificial life support use and withdrawal, drawing up of an Islamic will and issues relating to burial arrangements, etc. If they have any message or advice which they would like to be conveyed to their families then that should be noted and conveyed.

### **Participation in the *Janazah Salah* (Funeral Prayer):**

Muslim physicians (should note that their duty does not end with the passing away of their patients. They should try to participate in their funeral prayers.

Likewise, Muslim physicians both males and females should visit family members of their deceased patients in order to offer their condolences to them and to assist the aggrieved family members of their deceased patients who may need medical assistance.

In many Muslim countries women are allowed in funeral prayers and at burial, but not to wail, etc. in the cemetery.

### **Duties of Muslim Physicians towards Society:**

Muslim physicians are in effect members of the community in which they reside in. By virtue of this reality, they are *ipso facto* bound to a common cause, familiar communal feelings and mutual solidarity. The Glorious Qur'an affirms this in the following words:

"إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ..."

"Verily the Believers are brethren to each other"<sup>102</sup>.

In every community, Muslim physicians are respected and they should capitalize on this reality to render meaningful services for the upliftment of their community. Prophet Muhammad said:

أن النبي (ﷺ) قال: " الدين النصيحة، قلنا لمن؟ قال: لله ولكتابه ولرسوله ولأئمة المسلمين وعامتهم".

"Religion (*din*) is *nasihah* (advising each other)." We said: "To whom?" The Prophet, ﷺ, said: "To Allah and His Book, and His messenger, and to the leaders of the Muslims and their common folk"<sup>103</sup>.

They should therefore provide guidance in combating the ills within the society such as drug addiction and alcohol abuse. They should likewise actively participate in humanitarian services such as HIV/AIDS rehabilitation programs and natural disasters relief initiatives, etc. Moreover, they should also be role models in their interactions with both Muslims and non-Muslims and this positive attitude will inevitably facilitate *da'wah* efforts within the community.

#### Relationship with Colleagues<sup>104</sup>:

The Glorious Qur'an states:

...وَمَا أُوتِيتُمْ مِّنَ الْعِلْمِ إِلَّا قَلِيلًا"

"And of knowledge, you (mankind) have been given very little"<sup>105</sup>.

Hence, physicians should display humility and have mutual respect for

each other. They should acknowledge their limitations in their own field of expertise and to feel free to consult or solicit the assistance of their colleagues in clinical situations whenever the need arises. Physicians should engage in collegial behavior and avoid any professional engagements that would result in exploiting other physicians.

Likewise, they should collectively uphold intellectual honesty, moral integrity, clinical competence, and physical and psychological well-being consistent with their responsibilities. This would entail that they should individually and collectively bring to the notice of the Medical Board/relevant authority the identity of their colleagues whose ability to practice medicine becomes temporarily or permanently impaired. The Glorious Qur'an which stipulates:

"...وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا..."

"Whosoever saves a life, it will be as if he has saved the lives of the entire humankind"<sup>84</sup>.

Moreover, they should rally behind such impaired colleagues so that they may facilitate remedial help for him and assist them to modify or discontinue their practice altogether, and assist them with rehabilitation whenever that is deemed appropriated. The Glorious Qur'an states:

"...وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ..."

"And help one another in righteous and piety, but do not help one another in sin and aggression"<sup>106</sup>.

Furthermore, they have to be stewards of medical knowledge and make it their obligation to educate and share information with their colleagues as well as with physicians-in-training.

Prophet Muhammad ﷺ said:

قال رسول الله (ﷺ): إذا مات ابن آدم انقطع عمله إلا من ثلاث: صدقة جارية، أو علم ينتفع به، أو ولد صالح يدعو له

“When the son of Adam dies, his deeds (in this world) cease, except for three: an ongoing charity, knowledge that he imparted and virtuous progeny who continue to pray for him”<sup>107</sup>.

#### **Duties towards the establishments in which they are employed:**

Physicians in general should uphold the code of conduct in all such establishments where they are being employed. At the same time they should also have the interest of their patients at heart. Thus if they become aware of any form of exploitation being perpetrated against patients in such establishments, they ought to bring this matter to the attention of the relevant authorities. The Glorious Qur'an states:

"يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِنْ يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أَوْلَىٰ بِهِمَا..."

*“O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both”*<sup>108</sup>.

#### **Making use of advertisement/media in order to promote their professions<sup>109</sup>:**

It is not wrong for Muslim physicians to market their practices via the use of advertisements and or the media. However, what is being communicated must be truthful and not misleading, deceptive or discriminatory. Prophet Muhammad ﷺ said:

آية المنافق ثلاث: "إذا حدث كذب وإذا وعد أخلف وإذا أؤتمن خان".

“The signs of a hypocrite are three: Whenever he speaks he tells a lie; whenever he is entrusted he proves dishonest; whenever he promises he breaks his promise”<sup>100</sup>. In other words then, in promoting their practice, physicians must desist from using such terms as “top”, “world famous”, “world class” or “pioneer” since such pronouncements may not necessarily be true and are meant to target vulnerable patients. Moreover, bearing in mind that the Glorious Qur'an tells us that Satan retorted to Allah ﷻ that he was better than Prophet Adam (AS),<sup>110</sup> then it can be inferred from that incident that any form of advertising that attempts to denigrate the competence of other individual professionals or group practices would be deemed to be unethical and therefore unacceptable.

#### **CHAPTER FOUR: LIABILITY OF MUSLIM PHYSICIANS:**

Medicine, it must be conceded, is a high-risk profession in view of the fact

that medical treatment entails dealing with the health, body and even the life of the patient. A slight error on the part of the doctor may have disastrous consequences and that explains why in most Western countries, malpractice litigation is on the increase<sup>111</sup>. This seeming over-preoccupation with malpractice claims have undoubtedly led to high costs of physicians' malpractice insurance, high cost of medical services, and the doctors' reluctance to take on medically complicated cases.

Within the domain of Islamic Medical Jurisprudence, due consideration is given to the fact that while physicians are inclined to do what is best for their patients, mistakes, however, in the field of medical treatment are bound to happen. But what is of primary importance is that one should be amenable to be corrected and to atone for one's mistakes.

The Glorious Qur'an says:

"...رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا..."

"Our Lord, do not take us to task if we forget or make a mistake!"<sup>112</sup>

"...وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ..."

"You are not to blame for any honest mistake you make but only for what your heart premeditate"<sup>113</sup>.

Prophet Muhammad ﷺ said:

عن ابن عباس، رضي الله عنهما، أن رسول الله (ﷺ) قال: "إن الله تجاوز لي عن أمتي الخطأ والنسيان وما استكرهوا عليه".

"Allah forgives acts committed in error or under coercion, and forgetfulness"<sup>114</sup>.

There is no wrong or criminal action in committing an error, but in all cases the damage is to be redressed<sup>115</sup>.

## COMPENSATION TO THE PATIENT:

Islamic Medical Jurisprudence has stipulated how payments/compensations as a result of damage from the physician ought to be fulfilled, by the physician (himself/herself), by the physician's *aqilah* (relatives, medical organization, etc.) and by the state<sup>116,117</sup>.

The damage, according to Islamic Medical Jurisprudence, renders the physician to pay up to one third of the value of *diyyah* as indemnity. Over and above that, compensation will be paid by others: *aqilah* (family) or *Bayt al Mal* (the State's Public Treasury). In other words then, the patient would receive compensation without having to prove anything, as the damage would speak for itself. This will also take care of patient's demands for accountability and justice. At the same time the physician would not be humiliated.

Dr. Ahmed Yacoub, in his book, *The Fiqh of Medicine*, elaborated on the wisdom (*hikmah*) behind this system of compensation for medical mistakes as follows:

- The involvement of society or community in sharing the



indemnity is a token of shared responsibility, and not liability.

- The involvement of the state has the added moral of better supervision of the standards of education, training, and performance, which is the responsibility of the government as an authorizing body.
- It is also an instruction for medical practitioners to be more careful, or more proficient in executing their duties.
- Within the framework of Islamic *Fiqh*, the issues involved in malpractice suites are properly addressed in a manner similar to that stated in modern medical laws, namely: accountability, an incentive to maintain high standards of care, retribution, and compensation<sup>118</sup>.

#### NON-LIABILITY OF PHYSICIANS:

Muslim jurists, taking cognizance of the Islamic dictum “executing one’s duty (*wajib*) does not entail a guarantee of safety or success”, are of the view that the physician’s obligation to his/her patient is to provide proper care, and is under no obligation to effect cure<sup>119</sup>. They have, however, laid down two criteria for the non-liability of the attending physician<sup>119-121</sup>:

##### (a) Competency and Accreditation:

A competent and accredited physician who performs his/her duty according to

the acceptable methods/standards of the profession would not be held liable whenever complications or damage or death occurs. This, however, is contingent upon establishing that there was no transgression (*ta’addi*), no incompetence, nor negligence in the performance of his/her duty (*wajib*), for which he/she had been properly trained for, in the manner in which it is usually conducted by peers in the profession.

Competence and accreditation are forms of quality control procedure by the professional health authorities that demarcate the recognition of the professional standard for the physicians in practice. Likewise, Islam requires one to do one’s job well, as outlined by the Prophet’s ﷺ *Hadith*:

"إن الله يحب أحدكم إذا عمل عملاً أن يتقنه"

“Allah likes it when one does his job to do that in perfection”<sup>122</sup>.

The Prophet ﷺ also laid down the ground for the requirement of levels of skill, or specialized competence, when he posed the question to the practitioners who came to treat one of his companions (*Sahabah*):

"أيكم أطب"

“Which of you is best at medicine?”<sup>123</sup>.

##### (b) Consent:

The attending physician is absolved of any liability if he/she has secured consent of the patient or his/her guardian to carry out the treatment procedure.

## LIABILITY OF PHYSICIANS:

Muslim jurists have addressed the issue of liability of physicians under the following categories:

### (a) A competent and accredited physician who erred and was involved in a situation of misadventure or accident:

Modern day laws do not make a distinction between error and negligence, or the implications thereof. In Islamic *fiqh*, there is a distinction, with applicable legal consequences. While Islamic Medical Jurisprudence differentiates between the mistake (*tajawuz al-hadd*) of a competent practitioner, and negligence, it stipulates due compensation (*diyyah*) for the injured party<sup>124,126</sup>.

Islamic Medical Jurisprudence recognizes the very thin line between negligence and error. The distinction between the two rests on the intention (*niyyah*) which is not always discernible<sup>126</sup>.

However, loss due to error is subject for restitution, which is paid by the *aqilah* (family, medical organization...etc), and by the State.

### (b) A competent, unauthorized physician (does not have patient's consent and/or no official authorization)<sup>127,128</sup>:

The majority of jurists (*al-jumhur*) concur that if any physician undertook to attend to a patient without due

consent from the patient or his/her guardian authority then that would constitute transgression (*ta'addi*), and would be ground for restitution (*daman*) as a form of remedy for any battery or complications (*sirayah*) that result thereby.

In addition to compensation being given to the aggrieved patient, other forms of disciplinary action fines would be imposed upon the physician for negligence: that would include discretionary punishment (*ta'azir*), depending on the dictates of the different *fiqh* schools. For example, the Maliki School envisages that the practitioner must be disciplined and lashed or imprisoned, depending on the merit of each case. The Shafi'i School, on the other hand, hold the view that the physician would be liable for expiation (*kaffarah*), as well as the (*daman*) in the form of giving alms, or by fasting for a number of days.

### (c) The incompetent (unqualified) practitioner<sup>125,127</sup>:

There is consensus (*ijma'*) amongst Muslim jurists that such a physician is liable for any loss or harm, caused by his action, and all the complications that ensue as a result of his/her action. However, they differ on the compensation and the share of the compensation that should be imposed upon such a physician. Some jurists hold the view that before any action is undertaken against the physician, it should be ascertained whether the patient was aware that the physician lacked the necessary qualifications and



yet consented to seek treatment from that physician.

### Medical negligence:

Physicians in all the different fields of their specialization could somehow be involved in medical negligence or reckless behavior that may jeopardize the health and even the lives of their patients.

In the context of English Law, negligence may take the form of:

- A breach of the duty to care.
- Loss occasioned by that breach<sup>129</sup>.

The above is reiterated in the following *Ahadith*:

"من تطيب ولم يُعلم منه طب فهو ضامن"

"He who undertakes the treatment of others, without preparing himself, and causes loss of life or damage is liable"<sup>130</sup>.

And:

"أئما طبيب تطيب على قوم فأعنت فهو ضامن"

"He who sets himself up, and undertakes the treatment of others, but had not prepared himself well for medical practice (*tatabbaba*), and as a result caused harm (*anata*), is liable"<sup>131</sup>. In what follows, Muslim jurists have succinctly delineated what would constitute medical negligence that would be tantamount to an act of transgression (*ta`addi*) in the domain of sound medical practice<sup>132,133</sup>:

1. Failure to secure the consent of the patient or his guardian.

2. Failure to secure the authorities' permission to practice.
3. Not being prepared, or being ill-prepared, for the job.
4. Taking on more than one is qualified for.
5. Not taking due care: using an instrument or a procedure which cause undue pain or shock, choosing a bad time of the day, or season of the year and not paying due care to the age of the patient<sup>133,134</sup>.

### Criminal negligence:

Islamic Medical Jurisprudence regards criminal negligence on the part of the physician as an intentional crime if it results in the death of the patient. This would apply in the context of a physician who caused the death of the patient, by either intentional commission, or by omission, such as refusing to help or rescue a patient in an emergency situation, ending up in his death. The majority of Muslim jurists are of the view that the perpetrator of this crime should be penalized by retaliation (*qisas*). In other words then, if the patient dies, as a result of such behavior on the part of the physician, then he/she would be liable for the death penalty unless the patient's relatives opt to forgive him/her outright or accept a ransom in return. It may thus be concluded that Islamic Medical Jurisprudence looks at gross negligence, irresponsible and/or reckless behavior on the part of the physician as intended crimes the culprit ought to be punished accordingly<sup>135,136</sup>.

### **Resolution No 142 (8/15) on Physicians' Liability (*Daman*):**

The Council of the Islamic International *fiqh* Academy-OIC, in its 15<sup>th</sup> session, held in Masqat (Oman) from 14-19 *Muharram* 1425 H, 6-11 March 2004, decided the following:  
Firstly: Physician's Liability (*daman*):

1. Medicine is an ever developing science and art for benefit of humankind. The medical practitioner should consciously observe Allah's (SWT) pleasure in conducting his medical work and to sincerely perform his duty according to recognized professional and scientific standards.
2. The physician shall be liable (*damin*) if harm is inflicted on the patient, in the following situations:
  - A.If the physician intentionally inflicted harm.
  - B.If he was ignorant in medicine, or in the branch (specialty) he embarks to practice in.
  - C.If he was not duly authorized (licensed) by the specific official authority.
  - D.If he embarked on medical action without consent of the patient, or guardian (as specified in the Council decision No 67"5/74").
  - E.If he deceived (misled) the patient.
  - F. If he committed a mistake that is not committed by his peers (physicians at his professional level), and a mistake that is not approved by

professional principles, or if he committed negligence or incapability.

G.If he breached secrets of his patients, without considered necessity, according to Council resolution No. 79(10/8).

H.If he refused to provide his medical duty in cases of emergency.

3. The physician -and those under similar status- is legally liable in the above mentioned situations provided the fulfillment of legal responsibility, except in the situation of medical error (point F above), in which case he is considered liable if this mistake was a major one.

### **Refusal to treat the patient:**

When a patient consults a physician, the physician enters into a form of contract with the patient and the physician becomes liable to render medical care to the patient. Hence the physician is expected to discuss with the patient the regime of treatment, but is under no obligation to undertake to treat the patient. In other words, depending on the nature of the disease, it may be necessary for the physician to refer the patient to a specialist<sup>137</sup>.

In the United States of America, the Indiana Supreme Court in 1901 ruled in the *Hurley* case<sup>138</sup> that 'the state does not require and the doctor does not engage that he will practice at all or on other terms than he may choose to accept.' In that particular case, the

physician's refusal to attend to an ailing person resulted in the death of that patient, but the physician was not held liable. In South Africa, too, there are no general obligations on a doctor to treat a patient except if that person is in a need of emergency treatment. On this particular issue, the HPCSA's ruling<sup>139</sup> which dealt with Workman's Compensation cases is hereunder cited<sup>140</sup>:

- Trade Union adopted a resolution submitting to the council their strongest protest against the action of certain doctors who refused to handle the Workmen's Compensation Act WCA. Certain doctors apparently refused to render emergency attention to such cases due to the inconvenience of having to wait for payment from the Compensation for Occupational Injuries and Disease Act COIDA (Commissioner because the amount that the doctor received was less than what would be charged if the patient had been seen in private practice.
- Councilor advised that the Trade Union of a previous resolution of the treatment by practitioners, namely he/she is free to decide to whom he/she wanted to render a service. The practitioner may however, be called upon to justify his action in the event of unnecessary suffering or death resulting from his/her refusal to render health care to a patient. A practitioner was obliged to render

assistance under all circumstances in emergencies.

Notwithstanding that the study and practice of medicine is regarded as a *fard kifayah*<sup>141</sup>, it is thus imperative to note that a Muslim physician would not have the right to refuse to treat a patient in case of an emergency where the life of a patient is in danger, or in the event that there are no other doctors in the vicinity where the patient who requires medical attention is located, or if the physician has already agreed to treat a patient, then that would imply that the doctor has willingly entered into a contract to treat that patient until no further treatment is required.

It may also be pertinent to note here that failure to attend to a patient in the event of an emergency leading to the death of that patient is considered to be a serious offense, in that the majority of the Maliki and Shafi'i jurists are of the view that that would be tantamount to an act of intentional killing of a human being<sup>142-144</sup>.

## CONCLUSIONS:

Knowledge in any particular field enables one to discharge one's duty in the best manner possible. Muslim physicians have to be well-versed in their professions, for they have in their hands human beings as their patients and any mistake on their part, or ignorance, could expose the lives of their patients to danger. That is why Prophet Muhammad ﷺ advised his followers to seek medical assistance from the one who is knowledgeable in

that particular field even if not a Muslim.

When Ubayy bin Ka'b (RA) fell ill the Prophet ﷺ sent a doctor to attend to him<sup>145</sup>. M.M. Sharif points out that the only known physician during the Prophet's time was Al-Harith Ibn Kaladah (RA), an Arab Jew who later embraced Islam<sup>146</sup>.

Prophet Muhammad ﷺ by urging his followers to seek medical attention desired that they should attend to their sicknesses whether of minor or major nature.

Insofar as physician-patient relationship is concerned, the physicians respect for their patients encompasses a number of responsibilities towards them. They should use the appropriate words in conversing with them. The Glorious Qur'an describes the successful physicians and other professionals as people who "have been guided (in this life) to the purest of speeches"<sup>147</sup>.

"وَهْدُوا إِلَى الطَّيِّبِ مِنَ الْقَوْلِ وَهْدُوا إِلَى صِرَاطِ الْحَمِيدِ"

Likewise, Muslim physicians should not harm their patients intentionally, nor should they try to place the lives of their patients in possible risk without justifying the probable benefits that may result thereby. They are also expected to contribute to the health and welfare of their patients. The underlying factor in the physician-patient relationship is the understanding that the former is expected to benefit the latter. Moreover, Muslim physicians

have the duty not to breach the confidentiality of their patients by disclosing the secrets and feelings of their patients. However, if they discover that their patients are suffering from venereal disease as a result of sexual license, their duty would not be merely to cure them, but to guide them toward chastity, purity, self-restraint, etc. Furthermore, they should not overcharge their patients for services rendered to them. They should be considerate to those who may not be in a position to pay them for their services.

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## CHAPTER TWO

### TERMINATION OF PREGNANCY (TOP) (ABORTION)

*Hossam E. Fadel\*, Aly A. Misha'l,  
Abul Fadl M. Ebrahim and Musa M. Nordin*

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#### Definitions:

Abortion is the complete expulsion of the products of conception/fetus from the uterus prior to its viability.

Viability according to the World Health Organization (WHO), is up to the 22<sup>nd</sup> weeks of gestation<sup>1</sup>. In USA, it is

defined as loss of the pregnancy either spontaneously or by artificial means before the 20<sup>th</sup> week of gestation<sup>2</sup>.

Estimation of gestational age is based on the number of weeks after the first day of the last menstrual period.

