

Medical Issues

Islamic Fiqh Academy (India)

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In the name of Allah Most Merciful Most Benevolent

**O ye who believe!
Guard your own souls;
If ye follow (right) guidance,
No hurt can come to you
From those who stray.
The return of you
Is to Allah: it is He
That will inform you
Of all that ye do.**

Al-Qur'an 5:105



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Foreword

Law and jurisprudence survive only by their dynamism. Warmth and vigour of life is reflected in many living laws. Implementation of law along with the changing pattern of events is certainly a difficult and intricate task. Harmonious correlation of a dynamic law with the changing pattern of time can be achieved only on the basis of certain basic principles and concrete rules of its interpretation. The durability of Islamic jurisprudence, its vitality in giving correct lead and bringing discipline in human life is in fact indebted to the principles deduced and drawn from the Qur'an and *Sunnah* by the jurists who accomplished the delicate task of correlating the rules of Fiqh in every age, in keeping with the prevailing conditions.

Once, there were versatile personalities having deep insight into the Holy Book, *Sunnah* and verdicts of the jurists, principles of analogy (*Al-Qiyas*) and methods of Correlation (*Ijtihad*). They possessed a thorough knowledge of the general principles of Shariah, and its aims and objects. They were fully conversant with the trends, currents and under-currents of the period they lived in. They used their skills with a high degree of piety and strict adherence to the spirit of Shariah and tenets of the religion to find solutions of the problems of their age. Their verdicts got credence and acceptance in the Muslim society over the ages.

The present era has brought multi-dimensional changes in the society. Progress of science and technology has

created new horizons. World has shrunk down to the size of a small settlement. New developments in social and economic fields have created new problems and have thrown up new challenges. People, who want to follow Islam and make Shariah the standard guide in all the spheres of life, are confronted with a number of questions for which they seek guidance from theologians. On the other side such competent persons who can solve these problems on the basis of their own knowledge and research and whose verdict may be readily acceptable to the Muslim society, are rare.

It was, therefore, a crying need to lay the foundation of a combined pool of opinions where scholars of religion and theologians could find solutions of problems in the light of, and in conformity with the principles of Shariah.

To achieve this goal, Islamic Fiqh Academy of India was founded, in which renowned scholars and experts of Medical Sciences, Economics, Sociology and Psychology, besides Islamic jurists and theologians were included and it is heartening to note that its echo is reverberating even outside India. This valuable exposition includes the decisions taken in the Fiqhi Seminars organised by the Islamic Fiqh Academy (India) so far. I am confident that our intellectuals will be benefited by it and in future we will constantly receive cooperation of the theologians, jurists and savants in fulfilling our aims and objects.

(Late) Qazi Mujahidul Islam Qasmi
Erstwhile Secretary General
Islamic Fiqh Academy (India)

Preface

It is the responsibility and important obligation of the Islamic theologians (*'Ulemā*) to solve problems and difficulties arising in every age. The masters of the classical age have addressed to the problems of their own time both individually and collectively. However, the latter has been regarded a safer and more appropriate approach in dealing with matters of Shariah. It is because the individual shortcomings could be done away with in a collective wisdom. Therefore, the reverend caliph Umar bin Khattab had followed this during the era of Companions (*Sahaba*) and Imam Abu Hanifa further elaborated upon it in the ensuing age.

There is no doubt that the present age is the age of fast changes. Hence, the experts in Islamic jurisprudence bestowed with acumen and grip on the nature of these changes have established Fiqh academies in various parts of the world. These collective platforms are growingly playing their crucial role in solving the issues and problems coming across in the field of Islamic jurisprudence. The leading divines and towering theologians of India have also taken keen interest to reflect on the contemporary issues and problems although in a limited way. May Allah generously reward late Qazi Mujahidul Islam Qasmi who laid the foundation of Islamic Fiqh Academy (India) with the cooperation of concerned *'Ulemā* and scholars; and thus created a dynamic platform of the Islamic theologians of the

country to sit together and resolve pressing issues of the time unitedly.

The Academy has successfully endeavored to avail cooperation of almost all leading '*Ulemā* and *Muftis* of the country apart from renowned figures in the field in India and from various countries.

