

Unprecedented Medical Issues The Position of Islamic Shariah

Urdu Compilation
Islamic Fiqh Academy
New Delhi, India

Published by
IFA Publications
Jogabai, Jamia Nagar, New Delhi-25

© All Rights Reserved

Urdu Compilation : **Islamic Fiqh Academy**
New Delhi, India

Name of English Title: **Unprecedented Medical Issues**
The Position of Islamic Shariah

(Determining the position of Islamic Sharian on unprecedented, varying medical issues, involving multiple moral, social, and legal aspects from the perspective of Islamic teachings, in the light of the scholarly papers prepared and submitted by the noted men of Islamic scholarship to the Academy in response to the Questionnaires it served to them as part of its seminars held over the past three decades right from the day of its institutional genesis)

Edited and Translated by: **Md. Ibrahim Khan**
MA (English)
PGDTE

Total Pages :

Year of Publication : 2018

Price : 312

Published by : **IFA Publications, Jogabai**
Jamia Nagar, New Delhi-25

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَافَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ ١٢٢

And it does not beseem the believers that they should go forth all together; why should not then a company from every party from among them go forth that they may apply themselves to obtain understanding in religion, and that they may warn their people when they come back to them that they may be cautious?

Table of Contents

1	Booke One		7
	Etuthanasia		
	Brain Death		
	Questionnaire		10
	Decision of the Academy (Euthanasia)		12
	An Abridged Presentation of the Views (Euthanasia) expressed by the Participants		
		Mufti Ahmad Nadir Al Qasmi	13
		Dr. Umar Hasan Kasule	29
		ML. Akhtar Imam Adil Qasmi	42
		Mufti Nazir Ahmad Kashmiri	57
		ML. Mustufa Abdul Quddus Nadvi	68
		Mufti Mohd. Arif Billah Qasmi	76
	Brain Death		
	Questionnaire		83
	Decision of the Academy (Brain Death)		87
	Summarizing the Papers		
	Answers to the Questionnaire (Papers)		
		Dr. Zafrul Islam Siddiqi	92
		ML. Akhtar Imam Adil	99
		Mufti Tanzeem Alam Qasmi	108
		Mufti Abdur Rashid Qasmi	113
2	Book Two		119
	Plastic Surgery (Concept & Practice)		121
	Questionnaire		125
	Decision of the Academy		127
	Papers		
		ML. Mustufa Abdul Quddus Nadvi	128
		Dr. Razi al-Islam Nadvi	136
		ML. Khalid Saifullah Rahmani	158
3	Book Three		171
	Medical Ethics in the Islamic Teachings		
	Questionnaire		173
	Decision of the Academy		186

	Medical Ethics (An overview of the Papers)		190
	Papers		
		Mufti Jameel Ahmad Naziri	199
		MI. Shams Peerzada (Late)	216
		MI. Khalid Saifullah Rahmani	225
4	Book Four		261
	Islamic View on DNA Test & Genetic Science		
	Preliminary Discourse		263
	Questionnaire		269
	Decision of the Academy		273
	DNA, Genetic Test (An overview of the Papers)		275
	Papers		
		MI. Badrul Hasan Qasmi	290
		MI. Khalid Saifullah Rahmani	298

Book One

The Book One discusses two important Medical Propositions, that is:

- 1. Euthanasia**
- 2. Brain Death**

Proposition I

Position of the *Shariah* on Euthanasia

(In this Book two important issues of modern medical implications have been discussed in a fair detail and the discussants have tried their best to arrive at the juristic opinions through a thorough and exhaustive study of the sources of the Islamic *Shariah*, both categorical and probable. These two ones are Euthanasia and the Brain Death. More particularly, these two issues, among other ones, were discussed at length in the sixteenth Fiqhi Seminar of the Fiqh Academy of India, held at the Jamia Islamia Darul Uloom Muhazzabpur, Azamgarh in March 13-April 2, 2007. Among the respected participants numbering 200 in approximation the notable were Prof. Dr. Umar Hasan Kasole, of the University of Baronai and Maulana Abdul Qadir Arifi of the Darul Uloom Zahidan, Iran. The Shaikhul Azhar Sayyid Md. Tantavi of Egypt, albeit was unable to personally attend the Seminar, due to his participation in a global conference which was to be held in the same dates in Cairo, he sent his valuable message for the seminar and expressed his good wishes for its success.