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\*Hossam E Fadel, M.D., Ph.D., F.A.C.O.G  
Editor-in-chief, FIMA Yearbook  
Clinical Professor, Obstetrics and Gynecology  
Maternal Fetal Medicine  
The Medical College of Georgia,  
Georgia Regents University  
Augusta, GA, USA  
E-mail: hefadel@gmail.com

**Types of Abortion in Contemporary Medical Practice<sup>3</sup>:**

1. Spontaneous abortion: Spontaneous expulsion of a fetus whether it is dead due to a chromosomal abnormality, for example, or alive due to incompetent cervix or other etiologies, with no interventions.

2. Induced abortion / Termination of Pregnancy (TOP): Is abortion that occurs as a result of medical or surgical intervention. There are 2 types:

(A) Therapeutic (medically indicated) TOP: is conducted for one of four reasons:

i. A significant medical condition that threatens the pregnant mother's health or life, if the pregnancy continues. A qualified medical team, within the context of an ethics committee or Institutional Review Board (IRB), should make the decision that continuation of pregnancy, in their best judgment, will cause the progression of the maternal disease, may cause permanent deterioration of the mother's health or may cause her death.

ii. Lethal fetal malformations, for example, anencephaly, bilateral renal agenesis, trisomy 13, 18, triploidy, and spinal muscular atrophy type 1.

iii. Significant but nonlethal malformations.

iv. Selective reduction in cases of high order multiple pregnancies (quadruplets, quintuplets, etc... but may also be considered in triplets) to reduce the risk of early preterm (previable) delivery with death of all fetuses. In essence this procedure sacrifices some of fetuses to avoid the loss of all if the pregnancy continues.

**(B) Elective TOP (abortion)**

■ Unplanned or unwanted pregnancies due to:

a) Social, psychologic or economic considerations of the mother or family, such as: extramarital pregnancies, and pregnancies due to incest and rape.

b) Failure of birth control modalities.

**Methods of TOP:**

1. The "morning after pill" can be used to prevent a pregnancy by delaying ovulation or to induce a very early abortion by interfering with the implantation of a blastocyst.

Actually it is considered "emergency contraception" rather than TOP. High dose combination (estrogen/progesterone) birth control pills are given within 24-48 hours after intercourse (Yuzpe regime).

It is effective in about 75% of the cases. Alternatively, Levonorgestrel (long acting progesterone) can be used (plan B). Its reported efficacy is 89%. A newer pill, Ulipristal (Ella) may be effective up to 120 hours after intercourse. These methods are usually used in cases of failed barrier contraception (break of a condom for example) or in case of rape or other unplanned sexual intercourse<sup>4,5</sup>.

2. Menstrual Aspiration (Extraction<sup>6</sup>), a minor surgical procedure, can be used after the first missed period, even before a confirmed pregnancy, or up to the 7<sup>th</sup> week by using a suction apparatus (Manual Vacuum Aspiration –MVA). Usually it can be done in the

office under sedation (without anesthesia). After the procedure, verification of the termination of an early pregnancy should be done by proper testing.

3. Dilation and evacuation is done if the pregnancy is  $> 7$  but  $< 20$  weeks and is usually performed under general anesthesia. Evacuation can be done using suction or by use of surgical instruments.

### TOP: The Islamic Perspective:

Human life is glorified in Islam, and distinguished from all other forms of life, in view of the dignity and honor bestowed on man by the Creator ﷻ. Allah says:

"وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ .."

*"We honored the sons (progeny) of Adam"*<sup>7</sup>

Preservation of life is the second most important *Maqсад* (goal) of *Shari'ah* (Islamic Law). In essence TOP is termination of a potential human life. The determining question is when human life begins i.e. when the embryo/ fetus becomes a person worthy of protection. Is it at the time of fertilization or later on. It is therefore pertinent to address the concept of ensoulment as it relates to the beginning of human life, since jurist opinion depends, to a great extent, on this concept.

### The Soul "*ruh*" and beginning of human life:

Among all religious, philosophical and materialistic schools of thought, Islam is unique in adoption of clear concepts

of human life and soul (*ruh*), within the context of a holistic, universal view of the human being, in this world and in the Hereafter.

What is "*ruh*"?

Muslim scholars discussed the issues of human life and "*ruh*" for centuries. Over the past three decades, these discussions took new pertinent dimensions in view of emergence of many biomedical and clinical developments including birth control, abortion, in-vitro fertilization (IVF), embryo banking, stem cells research, pre implantation genetic diagnosis (PGD), genetic engineering and withholding or withdrawing of life support measures in critically ill or terminal patients.

The nature of the soul (*ruh*) is and will always be unknown to humans.

Allah ﷻ says:

"وَيَسْأَلُونَكَ عَنِ الرُّوحِ قُلِ الرُّوحُ مِنْ أَمْرِ رَبِّي وَمَا أُوتِيتُمْ مِنَ الْعِلْمِ إِلَّا قَلِيلًا"

*"And they will ask about the ruh (soul). Say the soul is (solely) in the command of my Lord. O men you have been granted knowledge but only very little of it"*<sup>8</sup>.

The Glorious Qur'an speaks of "*ruh*" in several "*ayas*" (verses), and several meanings were given by the commentators. Many Muslim scholars understood "*ruh*" as the soul. The Qur'an translators (Yusuf Ali and Mohammad Asad) chose the meaning "divine inspiration" as a translation for "*ruh*". The meaning that is pertinent to our current discussion is the soul which breathes life into the human being, and when it departs the body, death occurs. The issues of life, and "*ruh*" were

subjects of discussions by several Muslim scholars.

Ibn al-Qayyim stated<sup>9</sup>: "if it is asked: Does the embryo, before the breathing of the soul into it, have perception and movement? It is answered that the movements it possesses are like that of the growing plant. Its movements and perception are not voluntary. When the soul is breathed into the body, the movements and perceptions become voluntary, and are added to the vegetative type of life it had prior to the breathing of the soul".

Ibn Hajar al-Asqalani<sup>10</sup> expresses a similar argument in associating the breathing in of the soul with the appearance of voluntary movements in the fetus.

Abu Hamid al-Ghazali<sup>11</sup> stated that life of the embryo should be respected from the time of fertilization. No disregard of this early life should be allowed by any means that endangers it, although ensoulment occurs at a later stage.

In the Qur'an, the stage at which the *ruh* is breathed into the forming fetus within the womb, occurs after it has passed through the stages of *Nutfah*, *Alaqah*, *Mudghah*, bone formation and flesh formation that covers the bones.

"وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ سُلَالَةٍ مِّنْ طِينٍ، ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ، ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظَامًا فَكَسَوْنَا الْعِظَامَ لَحْمًا ثُمَّ أَنشَأْنَاهُ خَلْقًا آخَرَ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ "

"We created man from the finest extract of clay. Then we placed him as a *Nutfah* (drop of sperm-ovum) in a firm lodging. Then we fashioned the drop into an *alaqah* (a leech-like structure). Then we fashioned this

structure into a *Mudghah* (chewed lump-like). Then from that lump of flesh we fashioned bones, then covered the bones with flesh. Then we formed him into a new creation. So blessed be Allah the Best of Creators"<sup>12</sup>.

The "new creation" was explained by Muslim scholars as the beginning of another (new) life (another human being) through the breathing of the soul into the fetus<sup>13</sup>.

Scholars of Jurisprudence studied and interpreted this Qur'anic verse and formulated the concept that creation of the human fetus passes through 7 stages<sup>14-17</sup>:

#### 1. Creation from Clay:

This implies the creation of Adam from clay (soil and water). One can also view the issue differently. It may imply that the sperm and ovum originate from human bodies which are built from nutrients that originate from clay.

#### 2. The *Nutfah* (drop of sperm-ovum):

This is the zygote, the outcome of sperm-ovum unification. It is noteworthy to contemplate on the wording of the phrase of the *Hadith*:

"You are gathered or added together in your creation."

This may be explained, considering recent medical knowledge, by the fact that half of one's chromosomes are derived from each parent and then added together to form the fertilized ovum.

#### 3. The *Alaqah*, (hanging leech-like structure):

This forms around the seventh day after fertilization. This hanging structure is attached to the endometrium by fine villi which develop further in stages. Many scholars consider this stage as the

first and very early form of life in human development. The Qur'anic verse in *Surat al-Qalam* states:

"خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ"

"He created man from hanging leech-like structure"<sup>18</sup>.

It is conceivable that life prior to this stage of implantation has a different form. A sperm or ovum does not constitute life because neither alone can develop into a human being. Likewise, a fertilized ovum outside the womb or inside it, but without implantation, cannot develop into a human being. Many fertilized ova make the trip from the fallopian tubes to the uterine cavity and then to the outside without implantation. It is only the implanted ovum (the *alaqah*), which gains significance and respect in human development.

4. The *Mudghah* (chewed piece of flesh or mass of somites):

The fetus starts showing grooves and protrusions dividing it into somites. The term "*mudghah*" in Arabic, brings to imagination the resemblance to a partially chewed piece of meat, although the size is only a few millimeters. It beautifully describes the formation of the somites. This stage starts at the end of the third or the beginning of the fourth week.

There are some variations in the rate of growth and development of fetuses, in a way similar to the variation in infants.

5. The Stage of bone development:

Early somites appear in the fifth week. Early stages of bones of extremities start in the sixth week, the upper preceding the lower limbs. In the

creation of bone it is significant to contemplate on the Qur'anic verse :

"...وَانْظُرْ إِلَى الْعِظَامِ كَيْفَ نُنْشِزُهَا ثُمَّ نَكْسُوهَا لَحْمًا..."

"And look at the bones, how we raise them and clothe them with flesh"<sup>19</sup>.

6. The Stage of flesh (muscles):

Several days after stage five, early muscles start around the vertebrae at the sixth week and around the extremities at the seventh week. The fact that bones are created first and then wrapped with muscles has only recently been known.

It is another sign of the divine source of the Qur'an.

The organs, both external and internal, develop from the beginning of the fourth week and are already developed by the conclusion of the seventh, or the beginning of the eighth week.

7. Ensoulment:

The 7<sup>th</sup> stage is defined in this Qur'anic verse as: "*Then We formed him into a new creation*". Which, in the view of many scholars, denotes the breathing of the soul or "*ruh*" in the fetus.

**Timing of the breathing of the soul (*ruh*):**

The timing of the breathing of the soul into the fetus has not been definitively stated, but various *Ahadith* are interpreted to provide us with insights in this issue.

Until recently the well-known view is that soul "*ruh*" is breathed into the fetus after four lunar months (120 days) from the beginning of conception. The cornerstone, in this regards, is the famous *Hadith* narrated by Abdullah ibn Masoud, in *Sahih al-Bukhari (Kitabul Qadar)*:



حديث عبد الله بن مسعود رضي الله عنه قال: حدثنا رسول الله ﷺ - وهو الصادق المصدوق، قال: إن أحدكم يجمع خلقه في بطن أمه أربعين يوماً، ثم يكون علقه مثل ذلك، ثم يكون مضغة مثل ذلك، ثم يبعث الله ملكاً، فيؤمر بأربع: برزقه وأجله وعمله وشقي أو سعيد، ثم ينفخ فيه الروح ...

The Prophet ﷺ who tells the truth, told us: "Each one of you is put together in his mother's womb in forty days, then he becomes a hanging clot in a similar time (*mithl thalika*), then he becomes a mass of flesh in a similar time (*mithl thalika*), then Allah sends an angel who is ordered to establish four issues: his sustenance, his destiny, his deeds, and whether he will be mischievous or happy, then the soul is breathed into him"<sup>20</sup>.

The same *Hadith* was also narrated in *Sahih Muslim*, with minimal difference in wording, but with significant implications.

ورواية مسلم للحديث هكذا: ( إن أحدكم يجمع خلقه في بطن أمه أربعين يوماً، ثم يكون في ذلك علقه مثل ذلك، ثم يكون في ذلك مضغة مثل ذلك، ثم يرسل إليه الملك فينفخ فيه الروح ويؤمر بأربع كلمات ...).

"Each one of you is put together in his mother's womb in forty days, then, and during the same time, he becomes a hanging clot, then, and during the same time, he becomes a mass of flesh, then Allah sends the angel who is ordered to breath "*ruh*" into it, and to write down four issues ..."<sup>21</sup>.

The phrase (and during the same time- in Arabic: *fi mithli thalika*) represents a difference between the two narrations, and some contemporary scholars interpreted it to mean: and during "the same time", i.e. it combines the three stages of *nutfah*, *alaqah* and *mudghah* to occur during one set of 40 days,

rather than a succession of three sets of consecutive 40 days<sup>22</sup>. They quote the following *Ahadith* to support their view:

1. *Hadith* narrated by Huthaifa ibn Usayd, the *Sahabi* of the Prophet ﷺ: عن حذيفة بن أسيد رضي الله عنه- يبلغ به النبي- ﷺ - قال: يدخل الملك على النطفة بعدما تستقر في الرحم بأربعين أو خمسة وأربعين ليلة، فيقول يا رب أشقي أو سعيد؟ فيكتبان، فيقول أي رب أذكر أم أنثى فيكتبان، ويكتب عمله وأثره وأجله ورزقه ثم تطوى الصحف فلا يزداد فيها ولا ينقص.

"The angel enters to the semen drop, forty or forty five nights after it settles in the womb. The angle says: O Allah is it mischievous or happy? And the angle writes down. Then the angle says" O Allah is it male or female? And he writes, He also writes it's deeds, influence, destiny and sustenance. Then the papers are folded (record closed) with no addition or omission in them"<sup>23</sup>.

2. *Hadith* narrated by Huthaifah ibn Usayd:

عن حذيفة بن أسيد- رضي الله عنه- قال: سمعت رسول الله ﷺ يقول: إذا مر بالنطفة ثنتان واربعون ليلة بعث الله إليها ملكاً فصورها وخلق سمعها وبصرها وجلدها ولحمها وعظامها ثم قال: يا رب أذكر أم أنثى؟ فيقضي ربك ما شاء ويكتب الملك، ثم يقول: يا رب أجله فيقول ربك ما شاء ويكتب الملك، ثم يقول: يا رب رزقه فيقضي ربك ما شاء، ويكتب الملك، ثم يخرج الملك بالصحيفة في يده فلا يزيد على ما أمر ولا ينقص.

"When forty two nights have passed over the drop of semen (in the womb), Allah sends an angel who pictures it and witnesses the creation of its hearing, vision, skin, flesh and bone, then the angel asks: O Allah is it male or female, and Allah decides what He wishes and the angel writes. Then the



angel asks: O Allah, its destiny? Allah decides what He wishes and the angel writes. The angel then asks: O Allah, its sustenance? Allah decides what He wishes and the angel writes. Then the angel emerges out with the paper in his hand, after which no addition or omission takes place to what he was ordered to write”<sup>24</sup>.

3. *Hadith* narrated by Huthaifah ibn Usayd who said: I heard the Prophet ﷺ with my these ears, saying:

عن حذيفة بن أسيد صاحب رسول الله - عليه وسلم - قال: سمعت رسول الله - عليه وسلم - بأذني هاتين: يقول: إن النطفة تقع في الرحم أربعين ليلة ثم يتصور عليها الملك.....

“The drop of semen settles for forty nights in the womb, then the angel is sent to it...”<sup>25</sup>:

4. *Hadith* narrated by Huthaifa ibn Usayd:

عن حذيفة بن أسيد صاحب رسول الله - صلى الله عليه وسلم - رفع الحديث إلى رسول - صلى الله عليه وسلم - أن ملكاً موثقاً بالرحم إذا أراد الله أن يخلق شيئاً بإذن الله ليضع وأربعين ليلة.....

“An angel is assigned to the womb when Allah wishes to create something in it, after some forty nights ...”<sup>26</sup>.

5. *Hadith* in *Musnad Imam Ahmad*, narrated by Jaber bin Abdullah:

عن جابر بن عبد الله قال: قال رسول الله - صلى الله عليه وسلم -: إذا استقرت النطفة في الرحم أربعين يوماً أو أربعين ليلة بعث الله إليها ملكاً فيقول: يا رب ما رزقه فيقال له.....

“When forty days or forty nights pass after the semen drop settles in the womb, Allah sends an angel to it, who asks: O Allah, what is its sustenance? And the angel is told...etc”<sup>27</sup>.

It is noted that the last five prophetic sayings did not mention “the breathing

of the soul” They mentioned fashioning of the creation and writing destiny of the fetus. The two versions of the *hadith* reported by ibn Masoud state that breathing of the soul occurs at the time of writing the destiny. Not a single saying indicated that the two incidents are separate. This may lead one to understand that the timing of breathing of the soul is the same as writing the destiny and fashioning of the fetus.

Muslim scholars, both old and contemporary, attempted to reconcile these *Ahadith*, but there is no universal agreement yet. However, there has been more weight given to the latter argument recently<sup>28</sup>.

Current embryologic knowledge indicates that at the end of 40 days of conception, embryogenesis is almost complete, the embryo becomes a fetus with determined sex, and human external features. The skin, skeletal system, and muscles (as described in the last 5 *Ahadith*) have been formed as well as its internal organs.

Some scholars tried to define the exact day in which “*ruh*” is breathed into the fetus, taking in consideration the Qur’anic verse, the above-mentioned *Ahadith*, and the fruits of recent medical and scientific advances<sup>28</sup>. They reached the conclusion that fetuses vary slightly in acquiring “*ruh*”. The least time is 40 nights (or days), and the maximum is 45 nights (or days). Specifically *Ahadith* 3 and 5 cited above, imply that “*ruh*” is breathed at 40 nights after the fertilized ovum is implanted into the uterus, and not 40 nights after fertilization. It is now scientifically established that the fertilized ovum needs about 7 days to

implant in the endometrium<sup>29-31</sup>, which coincides with the beginning of the stage of the *alaqah*. Based on the variation in the rate of fetal development, and taking in consideration the range 40-45 nights mentioned in *Hadith* number 1, and add these 7 days, then *ruh* is presumed to be breathed in the fetus between the 47<sup>th</sup> and 52<sup>nd</sup> night (or day) from fertilization.

However, we have to state that some scholars still adopt the idea that “*ruh*” starts after 120 days from fertilization. Allah ﷻ knows best.

### **Ensoulment:**

#### **Implications for biomedical issues:**

Contemporary biomedical issues have been the subject of many discussions and jurists rulings. We now have a wealth of knowledge from combined jurisprudence-medical seminars, *Fatwa* councils, and publications by Muslim scholars<sup>32-35</sup>.

From these discussions we are currently capable of understanding the issues of early life in the embryo, with a fair amount of knowledge about the *Shari'ah* concepts of embryo ensoulment, its timing and significance for the Muslim medical practitioner and for the Muslim jurist.

The first and most crucial concept in discussing the issue of beginning of life is the understanding that the Qur'anic verses and the Prophet's sayings about beginning of life and soul were not revealed to address medical issues such as abortion. They were revealed to help us conceptualize Allah's wisdom, knowledge and power, to contemplate

on secrets of life, death and the Hereafter, and to strive and stay on the right path of Allah in this life<sup>36</sup>.

The second concept is that this new life (the fetus) is respected and should be protected starting from the time when the fertilized ovum (blastocyst) is implanted into the uterus, although some sort of life ensues from the time of fertilization<sup>32-38</sup>. This protection is to be offered to the embryo even before ensoulment (the breathing of the soul into it).

Thirdly, the soul (*ruh*) is in Allah's knowledge and the timing at which ensoulment occurs is still not determined with certainty. Many contemporary scholars consider breathing of *ruh* in the fetus, to take place after the first 40 days from implantation, while others believe it to occur after 120 days.

Taking this in consideration, we will address some related biomedical topics, from an Islamic perspective which has a satisfactory degree of clarity and approval by the majority of Muslim jurists.

### **Termination of Pregnancy:**

1. There is universal agreement that respected and significant life starts at the time of implantation of the fertilized ovum, in the uterus, the *alaqah* stage.
2. Abortion is therefore generally prohibited, except under special circumstances that will be discussed later. The severity of prohibition (*Tahrim*) increases as the timing proceeds from implantation upwards<sup>11</sup> and is considered a criminal act after the occurrence of ensoulment<sup>39,40</sup>.

3. However, some jurists still hold the opinion that abortion is permissible until ensoulment occurs at 40 days of gestation, and other scholars who believe that ensoulment occurs at 120 days will allow it till that time.