It is a matter of pleasure and satisfaction for us that **24** grand **Fiqh Seminars** have been organised so far under the aegis of Islamic Fiqh Academy delving on around **114** issues of contemporary nature. The major decisions of these seminars have been published both in Urdu (*Aham Fiqhi Faisle*) and English '*Important Fiqhi Decisions*'. Later on it was thought pertinent to republish them by arranging text on the basis of themes and subject matter rather than on chronological order so that interested people could have easy access to them.

Consequently, the volume containing major decisions of all the seminars, in a new order, was published in Urdu some time back titled '*Naye Masail aur 'Islamic Fiqh Academy ke Faisle*'. The present title '*Juristic Decisions on some Contemporary Issues*' is an endeavor to present various resolutions and decisions of the Fiqh Seminars, held so far, with a subject-wise arrangement of the undertaken issues. It is an updated edition of the previous title '*Important Fiqh Decisions*' and *Insha Allah*, it will be our effort to bring out, as soon as possible, pamphlets dealing with a single problem for wider circulation among common people.

May Allah elevate the status of the founder of Islamic Fiqh Academy late Maulana Mujahidul Islam Qasmi in

the Hereafter and help us to rightly preserve the treasure left by him and to develop it further in the days to come.

Khalid Saifullah Rahmani

General Secretary

06 April 2015

Islamic Fiqh Academy

Medical Ethics in Islam

Advances in medical science, and in the related technology, have changed doctor-patient relations in many ways. Therefore, need was felt to reassert and redefine rights and obligations involved during medical practice in modern time so that the medical ethics prevalent in these days could be tempered in the light of Islamic teachings. The Eight Seminar of the IFA discussed many related issues of medical ethics and resolved as follows.

- 1.1 Only a duly qualified person whose competency in the matter has been authenticated by a credible authority is competent to undertake treatment of patients. It is not permissible in Shariah to treat patients without competence.
- 1.2 If, during the course of treatment by a person, not permitted by Shariah to do so, some major harm is caused to the patient's health, the treating person shall be liable to penalty and punishment.
- 1.3 If the patient suffers harm to his/her health due to the negligence of or some lapse on the part of the person treating him/her (he/she, even may be a qualified physician), that person will be liable.
- 1.4 If, in spite of opportunity, the doctor performs an operation without the consent of the patient or his next kin and the operation either causes death or

some injury to the patient, liability will be on the doctor.

- 1.5 If the patient is in an unconscious state and his/her next of kin are also not available and the doctor feels that to save the life or any organ of the patient, immediate operation is called for and he/she performs the operation without obtaining any one's consent, and it results in some injury to the patient, the doctor will not be held liable.
- 1.6 If a person negotiating for marriage with some woman is suffering from such disease or deficiency which if becomes known to the woman she might decline to accept the proposal, and his doctor has the knowledge of that disease or deficiency, and the concerned lady or her guardian contacts the doctor and in the context of the impending marriage proposal enquires about the true state of the health of the person, it would be incumbent on the doctor to state the factual position. In case the lady or any of her guardians do not contact the doctor in this regard, it will not be incumbent on the doctor to, of his own accord, inform the lady or her guardians of the person's disease or deficiency.
- 1.7 If the eyesight of a driver employee gets impaired it will be incumbent on his doctor to inform the employer of the same. Similarly, if the pilot of an airplane or a bus-driver is so addicted to drinking as may jeopardise the safety of passengers, it will be incumbent on the doctor to inform of it to the concerned authority.

- 1.8 If the doctor knows about an offence having been committed by his patient and some one else is being prosecuted for that offence, it will be incumbent on the doctor to make the fact known to the authority in order to save the innocent persons. The principle of confidentiality will not be applicable in such a case.

Position of Shariah on Birth Control and Abortion

The concept of family planning and population control on the pretext of depleting resources or demands of modern life styles created controversies all over the world, particularly among the religious circles. There was a consistent pressure on '*Ulemā* (theologians) to guide the Muslim community on various aspects and practices emanating from this concept so that the Muslims could act according to the precepts of Shariah and the non-Muslims could be convinced of the rationality of the Islamic viewpoint. Therefore, the First Fiqh Seminar of the IFA debated on the issue of birth control and abortion so as to guide the Muslim community in this regard. The Seminar reached to the following derivations.

- 2.1 Any practice leading to terminating or restricting human birth is against the basic tenets of Islam.
- 2.2 In no case Shariah approves the evasion or refusal of shouldering the responsibility of procreation on the ground of keeping the family small as a fashion or because of hindrance in cultural pursuits or because of affecting employment or business engagements of the parents.
- 2.3 The women who take up employment as a career to achieve higher standard of living or to amass wealth, ignore their function of procreation and also forget the sacred obligation which nature has blessed them with, as mother of human race.