The Book I comprises two sections. While the first section discusses the issue of Euthanasia, in a number of chapters, the second section deals with the position of the Islamic *Shariah* on “when the death is to be declared – either after the brain death or immediately after the complete collapse of the respiratory system. Ed.)

The Questionnaire

Introductory note

From among the problems engendered by the ascendancy of the Western civilization and its cultural values is that of Euthanasia. Initially it was thought to be a part of the Western society. In the present age of globalization, however, such problems have become quite common and are knocking India and other eastern countries as well. Keeping this perspective in mind, the problem of euthanasia is one out of the themes to be discussed in the Sixteenth Seminar of the Islamic Fiqh Academy of India. Vis-à-vis the issue of euthanasia the Late Qazi Mujahidul Islam Qasmi had much earlier sent a questionnaire to a number of the men of Islamic Learning and *ifta*. Since that questionnaire explains the nature of the problem in a fair and beautiful way, it is being reproduced here as such:

Euthanasia:

Euthanasia, a Greek term, means to terminate the life of such patients suffering from unbearable illness and there is no hope for them to live any longer; or such children who unfortunately happen to be almost totally disabled and therefore are mere a burden on the society. The life of such patients and children is terminated with the intent to relieve them of the pain and disability by facilitating an easier death for them. In this context it is to be noted that euthanasia is of two types:

(1) Active Euthanasia, (2) Passive Euthanasia.

As far as the Active Euthanasia is concerned, it refers to the condition in which the doctors and physicians have to do an act to precipitate the death of the patient suffering from illness of grave medical complications. For example the cancer patient enduring unbearable pain, or a patient undergoing a prolonged unconsciousness and the doctors have no hope for the recovery of his/her health. Administering a massive overdose of the pain killers to such a patient constitutes an example of the active euthanasia. As a result of such acts the patient is often choked to death. Or, a patient with a fatal head injury or suffering from very serious illness like brain fever and lying unconscious on the ventilator breathing only on

the support of artificial respiratory apparatus and the doctors are not hopeful of the restoration of his/her health, so much so that the removal of the ventilator might result in his/her death. The removal of the ventilator and artificial respiratory apparatus from such a patient also is a sort of active euthanasia.

(2) As regards the passive euthanasia, this refers to the condition in which the patient is not subjected to any activity to hasten his/her death. The patient is denied only the treatment necessary to keep him/her alive. In other words, the patient is let without treatment to die. To illustrate the point, the patient suffering, for instance, from cancer, unrecoverable unconsciousness, brain damage, brain fever, etc, attracted some more illnesses which are curable but he/she is denied the treatment of the later type of disease with an intent to hasten his/her death. Or, the children with a near total disability caused, for instance, by a damage in the backbone leading to the paralysis of the legs, or the patient has lost control over his/her natural calls, or a child received a serious brain injury at the time of his/her birth. A patient/child with such serious physical and brain infirmities is of course bound to live a life completely dependent on others. Besides such inseparable infirmities, if such patients or children attract other curable illnesses such as pneumonia, they are left without treatment, thereby to precipitate their early death. Or, the people of old age suffering from serious illnesses and the treatment involves much more money. About such people, as mentioned in the lines above, the ideology developing in the West is to leave them without medical treatment.

As expressed by the profounder of this ideology, the ideology is intended to relieve both the patients and their attendants of the prolonged pains of illnesses and the heavy expenses involved. The detail furnished above gives rise to two important questions:

1. Does Islam permit the doing intentionally of such acts which are bound to lead the patient to an early death with an intention of relieving the patient of unbearable pain and the attendants of the heavy monetary expenses? This act is termed as active euthanasia.

2. And, is it permissible in Islam to leave such patients/children without medical treatment so that they may die an early death?

Euthanasia

The Decision of the Academy¹

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

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

¹ 16th Fiqhi Seminar (Muhazzabpur – Azamgarh) 30 March 2 April 2007.