Some of these jurists will allow TOP prior to ensoulment for no reason, while others will not allow it except if there is a considerable necessity. There are others who allowed TOP for reasons that are not really necessities such as when the pregnant woman needs a medicine, or being unable to breastfeed a recent newborn and is unable to hire a milk-mother (wet nurse)<sup>40-42</sup>.

However, most contemporary jurists do not accept any procedure or means which may threaten this new life, regardless of whether ensoulment occurred or not<sup>43-44</sup>.

Current jurist opinion, as expressed in *Fatwa* councils, jurisprudence seminars or individual opinions, became more representative of the view that from the time of fertilization and implantation of the ovum in the womb, the unborn is looked upon as a potential human being<sup>43,44</sup>.

The contemporary Islamic jurisprudence opinion has been summarized by a series of jurisprudence-medical seminars conducted by the Jordan Society of Islamic Medical Sciences, and published in 1995<sup>44</sup>:

- TOP is not allowed from the time of ovum implantation in the womb, unless a qualified, trustworthy committee of medical professionals decides that continuation of pregnancy will jeopardize the

mother's life. In that situation, the mother's life is given priority over that of the unborn.

- TOP is not justified on basis of non-life threatening conditions, such as, psychological or socio-economic considerations of the mother.
- TOP is not allowed in cases in which fetal malformations, proven by advanced contemporary means of diagnosis, to be compatible with life, or are remediable, or that may persist in the fetal body, mind or both, but that do not threaten its life. This ruling includes fetal exposures to medicines, radiological agents or infections that do not cause fetal death.
- In cases of some serious maternal medical diseases for example, heart diseases, cancer, advanced diabetes, chronic renal disease, disseminated lupus erythematosus that can become worse during pregnancy with permanent deterioration of maternal health, TOP before ensoulment will be justified.
- Some jurists expressed reservations on prohibition of TOP when continuation of pregnancy would threaten one of the mother's vital organs, e.g. losing her vision.
- A fetal malformation in which contemporary advanced means of diagnosis reveal incompatibility with fetal survival, is a justification for TOP.

Some jurists requested experienced medical professionals to present a clear list of fetal malformations that are incompatible with life.

**Beyond 120 days of gestation:**

The traditional estimated time of ensoulment, in the view of some jurists, the widely adopted verdict is against abortion except when continuation of pregnancy will endanger the mother's life. In this situation, the mother's life is given precedence, because it is the original and stable life, while the fetal life is secondary.

Another exception has been stated by Shaikh Shaltut and several other jurists<sup>45</sup>. They opined that TOP could be undertaken after 120 days from conception, if the fetus is affected by a serious, lethal malformation that can result in fetal death, prior to, or shortly after delivery, such as cases of absence of the heart or kidneys, anencephaly, and severe hydrocephaly. The latter two conditions, in addition, increase the need for cesarean delivery because they tend to present as breech and because of the risk of obstructed labor due to the large size of the head. Pregnancy termination after 24 weeks is considered preterm induction of labor. If this allows for safe vaginal delivery it will be another justification to the permissibility of the procedure even though the outcome will be a stillbirth or neonatal death.

A qualified, trustworthy committee of specialists should support these diagnoses<sup>43,45</sup>.

All schools of Islamic Jurisprudence (*Fiqh*) concur that in the event that pregnancy poses a threat to the life of the mother, then TOP would be justified.

Some contemporary jurists, however, expressed concern in situations where

pregnancy, after the 120 days period, threatens the mother's life, because ensoulment occurs at 120 days, and they consider that the unborn would, at that point in time, have equal right to life as that of its mother<sup>39</sup>.

One example that represents this situation is pre-eclampsia, which is rarely diagnosed prior to 120 days after conception and, if untreated, can lead to eclampsia, which could be fatal to both the mother and fetus<sup>46</sup>. To avoid this outcome, induction of labor is indicated in severe preeclampsia, after this 120 day period, although the unborn baby may not have a chance to survive.

In the view of other jurists, this dilemma can be resolved on the basis of the *Shari'ah*: principle: choosing the lesser of two evils<sup>44,45,47-49</sup>.

We will now discuss the issue of fetal malformations in more detail.

**Fetal Anomalies:****Medical Perspectives:**

In about 65% of cases, the etiology of fetal malformations is undetermined<sup>50-51</sup>.

In 25% of cases a genetic defect or a chromosomal anomaly is the cause.

Ten percent of the cases are due to external or environmental factors, including chemicals, toxins, medications, radiation exposure, microbial or other diseases.

Many fetal anomalies end up by spontaneous abortion, stillbirth, or neonatal death, immediately, hours or few days after delivery. However, many newborns survive with lifelong mental and / or physical anomalies. Fetal anomalies are detected in about 3% of all live births.

In an European study conducted in 2004, 43% of fetuses with anomalies were spontaneously aborted, 53% were born alive with anomalies, and 4% died in utero. Diagnosis of fetal anomalies was established antenatally (prior to delivery) in 64% of cases, and in 68% of those cases the diagnosis was made prior to the 24<sup>th</sup> week of gestation<sup>50</sup>.

Other reports in the literature point out to statistics with essentially similar implications.

With contemporary scientific and technical advances, a considerable percentage of fetal anomalies could be diagnosed antenatally.

These advances include modern realtime ultrasonography, especially 3- and 4-dimensional (3D and 4D sonography), and magnetic resonance imaging (MRI).

Modern day ultrasonography is safe, non-invasive, and can reliably help in diagnosis of many structural abnormalities, such as anencephaly, cleft lip/palate, congenital cardiac abnormalities and neural tube defects (NTDs), prior to 20<sup>th</sup> weeks of gestation<sup>52</sup>.

Chromosomal anomalies and some genetic diseases such as cystic fibrosis, sickle cell disease and Tay-Sachs disease can be diagnosed with 99% accuracy by examining fetal cells obtained either by chorionic villous sampling (CVS) between 9 and 11 weeks<sup>53</sup>, or by amniocentesis at 13-14 weeks of gestation. However, generally amniocentesis is performed at 16-20 weeks of gestation<sup>54</sup>. Neural tube defects can be diagnosed by measuring amniotic fluid alpha fetoprotein

obtained at amniocentesis. CVS cannot detect neural tube defects<sup>53</sup>.

It is important to state that some fetal anomalies, including life threatening ones, still cannot be diagnosed reliably before 20 weeks gestation, such as some types of lethal skeletal dysplasias<sup>53</sup>. (For a detailed discussion of prenatal diagnosis of fetal anomalies see Reference # 55).

### **Overview of TOP**

#### **For fetal malformations in Islamic jurisprudence:**

The advent of new modalities for prenatal diagnosis of fetal malformations resulted in the search for Islamic guidelines to determine if and when TOP is justified when a fetal anomaly is identified. However, we will first discuss the Islamic guidelines that attempt to decrease their incidence.

#### **Preventive measures in Islamic guidance:**

Muslim jurists are of the view that all necessary steps must be undertaken to protect women from giving birth to defective newborns by addressing causes of these occurrences<sup>56</sup>.

Prohibition of alcohol consumption and narcotics, as well as legal and moral measures to prevent exposure to sexually transmitted diseases, are significant interventions that reduce the incidence of fetal malformations.

Consanguinity is known to increase the incidence of some autosomal recessive genetic diseases such as hemoglobinopathies, cystic fibrosis and possibly some chromosomal anomalies,



such as Down syndrome (DS)<sup>56-57</sup>. This may be a reason to discourage such marriages.

### **Pre-implantation genetic diagnosis (PGD):**

Is a contemporary measure to reduce the incidence of congenital malformations.

PGD is a procedure undertaken to diagnose genetically defective or chromosomally abnormal embryos so as not to implant them into the womb.

It is performed in assisted reproductive centers, as a part of In Vitro Fertilization (IVF) procedures, when one or both of the married partners is genetically screened and found to be a carrier for a certain genetic disorder or a carrier of a chromosomal abnormality or at increased risk for the same if the woman is older than 35-40 years.<sup>56,58</sup>

In the IVF laboratories, the ovum of the wife is fertilized with her husband's sperms. After 3 days, there will be several early developing embryos (pre-embryos), at the stage of 8 cells. One or two cells are removed from each and subjected to molecular (DNA) and / or chromosomal analysis. If the abnormal gene is diagnosed in any of the pre-embryos tested, these (still at the IVF lab) are discarded. Two or three of the other pre-embryos are implanted into the wife's womb. Many serious genetic diseases could thus be avoided, including beta thalassemia, sickle cell disease, spinal muscular dystrophy, Tay Sachs disease, etc.

Moreover, since X-linked diseases are known to be passed on to only male children, it is possible, through PGD, to

discard all of the male pre-embryos and implant only female pre-embryos, thereby preventing transmission of diseases, such as hemophilia A, to the next generation.

Also karyotyping can be performed and some of the most common chromosomal abnormalities diagnosed. Only 2-3 pre-embryos that do not show such abnormalities are implanted.

PGD does not involve manipulation of genes in embryos, but it rather selects the pre-embryos that are free from the genetic disease or the chromosomal anomaly that a particular couple is at risk for, to be implanted into the wife's womb. PGD, in this context, is considered to be Islamically permissible. (For more details see Reference # 59).

### **Fetal therapy:**

Advances in Maternal Fetal Medicine, a subspecialty of obstetrics, has resulted not only in improved reliability but also specificity of diagnosis of fetal malformations and diseases. This led to better understanding of the natural course and prognosis of these anomalies. It also resulted in the development of means to treat some of these in utero. However, there are still many anomalies that cannot be corrected, for example structural defects such as anencephaly, chromosomal abnormalities and genetic diseases. However, even in some of the latter, treatment can be started in utero to improve the prognosis, for example some inborn errors of metabolism, such as congenital adrenal hyperplasia.

In- utero treatment can be:

1. Medical, for example digoxin to treat fetal cardiac arrhythmias, and steroids to correct fetal congenital atrioventricular block due to autoimmune diseases<sup>60</sup>.
  2. Surgical intervention, for example i.intra-uterine blood transfusion to treat severe anemia due to blood group incompatibility or fetal parvovirus infection<sup>61</sup>, ii. Laser coagulation of intraplacental communicating vessels in cases of Twin-Twin-transfusion syndrome<sup>62</sup>.
  3. Fetal in-utero surgery, for example excision of sacrococcygeal teratoma, or surgical treatment of bladder outlet obstruction<sup>63</sup>.
1. Whereas these are promising accomplishments, it should be stressed that many fetal malformations cannot yet be diagnosed prenatally and many of those that are diagnosed cannot be treated at present. Nevertheless the fact that many anomalies can be diagnosed before 120 days of gestation allows the consideration of TOP in some cases.

#### **Islamic rulings on abortion for fetal anomalies:**

A landmark *fatwa* (legal resolution) was issued by the Islamic Jurisprudence Council of the Muslim World League in Makkah al-Mukarramah in 1990<sup>64</sup>, which stated:

The Islamic Fiqh Council at the World Muslim League, in its 12<sup>th</sup> session, held in Makkah al-Mukarramah, on Saturday 15-22 *Rajab* 1410 H, 10-17 February 1990, has examined this issue, and after discussions among the respected council assembly and the

specialist medical professionals who attended the meeting for that purpose, the following decisions were adopted by the majority:

- In cases where pregnancy has reached 120 days from conception, it is not allowed to be aborted, even if the medical diagnosis revealed the fetus to be malformed, except when a trustworthy, qualified committee of specialist physicians decides that continuation of pregnancy represents a confirmed danger to the mother's life, in which case aborting the fetus is allowed, whether it is malformed or not, in an aim to prevent the worse of the two evils.
- Prior to 120 days of conception, if it is confirmed, by a report from a trustworthy, qualified committee and dependant on proper examinations by diagnostic equipment and laboratory testing, that the fetus has severe malformation that is not amenable to treatment, and, if it stayed and was born in time, its life will be very poor and will represent suffering to it and to its family, in which case its abortion is allowed, upon request of its parents.

The Council, in making this decision, advocates the treating physicians and the parents, to pursue *taqwa* of Allah, and to be clear and confident in making opinion in this matter.

It is to be noted that the decision was passed by the majority of votes, with abstention of the president, the late Shaikh Abdul Aziz Bin Baz.



**TOP in Rape Pregnancies:**

It is pertinent to note that although rape in itself is a sexual crime, it is certainly unlike adultery and fornication, in the sense that it is associated with force and violence against the victim's will<sup>65</sup>. It can, therefore, be argued that the woman has every right not to desire to carry the child of someone who committed such crime and will be a constant reminder of this assault. But deeper analysis reveals that pregnancies resulting from rape are those that have not been reported immediately, thus negating the usual proper immediate medical care. This usually includes treatment of physical injuries, prophylaxis for venereal diseases, medication to minimize the chance for a pregnancy, along with emotional support<sup>38,65</sup>.

The rape victim should seek immediate medical attention for possible prevention of pregnancy<sup>44,65</sup>.

The problem, in Muslim communities, is the delay in reporting rape by victims, for various reasons, especially the fear of being ostracized<sup>65,66</sup>. What generally happens is that rape is reported only after pregnancy had been established, at which time it becomes hard to medically establish whether the pregnancy is in reality the result of rape or of consensual sex<sup>44,65</sup>.

Rape pregnancies pose two pertinent considerations:

- For the sexually assaulted victim: Is it fair to carry the pregnancy to term?
- For the baby that is to be born, is it fair to carry the stigma as an illegitimate child?

The vast majority of Muslim jurists do not allow TOP as a result of rape. Some contemporary jurists, however, have revisited this issue in certain circumstance, including rape during brutal hostilities<sup>44,65,67</sup>.

The topic, under various circumstances, was subject of detailed discussions in a series of seminars conducted by the Jordan Society for Islamic Medical Sciences in 1995. The seminars included scholars in Islamic Jurisprudence (*Fiqh*) and specialists in medical sciences<sup>44</sup>. The following summary represents conclusions of these deliberations:

(1) When the victim presents immediately following the rape insult, there was consensus among jurists to allow medical measures to prevent pregnancy, including emergency contraception "the morning after pill", and menstrual extraction if needed.

(2) If the presentation to medical attention takes place after early conception, with positive pregnancy tests indicating implantation of the embryo in the womb "*Uluq*" then TOP is not allowed by most jurists.

(3) In exceptional circumstances, in certain societies, where the victim is seriously threatened to be killed as a result of rape-induced pregnancy, TOP is justified to save her life, unless the society or state could provide effective measures to safeguard the victim.

(4) In a true Muslim society, the basic principle is to avoid TOP in any of its stages. The fetus should be protected. The pregnant woman / mother should be adequately cared for by the family and society. The fetus when born has to be fully cared for socially and

financially as a Muslim individual. The problem occurs only if the society is not truly a Muslim one.

(5) In situations of mass rape, such as in cruel aggressive wars against Muslim societies, jurists applied the same standards as those in individual cases of rape. Some jurists stated: the situation in mass rape is more clear and the general circumstances are more understood. The Muslim society in such circumstances is more capable to raise the children as Muslims, and to render due care to the psychosocial problems of rape victims.

In all these situations the baby is innocent and has the right to be properly nurtured as a Muslim.

(6) The same ruling also applies to pregnancies resulting from rape or fornication from persons who are *Maharim* (incest).

However, one jurist reminded the audience of an old jurist opinion that allows TOP prior to ensoulment at 40 days for no reason. He stated that the situation of rape is a strong justification, in view of its social and psychological ramifications.

In this context, Shaikh Yusuf al-Qaradawi answered a question about Muslim rape victims during the Serbian aggression in Bosnia<sup>67</sup>. Here is his *fatwa*:

Undoubtedly, raping a Muslim woman by an evil enemy is a strong reason for the victim, and for her family, to have an abortion, for she will hate this fetus. The earlier in pregnancy the better (the stronger is the reason to allow TOP).

This dispensation is to be given because of necessity. The degree of necessity should be determined by religious

scholars, doctors and people of wide experience and wisdom, otherwise, the original rule (of prohibition) should be applied. Moreover, there is nothing wrong for a Muslim woman, who has suffered this disaster, to keep the fetus. The child, when born, will be a Muslim child. The Muslim society is obliged to take care of his upbringing. They should not leave the burden on his poor, suffering mother. And Allah ﷻ knows best.

### **Embryos outside the womb (including Prenatal diagnosis and therapy):**

These issues were subjects of several discussions and publications in the Islamic world, in which both Muslim jurists and specialists in medical sciences participated<sup>68-70</sup>.

A series of seminars were held at the Islamic Hospital in Amman-Jordan, by the Jordan Society of Islamic Medical Sciences<sup>71</sup>. In this series of seminars, outcomes of Jurisprudence rulings by other scholars were reviewed and taken in consideration.

The following are the main *Shari'ah* guidelines adopted:

1. Scientific research, including testing to diagnose genetic disorders, is allowed on sperms, and ova.

Islamic ethical standards must be observed through ethical committees in which medical experts and Muslim scholars participate. Such standards include prohibition of use of unapproved fertilization procedures. Obtaining ova for such research should have ethically approved purpose, (in a subject with significant personal or

family history of fetal disorders, recurrent abortions, fetal malformation, specific genetic disorders ...etc). The practicing medical team should weigh the hazards and frequency of fetal disorders, against the hazards of the procedures to establish prenatal diagnosis.

## 2. Fertilized ova in IVF laboratories:

- They do not acquire consideration as human fetuses, unless restored to the mother's uterus.
- Experimentation on them is permissible to diagnose genetic disorders, within the above mentioned *Shar'iah* guidelines. This includes surplus fertilized ova in IVF laboratories.
- Practitioners are allowed to avoid restoring to the uterus, any fertilized ova, if they realize that such ova carry significant genetic disorders or chromosomal abnormalities.

3. Administration of specific genetic materials to the fertilized ovum, with the aim of substitution of abnormal genes by normal ones, to prevent development of genetic disorders, is permissible, provided no interference is undertaken in the other genetic composition, including the usual, non pathologic features, such as color of eyes, height, color of skin ..etc.

4. Experiments on fertilized ova in the lab, to recognize the sex of fetus, is allowed, and can be used not to implant it in the uterus, if that sex significantly predisposes it to have certain heritable

disorders, for example pre-embryos in cases of X-linked diseases.

Experimentation on fertilized ova in the lab, with the purpose of choosing certain fetal sex, other than in the above-mentioned situation is not permissible in the opinion of the majority of Muslim scholars.

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## CHAPTER THREE

### FETAL SEX IDENTIFICATION AND PRE-SELECTION

*Aly A. Misha'l\*, Hossam E. Fadel  
Abul Fadl M. Ebrahim, and Musa M. Nordin*

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#### Scientific Overview:

Somatic cells of the human body contain 44 chromosomes, termed “autosomes”, and 2 sex chromosomes; either XX or X and Y. The chromosomes carry the genetic encoded information, responsible for determination of various human heritable features.

In males, the spermatozoa have 23 chromosomes, and are of 2 types, one carrying a Y and the other an X

chromosome. In females, each ovum has 23 chromosomes, including one X chromosome.

The karyotypic sex of the embryo is established at the time of fertilization<sup>1</sup>. If the spermatozoon carrying the Y chromosome fertilizes the ovum which has an X chromosome the resulting embryo will be a karyotypic male, and will carry the XY genotype.

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\*Aly A. Misha'l, MD, FACP  
Senior Consultant in Endocrinology  
Chairman, Institutional Review Board,  
Islamic Hospital, Amman-Jordan  
E-mail: [fimainfo@islamic-hospital.org](mailto:fimainfo@islamic-hospital.org), [aly.mishal@yahoo.com](mailto:aly.mishal@yahoo.com)



On the other hand, if the spermatozoon carrying the X chromosome fertilizes the ovum, the resulting embryo will be a karyotypic female, and will carry the XX genotype. Subsequently the stage of sexual differentiation gradually sets in to form the phenotypic sexual appearance.

Prior to the 6<sup>th</sup> week after fertilization, embryos of both sexes differ only by their karyotypes. In both, there is a primitive bipotential gonadal area termed "the genital ridge" composed of primitive, undifferentiated germ cells<sup>2,3</sup>. At gestational age of 6-7 weeks, the primitive bipotential gonad starts to differentiate, according to the karyotype.

In the XY embryo, the sex-determining region (SRY)<sup>4</sup>, located on the short arm of Y chromosome, acts towards differentiation of the primitive, bipotential gonad into a testis, under the influence of several other determining factors, in an integrated, cascade manner to effect the sex-differentiation process<sup>5</sup>.