Therefore, the idea of limiting the family with these considerations is totally un-Islamic.

- 2.4 If due care and nourishment of the child falls in jeopardy because of early pregnancy of the mother, in that case, to keep a suitable interval by spacing conception, temporary birth control devices can be adopted.
- 2.5 Adopting permanent birth control devices (like vasectomy) are in no case permissible for men. Such devices are prohibited for women as well. However, only in exceptional cases this is permissible, that is, if in the opinion of a medical expert there is danger to the life of the woman or apprehension of destruction of some organ of the woman while delivering a child, oviductomy operation can be performed on the woman to prevent future pregnancy.
- 2.6 Use of temporary birth control measure under ordinary circumstances is not permitted in Islam.
- 2.7 Under the following exceptional circumstances use of temporary birth control devices or taking medicine for that purpose is permissible for men and women.
 - a) If the woman is very weak and in the opinion of doctors she cannot bear the rigours of childbirth without the risk of grave danger to her life.
 - b) If the pains of childbirth are going to be, in the opinion of medical experts, unbearable for the woman and shall expose her to grave harm.

Transplantation of Organs

The problems and issues related to transplantation of human organs were discussed threadbare in the First Fiqh Seminar held on 1-3, April 1989. There was almost a consensus on some issues. For the rest of issues, in order to arrive at a final decision, a sub-committee was formed to prepare a questionnaire in the light of issues that emerged in the Seminar and to send it to '*Ulemā* (theologians) and *Fuqaha* (jurists) for their opinion, which was obtained accordingly. After going through those deliberations and the opinions so received, the following conclusions were unanimously arrived at.

- 3.1 If an organ of a person stops functioning and for the purpose of restarting it's functioning it becomes necessary to replace that organ, it is lawful to use:
 - a) Organic or inorganic objects such as metal, plastic, etc.
 - b) Organs of *Halāl* animals, which have been slaughtered according to Islamic methods.
 - c) For replacement the organs of such animals whose meat is *Harām*, or of such animals whose meat is *Halāl* but which have not been slaughtered in the prescribed Islamic manner, in cases where there is no alternative available and either the life of the person is in danger or the organ is in the danger of being completely damaged.

- d) If there is no strong danger to life or the organ being damaged, the use of the organs of pigs is not permissible.
- 3.2 It is valid to replace a part of a person's body with another part of the same person if necessity so demands.
- 3.3 It is not permissible to sell one's organs. It is *Harām*.
- 3.4 In case a patient has reached the stage where his organ has stopped functioning and there is strong danger that he will lose his life if that organ is not replaced through transplantation, and there is no substitute for it except the human organ, and medical experts are of the opinion that there is a strong likelihood of his life being saved if transplantation of human organ is made and that the needed organ is also available, in such a desperate and unavoidable situation, transplantation of human organ will be permissible for the patient to save his life.
- 3.5 If a healthy person, in the light of the opinion of medical experts, is sure that he/she can live with one kidney only, it will be valid for him/her to donate one kidney to an ailing relative, if it be necessary to save his life while no alternative is available, but without charging any price.
- 3.6 If someone expressed his wish that after his death his organs may be used for transplantation

purpose (testamentary disposition as it is commonly known) it cannot be considered as *Wasiyat* (will) according to Shariah and is invalid according to Shariah and such a wish is not to be honored.

Matters related to AIDS

Acquired Immune Deficiency Syndrome (AIDS) has almost become a modern plague, spreading very fast in various parts of the world. In order to save the life of healthy persons by controlling its spread and to treat the patients suffering from the disease and to understand related issues, the Islamic Fiqh Academy brought the issue on the agenda of its Eight Seminar in row. The following decisions were made.

- 4.1 If a person, not disclosing that he is suffering from AIDS, contracts a marriage, the wife shall have the right to have the marriage dissolved. She will have the same right in the case of her husband contacting AIDS subsequent to marriage provided that AIDS assumes serious proportion.
- 4.2 If a woman suffering from AIDS gets pregnant and a qualified doctor be of the opinion that in all likelihood the foetus will also develop AIDS, in that case, prior to the life coming in the embryo, the period which the Muslim jurists have fixed as 120 days from the day of conception, permission for abortion can be given.
- 4.3 If an AIDS patient is completely in the grip of the disease and is rendered incapable of performing normal functions of life, such a person will be treated as one on deathbed.