Euthanasia

**An abridged presentation of the views expressed
by the participants of the seminar *vis-à-vis* there
two questions**

By
Mufti Ahmad Nadir al-Qasmi
of the Islamic Fiqh Academy, New Delhi

The teachings of Islam are essentially those of sympathy and commiseration towards the afflicted and distressed; of rendering all possible help to the needy and helpless; and of consoling the patient and nursing and caring the sick and those with physical and mental disabilities. The teachings of Islam, as contained by the Holy Scripture of Islam, the statements of the Holy Prophet of Islam and his lifelong practical exemplary behavior, consist in the moral and social sympathy, exercising maximum possible tolerance and being sincere and solicitous towards the weaker sections, particularly to those of the Muslim society. Humanitarian is perhaps an appropriate adjectival word which rightly qualifies the kind teachings of Islam.

As the natural order of things goes, man feels free from others as long as he enjoys health and physical strength. He needs sympathy and help from others when he undergoes sufferings, trials and mental anxieties and physical problems. Strangely enough, the West, in spite of its pretensions to be in possession of the Divine Scriptural guidelines and teachings, is devoid of real human morality, good and solicitous behavior towards other fellow beings and sympathetic guiding teachings. It, then, associates less importance to man as the Creator's vicegerent than seeing from a mechanical viewpoint. All irrational, illogical rather inhuman ideas in the western mindset have in fact stemmed from a primarily erroneous concept that when a human being is no longer of any use for the society, what is the use and meaning of his life? Or, to use other expression, a patient, to the Western ideology, is better to suffer a silent death than suffering from the pain of his sickness. In order to precipitate the death of such

patients there could have been no way other than administering to such unfortunate patients and children a killer medicine, or leaving them without a medical treatment so that the pain of the sickness might kill them on its own and then the kinsfolk of the patient dispose of the dead body and feel relieved. In the Western moral philosophy this ruthless act is termed as Euthanasia Active and Euthanasia passive. Although the origin of this ruthless philosophy could be traced back to earlier periods of human history, the known history tells us that the known British emperor George V (D. 1865) to whom the same unkind treatment was meted out. That is, denied of medical treatment, he was left uncared only to die. But what is alarming is the fact that since a couple of the past decades this inhuman activity has been committed in the West almost in an institutionalized way and is gaining currency with a rapid pace.

The West apart, the contemporary Muslim society which, under the growing influence of the Western materialism, atrophy of Faith, moral degeneration, intellectual and mental defeatism, simultaneously suffering from moral bankruptcy, is widely and rapidly accepting Western thoughts and practices without making a distinction between what is right and wrong and true and false.

Equally true is the phenomenal reality that an all-inclusive decline in the areas of politics, education, medical and health services and the lack of other associated facilities, which has unfortunately been the fate of the Muslim societies particularly in the Middle East and most of the South Asian countries at all levels, has endeared to others as well as the Muslims at large the attitudes of easygoing and expediency under the pretext of necessity and hardship.

With the same perspective in view, the Islamic Fiqh Academy of India, the *raison d'être* of whose existence ever since its first day has been to offer the Sharai solutions to the situations and complex problems hitherto not encountered by the Muslim Ummah, took a step to subject the contemporary problem of Euthanasia to a scholarly analysis in the light of the sources of Islamic *Shariah* and Law. Following a proper methodology for the purpose, the Academy prepared a questionnaire which was served to the renowned men of Islamic law within the country and the overseas. In response to the questionnaire the Academy received forty items from the learned

jurisprudents and scholars of the sacred law of Islam. In the following lines a summary of those papers and the supporting evidences is being attempted.

1. Does Islam permit the doing intentionally of such acts which are bound to lead the patient to an early death with an intention of relieving the patient of unbearable pain and the attendants of the heavy monetary expenses? This act is termed as active euthanasia.