On the other hand, in the XX embryo, due to the absence of SRY, ovaries will develop.

It should be noted that both sexes, at their very early stages of sexual differentiation, have both the paramesonephric duct (Mullerian duct), as well as the mesonephric duct (Wolffian duct)<sup>6</sup>. In the male fetus, under the influence of testosterone and the Mullerian inhibiting factor (MIF) secreted by the fetal testis, the Wolffian duct develops into the seminal vesicles, vas, epididymis and ejaculatory duct.

The Mullerian duct involutes then disappears under the effect of MIF.

In the female fetus, with no testicular factors, the Wolffian duct atrophies, and the Mullerian duct develops into the fallopian tubes, the uterus, and upper vagina. In some cases, these processes may not proceed homogeneously. Opposing influences by various determining factors of sex differentiation, some of which have been elucidated, and others are yet to be determined, may produce varying mixtures of anomalies of male and female phenotypic sexual features in the bipotential gonads, the pelvic organs or the external genitalia resulting in various types of hermaphrodites.

The glorious Quran states the fact that the sperms are the determining factor in sex selection, a fact only known less than a century ago.

"وَأَنَّهُ خَلَقَ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَىٰ مِنْ نُطْفَةٍ إِذَا تُمْنَىٰ"

*"That He did create in pairs males and females. From a seed (semen) when lodged (in its place)"*<sup>7</sup>.

In another verse:

"أَلَمْ يَكْ نُطْفَةً مِّن مَّنِيٍّ يُمْنَىٰ، ثُمَّ كَانَ عَلَقَةً فَخَلَقَ فَسَوَّىٰ،

فَجَعَلَ مِنْهُ الزَّوْجَيْنِ الذَّكَرَ وَالْأُنثَىٰ"

*"Was he (the human being) not a drop of sperm emitted then did he become a leech like clot. Then did (Allah) make and fashion him in due proportion and of him He made two sexes; male and female"*<sup>8</sup>.

It is also pertinent to note that Prophet Muhammad (ﷺ) has alluded to this issue of sex differentiation, fourteen centuries prior to its scientific elucidation. This is what we understand

from the following prophetic *Hadith*, as narrated by Huthaifa:

" إذا مر بالنطفة ثنتان وأربعون ليلة بعث الله إليها ملكاً فصورها وخلق سمعها وبصرها وجلدها ولحمها وعظامها، ثم قال: يا رب ذكر أم أنثى؟ فيقضي ربك ما شاء، ويكتب الملك، ثم يقول: يا رب أجله؟ فيقول ربك ما شاء، ويكتب الملك، ثم يقول: يا رب رزقه؟ فيقضي ربك ما شاء، ويكتب الملك، ثم يخرج الملك بالصحيفة في يده فلا يزيد على ما أمر ولا ينقص".

"When forty two nights have passed over the drop of semen (in the womb), Allah sends an angel who pictures it and witnesses the creation of its hearing, vision, skin, flesh and bones, then the angel asks: O Allah is it a male or female? and Allah decides what He wishes, and the angel writes. Then the angel asks: O Allah, his destiny? Allah decides what He wishes and the angel writes. The angel then asks: O Allah, his sustenance? Allah decides what He wishes, and the angel writes. Then the angel emerges out with the paper in his hand, after which no addition or omission takes place to what he was ordered to write"<sup>9</sup>.

This *Hadith* points to the external features of the fetal sex at 42 nights from conception, and, in no way does it mean the fetal sex at the molecular level has not been already determined<sup>10</sup>. And Allah (SWT) knows best.

### **Traditional Means of Fetal Sex Determination<sup>11, 12</sup> :**

Along human history, there has been well maintained balance between male and female newborns all over the world, in all races, and ethnic groups resulting in almost equal number of each gender. However, on an individual

level, some couples prefer to have a boy or a girl. Therefore, there has been many attempts by lay people, and even some medical practitioners to consider means of promoting conceiving a fetus of one sex or the other (fetal sex selection) by methods based on general observations.

The following are the main ones:

1. Sexual intercourse timing: When nearer to ovulation time, the possibility of pregnancy with a male fetus is more, since the Y carrying spermatozoa move quicker and have a shorter life span, as compared to the X carrying ones.

2. Mothers' diet: When it is more salty, less alkaline, and contains less calcium/phosphorus and milk, the possibility of pregnancy with a male fetus increases. On the other hand, when the pregnant woman's diet is more alkaline, contains more calcium and phosphorus, and is poor in sodium, the possibility of pregnancy with a female fetus is increased.

3. Longer intervals between sexual intercourses favors pregnancy with males, especially if the interval is more than 3 months. It has been observed that the 1<sup>st</sup> pregnancy is most likely to be with a male fetus. Also it has been observed that male pregnancies are more probable during wars.

4. Adjustment of pH (acid / alkaline milieu) of the vagina: Y- carrying sperms are less resistant to an acid medium, and fare better in an alkaline medium. On the other hand, the X-carrying sperms are less resistant to an alkaline medium and fare better in an acid medium.

All these observations, however, lack scientific validity.

### Scientific Means of Fetal Sex Identification and Selection:

Medical professionals have efficient capabilities to identify fetal sex at various stages of development. Such tools are being further improved and developed.

(1) Selection of sperms for fertilization: In a semen specimen the spermatozoa carrying the X and Y chromosomes are separated from each other based on their different physical characteristics, weight and mobility speed, and the selected one could be used to fertilize the mother's ovum through intra-uterine insemination. However, due to the lack of certainty of complete X and Y carrying sperms separation, this procedure is not pursued any more.

(2) Pre-Implantation Genetic Diagnosis (PGD):

PGD is a procedure whereby certain inheritable (genetic) conditions and the fetal sex could be diagnosed in the embryo prior to implantation into the mother's womb<sup>1</sup>.

In the in-vitro fertilization (IVF) laboratories, the ovum of the mother is fertilized with the father's sperms. After approximately 3 days, the early developing embryo, at the stage of 8 cells called blastomeres, one or two cells are removed by a special technique, and subjected to DNA analysis, to identify certain genetic traits and for karyotyping. Primarily PGD is used to diagnose certain genetic diseases for which the responsible genetic mutation has been identified. The pre-embryo(s) that are not found to carry the abnormal gene are then implanted into the mother's womb. If

PGD is used for fetal sex selection, the pre-embryo of the desired sex is chosen for implantation<sup>13</sup>.

(3) Fetal sex identification after implantation in the mother's womb: For that purpose, several diagnostic procedures are utilized, including:

i. Chorionic villous sampling (CVS)<sup>14</sup>, a procedure in which chorionic villous cells are aspirated. They are fetal cells. These cells are then subjected to karyotyping and fetal sex determination. This procedure is performed between 11 and 12 weeks of gestation.

ii. Amniocentesis<sup>15</sup>, and karyotyping of the amniotic fluid cells (amniocytes). The procedure is usually done between 14 and 16 weeks of gestation.

iii. Ultrasonography<sup>16</sup>, conducted as early as the 14<sup>th</sup> week of gestation, to identify the fetal external genitalia.

### Fetal Sex Selection in the Islamic Tradition:

The issue of pre-selection of fetal sex was not addressed by verses of the Glorious Qur'an or *Ahadith* of the Prophet (PBUH). It is a product of scientific advances, in which contemporary jurists had to use *Ijtihad* in their deliberations, along the broad guidelines derived from these two original sources of *Shari'ah*. As expected in these situations, *Shari'ah* scholars may have different views.

It is noteworthy that traditional trials aiming at fetal sex selection were not opposed by jurists apparently because they were 'natural'. It is the contemporary technologies and procedures that made jurists examine

them much more carefully. There is real concern about the possibility of disrupting the male-female balance in societies. There are also concerns about the possibility of fetal malformations, and the unnecessary exposure of *awrah* (private parts) in addition to all the pitfalls associated with IVF procedures. Thus jurists have generally considered fetal pre-selection not permissible unless there is a necessity, or a need that reaches the degree of a necessity. Muslim jurists are in agreement that fetal preselection is not permissible on the basis of preference of one sex over the other, in view of its contradiction with Allah's patterns (*Sunan*) in His creation, and Allah's pre-determination<sup>17</sup>, in addition to the threat it poses to the long standing equilibrium between males and females in various times and societies. Jurists pointed to the Qura'nic verses that disapprove the preference of one sex over another (usually male over female). One of these verses states:

"وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ،  
يَتَوَارَىٰ مِنَ الْقَوْمِ مِن سُوءِ مَا بُشِّرَ بِهِ ... "

*"When news is brought to one of them of (the birth of) a female (child), his face darkens, and he is filled with inward grief!"*<sup>18</sup>.

And the next verse ends by a condemning statement:

"أَلَا سَاءَ مَا يَحْكُمُونَ "

*"Ah! What an evil (choice) they decide on"*<sup>18</sup>.

Some Muslim jurists deduced from the permissibility of making *du'a* (supplication) to Allah requesting a male newborn, that it is permissible to pursue means to fulfill this aim, based

on the broad *Shari'ah* guideline "what is permissible to request (from Allah), is permissible to pursue". One of the conditions of *du'a* is not to request the impermissible<sup>19</sup>.

In the Glorious Qura'n, the Prophet Zakariyya prayed to Allah (ﷺ) saying:

"...وَكَانَتْ امْرَأَتِي عَاقِرًا فَهَبْ لِي مِن لَّدُنكَ وَلِيًّا"

*"...But my wife is barren: so give me an heir as from yourself"*<sup>20</sup>.

And Allah (ﷺ) replied (His prayer was answered):

"يَا زَكَرِيَّا إِنَّا نُبَشِّرُكَ بِغُلَامٍ اسْمُهُ يَحْيَىٰ .... "

*"O Zakariya! We gave you good news of a son: his name shall be Yahya"*<sup>21</sup>.

In this context, it is pertinent to repeat stressing the non-permissibility of requesting fetal pre-selection on the basis of preference of one sex over the other, as outlined above.

It has been reported by some jurists that procedures to identify or select fetal sex contradict the implications derived from Qura'nic verses that knowledge of intrauterine fetal conditions is the exclusive knowledge of Allah (ﷺ).

Any human attempt to interfere in fetal sex identification or selection, represents interference in the divine will of Allah (ﷺ). Qura'nic verses quoted to support these views include:

"اللَّهُ يَعْلَمُ مَا تَحْمِلُ كُلُّ أُنْثَىٰ وَمَا تَغِيصُ الْأَرْحَامُ وَمَا تَزْدَادُ  
وَكُلُّ شَيْءٍ عِنْدَهُ بِمِقْدَارٍ "

*"Allah does know what every female (womb) does bear, by how much the wombs fall short (of their time or number) or do exceed. Every single thing is before His sight, in due proportion"*<sup>22</sup>.

"هُوَ الَّذِي يُصَوِّرُكُمْ فِي الْأَرْحَامِ كَيْفَ يَشَاءُ..."

“He it is who shapes you in the wombs as He pleases ....”<sup>23</sup>.

Some contemporary Muslim jurists have presented answers to this apparent contradiction, and concluded that Allah (ﷻ) has detailed divine knowledge of intrauterine fetal conditions, including its destiny, life, death, future happiness, or misery, faith or disbelief<sup>24</sup>. It is a fact that with modern technology, ultrasonography, karyotyping, and DNA analysis, we know many features of the fetus as well as its genetic makeup, including its sex, but there are many scientifically unknowable facts, such as its destiny, future, happiness, faith, time of death... etc, that are only known to Allah (ﷻ).

The new scientific discoveries in genetics and inheritance, are new innovations and discoveries of contemporary times that were not known by our ancestors. When Allah (ﷻ) granted this new knowledge to man, that enabled him to identify fetal sex, it has become incumbent on us to understand the implications of the above cited Qura’nic verses while continuing to be absolutely certain of the fact that Allah (ﷻ) has the exclusive knowledge of the unseen (*ghayb*)<sup>25</sup>.

Ibn Kathir<sup>26</sup>, in his *Tafsir* (Exegesis) stressed the fact that the keys of the unseen (*ghayb*) are the exclusive knowledge of Allah (ﷻ), and that no individual could acquire this knowledge unless Allah (ﷻ) grants him/her this knowledge.

Al-Sa’adi<sup>27</sup>, in *Tafsir al-Karim al-Rahman*, reported that: It has been decided that Allah (ﷻ) has full

knowledge of the unseen (*ghayb*) and the open (*Shahadah*), the outer and the inner. However, Allah may choose to grant some of this knowledge to His worshipers (servants).

This concept has also been adopted by several other commentators<sup>28-31</sup>.

It is therefore understood that fetal sex identification does not contradict the implications of Qura’nic verses and prophetic *Ahadith*. The physician only utilizes scientific knowledge, facilitated by Allah, to identify some features of the fetus inside the womb. Allah (ﷻ), with His vast wisdom and knowledge, may choose how and when to reveal some of His knowledge to certain people, especially scientists who endeavor to study and explore Allah’s creation, including fetal sex. Allah (ﷻ) has not facilitated exposure of knowledge of certain fetal features, such as the fetal future, happiness, miseries, faith or disbelief<sup>32-33</sup>.

Allah (ﷻ) states:

"وَمَا تَشَاءُونَ إِلَّا أَنْ يَشَاءَ اللَّهُ رَبُّ الْعَالَمِينَ"

“But you shall not will except as Allah wills...”<sup>34</sup>.

This verse teaches us that nothing in this world is beyond Allah’s knowledge and control.

Imam Al-Qurtubi alluded to the importance of scientific research and experimentation to elucidate some facts that have been thought to be part of the unseen (*ghayb*). He states: “By long experience, medical practitioners may be able to know issues related to pregnancy with males or females, and other issues.... and their experiences may fail and knowledge remains the exclusive ownership of Allah (ﷻ)”<sup>35</sup>.



If human scientific knowledge in modern times, develops to the levels of fetal sex identification and selection, it is looked upon as merely a scientific breakthrough facilitated by Allah with His Will and Desire<sup>33</sup>.

Dependent on these explanations and understandings, some contemporary jurists adopted the opinion that fetal sex identification and selection are permissible in situations of a necessity or a need that reaches the order of a necessity.

### **Overview of Islamic Jurisprudence opinions on fetal sex identification and selection:**

There are no clear Qur'anic verses or prophetic *Ahadith* that address the issue of fetal sex identification or determination. Moreover, past Muslim jurists and scholars from various Islamic schools of thought, had no input on these issues that had never took place at their times.

Contemporary jurists have provided general *Shari'ah* standards that include controls and safeguards to preserve the long-standing inherited balance between males and females that had prevailed throughout human history.

These *Shari'ah* controls have formed basis for the non-permissibility of fetal sex selection, unless there is a significant considered necessity or a significant need that takes the consideration of a necessity.

In the Medical-*Fiqhi* Encyclopedia, two viewpoints were stressed<sup>36</sup>.

- Some scholars opined that it is permissible to resort to fetal sex selection in a family with children

of only one sex, with no preference of one sex over the other, which is against Allah patterns (*Sunan*).

- Other scholars, however, advocated leaving sex selection to the wisdom and the will of Allah (ﷻ) to decide, rather than to what we desire as individuals.

Professor Abdel Nasser Abul Bassal analyzed this issue, and approved genetic identification of fetal sex in families with proven history of certain inherited sex-linked diseases or malformations.

He, however, advocated application of the principle of *Sadd ul- Tharai'a* or (blocking the lawful means to an unlawful end) to disallow fetal sex selection in view of contemporary widespread noncompliance with guidelines, and to unfounded or alleged justification of necessities or needs related to sex selection<sup>37</sup>.

In his book *Al-Thukurah wal Unuthah* (Masculinity and Femininity)<sup>38</sup>, Dr. Mohammad Ali Albar presented a detailed medical- jurisprudence discussion, and outlined two jurist opinions:

The first opinion prohibits fetal sex selection, in view of possibility of disturbance of the male-female balance, unjustified exposure of *awrah*, and implied objection to Allah (ﷻ) pre-determination.

The second opinion allows fetal sex selection in a family with increased number of children from one gender (usually female children) to fulfill their desire to have children from the other gender (usually male children). In their opinion, seeking possible means to fulfill this social need, which is a



human instinct, is permissible as a form of seeking remedy. They opine this undertaking is limited in certain families in the large society, which should not disturb the male-female balance in society.

Some jurists went as far as allowing using IVF technologies of pre-implantation genetics diagnosis (PGD) for fetal selection, with all its known precautions<sup>38</sup>.

The Islamic Organization of Medical Sciences (IOMS) refrained from adopting a definite position on the question of fetal sex selection which was addressed in the (Seminar on Human Reproduction, 2005), and merely recorded the following scholars' views<sup>39</sup>:

- There was an agreement that the Islamic legal viewpoint is that fetal sex selection is unlawful when practiced on a national level.
- On an individual level, however, some of the scholars participating in the seminar, believed there is nothing legally wrong with the attempt to fulfill the wish of a married couple to have a boy or girl through available medical means, while other scholars believed it is unlawful, for fear that one sex might outnumber the other.

In 2007, The Islamic Jurisprudence (*Fiqh*) Academy of the Muslim World League, in its 19<sup>th</sup> session, held on 22-27 of *Shawwal* 1428 *Hijri* (3-8 November 2007) issued its 6<sup>th</sup> decision concerning the issue of fetal sex selection<sup>40</sup>:

The Council stressed the concept that a Muslim should submit to the destination and decree of Allah (ﷻ),

and acceptance of Allah's provision of progeny, whether male or female, and to thank Allah for that, because the real choice is that of Allah (ﷻ). In the Glorious Qur'an there is dispraise of lack of submission and lack of consent, as traditionally expressed by the *jahiliyyah* people for the female newborn.

The Glorious Qur'an states:

"وَإِذَا بُشِّرَ أَحَدُهُمْ بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ،

يَتَوَارَىٰ مِنَ الْقَوْمِ مِن سُوءِ مَا بُشِّرَ بِهِ ... "

*"When news is brought to one of them of (the birth of) a female (child), his face darkens, and he is filled with inward grief!"*<sup>18</sup>.

There is nothing wrong for a person to wish for a male or female child, as indicated by Qur'anic notion of some prophets making supplication (*dua*) to Allah to grant them a male child.

According to the above, the Council decided the following:

First: Fetal sex selection, using natural means, such as diet regimens, change of vaginal milieu by douches and timing of intercourse, is allowed, in view of the permissibility of these means.

Second: Any medical intervention for the purpose of fetal sex selection is not permissible, except in situations of therapeutic necessity, in cases of inherited diseases that affect only males and not females, or vice versa, in which cases medical intervention is allowed, under approved *Sharia'h* restrictions, provided the approval of a specialized committee of at least three qualified, trustworthy Muslim medical specialists, that provides a report by unanimous decision, which is referred to a specific

*Fatwa* authority to make the decision it deems proper.

Third: It is necessary to establish regulatory bodies for direct and meticulous scrutiny on hospitals and medical centers that perform such procedures in Islamic countries to prevent non-compliance with this decision. All concerned authorities in the Islamic countries should issue regulations and instructions to this effect.

### **In Vitro Fertilization and Pre-Implantation Genetic Diagnosis (PGD) for Fetal Sex Pre-Selection:**

For infertile couples in whom traditional treatment, for example induction of ovulation has failed, IVF is usually performed. Fetal sex selection can be done using PGD described above as part of the IVF procedure.

Some parents, however, may request their treating specialists to use IVF and PGD for the sole purpose of fetal sex selection.

In most countries, there are adopted regulations that ban fetal sex selection by any means, unless there are medical justifications, such as the cases of sex-linked inherited diseases, for example hemophilia A<sup>1</sup>.

*Shari`ah* considers natural sexual intercourse within the marriage bond as the accepted means of conception.

When Muslim jurists approved various methods of assisted reproductive technologies, including IVF, they imposed a precondition that no such technologies could be allowed unless there are no other ways of inducing pregnancy. This consensus was based

on *Shari`ah* principles of preventing harms associated with various procedures involved in IVF and other assisted reproductive technologies, including lineage mixing and unnecessary exposure of private parts (*Awrah*).