- 4.4 It is the moral responsibility of an AIDS patient to inform his kinsmen of it and also to take all necessary precautionary measures.
- 4.5 If an AIDS patient insists upon his doctor to keep it under wraps and the doctor is of the opinion that by doing so there is the likelihood of harm to the members of the patient's household, to patient's relatives and to the society at large, then it will be incumbent on the doctor to convey the information to the relatives of the patient and to health authorities.
- 4.6 In respect of the persons suffering from AIDS or some other infectious diseases, it is the duty of their folks, relatives, and the society as a whole, not to leave them isolated and uncared for. Taking all necessary precautions, good care should be taken of the patients and due cooperation be offered in their treatment.
- 4.7 It is improper to keep the AIDS-infected children deprived of education. Observing due precautions, arrangements for imparting education to them should be made.
- 4.8 Restriction of movement in and out of plague-affected areas is desirable except in cases of extreme necessity.
- 4.9 It is *Harām* (totally forbidden) and a major sin for AIDS patients to, knowingly, transmit the disease to any other person. Such a person will be liable for punishment in view of the nature of the act and for the harmful effect it has on an individual or on the society as a whole.

Use of Alcohol

It is a universally accepted fact that the use of alcohol as a inebriating substance is harmful for life. However, its other uses remain controversial among the Muslim theologians. In order to develop appropriate clarity on the matter, the Fourteenth Seminar of the IFA considered it and propounded the following opinion.

- 5.1 Alcohol is a chemical substance, which is prepared by the process of decomposing various kinds of carbohydrates or sugar present in fruits and cereals. It is of many types, but only one of them is intoxicating in nature.
- 5.2 Certain medicinal drugs contain ethyl alcohol. This type of alcohol is intoxicating in nature and it does not lose its characteristics in spite of being mixed in the drug. However, as far as the treatment and cure is concerned, Shariah clearly mentions some provisions, by which the consumption of alcohol-containing drugs is permissible, in case no other alternative is available.
- 5.3 According to the research reports of the experts, the alcohol used in the preparation of perfume is not intoxicating in nature. Therefore, it is not unclean.

Medical Insurance

No form of gambling is permissible under the Islamic Law. The prevalent method of medical insurance is tantamount to gambling on the ground of its actual consequence; which has turned the benign service of medical treatment into business and trade. In this context the delegates of the Fifteenth Fiqhi Seminar of the Islamic Fiqh Academy have taken the following decisions regarding medical insurance:

- 6.1 Medical insurance, like all other aspects of insurance itself, is based on non-permissible dealings. Therefore, in normal situation medical insurance is not permissible; and in this judgment no distinction could be made between the governmental or private set ups.
- 6.2 If the medical insurance has been done due to any legal compulsion, then there could be possibility of permission. In such a situation, it will be obligatory upon a capable patient to distribute equivalent of the excess amount spent on treatment as compared to the deposited amount in charity without expecting any divine reward on it.
- 6.3 The Islamic alternate of the prevalent system of medical insurance is possible and the simple solution in this regard could be the establishment of such medical institutions by the Muslims, which could treat poor patients while helping them according to their needs.

Genetic Test

The advancement of science and technology in the present era has provided several benefits to mankind. However, from human perspective there are some negative aspects of concerning developments too. Genetic science and DNA test comprise important links in this regard. Hence, the following resolutions of the Fifteenth Seminar of the Islamic Fiqh Academy were brought on record concerning various aspects of genetic engineering.

- 7.1 If it becomes evident from a genetic test that the foetus is growing in the mother's womb with an incurable mental or physical disability and that the life of the prospective human being would be some sort of a burden and taxing to the parents, then in such a situation it will be permitted for them to abort it before 120 days from the conception.
- 7.2 If it is established by the genetic test that the next generation of a person would suffer from hereditary disability of sever nature, and then it would be permitted to check the birth.
- 7.3 If it is apprehended from the genetic test that a person would become mad or suffer from such an incurable disease which provides ground for dissolution of a marriage, then such a test would not be regarded a sufficient ground for dissolution of any marriage.

- 7.4 It is permissible to make use of genetic test for treatment, diagnosis of disease and for carrying out research in the field of genetic engineering.