In response to this question almost, all the discussants are unanimous on the point that the active euthanasia is an act completely unlawful and in no case permissible. Such an act will involve a crime of killing a human being for nothing and with no right. If the patient himself/herself adopts such a way to end his/her life, it will undoubtedly constitute an act of suicide, an open wrong to oneself which nobody has a right to do, and which is bound to deprive the committer of the Divine mercy in the Hereafter. If this unfortunate activity is carried out by any of the patient's kinspeople, or anyone of those rendered any help to the patient in the act of suicide, it will constitute an act of intentional homicide entail retaliation, *qisas*. This stand of the discussants is based on the following Quranic expressions, the hadiths and the juristic statements:

Qur'anic Verses:

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ ١٩٥

And cast not yourselves to perdition with your own hands, and do good (to others); surely Allah loves the doers of good.¹

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ٢٩

And do not kill your people; surely Allah is Merciful to you.²

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

And do not kill any one whom Allah has forbidden, except for a just cause.³

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا ٩٣

¹ Al-Qur'an, 2:195.

² Al-Qur'an, 4:29.

³ Al-Qur'an 17:33.

And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement.¹
وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِمَّنْ إِهْلَقَ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطُنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَلَّيْكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ ١٥١

And do not slay your children for (fear of) poverty-- We provide for you and for them-- and do not draw nigh to indecencies, those of them which are apparent and those which are concealed, and do not kill the soul which Allah has forbidden except for the requirements of justice; this He has enjoined you with that you may understand.²
وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ٢

And help one another in goodness and piety, and do not help one another in sin and aggression; and be careful of (your duty to) Allah; surely Allah is severe in requiting (evil).³
يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ

O you who believe! retaliation is prescribed for you in the matter of the slain.⁴

وَلِكُلِّ أُمَّةٍ أَجَلٌ فَإِذَا جَاءَ أَجْلُهُمْ لَا يَسْتَأْخِرُونَ سَاعَةً وَلَا يَسْتَقْدِمُونَ ٣٤

And for every nation there is a doom, so when their doom is come they shall not remain behind the least while, nor shall they go before.⁵

مَنْ عَمِلَ صَالِحًا فَلِنَفْسِهِ وَمَنْ أَسَاءَ فَعَلَيْهَا وَمَا رَبُّكَ بِظَلَّامٍ لِلْعَبِيدِ ٤٦

Whoever does good, it is for his own soul, and whoever does evil, it is against it; and your Lord is not in the least unjust to the servants.⁶

ثُمَّ لَتَبْلُغُوا أَشُدَّكُمْ ثُمَّ لَتَكُونُوا شُيُوخًا وَمِنْكُمْ مَنْ يُنَوِّفُ مِنْ قَبْلِ وَلَتَبْلُغُوا أَجَلًا مُّسَمًّى وَلَعَلَّكُمْ تَعْقِلُونَ ٦٧

Then that you may attain your maturity, then that you may be old-- and of you there are some who are caused to die before-- and that you may reach an appointed term, and that you may understand.⁷

¹ Al-Qur'an 4:93.

² Al-Qur'an 6:151.

³ Al-Qur'an 5:2.

⁴ Al-Qur'an, 2:178.

⁵ Al-Qur'an, 7:34.

⁶ Al-Qur'an, 46:41.

⁷ Al-Qur'an, 47:40.

وَلِلَّهِ الْمُلْكُ السَّمُوتِ وَالْأَرْضِ وَاللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ ١٨٩

And Allah's is the kingdom of the heavens and the earth, and Allah has power over all things.¹

لَا إِلَهَ إِلَّا هُوَ يُحْيِي وَيُمِيتُ رَبُّكُمْ وَرَبُّ آبَائِكُمُ الْأَوَّلِينَ ٨

There is no god but He; He gives life and causes death, your Lord and the Lord of your fathers of yore.²

تَبَارَكَ الَّذِي بِيَدِهِ الْمُلْكُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ ١ وَهُوَ الَّذِي خَلَقَ السَّمُوتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ وَكَانَ عَرْشُهُ عَلَى الْمَاءِ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا

Blessed is He in Whose hand is the kingdom, and He has power over all things, 7. And He it is Who created the heavens and the earth in six periods-- and His dominion (extends) on the water-- that He might manifest to you, which of you is best in action.³

إِنَّ اللَّهَ اشْتَرَىٰ مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةُ

Surely Allah has bought of the believers their persons and their property for this, that they shall have the garden.⁴