The Islamic *Fiqh* Academy, of the Muslim World League, in its 7<sup>th</sup> session held in 1992, addressed the issue of artificial assisted reproduction as follows:

“The method is, in principle, acceptable in itself from the point of view of Islamic Law. It is, however, not completely devoid of the possibilities of confusion in its requirements and circumstances under which it is conducted. Therefore, it should be resorted to only in cases of extreme necessity and when general legal controls are in operation”<sup>41</sup>.

In his book *Ethics of Artificial Reproduction*, Dr. Mohammad Ali Al-Bar suggested these technologies should not be resorted to unless all other means of natural reproduction have failed<sup>42</sup>.

A similar standpoint was adopted by the Jordan Society of Islamic Medical Sciences<sup>43</sup>.

Using IVF and other technologies, i.e. PGD for the sole purpose of fetal sex selection has not been specifically addressed by Jurisprudence or *Fatwa* councils. It is, however, understood from the above *Shari`ah* verdicts, that IVF and similar technologies are not permissible if used for the sole purpose of fetal sex selection for non medical reasons. This issue deserves further discussion by Jurisprudence and *Fatwa* councils to reach at clearer verdict.

### Summary of jurists' opinions:

(1) Identification of fetal sex prior to birth: There is no juristic prohibition<sup>38,44</sup>. It does not entail aggression on the exclusive knowledge of Allah (ﷻ). Even so, some jurists are of the opinion that identifying the fetal sex is not permissible except in cases of certain serious inherited sex-linked diseases, for example hemophilia A, and within sound medical and jurisprudence controls.

#### (2) Fetal sex pre-selection:

As in other situations where no clear guidance exists in the Qur'an and *Sunnah*, jurists have various opinion (*Ijtihad*) that may tend towards agreement, objection or abstention.

There is general agreement that the desire of parents to decide on sex selection of their future children, should be subject to a delicate balance between its merits and evils<sup>33,42,44</sup>.

Any Jurisprudence verdict to deal with this issue, should be based on clear supporting evidence, in compliance with jurisprudence norms related to *Maqasid al-Shari'ah*, in view of consequences on the long-preserved balance between sexes, and on protection and preservation of the human race from any waste, squander or obstructive acts. It is, therefore, neither acceptable to absolutely ban it, nor to absolutely allow it. Verdicts in each individual case may differ according to the circumstances of individuals and families<sup>32,45</sup>.

There is consensus that fetal sex selection is not permissible as a general policy in the society<sup>32,33,42,44-46</sup>.

Fetal sex selection could be allowed in special individual cases in families with considered needs and causes that render sex selection a considered necessity, according to the judgment of trustworthy Muslim medical practitioners<sup>42,45,46</sup>, within *Shari'ah* boundaries and controls, that include:

#### ▪ Health related justifications:

Such as families with known sex-linked inherited diseases e.g hemophilia A which affects only male fetuses. Families could avoid these diseases by selecting a female fetus.

Assessment of the need for fetal sex selection should be undertaken by an experienced, trustworthy Muslim medical practitioner. Some jurists demanded approval of a committee of experienced, trustworthy medical practitioners.

#### ▪ Psychosocial justifications:

Such as married couples who have children from one sex, but none from the other. Some jurists allowed sex selection for one or two children from the desired sex, without excess. They considered fetal sex selection as a need that may be considered as a legitimate necessity.

A seminar was held in Amman-Jordan in 2000 with participation of 11 jurisprudence scholars and 7 medical specialists<sup>47</sup>. Nearly half of them opposed the procedure unless it is conducted for a clear necessity such as in families with certain inherited sex-related diseases.

An equal group of jurists opined the procedure is permissible, within recognized *Shari'ah* boundaries and safeguards on individual, case-by-case basis according to special needs, as this

procedure will not end up in disturbing the balance between males and females in society. Thus the fulfillment of needs for families with children from only one sex is considered legitimate.

Dr. Abbas Al Baz<sup>48</sup> also opined that it is permissible for a family with increased number of female children, with no male ones, to resort to a trustworthy Muslim physician to preselect a male baby only once or twice without exceeding the permissible need which should be judged carefully, without excess.

Other jurists, however, disallowed sex selection on this basis, and allowed it only in situations of therapeutic necessity<sup>39,42</sup>. Regardless of disagreements on this particular issue, there is general agreement on the following:

A. Parents must not resort to fetal sex selection at the beginning of marital life, whether they desire a male or female child. They should only resort to it when, and if, a justified need arises.

B. Fetal sex selection is not permissible on the basis of preference of one gender against another.

C. Sex selection by any form of aggression on already formed and implanted fetus in the mother's womb, is prohibited, and considered as unlawful termination of pregnancy (TOP), unless there is a necessity considered by *Shari'ah*.

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## CHAPTER FOUR

### PLASTIC, COSMETIC AND RECONSTRUCTIVE SURGERY AND PROCEDURES

*Aly A. Misha'l\*, Hossam E. Fadel  
Abul Fadl M. Ebrahim, & Musa M. Nordin*

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\*Aly A. Misha'l, MD, FACP  
Senior Consultant in Endocrinology  
Chairman, Institutional Review Board,  
Islamic Hospital, Amman-Jordan  
E-mail: fimainfo@islamic-hospital.org , aly.mishal@yahoo.com



## Introduction:

Beautification practices in the past were largely confined to external procedures aiming at improving features of the face, skin, hair and teeth.

Currently these practices have developed gradually and steadily into surgeries and procedures that became distinct surgical specialties.

In past Islamic heritage, the issues of beautification and shape-improvement practices were tackled by jurists, on the basis of *Shari'ah* – derived principles, which have been outlined recently by Prof. Abdul-Nasser Abul Bassal, in his presentation to the Islamic International *Fiqh* Academy, held in Malaysia, July 9-14, 2007<sup>1</sup>:

The presentation lays down sound foundation for understanding Islamic concepts towards the whole issue of beautification procedures. The following are the salient points:

1. Human dignity and honor, as implied by the Qur'anic verse:

".... وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ.."

"...And We have honored the sons (Progeny) of Adam...."<sup>2</sup>.

The human race was favored and endowed by this merit. Allah (ﷻ) established this principle in His creation of human beings.

2. The human race was created in the best of moulds: Allah (ﷻ) says:

"لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ"

"....And We have created man in the best of moulds"<sup>3</sup>.

The basic original human creation was divinely designed to be sound, perfect and devoid of defects and blemishes, beautiful in outlook and function to ensure fitness of the human beings for what they were created for, as stated in the Glorious Qur'an:

"الَّذِي خَلَقَكَ فَسَوَّاكَ فَعَدَلَكَ"

"It is He who created you, fashioned you in due proportion, and gave you just bias (evenness and balance)"<sup>4</sup>.

"وَصَوَّرَكُمُ فَأَحْسَنَ صُورَكُمْ..."

"...And has given you shape, and made your shapes beautiful ..."<sup>5</sup>.

From the above Qur'anic verses, Muslim commentators on the Glorious Qur'an deduced that Allah (ﷻ) created man in the best of shape, granted him the most perfect image and moulded him in the best of moulds<sup>6</sup>.

3. The principle of "original creation" is the main guidance to jurists to decide on whether any therapeutic undertaking represents true fulfillment, or negation, of this original creation.

4. People were created in different images, shapes and colors, according to the Qur'anic verse:

"وَمِنْ آيَاتِهِ خَلْقُ السَّمَاوَاتِ وَالْأَرْضِ وَالاخْتِلَافُ الْاَلْسِنَتِكُمْ وَالْوَالِدِكُمْ اِنَّ فِي ذَلِكَ لآيَاتٍ لِّلْعَالَمِينَ"

"And among His signs is the creation of the heavens and the earth, and the

*variations in your tongues (languages) and your colors; Verity in that are signs for those who know”<sup>7</sup>.*

This represents a principle to maintain human variations and differences that should not be changed or replaced, unless there are significant justifications acceptable in compliance with *Shari`ah* goals.

5. Acceptance of divine destiny and decree is one of the basics of faith (*Iman*)<sup>8</sup> It includes acceptance of what Allah (ﷻ) grants of various human body features.

6. Beauty and beautification, in its general and comprehensive concept, is an acceptable and permissible quest.

Allah (ﷻ) says in the Glorious Qur’an:  
 "قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ.."

*“Say: Who has forbidden the beautiful (gifts) of Allah, which He has produced for His servants, and the clean and pure things (which He has provided) for sustenance”<sup>9</sup>.*

Prophet Muhammad (ﷺ) said:

"إن الله جميل يحب الجمال"  
 “Allah is beautiful and He loves beauty”<sup>10</sup>.

In Islamic culture, beauty is not solely confined to external apparent features, but includes internal beauty.

7. Humans do not own their bodies and organs. These are (*amanat*) held in trust by man, who is enjoined to safeguard

them and prevent any aggression on them. On this basis, beautification undertakings are judged on the same considerations of other therapeutic means that are justified in *Shari`ah* according to whether they are deemed as necessities or considered needs.

8. Beneficence, non-maleficence and removal of harm<sup>11</sup>, by all possible and approved means, are *Shari`ah*-ordained rulings to seek remedy to cure disease and human suffering, physical or psychological.

In this context, plastic and reconstructive procedures are looked upon as permissible if provided within the framework of *Shari`ah* principles and controls.

The issue of psychological harm has not been addressed by past Muslim jurists. Some contemporary jurists opined that harm includes both physical and psychological domains.

Two *fatwas* were issued by senior jurists in the Supreme Council of Jurists in Saudi Arabia that permitted surgical correction of facial features that caused psychological harm<sup>12</sup>.

The Islamic International *Fiqh* Council-OIC approved correction of ugly features that cause physical or psychological harm<sup>13</sup>.

The Islamic International Code for Medical and Health Ethics-IOMS, also approved using plastic surgery to correct physical or psychological harm<sup>14</sup>.

In this context, caution should be undertaken towards psychological

deviations whereby some individuals may suffer from lack of satisfaction and acceptance of some physical features, due to fantasies, imaginations, imitation, or, in some instances, commercial marketing motives. Such deviations may need psychological evaluation, rather than plastic surgeries.

These aspects demonstrate the significance of proper consultations and evaluations by expert physicians.

#### **Traditional beautification procedures:**

These are procedures that have been exercised since ancient times, for which Muslim jurists issued rulings, that may provide significant guidance to contemporary surgeries and procedures.

#### **1. Joining hair with other types of hair/fibers (*Wasl*):**

Traditionally, women used to beautify their hair by connecting it with other human hair or other types of fibers.

On this issue, there was consensus among Muslim jurists that it is not permissible, according to *Ahadith* of the Prophet, of which the following is an example:

" لعن الله الواصلة والمستوصلة "

"Allah (ﷻ) condemned (cursed) the hair connector and the one connected for"<sup>15</sup>.

Muslim jurists, from various schools of thought, prohibited this procedure on the basis of deceit, cheating, provision of false image to others, and change of Allah's creation.

However, there was some juristic difference of opinion when hair connection involved non-human hair, fibers or cloth.

Recently, Professor Mohammad Othman Shubair has summarized jurist opinion depending on preponderance of concepts upon which the prohibition was based<sup>16</sup>.

He gave more weight to the *Shafi'i* and *Hanbali* opinions that base the prohibition on deceit, cheating and misleading. The opinion followed the prophetic *Ahadith*, among which this procedure was described as false (*zur*)<sup>17</sup>.

Professor Shubair summarized this opinion in the following:

- Prohibition of using human hair for connection.
- Using non-human hair for connection: If the used material closely resembles human hair, it is prohibited in view of the issue of deceit and cheating.
- Using materials that are distinctly different from human hair, e.g. fibers or pieces of colored cloth, is permissible in view of absence of the cause of prohibition, which is deception, misleading and cheating.

#### **2. Shaving of women's scalp hair:**

If not done for necessities, such as disease, this practice represents

changing of creation and natural women's beauty.

In the view of *Hanafi*, *Shafi'i*, and *Hanbali* scholars, it is considered abhorred (*makruh*)<sup>18</sup>, but if practiced seeking resemblance with men, it is considered forbidden (*haram*)<sup>19</sup>.

The Prophetic *Hadith* narrated by al-Tirmidhi stated: the Prophet forbade women from shaving their head hair<sup>20</sup>.

روى الترمذي عن عائشة (رضي الله عنها) أن النبي (صلى الله عليه وسلم) قد نهى أن تحلق المرأة رأسها.

In another *Hadith* narrated by Abu Musa, the Prophet (ﷺ) said:

روى مسلم عن أبي موسى: "... أن رسول الله (صلى الله عليه وسلم) بريء من الصالقة والحالقة والشاقة"

The Prophet (ﷺ) is *bari'* (have nothing to do) with the woman who wails (raises her voice at time of disaster, *al-saliqah*), the woman who shaves her head hair at time of disaster (*al-haliqah*), and the woman who tears her garment at time of disaster (*al-Shaqqah*)<sup>21</sup>. It is known that women performing Hajj, shorten some of their head hair instead of shaving it<sup>22</sup>.

### 3. Shaving head hair in the form of tufting (*qazi'*):

This implies shaving a man's or a woman's hair partially, without necessary justification, such as disease. There is jurist consensus on the dislike (*karahah*) of this form of shaving:

dependant on the prophetic saying when he saw a boy with partial head hair shaving:

"احلقوه كله أو اتركوه كله"  
"Shave it all or leave it all"<sup>23</sup>.

Some jurists opined the cause of the dislike is related to imitation of the infidels, the wicked and malicious people. Others describe it as disfigurement of natural creation<sup>24</sup>.

### 4. Plucking out of white hair, or expediting its appearance:

Jurists are in agreement that this is disliked (*makruh*).

The *Hanafi's* exclude this dislike (*karahah*) when practiced to frighten enemies at time of war, citing the prophetic *Hadith*:

" لا تنتفوا الشيب، ما من مسلم يشيب شيبة في الإسلام إلا كانت له نوراً يوم القيامة"

"Do not pluck white hair. For every Muslim whose hair becomes white during Islam, it (grants) brightness (*nur*) to him on the Day of Judgement"<sup>25</sup>.

Jurists based this opinion on change of creation, and implication of deception. Expediting of white hair, on the other hand, by any procedure, to assume the appearance of older age or wisdom, is considered disliked (*makruh*), by the *Shafi'i* school of thought, in view of likelihood of cheating, and possibility of harm from the materials used.

### 5. Beautification of hair by plucking (*namas*):

Jurist opinion on this issue was based on the prophetic *Hadith*:

" لعنت الواصلة والمستوصلة، والنامصة والمتنمصة، والواشمة والمستوشمة من غير داء" "Cursed is the woman who practices hair connection, the women who requests her hair to be connected, the woman who practices hair plucking (*al-namisah*), the woman who requests her hair to be plucked out (*al-mutanamisah*), the woman who practices tattooing (*al-washimah*) and the woman who requests to be tattooed (*al-mustawshimah*), without disease"<sup>26</sup>.

The various jurist opinions around this issue has been recently summarized by professor M. A. Shubair<sup>27</sup>, who also analyzed the Arabic origin of the words (*namas* and *tanammus*) which implies exaggeration of hair plucking, especially of eyebrows, to the extent of complete removal or marked thinning, which is prohibited.

According to this analysis, removal of extra hair which is not in line with the original eyebrows shape, without exaggeration, as well as plucking, or shaving of excessive moustache and chin hair in women is permissible. Jurists consider appearance of hair in these sites as a defect and blemish of the original creation<sup>28</sup>.

## 6. Dying of hair:

In their discussions on this issue, past Muslim jurists had various views, according to whether the motive for dying was disease- related, or on the basis of individual desire to change the natural hair color. Also there were different views on the types of colors used<sup>29</sup>.

In the opinion of *Hanafis*, *Shafi`is* and *Hanbalis*, it is desirable (*mustahab*) to dye hair using yellowish or reddish colors, which includes head and beard hair for men. They quote the prophetic *Hadith*:

"غيروا الشيب ولا تنتشبهوا باليهود والنصارى" "Change your white hair and do not imitate Jews and Christians"<sup>30</sup>. It is known that Jews and Christians had traditions at that time to leave their white hair as such.

*Imam* Malik, on the other hand, preferred avoidance of hair-dying, and he did not perform this practice.

It was reported that Prophet Muhammad (ﷺ) did not reach the stage of full white hair. Anas (RA) reported about the Prophet (ﷺ): "He did not reach the stage of white hair, except to a minimal degree"<sup>31</sup>.

" لم يبلغ الشيب إلا قليلاً" وفي رواية أخرى: " لم يبلغ ما يخضب"

Abu Bakr (RA) used to dye using a plant with leaves that produce reddish color (*hinna*)<sup>32</sup>, or another plant named (*katam*). Umar (RA) dyed with (*hinna*)<sup>32</sup>, Ali bin Abi Talib (RA) never dyed<sup>33</sup> (he was young), while his son Al-Hussain, used black dye.

It was reported that some senior companions of the Prophet (ﷺ) did not dye because their hair looked good without dying.

Most likely, the jurists' differences on the issue of hair-dying stemmed from



differences in the appearances of white hair, whether it is acceptable, or needs dying to be so.

Dying of hair on pathological basis is permissible by all jurists<sup>34</sup>.

In view of differing jurist views on the issue of hair- dying, using black color dyes, and taking in consideration the possibility of cheating and giving false impression to others, Professor M.O. Shubair provided a comprehensive analysis and re-conciliation of various past jurists on these issues<sup>35</sup>:

- In the analysis of various jurist views and evidence cited, the prohibition of black hair- dying could be attributed to the possibility of cheating and fraud motives, e.g. an old man or woman to mislead a younger person for marriage. In absence of this motive, black hair- dying is permissible.
- Hair dying should not change Allah's creation in a permanent manner, by using a permanent dye.
- Using unusual, extraordinary dyes, e.g. green, that changes and disfigures the natural created beauty, is disallowed.
- Hair dying must use pure ( *tahir*) and not impure ( *najis*) materials.
- Dyes should not cause harm to the subject or to others.

## 7. Traditional beautification by colors and permanent marks:

### Tattooing ( *washm*):

Conducted by injecting certain coloring materials, by a needle, in or under the

skin to produce certain shapes and pictures.

There is jurist consensus on tattoo prohibition, based on several *Ahadith* of the Prophet (ﷺ), one of them was listed previously<sup>26</sup>, which was narrated in somewhat different wording by Ibn Abbas:

" لعنت الواصلة والمستوصلة والنامصة والمتنمصة والمستوشمة من غير داء"

"Condemned (cursed) is the woman who connects hair, the one who requests her hair to be connected, the woman who perform hair plucking, the one who requests her hair to be plucked, and the woman who undertakes tattooing without disease"<sup>26</sup>.

It is known that cursing applies on forbidden (*haram*) issues<sup>36</sup>.

The underlying cause for prohibition (*tahrim*) is deceit and change of Allah's creation, with torturing of the human body for no necessity or considered need.

Jurists excluded from prohibition, non-permanent skin coloration, such as painting hands and feet by *hinna*, reddening of cheeks, painting by temporary dyes, black coloring of eye lids (*kuhl*) and similar other temporary beautification procedures.

### Removal of tattoos:

Some jurists ( *Shafi`is* ) allow it, provided removal will not produce more harm. There is difference in opinion whether tattoos are impure



(*najis*) in the *Shafi'i* view, or not *najis* in view of some others<sup>37</sup>.

### **Skin marking ( *wasm* ):**

Which includes inflicting permanent marking by cautery. Jurists disallowed it (*tahrim*), unless performed as a therapy, if cure has been proven. *Tahrim* is based on its consideration as torture, and incompatibility with human dignity<sup>38</sup>.

### **Peeling of facial skin (*qashr*):**

Certain substances are used that cause peeling of the external or the superficial skin layers to try change skin color. Jurists disallowed this procedure, in view of inflicting pain, torture, or possible harm with no necessity<sup>39</sup>.

On the other hand, it is permissible to use medications and creams that remove skin patches or freckles and improve facial appearance<sup>40</sup>.

### **Surgical beautification:**

These are new contemporary surgical procedures and surgeries, not known to past jurists. Following are most popular ones:

#### **1.Surgical hair beautification<sup>41</sup>:**

Included under this heading are the following:

- Hair implantation in the scalp.
- Management of white hair of a child or young person, which is usually pathological.

- Surgical removal of thick hair from faces or bodies of children.
- Management of excessive hair in women's' beard and moustache.

All these procedures are permissible on the basis of restoration of original authentic creation, or on therapeutic basis. No deceit or fraud is involved. Their permissibility is also conditioned on avoidance of harm that exceeds benefit.