DNA Test

The following decisions were taken in the Fifteenth Seminar of Islamic Fiqh Academy appertained to the DNA test:

- 8.1 It is not permissible to create doubt about the lineage a person through DNA test, which could otherwise be established according to the principles of Shariah.
- 8.2 If there are a few claimants of a child and no one of them possesses any irrefutable proof in this regard acceptable to Shariah, then in such a situation the validity of a claim could be established through the DNA test.
- 8.3 Validity of a DNA test will not be acceptable as compared to the Islamically valid methods for proving crimes attracting capital punishment.
- 8.4 Validity of a DNA test will be acceptable for proving such crimes, which are not attracting capital punishment according to Shariah.

Plastic Surgery

- 9.1 It is permissible to go in for plastic surgery to remove physical deformity. Defect/deformity means a deformity in the body that makes the physique different from common and formal creation whether it is a defect by birth or it manifests after wards.
- 9.2 To remove physical deformity if physician so advises – plastic surgery is permissible.
- 9.3 It is not permissible to go in for plastic surgery to get the wrinkles or changes that are the result of wear and tear in the physical appearance due to advancing age.
- 9.4 If nose and other organs of the body are not attractive and unproportionate but are not beyond the common and popular creation then it is not permissible to opt for plastic surgery just for transforming oneself attractive.
- 9.5 It is not permissible to resort to plastic surgery to conceal one's identity save that a victim is desperately indeed to save him/herself from repression.

Death, when it is to be declared and artificial respiratory apparatus

- 10.1 When the respiratory system collapses completely and the signs of death are apparent, only then it would be declared that the patient is dead. His will would take effect from that time. The inheritance will be released and the period of *Iddat* will also be counted from that time.
- 10.2 When the patient is on the artificial respiratory system and the physicians are hopeful that his natural respiratory system will be restored, the relatives of the patient may ask for the removal of the artificial respiratory apparatus if it is not possible to continue the treatment out of the assets of the patient and it is beyond the means of the relatives to pay for the treatment nor other resources are available to continue it.
- 10.3 If the patient is on the artificial respiratory system and the physicians have lost hope for his life, the relatives may ask for the removal of the artificial respiratory apparatus.

Euthanasia – What the Shariah enjoins?

Islamic Shariah lays greatest emphasis on the safety of human life. The person concerned and the others are under obligation to ensure the safety of one's life.

- 11.1 To redeem a patient from unbearable pain or to relieve the relatives of the patients from the burden of heavy treatment expenses, to take any such step that causes the death of the patient is absolutely forbidden. It is illegal rather a sinful act of homicide.
- 11.2 No lethal medicine should be administered to the patient. It is also not permissible to discontinue the treatment despite having resources for it, to see that the patient dies an early death.

Donating Human Organs & Parts

After analyzing all the article/papers on donations of human organs and part and after due deliberation on the issue, the seminar feels that the subject on one hand relates to the enjoins of the Shariah and medical and modern research and facilities on the other, New research are coming to forth so Shariah enjoins will also be sought for it. Keeping in view the research that has emerged so far, the seminar resolves as under:

- 1- Blood is the main and fundamental part of human body. Human life depends on it. If a patient is in dire need of blood and doctors insist on it, so it is permissible to donate blood to a Muslim or non Muslim patient and vice versa to save a human life.
- 2- Blood bank where people donate their blood voluntarily and the banks supply blood to the patients free of cost a Muslim can donate his blood to such a bank.
- 3- To hold camps for blood donation is permissible as it is a service to humanity.
- 4- In a case where a patient is in dire need of human blood and a person with the required blood group is present there, he must come forward to donate his blood to save the life of the patient it is desirable under the Shariah.
- 5- Under the Modern medical research it is now possible to transplant a part of liver of a living person to a patient and the remaining liver of the donor will recover to become a complete liver within minutes, so it is permissible to donate ones liver for transplantation to ones friend or near and dear one. But sale and purchase of the organ is not permissible.

6- It is not permissible to establish human Milk bank. If a bank of human milk has been set up it is not permissible to donate human milk to the bank or to cooperate in such a business.

7- To set up bank for human semen (male/female) or to donate or accept semen to a needy Male/Female or to sale it is prohibited.

8- It is not permissible to transplant the cornea of a living person's eye to another person. However, the cornea of a dead person can be used to restore the eye sight of a patient or not, a final decision on this issue is postponed.