قُلْ لَنْ يُصِيبَنَا إِلَّا مَا كَتَبَ اللَّهُ لَنَا هُوَ مَوْلَانَا وَعَلَى اللَّهِ فَلْيَتَوَكَّلِ الْمُؤْمِنُونَ ٥١

"Say: Nothing will afflict us save what Allah has ordained for us; He is our Patron; and on Allah let the believers rely."⁵

The Hadiths:

- "Nobody of you should wish for death due to a harm one has received. If one is virtuous, maybe this harm adds more to his virtue. If one is wrong-doer, one may get chances to rectify one's bad character."
- "Nobody of you should ask for death owing to an injury one has sustained."⁶
- Haz. Abu Hurairah (may Allah be pleased with him) reported the Messenger of Allah to have said: "One who killed himself with a sharp-edged weapon shall be given the same weapon in his hand with which he shall be stabbing his belly forever."⁷

¹ Al-Qur'an, 3:189.

² Al-Qur'an, 8:4.

³ Al-Qur'an, 67:1-2.

⁴ Al-Qur'an, 9:111.

⁵ Al-Qur'an, 9:51.

⁶ Bukhari with Fathul Bari, 10/110.

⁷ Muslim Sharif, 1/72.

- One who killed himself by consuming the poison, Allah *ta'ala* will place the same poison in his hand on the Day of Judgement which he shall be consuming forever."¹
- "In no circumstances the blood of a Muslim could be shed excepting that he committed intentional homicide, perpetrated the adultery while he is married or turned apostate and thus severed himself from the Community."²
- If all those in the heavens and on earth share the killing of a single believer Allah *ta'ala* will condemn them all to the Fire of Hell."³

(For detail, see the papers of Mufti Sanaul Huda Qasmi, Mufti saidur Rahman, Ml. Mufti Akhtar Imam Adil)

- Jabir bin Samurah related that a person killed himself with a knife. The Holy Prophet (SAWS) reacted: "As of myself, I will not perform a funeral prayer for him."⁴
- Haz. Abu Hurairah (may Allah be pleased with him) related, 'We took part in a battle, that is, the Battle of Hunain, with the Prophet of Allah, About a person pretending to be a Muslim the Prophet informed us that he was out of the people of Fire. When the war broke out the person fought valiantly and received a fatal injury. The valiant fighting of him was reported to the Holy Messenger of Allah in the following words: "O the Messenger of Allah! About whom you had declared that he was out of the people of the Fire gave a valiant fighting to the enemy during the battle and eventually suffered death." 'He was consigned to the Fire of Hell', the Prophet (SAWS) replied, "He did not meet the death of martyrdom. During the war he had received a fatal injury. In the night when his pain turned more unbearable, he could not endure it and killed himself."⁵

¹ Tirmizi Sharif.

² Agreed upon, Bukhari 3/1016.

³ Mishkat, p. 300.

⁴ Nasai.

⁵ Bukhari, Book of Jihad.

(For more detail, see the paper presented by Maulana Mumtaz Khan Nadwi)

- “If a believer has to endure pain due to any type of sickness, or anything painful less than sickness, by this pain Allah *ta’ala* removes his sins like the tree which sheds its leaves during fall.”¹
- Abu Saeed Khudri reported the Prophet (SAWS) to have said, ‘No hardship, discomfort, problem, injury, affliction or anxiety, is endured by a believer, even if a thorn by which he is pricked, but Allah *ta’ala* turns it a penance for his sins.”²
- “Those given to be kind and merciful to others are treated with mercy and kindness by Allah, the Merciful. So, be kind and merciful to those on the land, you, in turn, will receive mercy and kindness from the One in the Heaven.”³

(For more discussion, recourse may be made to the papers of Mufti Habibullah and Ml. Akhtar Imam Adil.)

- In the nations preceding you there was a person. He received an injury the pain of which he could not endure. So, he took a knife and cut his hand; the blood of which did not cease and eventually, he suffered death. Allah *ta’ala* declared, ‘My servant prompted about himself (and killed himself), so I debarred him from Paradise.”⁴
- One the Day of Judgement, when the people of sufferings (those who had undergone the sufferings and hardships during the worldly sojourn of their lives), shall be granted the reward in plenty, those who lived here in peace and health shall express their wish as: “were it their skins would be cut with scissors.”⁵
- “Whoever of you is able to be of any benefit for his brother he ought to do it.”⁶

¹ Mishkat, 134.