It could be understood this permissibility includes hair implantation in the scalps of bald men, although there was no specific mention of that in available references.

- On the other hand, surgical removal of men's facial hair is not permissible, if pursued to seek resemblance with women and change of the natural creation.

It is to be noted that available references did not address rulings specific for transgender individuals.

### **2. Amputated body organs:**

Management by implantation, fixation and other corrective procedures is permissible by jurist consensus<sup>42</sup>, who cite the past permissibility of implanting a golden nose to a person whose nose was amputated by trauma<sup>43</sup>, and the permissibility of fixation of a loose tooth by golden or silver support. In this context, jurists allowed implantation and fixation of deficient human bones by bones from other parts of the body or from animal bones.

Jurists disallowed utilizing bones from impure (*najis*) animals, unless no pure

(*halal*) animal bones are capable and fit for this purpose<sup>44</sup>.

### 3. Beautification of organs By changing their shape<sup>45</sup>:

- Human organs that are within the familiar and natural shape: Manipulations by enlarging, reduction or other changes in shape and form, with the aim of beautification without necessity, are not permissible.

*Imam* Al-Tabari reported: “It is not permissible for a woman to change the nature of Allah’s creation by exceeding or reducing, in the quest of beautification, whether this is directed to her husband or otherwise”<sup>46</sup>.

Ibn al Arabi reported: “Allah (ﷻ) created and perfected human appearance in the original shape, He differentiated various degrees of beauty (among humans), and created them in variable ranks and degrees. Any individual who desires changing of Allah’s creation in appearance, and to negate His wisdom, is condemned (cursed) because of this prohibited act”<sup>47</sup>.

### 4. Organ beautification By amputation of extras<sup>48</sup>:

Cutting extra organs, appendages or parts with which people were born, is permissible in views of jurists from the *Hanafi*, *Maliki*, *Shafi’i* and *Hanbali* schools of thought, considering them as defects in the natural creation. For permissibility of these procedures, the

following conditions should be fulfilled:

- The part/ organ is an excess in the familiar natural creation, e.g. a sixth finger or toe.
- It causes physical or psychological harm.
- The affected individual ( or legal guardian ) consents to its removal.
- No harm is involved that exceeds benefits of removal.

### 5. Ear piercing:

Most jurists, including *Hanafis* and *Hanbalis*, allowed it for women only. It fulfills a natural instinctive beautification need, and inflicts minimal pain<sup>49</sup>. It is disallowed for males<sup>50</sup>.

### Newer beautification Surgical procedures:

#### Liposuction:

This involves removal of excessive, accumulated fat due to obesity, especially from the abdomen.

Prof. M.O. Shubair presented a review of this issue<sup>51</sup>, and found it permissible if performed to improve fitness, or as therapy if the condition is pathological. Liposuction, with the intention to reduce weight and improve body fitness, is permissible, provided there is no alternative means, and provided harm involved does not exceed its benefit.

In another analysis, by Prof. A.M. Abul Bassal, a similar stand was adopted, with adovcation of consulting expert,

trustworthy physicians to decide on harms, benefits and availability of alternative therapeutic measures to liposuction<sup>1</sup>.

Shaikh Yousef Al-Qaradawi issued a *fatwa* that states: “Obesity could become pathological, and may impede proper mobility, and there is no objection to manage it by procedures of weight reduction, or slimming, which include liposuction from the abdomen and other body sites, to restore the body to its original familiar status of Allah’s creation. But it is not permissible to follow or imitate the deviations and exaggerations of what is practiced to actresses and songstresses<sup>52</sup>.”

### Rhinoplasty:

Aside from the physiologic functions of the nose as part of the respiratory system, it assumes a central and significant role in imparting characteristic facial shape, configuration and beauty. Allah (ﷻ) says in the Qur’an:

"لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ"

*“We have created man in the best of moulds”<sup>3</sup>.*

Contemporary nasal beautification surgeries are the most common and popular plastic procedures, that aim at correction of various defects that may be congenital, or incidental (acquired). The main problems are, however, excessive exaggerations and deviations to satisfy desires, inclinations or psychological motives, that exceed limits of therapeutic management<sup>1</sup>.

Non cosmetic rhinoplasty is performed for other nasal disorders:

- Infectious disease-related, such as sexually transmitted diseases (e.g Syphilis), leprosy, tuberculosis (Lupus vulgaris)...etc.
- Tumors, malignant or benign.
- Trauma.
- Local nasal disorders, such as, septal deviation, local glandular or dermatological hypertrophy.

Most contemporary surgical procedures to remedy the above derangements include:

1. Nasal reconstruction. Surgeons utilize bone, cartilage or skin from the same patient, or synthetic materials.
2. Rhinoplasty to correct severe disfigurement and ugliness, that affect the subject psychologically.
3. Septoplasty to correct septal deviation, improve nasal respiratory functions and other pathological conditions.

### Facial cosmetic surgeries<sup>1,27</sup>:

These are common and expanding beautification procedures, that mainly aim at dealing with age-related skin folds, lines and wrinkles.

These disorders could be caused by pathological entities or trauma, especially in younger individuals.

Jurist rulings take age in consideration. Surgical procedures to tighten old age wrinkles, more often in women, are not permissible, in view of motives of

deceit in assuming a young appearance that may mislead others from the opposite sex for marriage.

In young age, with disease-related wrinkles and other disfigurements, plastic surgeries are permissible, as forms of therapy which bring facial features back to the original creation, provided harm involved does not exceed benefit.

Surgical procedures to remove skin wrinkles of eye lids, to correct ptosis, loose, hanging lids, cysts, tumors, flabby lateral eye brows and other disfigurement, that adversely affect visual function, are permissible.

### **Lip plastic surgeries<sup>1</sup>:**

Procedures conducted to remedy congenital, for example cleft lip, traumatic or disease-related defects, are all permissible as therapies to cure disease, and to restore organs to their original natural creation.

Procedures to magnify lips, or adjust their shape, involve change of natural creation, imitation of others, and are not permissible.

### **Breast plastic surgeries/ procedures<sup>1</sup>:**

They involve:

- Breast reconstruction following mastectomies for various pathological entities.
- Breast enlargement, in cases where breasts are significantly small or rudimentary, due to congenital, hormonal or other conditions.

- Breast reduction in situations where breasts are very large, pendulous, and associated with pain, as well as physical or mobility handicaps.

In all such conditions, surgical procedures are looked upon as therapies aiming at restoration of breasts to the original sound creation, provided non-availability or non-effectiveness of non-surgical alternatives.

On the other hand, surgical procedures to adjust breast size or shape to make it "more attractive", for no therapeutic motives, are not permissible.

### **Dental beautification<sup>53</sup>:**

In past medical heritage, teeth beautification was undertaken by splitting and rifting (*falj*) by using tools to sharpen, improve outlook and widen the spaces between teeth.

Past Muslim jurists had consensus on non-permissibility (*tahrim*) of *falj*, if teeth are within normal, familiar appearance. They looked upon these procedures as forms of deceit and changing of original creation, without necessity. They cite the prophetic *Hadith* narrated by the two *Imams* (*al-Shaikh*) which states:

" لعن الله الواشمات والمستوشمات والنامصات والمتنمصات والمتفلجات للحسن المغيرات لخلق الله "

" Allah cursed the women who perform *washm* (tattooing), those who request *washm*, women who perform hair plucking (*namas*), those who request to

undergo hair plucking, and those who perform *falj* for beautification, who change Allah's creation"<sup>54</sup>.

On the other hand, if *falj* is performed with intention of therapy, to remove harm, it is permissible.

The issue of extra teeth did not receive consensus among jurists. Some of them looked at it as part of the original natural creation, while others considered them as defects and blemishes, and allowed them to be corrected.

*Imam* Ahmad opined against removal of extra teeth ( and, similarly, extra fingers and other organs)<sup>55</sup>.

*Imam* Al-Tabari disallowed cutting extra organs, but excluded extras that cause harm, such as extra teeth or disproportionately long teeth that make chewing of food difficult ( or extra fingers that cause harm or pain )<sup>56</sup>.

Many *Maliki*, *Shafi'i*, *Hanafi* and *Hanbali* jurists looked at these extra organs or appendages as defects in the sound, original and familiar creation, and allowed their corrective removals in the context of procedures that remove harm, defects and disfigurements, and to restore proper function and original familiar creation<sup>57-59</sup>.

Prof. M.O. Shubair<sup>60</sup> extracted from the above jurists' opinion that congenital extra organs (including teeth) and appendages, represent defects of the original creation, and allowed their removal, provided:

- They are extras to the original familiar creation.
- They inflict physical or significant psychological harm.
- Removal upon the consent of the individuals.
- No harm involved that exceeds the benefit of removal.

### Contemporary beautification dental procedures:

There are, nowadays, many new and emerging dental surgeries and procedures to improve teeth appearance. Dentistry subspecialties have developed to deal with many dental deformities and pathological conditions.

From the jurisprudence view, the past jurist opinion in the area of teeth beautification, as outlined in this review, could form a foundation for judging contemporary dental procedures. It is noteworthy to point out the lack of detailed jurists discussions, opinion or verdicts in this area.

The few available jurisprudence opinion could be summarized as following:

- A *fatwa* by Shaikh Bin Baz, ex president of the Permanent Committee for Research and *Iftaa'* in Saudi Arabia<sup>61</sup>:
  - "It is permissible to remove an extra tooth, and to arrange the rest of teeth for the mouth to be within normal configuration".

- Modification or reconciling of some teeth, if longer than others, if this defect causes harm: only harmful ones could be removed<sup>62</sup>.
  - The ruling of fitting or installing of artificial dentures: It is permissible to manage teeth by removal of irregularities, and substituting defective ones by artificial teeth<sup>63</sup>.
  - Substitution of old, defective or pathologically affected teeth and removing their harm, by replacing them with new artificial teeth is permissible. This is because it falls within seeking permissible remedy to remove harm. Such undertaking does not fall within changing of Allah's creation<sup>64</sup>.
- ii. Surgical procedures are permissible if there are no other alternative means to fulfill management of the necessity or considerable need.
  - iii. The treating physician(s) should have significant likelihood of success of the surgical procedure.
  - iv. The surgical procedure should not involve changing of the natural, familiar creation. It is not permissible to change the shape of any organ if it is within the natural familiar shape, size and function.
  - v. The surgical procedure must not involve mutilation or disfigurement of the original familiar beauty.
  - vi. The surgical procedure must not involve cheating, fraud or deceit, such as showing younger age to mislead a prospective young wife/husband for marriage.

### General guiding jurist principles:

Contemporary Muslim jurists have discussed past and new beautification surgical procedures in forums and seminars, and issued specific rulings toward each specific procedure, according to their nature and *Shari'ah* descriptive designation.

The following rulings address the general *Sharia'h*- approved principles related to plastic surgical procedures:

i. Surgery, in general, inflicts pain and agony, and is, therefore, not permissible unless there is a necessity or a considered need.

vii. The harm expected from any surgical procedure should need exceed its benefit.

viii. The procedure must not involve imitation of one sex to the other.

ix. The procedure must not involve imitation of the infidels, vicious or immoral individuals.

### Injectable soft tissue fillers<sup>65</sup>:

Aging is frequently associated with facial changes in the skin, underlying tissues, subcutaneous fat, and structural



support due to bone atrophy. These changes result in several deformities, including:

- Wrinkling, folds and lines.
- Local atrophy due to loss of volume.
- Variable changes in shape.
- Dyspigmentation.
- Lateral brow ptosis.
- Wasting of the temporal fossa.

Facial changes could also be caused by pathological entities, such as:

- HIV/AIDS associated lipoatrophy.
- Congenital facial asymmetry, with various manifestations.
- Acquired defects: post- surgical, traumatic, acne ...etc.

Soft tissue fillers are used to correct the above mentioned defects. The fillers could be permanent or semi permanent. Permanent soft tissue fillers:

These are permanent agents<sup>66</sup>, non-biogradable, injectable filling materials. Cautious use and meticulous expertise of the injector is necessary to avoid local complications that may require local surgery to correct:

- Polymethylmethacrylate microspheres: side effects, such as local granuloma, persistant redness and telangiectasias were reported.
- Hydrogel polymers.
- Polyacrylamide hydrogel.
- Liquid injectable silicone.
- Autologous fat.

Semi permanent agents<sup>67</sup>:

A wide variety of soft tissue fillers are available for clinical use, including:

- Hyaluronic acid, collagen, calcium hydroxylapatite, poly-L-lactic acid and Botulinum toxin. They are biodegradable products with durations of effect between 3-24 months, and need to be re-injected repeatedly to maintain desired effects. Adequate clinicians' training is essential to avoid side effects and complications that range from early bruising, edema and erythema, to skin necrosis and rarely vascular compromise. Blindness due to retinal embolism has been rarely reported.

This relatively new topic has not received detailed, and systematic discussions by jurists, and awaits proper *fiqhi* regulation and ruling.

### **A Landmark, collective (Legal Resolution) Fatwa<sup>68</sup>:**

We conclude this discussion by enlisting a comprehensive ruling (*fatwa*), number 173(18/11), adopted by the International Islamic *Fiqh* Council of the Organization of Islamic Cooperation (OIC), in its eighteenth session, held in Petrajaya- Malaysia, from 24-29 *Jumada Al-Akhirah* 1428 H, 9-14 July 2007.

Upon reviewing the research works referred to the Council on the subject of plastic surgery and its rulings, and following listening to the

comprehensive discussions on the subject, has decided the following:

First: Definition of Plastic surgery:

It is the surgery concerned with improvement and modification of the shape of one or more parts of the external human body, or to restore its function in case it is affected by an incidental dysfunction.

Second: General controls and conditions to undertake plastic surgery procedures:

1. Should fulfill a *Shari`ah* - considered benefit, such as restoring function, repair of defects (disorders) and restoration to the original familiar creation.

2. The surgical procedures should not involve a harm that exceeds its required benefit. This balance should be decided by trustworthy experts.

3. The physician who performs such procedure should be adequately qualified. Otherwise, he/she will be liable, according to Council ruling no. 142(15/8).

4. The patient should consent to the surgical procedure.

5. The (specialist) physician should inform the patient, in clear terms, about the possible or expected dangers or complications of the surgical procedure.

6. There must be no other therapeutic alternative with lesser damage or negative effects than surgery.

7. The procedure should not involve violation of *Shari`ah* stipulations, such as the prophetic *Hadith* narrated by al-Bukhari and the *Hadith* narrated by ibn Abbas and for the prophetic prohibition of men and women, to imitate or seek resemblance to infidels or people with vices and disobediences.

" لعن الله الواشمات والمستوشمات والنامصات والمتنمصات والمتفلجات للحسن المغيرات لخلق الله "

" Allah cursed the women who perform *washm* (tattooing), those who request *washm*, women who perform hair plucking (*namas*), those who request to undergo hair plucking, and those who perform *falj* for beautification, who change Allah's creation".

" لعنت الواصلة والمستوصلة، والنامصة والمتنمصة، والواشمة والمستوشمة من غير داء "

"Cursed is the woman who practices hair connection, the woman who requests her hair to be connected, the woman who practices hair plucking, the woman who request her hair to be plucked out, the woman who practices tattooing and the woman who requests to be tattooed, without disease".

8. Rulings of seeking remedy should be pursued, with compliance of avoiding private male-female seclusion (*khalwah*), and rulings of exposing the private parts (*awrah*) and other pertinent rulings, unless for a necessity, or a considered pressing need.

Third: *Sharia`h* Rulings:

1.It is permissible to perform beautification surgeries for necessities and considered needs, with the intention of:

- Restoring body organ shape to the status in which Allah created it considering the Qur'anic verse:

"لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ"

*"We created man in the best of moulds".*

- Restore the familiar function to the organs.
- Repair or amelioration of congenital (birth) defects, such as: Hare (cleft) lip, severe nasal deviation, skin dyspigmentation, extra fingers/toes, extra teeth, adhesion of fingers/toes, if such malformations cause significant physical or psychological harm.
- Repair of incidental (acquired) defects, such as effects of burns, trauma, diseases and other pathological entities, including breast reconstruction following total mastectomy, or partial removal of the breast to treat significant enlargement or breast implants to correct significantly small breasts . Similarly included is hair implantation following alopecia (hair loss) especially for women.
- Removal of ugly or repulsive appearance that induces physical or psychological harm, the previous Council ruling [26(4/1) ]<sup>13</sup>.

2.It is impermissible to perform decorative beautification surgeries, that are not considered in the realm of medical therapy, and that aim at changing the sound, familiar and natural human creation, and carried away by fancy passions trends, to follow and imitate others, such as changing facial features to impart certain desired outlooks, or aiming at deceit or deception of justice. These changes include changing nasal shape, enlargement or diminution of lips, change of eye shape and enlarging cheeks.

3.It is permissible to reduce body weight (slimming) by various approved means, including surgical liposuction, in conditions where excessive weight becomes pathological, provided absence of other non- surgical means, and provided safety from harm.

4.It is not permissible to remove skin wrinkles by surgery or injection, unless the condition is pathological, provided harm is avoided.

5.It is permissible to perform hymen patching (hymenoplasty) if caused by trauma, rape or imposed by coercion\* . It is not permissible in *Shari'ah* to perform hymen patching if it is caused by committing adultery (fornication), to block the excuses ( *Saddul dharia* ) of deceit and corruption. It is preferred that this procedure be conducted by female physicians.

\*It is not clear what "coercion" refers to, and whether it is different from rape.

6. The specialist physician should abide by *Shari'ah* principles in his/her medical activities, and to provide proper advice to individuals who seek beautification surgeries (Religion is proper advice "counseling") (الدين النصيحة).

### It is advised that:

1. Hospitals, private clinics and physicians should abide by fear of Allah (ﷻ)-*Taqwa*- and to avoid the impermissible harm of these surgical procedures.

2. Surgeons should seek knowledge of *Shari'ah* rulings related to medical practice especially in the area of beautification (plastic) surgeries. They should be careful not to be driven to conduct such surgeries purely for materialistic gains, without being certain of their proper *Sharia'h* rulings. Furthermore, they should not resort to any unrealistic and untruthful marketing of these procedures.

والله سبحانه وتعالى أعلم.

And Allah (ﷻ) knows best.

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## CHAPTER FIVE

### ORGAN DONATION AND TRANSPLANTATION

*Aly A. Misha'l\*, Hossam E. Fadel  
Abul Fadl M. Ebrahim and Musa M. Nordin*

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#### **Background:**

Major advances and innovations in organ transplantation have taken place over the past several decades, with significant impact on the life and health of millions of people worldwide.

Advances in organ transplantation included those of the kidney, liver, heart, lung, pancreas, intestine, cornea, skin, bone, blood and other organs.

From the medical and technical aspects, the successful outcomes of organ transplantation have improved gradually, due to advances in surgical techniques, immunosuppression and organ preservation, to reach satisfactory levels, with variability of success rates depending on organ type, experiences of various centers and donor-recipient factors.

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\*Aly A. Misha'l, MD, FACP  
Senior Consultant in Endocrinology  
Chairman, Institutional Review Board,  
Islamic Hospital, Amman-Jordan  
E-mail: fimainfo@islamic-hospital.org , aly.mishal@yahoo.com



For successful and sustainable outcomes, there is a growing need for programs to deal with the widening gap between demand and supply of organs, by ethically approved means.

Safety of donors has witnessed significant improvements by proper donor evaluation, follow up and care.

Studies suggested that the risk of donor nephrectomy, as an example, appears to be quite small<sup>1</sup>.

#### **Sources of organs for donation:**

- Living related donors.
- Living unrelated donors.
- Cadavers.

Across the world, systems of organ donation have been based on ethical and legal basis. The mainstay of these systems is based on expressed volunteerism as a gesture of altruistic motives to help fellow humans in danger of losing their lives or sound quality of life. In most countries, donor payments are unlawful.

The widening gap between the demand and supply of organs for donation, together with the prohibition of compensated organ donation, has led to the problems of organ trafficking, transplant tourism and commercialism. Evidence indicates that organ transplantation, under these unlawful practices is often conducted at a substandard level of care, resulting in significantly increased risk of morbidity and mortality of both living donors and recipients.

### **General Islamic Rulings**

#### **A. Cadaver organ transplantation:**

Firstly, it is to be noted that Muslim jurists have justified retrieval of human organs from the body of a deceased individual for the purpose of transplantation into a living recipient to save life or to improve the quality of life.

Secondly, obtaining organs from cadavers has the added advantages of harvesting unpaired (single) organs, e.g, the heart, and other organs that cannot be donated from living persons, e.g. corneas.

Juristic balancing of these procedures includes:

- The benefit of preserving human life or health takes precedence over the harm inflicted on the sacredness of the dead human body.
- Caring for the welfare of living humans takes precedence over leaving the needed organ from a dead body to decay after burial.

This approval, however, is not absolute. There are certain restrictions that should be observed, namely:

1. The organ transplantation is the only means of therapy.
2. Expected degree of success is relatively high, in the judgment of experts.
3. Consent of the donor, by a living will, or by his heirs, is properly obtained.
4. Due care of the dignity of the dead body, and avoidance of mutilation.

5. Death is established by a properly established committee, based on recognized criteria of death verification.
6. The recipient is well informed of this line of therapy and its various implications.

### **B. Living person donation:**

Muslim jurists have also approved a living person's gesture to donate certain organs to another person, whose life or health is in dire need for such organs. This donation has been looked upon as a commendable act of altruism to help other fellow humans in danger of losing life, or whose quality of life is poor. Living donors could be biologically related or unrelated persons. Especially in the latter category of donors there are complex ethical issues, including donor payments, organs' sale, and organ trafficking and possible coercion. Jurists imposed certain restrictions on living organ donation<sup>2-7</sup>.

1. Donors' free will and proper informed consent.
2. Organ transplantation is the only possible therapeutic modality.
3. No obvious dangers to the life or health of the donor.
4. The donation-transplantation procedures have proven record of success.

Moreover, vital, or single organs (e.g. the heart or a single kidney) cannot be donated, even with the donor's consent.

### **C. Transplantation of tissues and cells:**

In some medical situations, transplantation of whole organs may not be called for. In some cases only tissues are needed, e.g. skin, bone, arteries, veins or valves, and in other cases only cells are needed, e.g. stem cells.

All such transplantations are allowed, on the basis of permissibility of whole organ transplantation<sup>2,7</sup>.

It is preferable to derive these tissues and cells from the same subject if at all feasible. If not, it is allowed to obtain them from another individual.

### **D. Transplantation of animal organs into humans (Xenotransplantation):**

There has been wide consensus among jurists from several Islamic countries, to approve this kind of transplantation<sup>2-7, 8,9</sup>.

### **E. Organs from non-Muslims:**

Jurists did not differentiate between Muslim or non-Muslim organs<sup>10</sup> in the process of organ donation-transplantation. Some jurists, however, allowed using non-Muslim donated organs on the basis of necessity (dharurah)<sup>2</sup>.

### **Jurisprudence (*Fiqh*) resolutions:**

There are no Qura'nic verses or prophetic sayings (*Ahadith*) that sanction or condemn organ donation or transplantation. Muslim Jurists have addressed these emerging issues using

*ijtihad* based on deductions from broad principles and teachings derived from the two original sources of Islamic law (*Shari'ah*); The Glorious Qur'an and *Sunnah* of the Prophet (ﷺ).

As expected from human *ijtihad*, differences of jurist opinion have emerged<sup>2</sup>. Some earlier jurists have expressed opposition to organ transplantation and donation on the basis of sacredness of human life and body, subjecting the human body to material ends, and avoiding the doubtful<sup>2</sup>.

Contemporary Muslim juristic opinion, in various parts of the world, is now in favor of these therapeutic procedures. Jurisprudence opinion (*Fatwa*) has been issued considering organ donation as a form of altruistic action that should be respected and encouraged<sup>2-7</sup>.

These Jurisprudence opinions have been based on the broad Islamic principles of:

- Establishing what is in the best interests of public welfare (*Maslahah*) and preventing what is against it (*Mafsadah*).
- Necessities make the unlawful permissible.
- When two interests conflict, choose the one that brings greater benefit.
- Choosing the lesser of the two evils.

The Islamic *Fiqh* Academy-Muslim World League, issued its Decision # 1, in its 8<sup>th</sup> session held in Makkah Al-Mukarramah in 1405 H/ 1985<sup>8</sup>.

Firstly: It is permissible in *Shari'ah* to take an organ from a living person, and transplant it in the body of another person who is in dire need for it to save

his life, or to restore the function of one of his organs.

Such action does not contradict human dignity of the donor. It, moreover, provides significant benefits for the recipient. This act is both lawful and commendable provided the following conditions are fulfilled:

1.No harm to the donor, that may affect his normal living, in view of the juristic rule (Harm should not be removed by similar harm, or by a more severe harm), because the donation under this situation will be as if the donor sought self destruction, which is not permissible in *Shari'ah*.

2.Organ donation should be done voluntarily without coercion.

3.Organ donation must be the only possible medical alternative to treat the destitute patient.

4. The success of both the organ removal and its implanting should be, usually or most likely, guaranteed.

Secondly: The following undertakings are allowed from the *Shari'ah* point of view provided that the prescribed conditions are fulfilled:

(1) Removing an organ from a dead person to be transplanted into a person in dire need for it, provided the deceased was mentally competent and had left his permission for donating his organ prior to his death.

(2) Removing an organ from an animal, that is halal to be eaten, or any animal in cases of necessity, and transplanting the organ into a person in need for it.

(3) Removing an organ from a person to be transplanted or implanted in his own body, such as using his own skin patches or bone to be implanted in

another part of his body, when there is real need.

(4) Implantation of artificial devices or pieces of metal or other substances, into the human body to remedy certain medical conditions, such as joints, heart valves and others.

The International Islamic *Fiqh* Academy of the Organization of the Islamic Conference (OIC) met in Jeddah-Saudi Arabia, in its fourth session on 18-23 *Jumada al-Akhirah*, 1408 AH, 6-11 February 1988, and the following resolutions were adopted<sup>9</sup>:

Firstly: It is permissible to transplant an organ from a person to another part of his own body, provided there is certainty that the benefit of this procedure outweighs its possible harm(s), and provided the procedure aims at substituting a missing organ, or to restore its original shape or function, or to correct a malformation that causes him psychological or physical harms.

Secondly: It is permissible to transplant an organ from one person's body into the body of another person, if this organ is automatically renewable, such as blood or skin, provided the donor is legally competent, and the pertinent *Shari'ah* provisions are fulfilled.

Thirdly: It is permissible to make use of an organ portion, removed surgically due to a medical condition, to be transplanted into another person for a medical problem, such as using the cornea from a person, whose eye is surgically removed for an illness.

### **Transplantation and implantation of cells of the brain and nervous system:**

The significant progress achieved in organ transplantation in general has not

included transplantation of brain and other parts of the nervous system.

It is known that there are certain conditions that cause brain damage such as exposure to certain chemicals, trauma, lack of oxygen (hypoxia or anoxia), interruption of blood supply (ischemia) or other medical entities.

Medical professionals have posed questions to jurists about the permissibility of replacing the damaged brain cells with healthy cells taken from the same person, as in the case of transplanting adrenal gland cells, or from somebody else, as in the case of transplanting embryonic stem cells taken from aborted fetuses.

This issue was discussed by the Organization of Islamic Medical Sciences (IOMS) in its sixth seminar held in 1989, in which jurists found it lawful to transplant into a person's brain of cells taken from the adrenal glands of the same person, from cultured stem cells, or from animals. They considered it unlawful to transplant stem cells derived from embryos intentionally aborted, even prior to ensoulment<sup>11</sup>.

The topic of stem cell-based therapies was discussed by the Islamic Jurisprudence (*Fiqh*) Academy held in Makkah in December 2003, under the subject (Transplanting and Implanting of Stem Cells), in accordance with the recommendations of the above mentioned IOMS Sixth Seminar.

The Academy considered it lawful to acquire and cultivate stem cells and to use them for the purpose of treatment, or for conducting permissible research, if their sources are legitimate, such as stem cells derived from adults, the

placenta, umbilical cord, fetuses aborted spontaneously or for therapeutic reasons allowed by Islamic law, and from surplus fertilized ova in centers of assisted conception, with proper informed consents.

The Academy considered it unlawful to acquire and use stem cells derived from unlawful abortions or from deliberate sperm-ova fertilization for the purpose of obtaining stem cells<sup>12</sup>.

### **Transplantation of genital glands and organs:**

This topic was discussed by IOMS in its first session in 1983<sup>13</sup> and the sixth seminar in 1989<sup>14</sup>.

Since the testes and ovaries continue to produce sperms and ova that carry the genetic code of the donor, even after they are implanted in the recipient, the seminar considered it unlawful to transplant these genital glands, in view of the fact that it leads to confusion of lineage.

On the other hand, the majority of participant jurists were of the opinion that transplanting genital organs; penis, prostate, vulva, vagina, uterus, and fallopian tubes, that carry no genetic characteristics, is lawful when performed to meet a legitimate necessity that could not be corrected by other means. However, it is to be noted that if the purpose of uterine transplantation is to allow a woman who had prior hysterectomy to bear a pregnancy, the need for immunosuppressive therapy after the transplantation makes this unsafe for an embryo because of the teratogenic effects of these immunosuppressants.

The Islamic Jurisprudence (*Fiqh*) Academy, issued its resolution No. 59/8/6, citing and approving the above mentioned IOMS recommendations. It resolved that<sup>15</sup>:

#### **(1) Genital gland transplantation:**

Since the testicle and the ovary continue to have and produce genetic characteristics (the genetic code) of the donor, even after they are implanted in the recipient, their transplantation is prohibited in Islamic law.

#### **(2) Genital organs transplantation:**

Transplants of some genital organs that carry no genetic characteristics, excluding the external organs, is lawful when it is done to meet a legitimate necessity and in accordance with the legal criteria listed in resolution (1) of the fourth session of this Academy.

There was a prolonged debate about transplantation of the external genital organs, the penis, vulva and vagina, which carry no genetic characteristics. Some jurists allowed it, and others prohibited it on the basis these are the most private *Awrah* (*Awrah Moghalladha*) and on the basis of psychological factors. The final ruling was to include external genitalia in the prohibition with these motives<sup>16</sup>.

(3) The procedures of organ transplantation should never be subject to commercial purposes.

(4) Supervision of organ transplantation should be entrusted to a specialized, trustworthy authority.

**Making use of aborted fetuses, surplus zygotes and anencephalic babies in tissue/organ transplantation<sup>17</sup>:**

**Definitions:**

- **Aborted fetuses:** Fetuses that are spontaneously ejected from the uterus prior to 20 weeks of gestation. Most of them will be stillborn. However, some are born alive when the abortion is caused by anatomical factors such as incompetent cervix. These fetuses can live for few minutes or occasionally few hours. They are not fully formed, with no soul according to some scholars who believe that ensoulment occurs at 120 days of conception, but their organs can live for short periods and can be removed for transplantation. These live born fetuses may be also sources of stem cells .
- **Surplus zygotes:**  
In the process of in-vitro fertilization (IVF), physicians use a husband's sperms to fertilize his wife's ova in the IVF laboratory. To secure enough fertilized ova for the procedure, physicians usually retrieve and fertilize several ova, and may end up producing three to ten zygotes each time. This is done in view of the agony, time and expense of harvesting proper ova from the wife each time. Only one to three fertilized ova (zygotes) are introduced into the

wife's womb, to initiate a pregnancy that cannot take place otherwise. The remaining zygotes (pre-embryos) are usually frozen and stored in special incubators. If the first trial fails to induce pregnancy and the procedure has to be repeated, these extra zygotes which have been stored frozen can be used in the subsequent attempts.

In case pregnancy is successfully achieved, the extra zygotes may be disposed of or stored to be used in stem cell research and / or transplantation.

- **Anencephalic fetuses and babies<sup>18</sup>:**

Anencephaly is a major neural tube defect which results from failure of neural tube closure between 25 and 27 days after conception. It is a severe developmental defect in which the developing forebrain and variable portions of the brainstem are exposed in utero, and fail to develop or are destroyed.

They appear as a hemorrhagic, fibrotic, nonfunctional mass. Major portions of the CNS are absent or malformed. The cerebral hemispheres, the hypothalamus are absent, and the cerebellum, brainstem, optic nerves and spinal cord may be malformed. The pituitary gland is absent or underdeveloped, resulting in adrenal hypoplasia.



The bones of the cranial vault are absent and cause the characteristic appearance of bulging eyes and absent neck: the frog appearance.

Other associated congenital abnormalities include: Cleft lip/cleft palate, meningocele, cardiac, pulmonary, renal and skeletal malformations. They may have some brainstem function with spontaneous breathing, and often with suck, root and gag responses that may continue for few hours or occasionally days.

Affected fetuses usually die in utero, but may be born alive to die within hours or days. Without intensive care, the majority of them die within two days of birth, and none survive longer than two weeks.

These three possible sources of human organs, tissues and stem cells, received detailed discussions among medical specialists and *Shari'ah* scholars. These discussions also covered topics related to termination of pregnancy (TOP). The following *Shari'ah* positions are limited to the topics of organ and tissue transplantation, as decided by the Islamic Jurisprudence (*Fiqh*) Academy<sup>19</sup>:

( 1 ) Under the title (Making Medical Use of Aborted Fetuses), the Academy's resolution number 58/5/6, in its sixth conference held in Jeddah, 17-23 *Sha'ban* 1410 H, 14-20 March 1990, taking in consideration the outcomes of the combined IOMS/Academy seminar held in Kuwait on 23-26 *Rabi' 1*, 1410 H, 23-26 October 1989, decided:

1. Fetuses can be used as a source for organs to be implanted in other human beings, only when certain controls are applied:

- a. No abortion should be effected in order for the fetus to be used as a source of organs to be transplanted to other human beings. Only fetuses from natural, accidental, or legally justified abortions can be used. No surgical operation may be performed to get the fetus out except when saving the life of its mother is involved.
- b. If the fetus has the potential to survive, medical treatment should focus on keeping it alive rather than on exploiting its organs. If it has no potential to survive, it can be made use of but only after it dies, and in accordance with the conditions set in resolution 1 of the fourth session of this Academy.

2. The procedures of organ transplants should never be used for commercial purposes.

3. Supervision of such matters should be entrusted to a recognized, trustworthy authority.

( 2 ) Under the title (The fate of surplus zygotes )

The Academy resolution # 57/5/6, in consideration of the recommendations of the combined Academy/IOMS sixth seminar held in Kuwait on 23-26 *Rabee* 1, 1410 H, 23-30 October, 1989, decided:

1. In light of the achievement that allows the storing of unfertilized ova to be used later, the insemination of ova should be limited to the number

required to be implanted every time, to avoid having a surplus of inseminated ova.

2. When, for any reason, there is a surplus of zygotes, they should be left without any medical care until their life comes to a natural end.

3. It is forbidden to implant an inseminated ovum in a woman other than the one who has produced it, and sufficient precaution should be taken to guard against using a zygote in an illegitimate pregnancy.

(3) Under the title (Anencephalic babies). The Academy's resolution number 56/5/6, taken in consideration of the recommendations of the combined Academy/IOMS sixth seminar held in Kuwait on 23-26 *Rabi` 1*, 1410 H, 23-30 October, 1989, decided:

An anencephalic baby if alive at birth, must not be tampered with by removing any of its organs until its brain stem dies. In this respect, it does not differ from normal people. When it dies, any removal of its organs should be subject to the valid rulings and conditions concerning transplanting the organs of the dead, such as valid permission, the absence of the alternative, the determining of necessity and the other controls listed in resolution 1 of the fourth session of this Academy. There is no objection in Islamic Law to keep such an anencephalic baby attached to life-sustaining equipment after the death of the brain stem, which can be diagnosed, to keep the vital organs of such a baby functioning till their

procurement for transplantation in another human being, subject to the conditions referred to above.

### **Human organ Donation, Sale and incentives:**

The successes achieved in human organ transplantation, and the growing need for human organs has created an increasing universal need for organs.

Legitimate sources of organs for transplantation have been based on mutual compassion and sense of altruism among people in the form of voluntary organs donation from people who specify their desire for organs donation in their wills (living wills), executed after their death, or upon permission of their heirs, or from the ruler of Muslims in the case of a dead person whose identity is unknown, or who has no heirs, and from living donors, related or unrelated, with special restrictions.

Most countries of the world prohibit acquiring, receiving or otherwise transferring of human organs, on the basis of organ sale.

A great disparity between organ demand and availability has created new problems of transplant commercialism, trafficking and what became known as transplant tourism. Many instances of complications and poor outcomes of both recipients and donors have been reported.

The issue of sale or compensation for organ donation has been addressed by

several jurists in various Islamic countries<sup>20,21</sup>.

The Islamic Jurisprudence (*Fiqh*) Academy discussed this issue in its fourth session, and issued its Resolution no (1) d4/08/88, which adopted the IOMS recommendations in its third seminar held in 1987, and stated:

“It should be understood that endorsing the permission to transplant organs under the circumstances already stated is made under the condition that it involves no organ sale, because a human being should never be subjected to a sale transaction. As for the payment of money by the beneficiary when necessary in his effort to get the needed organ or as a reward and expression of gratitude to the donor, this has to be looked into and decided upon”.

Prohibition of human organ sale is based on considerations of dignity, honor and sanctity of humans and their organs that should not be dealt with as commodities. Human organs are a trust (*amanah*), owned by the Creator not by the person and should not be subjected to material ends, or commercialization. The issue of sale of human organs, or provision of incentives to donors received detailed discussion and debate<sup>2,5,7</sup>.

In view of the wide and growing gap between demand and supply of human organs, there are calls to revise the non-permissibility of providing monetary incentives to donors. In some countries (Iran<sup>22</sup> and Saudi Arabia) certain arrangements are being exercised

whereby the incentives to donors comes from the government or from non-profit or charitable organizations. The last sentence in the Academy resolution has kept the door open for ideas and suggestions among jurists to address specific situations that may allow donor compensation for their time lost and expenses incurred in the process of donation and its consequences, but not for the actual donation.

Some jurists approved such monetary compensations, based on the rule of necessity. Others disapproved it.

The issue needs further discussions. The “*Fiqh*” standing is based on prohibition of human organ sale.

In all circumstances, the matter should be centrally and legally organized, and should not be left to individual dealings that may result in loopholes of commercialism, and, among other considerations, may favor channeling organs from poor donors to wealthy recipients<sup>23</sup>.

Official authorities should monitor the organ donation-transplantation process according to recognized regulations, and to be conducted in recognized centers operated under both medical and Fiqh supervision<sup>24</sup>.

### **Definition of death that terminates human life:**

Death, in the true Islamic teachings, is the departure of the soul from the body. But since the soul and its departure cannot be identified, specific signs of

death have been traditionally accepted<sup>25</sup>.

Life ends, in the traditional concept, when the person's heart stops beating, and breathing stops. Upon definite verification of these signs, the person is declared dead.

With the contemporary advances in life support technology, situations frequently arise when patients, facing some serious medical conditions, are hooked onto life support equipment.

While their hearts are beating and other organs are functioning, they have no evidence of brain function, and are unable to survive without the ventilator support. Because of this a new concept of death "Brain Death" appeared, as being equivalent to actual death that terminates human life.

It has been possible, in some medical situations, to restore respiration and heart beat, by cardiopulmonary resuscitation when the brain stem has suffered no injury. On the other hand, if damage affects the brainstem, the brain area that controls the vital functions, death signs follow each other in succession: breathing ceases, the heart stops beating, and one by one, the other organs die. There is no way to replace damaged brain stem, even though artificial respirators and other means of life-support equipment continue to cause the heart to beat and respiration to continue. Criteria of brain death have been developed after decades of hard work. These criteria have been developed universally in the medical literature.

This concept of brain death was extensively discussed by the IOMS and Jurisprudence councils since the early 1980<sup>8</sup>.

In its second seminar, in 1985, IOMS<sup>26</sup>, held a symposium to study the "the end of human life" in Kuwait. The issue of brain death was extensively discussed and the following recommendations were adopted:

1. The seminar realizes that in the majority of cases, there is no difficulty in recognizing the occurrence of death, through conventional signs, or as a result of external medical observation which notes the absence of the signs that distinguish the living from the dead.

2. The seminar has reached the conclusion that there are few cases, which are usually under careful and comprehensive medical observation at hospitals, specialized medical centers, and intensive care units that have particular importance because there is an urgent need to diagnose death, although the body still shows signs, which have been always accepted as signs of life, whether these signs are naturally displayed by some organs of the body or result from resuscitation equipment applied to the patient.