² Agreed upon, Mishkat, vol. 1/134, Bukhari with Fathul Bari 10/110.

³ Abu Dawood.

⁴ Bukhari, Had. No.3276, Ibn Habban, 5988, Baihaqi: 16307.

⁵ Tirmizi.

⁶ Muslim, 2/223, 224.

- “Keep away from the seven deadly sins”, the Holy Prophet (SAWS) commanded. About those seven deadly sins he was asked to explain, he said: “They include the association of others than Allah with Him as partners and peers, playing necromancy and killing any human being except by the right of Allah Himself.”¹
- No one of you should ever wish for death owing to any affliction befalling him. He instead should say: “O Allah keep me alive as long as the life is good for me, and end my life when it is better for me.”²

Statements of the Fuqaha

- “He who abstained from eating the carrion in a state of extreme hunger, or observed fast and refused to eat and died, such a person shall be held sinful. So because he ruined his self, according the rules we have just expressed, without eating he was unable to keep himself alive. On the other hand, eating the carrion in a state of extreme hunger is either lawful or, at least, constitutes no sin. So, abstention from consuming it for the life of the soul is by no way permissible.”³
- “If a person is suffering from a sickness which is unbearable for him, the overpowering pain could not be a legitimate reason for him to kill himself.”⁴
- “If a person incised on an embryo and it got dissociated (from his/her mother) on its own, it will invite the law of *qisas* (equality) against the incisor even if the embryo was thus far without definite life, same as does the killing of a patient on the verge of death.”⁵
- As of the fearful injuries and formidable wounds and the stones in the gall bladder, etc, if the doctors say that the patient may or may not recover; or would recover and

¹ Bukhari, Muslim.

² Tirmizi, Book of al-Janaiz 1/19.

³ Majmaul Anhur 2/524.

⁴ Qawaidul Ahkam p. 85.

⁵ Al-Mughni of Ibn Qudama 4/126.

would escape death, in all such cases medical treatment shall be provided to him. But if the doctors express their complete disappointment from the patient's recovery, no medical treatment shall be provided to such a patient and shall be left as such."¹

(cf. papers submitted by Ml. Abu Sufyan Miftahi, Ml. Tanzim Alam Qasmi, Mufti Iqbal Ahmad Kanpuri)

- "About the physician it is presumed that his exercise of treating the patient would be useful and beneficial to him and whatever he is doing is motivated by his good intention. If he is driven by his evil intent and killed the patient, he shall be held liable for his act, both legally and socially."²
- "A person asked the other one "cut off my hand and eat it," doing so will not be lawful for one. It is because of that the human flesh in no case is permissible to eat, for the human being is inherently respectable."³
- "Someone said to another person, 'kill me', and he killed him, the killer, according to what is right, shall be liable for the payment of blood-money out of his property. For the law of permissibility is not to be acted upon vis-à-vis the human souls. As regards the *qisas*, it would not be enforced due to the doubtful circumstances."⁴
- "Whatever is applicable to the crime of homicide is as much effective in respect of killing himself as is to killing others. So, if a person killed himself by using any means, he indeed killed a soul held unlawful to be killed by Allah without a legitimate reason. The life of a human being is not a possession belonging to him; he is not the creature of himself, or of any organ or cell of his body. By killing oneself the committer of this sin desecrated a deposit deposited with him by Allah. So he is not permissible to do

¹ Al-Fatawa-al-Hindiyah 5/354.

² Al-Tashri al-Jinai fil Islam 1/522.

³ 9/488.

⁴ Shaami, 10/255.

any damage to it, let alone destroying it or getting rid of it.”¹

(For more detail, see the papers of Mufti Habibullah Qasmi, Ml. Abdur Rashid Qasmi, Ml. Iqbaal Ahmad Kanpuri, Ml. Abrar Khan Nadvi.)