3. The seminar discussed the signs of death listed by *fiqh* (Jurisprudence) reference work and discovered that, in the absence of a Qur'an text or a saying of Prophet Muhammad (ﷺ) which explicitly defines death, these opinions reflect the medical knowledge available

at the time of writing. Because of that, the diagnosis and signs of death have always been medical matters, on the basis of which *fiqh* scholars make legal rulings. Participant physicians presented the current medical view concerning the occurrence of death.

4. The decisive factor for physicians to proclaim the death of a patient is the lifelessness of the area of the brain that is responsible for vital body functions, which they express as death of the brain stem. A diagnosis of brain stem death clearly rules out certain suspicious cases, and physicians are capable of coming up with a confident diagnosis of brain stem death about which they have no doubts.

Any other vital organ function, such as the beating of the heart or respiration, may temporarily stop, but as long as the brain stem is alive, these functions can be revived. When, however, the brain stem itself has died, there is no hope of saving the patient, for his life has come to an end, even if other systems of the body continue to function by artificial means. Undoubtedly, with the death of brain stem, these systems are eventually going to stop and be lifeless sometimes even with the continuation of the life support measures.

5. On the basis of the presentation by physicians, *fiqh* scholars are inclined to the view that when it is ascertained that a human being has reached the stage of brain stem death, he is considered to have been withdrawn from life, and certain rulings of the dead are applicable to him. This ruling is based

on the principle of analogy as a basis for deriving new rulings. This situation is analogous, though with the evident difference, with what classical *fiqh* books say about an injured person who has reached the stage known as that of the "slain". Therefore when the death of the brain stem is certified by a report of a committee of medical specialists, it is lawful to remove resuscitation equipment.

As for the remaining rulings that concern the dead, the participant *fiqh* scholars preferred their postponement until all major systems of the body come to a stop.

It is therefore recommended that an additional, detailed study should be made to determine which rulings for the dead apply immediately and which should be delayed.

The Islamic Jurisprudence (*Fiqh*) Academy in Jeddah has endorsed this opinion. The Saudi protocol for diagnosing brain death goes along the same lines as most international protocols, and it is based on the Islamic legal ruling on the issue.

Resolution No (5) D3/07/6 of the Academy, held in Amman-Jordan, in October 1986, stipulates that a person is dead:

1. If his heart and respiration stop completely and physicians decide that this cessation is irrevocable, or
2. If all functions of his brain cease completely, and the physicians decide

that this cessation is irrevocable, and his brain starts the process of autolysis. A symposium was held in Kuwait from 17 to 19 December 1996<sup>27</sup>, to discuss the medical definition of death. A distinguished group of scholars in the specialties of neurology, neurosurgery, anesthesiology, intensive care, neurophysiology, cardiac surgery, organ transplantation, medicine, pediatrics, obstetrics and gynecology, general surgery, medical jurisprudence, who came from Kuwait, Saudi Arabia, Egypt, Lebanon, Turkey and the United States of America, was invited.

It was also attended by the director of the East Mediterranean Regional Office (EMRO) of the World Health Organization (WHO).

The subject was comprehensively discussed over three days, including a meticulous appraisal of the clinical cases presented in support of the dissent.

No patient properly diagnosed as being brain and brain stem dead ever regained life. In all the patients that "regained life" there were obvious and flagrant faults in making such diagnosis, omitting, misreading or violating the standard criteria.

Reviewing the global situation and the regional experiences and safeguards taken, and in full awareness of the scientific and religious dimensions, IOMS found no reason to discard, modify or alter the recommendation of its previous symposium on "Human Life: Its beginning and its end" held in Kuwait in 1985, or the rulings issued by the Congress of Islamic Jurisprudence.

The following standards, criteria and safeguards were spelt out by the symposium:

### **Firstly: Signs which signify death:**

An individual is considered dead in one of the following two situations:

- a. Complete irreversible cessation of the function of the respiratory and cardiovascular systems.
- b. Complete irreversible cessation of the function of the brain including the brain stem.

This should be confirmed by the accepted medical standards.

### **Secondly: Guidelines for diagnosing brain and brain stem death:**

- The presence of a reliable medical specialist, well experienced in the clinical diagnosis of brain and brain stem death and the various implications of such diagnosis.
- Prescribed observation necessitates complete medical coverage in a specialized suitably equipped institution.
- Second opinion should be accessible whenever sought.

Preconditions necessary before considering the diagnosis of brain death:

1. The person must be in continuous deep uninterrupted coma.



2. The cause of the coma can be explained by extensive damage to the structure of the brain, such as severe traumatic concussion, massive intracranial hemorrhage, after intracranial surgery, a large intracranial tumor or obstructed blood supply to the brain: confirmed by adequate diagnostic measures.

3. At least six hours have passed since the onset of coma.

4. The absence of any attempt at spontaneous breathing.

The diagnosis of complete irreversible cessation of brain and brain stem function necessitates:

1. Deep coma with complete unresponsiveness.

2. The clinical signs of absence of brain stem functions including: absence of the pupilloconial, oculocephalic, oculovestibular, gag, cough and vomiting reflexes.

3. Absence of spontaneous breathing as confirmed by the apnea test when the respirator is temporarily disconnected.

It should be borne in mind that:

- Some spinal reflexes may persist for some time after death. This is not incompatible with the diagnosis of brain death.
- On the other hand, the presence of convulsions, and other manifestations of decerebration and decortication, can only occur from an alive brain, and are

incompatible with the diagnosis of brain death.

Reversible or curable coma should always be definitively excluded. Possible causes are:

1. Sedatives, tranquilizers, narcotics, poisons, muscle relaxants, hypothermia below 33°C, and untreated cardiovascular shock.

2. Metabolic or endocrine disturbances.

3. There should be certainty of complete cessation of brain function over a period of observation of:

- 12 hours since the onset of irreversible coma.
- 24 hours if the coma is due to cessation of circulation (such as cases of cardiac arrest).
- In children under 2 months of age, the observation period is extended to 72 hours, followed by repetition of electroencephalography or tests for cerebral circulation.
- Children between 2 and 12 months of age require a longer observation period of 24 hours followed by repeat encephalography.
- Children over one year of age are handled like adults.

### **Specifications of the team authorized to diagnose brain death:**

1. The team comprises two specialists with experience in diagnosing brain death.

2. One of the two doctors of the team should be a specialist in neurology, neurosurgery or intensive care.

**No member of the team should be:**

1. A member of the organ transplantation team.
2. A member of the family of the deceased person.
3. Have any special interest in the declaration of death (such as inheritance or bequeath).
4. Blemished by any accusation by the family of the deceased that he had committed any professional misconduct.

There is still controversy on when to declare a person as dead? Is it the time the decision is taken by the doctors, or when the support is actually switched off?

This has its legal and moral implications, especially when coming to the issue of harvesting organs for organ transplant.

Even though there is almost unanimous agreement on the concept of brain death, there are many differences in the criteria adopted to decide on brain death in different countries, and even different hospitals in the same country, and this is not confined to the Islamic countries. The differences however are related to minor technical details and on whether there is a need or not to adopt confirmatory tests.

**Removal of life-support equipment  
When brain death is confirmed:**

Upon proper medical confirmation of brain death, dependant on recognized criteria, subjects who are on life support equipments could be pronounced dead, and it becomes permissible, but not obligatory, to remove life-support equipments.

The recommendations of the second IOMS seminar, (Human life: Its inception and End) held in 1985, stipulates:

“It is agreed that, if brain stem death is confirmed through the report of a specialized medical committee, it is lawful to turn off artificial life-supporting equipment”.

The IOMS reaffirmed this recommendation in its ninth seminar on (the Medical Definition of Death) in December 1996.

The Islamic Jurisprudence (*Fiqh*) Academy, in its meeting held in Amman-Jordan, in October 1996, endorsed this concept in Resolution No(5):

“In this case, it is proper to remove any life-support system used for such a person, even if some organs, such as the heart, continue to operate mechanically due to the systems attached”.

**The Living Will and organ donation:**

Definitions:

The Living will (in Arabic: al-Wasiyyah), is termed today “last will and testament”.

The drafting of such a will during one's lifetime is divinely ordained<sup>28</sup>.

The Prophet (ﷺ) emphasized the need to write down one's will:

"It is not right for any Muslim person, who has anything to bequeath, that he may pass even two nights without having his last will and testament written and kept ready with him"<sup>29</sup>.

The inclusion of organ donation into one's living will has been discussed by Jurists ever since the contemporary organ transplantation created a worldwide increasing need for human organs for donation to save lives and human sufferings.

There are no explicit texts (*nass*) in the Glorious Qur'an or Prophetic *Sunnah* to address this modern issue. As usual in such situations, jurists in their *ijtihad* had differences in opinion.

Some jurists have recorded their opposition to organ donation on the basis that a person cannot make a will (*wasiyyah*) concerning his organs in view of the concept that human organs are looked upon as an *amanah* (trust) from the Creator, and cannot be valued by material measures<sup>30</sup>.

The prevailing approval of human organ donation, however, was reported in the context of jurisprudence standpoints towards organ donation-transplantation. Considerations that have influenced the jurists' approval included the concepts of altruism (*al-*

*'ithar*) and the rule of necessity (*al-dharurah*).

The Council of the Islamic *Fiqh* Academy of the Muslim World League-Makkah-Saudi Arabia, in its eighth session, held in 1405AH/1985, resolved that it is permissible in *Sharia'h* to remove an organ from a dead person and transplant it into a living recipient, on the condition that the donor was sane (*mukallaf*) and had wished it so during his life<sup>31</sup>.

The Council of Islamic *Fiqh* Academy of the Organization of Islamic Conference (OIC), during its fourth session-Jeddah in 1988, resolved:

"It is permissible to transplant an organ from the body of a dead person, if it is essential to keep the recipient alive, or to restore a basic function to his body, provided it has been authorized by the deceased, or by his heirs after his death, or with the permission of the concerned authorities in case the deceased has not been identified, or has no heirs"<sup>32</sup>.

From these resolutions, we could implicitly deduce an agreement of the inclusion of organ donation in one's will.

Some jurists went as far as considering saving a threatened life as (*fardh kifayah*), a duty, if not fulfilled by any Muslim individual, the whole Muslim society will be considered sinful<sup>33</sup>.

### **Blood donation and transfusion:**

Blood, and blood products, is transfused from one healthy person

(donor) into the circulatory system of another person (recipient), to correct various necessities of blood loss, or clinical entities causing lack of vital constituents of the blood.

### **Blood Transfusion in Jurisprudence (*Fiqh*):**

The issue of blood transfusion was not mentioned in the Glorious Qur'an or the Prophetic *Sunnah*.

There were some inferences in jurisprudence related to blood that is shed from the body by various means. This kind of blood has been looked upon as impure (*najas*) in general Islamic teachings. It is for this reason that initially the issue of blood transfusion posed a genuine problem to Muslim jurists<sup>34</sup>.

Some scholars of jurisprudence have limited the impurity (*najas*) of blood, to that addressed by the Qur'anic verses that specified blood that is spilled out by slaying animals, which used to be eaten or consumed by the *Jahiliyyah* people prior to Islam. Blood inside the body system of humans is not looked upon as such. On the contrary the human blood within one's body, is as pure as his flesh and other body systems<sup>35</sup>.

Muslim Jurists sanctioned blood transfusion in cases of emergency. A *fatwa* was issued to that effect by the Grand Mufti of Egypt, No. 1065 dated 9<sup>th</sup> of June, 1959<sup>36</sup>.

Thereafter, several scholars in Islamic Jurisprudence in various parts of the

Islamic world, approved blood transfusion as a form of treatment. Some of them approved it on the basis of the rule of necessity, when blood transfusion is the only means to save human life.

On the same basis, jurists approved donation of blood, provided this donation would not jeopardize the donor's health.

In general, the following conditions must be fulfilled for the process of blood donation and transfusion<sup>37</sup>:

(a) The donor has willingly consented to donate his blood.

(b) No grave dangers to the donor's life or health exist, as deemed by qualified medical practitioners.

(c) Blood transfusion is the only way of saving the recipient life.

(d) The degree of success is anticipated to be high.

The issue of blood transfusion to improve patients, health (not directly life threatening situations), such as severe anemia, to expedite healing or to prevent organ decay, was approved by some jurists and *Fatwa* Councils<sup>38-40</sup>.

### **Blood banking:**

Proper storage of blood for possible transfusion into those who need it is permissible on the basis of taking proper precautionary measures to

ascertain the availability and safety of blood at times of real need<sup>41</sup>.

### **Blood donation: Sale and incentives:**

Blood donation should be undertaken on non-remunerated basis. Situations, however, may arise in which incentives or sale may be needed. Making incentives and / or monetary rewards for blood donors may be at variance with the prohibition of sale of organs such as the kidney. However, it may be understood by the fact that solid organs donors themselves need protection from organ trafficking under pressure of poverty as the underlying cause of selling their organs, which is untrue for blood donors.

Incentives for blood donors was allowed, especially if granted by the state or medical institutions, to encourage people to donate blood<sup>42</sup>.

The Islamic (*Fiqh*) Academy of the Muslim World League, Makkah, decided there is no prohibition in the state's encouraging blood donors, by giving them incentives as donations or rewards for providing this human service<sup>43</sup>.

On the issue of sale of blood, the Islamic (Fiqh) Academy of the Muslim World League-Makkah, in its meeting on 19-26 February 1989, stated:

There is no prohibition on a person, compelled by necessity, when there is no other means of obtaining blood except for paying for it, if he pays money in order to receive blood

transfusion. Thus, the one who pays for the blood is absolved from any misconduct (guilt), while it is the one who conditions payment for this service in case of emergency, may be liable to be sinful<sup>44</sup>.

A prominent Jurisprudence scholar<sup>45</sup> pointed out that it is permissible to pay for blood transfusion services from a blood bank or institution. Such payment is looked upon as compensation for the expenses of blood collection and storage, and not as a sale. Such transaction should be clearly mentioned in the documents of these institutions.

### **Human milk donation:**

In the Glorious Qur'an there are verses that address the issue of payment for the divorced mothers who breast feed their infants, if there is mutual agreement with the father. If there is no such agreement on the payment, a wet nurse could breast feed the infant:

"... فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِإِنَّكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتَرْضِعْ لَهُ أُخْرَى"

"And if they suckle your (offspring), give them their recompense, and let each of you accept the advice of the other in a just way, and if you find yourselves in difficulties, let another woman suckle (the child)....."<sup>46</sup>

"...وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ..."

"... If you decide on a foster mother for your offspring, there is no blame on

*you, provided you pay (the mother)....*<sup>47</sup>.

As explained by some commentators (e.g. Ibn Kathir)<sup>48</sup>, the wet nurse may provide breast feeding for a payment. There were extensive discussions among Muslim jurists regarding the specificity of human milk donation as compared to other organs<sup>49-51</sup>.

Some jurists looked upon human milk as a renewable material, designed to be secreted outside the human body, for benefit of others, with no harm to the woman. The benefits in nourishment, health and life protection of infants exceed the considerations of its sale on human dignity.

This opinion was adopted by Maliki, Shafi'i and Hanbali schools of jurisprudence (with individual jurist differences), but it was forbidden by Hanafis, in view of contradiction to human dignity.

More recently this issue was addressed by Shaikh Yousef Al-Qaradawi in the seminar on (Procreation in Light of Islam), where he described human milk donation in the following statement:

‘No doubt any woman who donates some of her milk to feed (weak and needy) infants, especially premature ones, is rewardable by Allah, and praiseworthy by people. Moreover it is permissible for her to receive payment, if she chooses not to donate (milk) for free, as was permitted by the Qur'an, and as what was pursued by Muslims’<sup>52</sup>.

This approval of payment for a wet nurse does not negate the generally approved conclusion of the scholars as outlined in a previous section that the sale of organs, for example a kidney, is prohibited. This approval by many Muslim jurists, past and contemporary, seems to be influenced by the permission of compensation of donating human milk, as specifically mentioned in the Glorious Qur'an.

### **Mixed human milk banks:**

This issue has been discussed in the IOMS seminar, held on 24<sup>th</sup> of May 1983<sup>53</sup>, and summarized in the International Islamic Code for Medical and Health Ethics on 11-14 December, 2004<sup>54</sup>.

A mixed milk bank collects human milk that is offered voluntarily, or for financial payment, which is properly stored, either through refrigeration, or by drying and sterilization, to be used in feeding premature babies. Jurists expressed differing points of view which are summarized in the following points:

1. Setting up of banks of mixed human milk was discouraged by majority of jurists, except when medical need arises during the course of care of preterm newborns that could not be nourished otherwise.
2. Some jurists advocated a process of documentation, whereby each milk donor and each receiving baby should be properly indentified.



Each nursing incident should be documented in records that are kept, and all concerned should be properly informed, to guarantee avoidance of marriages of persons who had authenticated milk relationships.

3. Some jurists, however, believe that milk relationships result only when a baby sucks the breast of a milk mother for at least five filling breast feedings. In their opinion, milk derived from milk banks is derived from unknown sources, does not involve actual breastfeeding by a woman, and thereby does not form a milk relationship.

The International Islamic *Fiqh* Academy of OIC prohibited establishment of human milk banks, and prohibited consuming milk from them<sup>55</sup>.

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b. Organization as author:

**Example:** Diabetes Prevention Program Research Group. Hypertension, insulin, and proinsulin in participants with impaired glucose tolerance. *Hypertension*. 2002; 40(5):679-86.

c. No author given:

**Example:** 21st century heart solution may have a sting in the tail. *BMJ*. 2002; 325(7357):184.

d. Personal author(s) of books and monographs:

**Example:** Murray PR, Rosenthal KS, Kobayashi GS, Pfaller MA. Medical microbiology. 4th ed. St. Louis: Mosby; 2002.

e. Editor(s), compiler(s) as author:

**Example:** Gilstrap LC 3rd, Cunningham FG, Van Dorsten JP, editors. Operative obstetrics. 2nd ed. New York: McGraw-Hill; 2002.

f. Author(s) and editor(s):

**Example:** Breedlove GK, Schorfheide AM. Adolescent pregnancy. 2nd ed. Wiecezorek RR, editor. White Plains (NY): March of Dimes Education Services; 2001.

g. Chapter in a book:

**Example:** Meltzer PS, Kallioniemi A, Trent JM. Chromosome alterations in human solid tumors. In: Vogelstein B, Kinzler KW, editors. The genetic basis of human cancer. New York: McGraw-Hill; 2002. p. 93-113.

h. Conference proceedings:

**Example:** Harnden P, Joffe JK, Jones WG, editors. Germ cell tumors V. Proceedings of the 5th Germ Cell Tumour Conference; 2001 Sep 13-15; Leeds, UK. New York: Springer; 2002.

i. Newspaper article:

**Example:** Tynan T. Medical improvements lower homicide rate: study sees drop in assault rate. The Washington Post. 2002 Aug 12;Sect. A:2 (col. 4).

j. Audiovisual material:

**Example:** Chason KW, Sallustio S. Hospital preparedness for bioterrorism [videocassette]. Secaucus (NJ): Network for Continuing Medical Education; 2002.

k. In press:

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l. Homepage/web site:

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m. Qur'anic Verse:

**Example:** The Glorious Qur'an: Mariam: 19: 54.

n. *Hadith* from printed volume:

**Example:** IbnHajar al-'Asqalani. Fath al-Bari bi-Sharh Sahih al-Bukhari (The Creator's Inspiration in Interpreting the Verified Collection of al-Bukhari). Cairo, Egypt: Al-Bahiyah Egyptian Press; 1930. Vol 11, p. 405.

o. *Hadith* from database:

**Example:** Sahih Al-Bukhari, Book 79, Kitaab al-Tibb, Chapter 1, Hadith 5354. [on-line] Available from: <http://www.muhammad.org>.



11. Number the tables consecutively, and use Arabic numerals. Each table must be cited in sequence at an appropriate point in the text. Each table has to have a caption. These should be brief yet indicate closely the purpose or content of the table. Each column should be precisely defined by headings. Abbreviations and special designations should be explained in a footnote to the table.

12. The term figure includes all types of illustrations such as graphs, diagrams, photographs, flow charts, and line drawings. Figures must be cited consecutively in the text with Arabic numerals. If photographs of patients are used, either the subjects should not be identifiable or written permission to reproduce them should accompany the submission.

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