Maulana Abdul Rashid Qasmi, in spite of agreeing with all other discussants in principle, tends to permit the performance of the Active Euthanasia in the case of a patient feared to utter the words of disbelief under the extreme pain of his/her sufferings. This is in order to save his religion. For the religion is of incomparably important than the safety of life. He thinks that it should be permissible in the larger interest of his religion. Actually, to him this is very much similar not to uttering the word of disbelief under duress and extreme persecution. From the discussants Maulana Naim Akhtar Qasmi is of the view that in rare circumstances and extremely special conditions the performance of active euthanasia may be permissible, and the proposition, on this count, needs reconsideration. To Maulana Mufti Zahir Ahmad Qasmi of Kanpur the patient enjoys full right about his person. If he asked any other person to perform the active euthanasia on him, and the other person did so in deference to his wish which resulted in a damage to his person or he suffered death, the second person shall not be liable to be subjected to the law of equality and retaliation. Yet, nobody has a right to do so vis-à-vis others on his own. (For more detail, the papers of Maulana Abdur Rashid Qasmi, Ml. Naim Akhtar Qasmi and Ml. Mufti Zahir Ahmad Qasmi may be referred to.)

Question No. 2.

2. And, is it permissible in Islam to leave such patients/children without medical treatment so that they may die an early death?

As regards the question No. 2, that is, leaving the patient without a medical treatment in order to die an early death, which is termed as Passive Euthanasia, the majority of the discussants shares the opinion that leaving the critical patient without a medical treatment with an intent to hasten his/her death would in fact be an act of sadism and torture and in blatant violation to the respect and

¹ Al-Halal wal-Haram fil-Islam p. 297.

dignity of human beings. Such an act is absolutely impermissible in the Islamic Shariah. Undeniably, providing medical treatment to the patient is not obligatory. Still, if a patient is denied the medical treatment under the same intent and the patient suffered death, this too will amount to homicide. The *shariah* persuades the patients and attendants to use medicines and medical treatment and as Allah *ta'ala* has created sorts of illnesses and infirmities, so He has sent the remedies and medicines as well. So, abandoning the treatment in no case would not be permissible as far as it is within the capacity of the patient and the attendants. In support of this stand the common arguments include the following:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ
وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَنٍ ذَلِكَ
تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ١٧٨

O you who believe! retaliation is prescribed for you in the matter of the slain, the free for the free, and the slave for the slave, and the female for the female, but if any remission is made to any one by his (aggrieved) brother, then prosecution (for the bloodwit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and a mercy; so whoever exceeds the limit after this he shall have a painful chastisement.¹

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَنِ وَإِيتَايَ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ
وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ ٩٠

Surely Allah enjoins the doing of justice and the doing of good (to others) and the giving to the kindred, and He forbids indecency and evil and rebellion; He admonishes you that you may be mindful.²

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ ١٩٥

And cast not yourselves to perdition with your own hands, and do good (to others); surely Allah loves the doers of good.³

Hadiths

- “Acts shall be judged according to the motivating intents.”⁴

¹ Al-Qur'an, 2:178.

² Al-Qur'an, 16:90.

³ Al-Qur'an, 2:195.

⁴ Bukhari.

- Abu Darda (may Allah be pleased with him) reported the Holy Prophet (SAWS) to have said: Allah *ta'ala* has sent down both malady and remedy. Against every malady He has created a remedy. So, treat the maladies and illnesses but use not the unlawful remedies."¹
- Usman bin Sharik related that some people asked the Holy Prophet of Allah, "Should we treat the illnesses by the use of medicines"? 'Of course, use medicines to cure the maladies and sicknesses,' the Prophet replied, 'for there is no malady but Allah *ta'ala* has created a cure against it, except for the only illness, that is, the old age the prophet (SAW) replied."²
- Jabir bin Abdullah (may Allah be pleased with him) reported the Holy Prophet (SAWS) to have said: 'If anyone of you is able to do anything for the benefit of his brother, he should do it.'³
- "No malady is created by Allah but a remedy has also been created to cure it."⁴
- "One who strives to meet a need of his brother, Allah fulfills his need. And if he relieves a Muslim of a problem; Allah *ta'ala* shall relieve him of a trouble out of those of the Day of Resurrection."
- "He who is not careful to the affairs of the Muslims is not of us."
- "Allah *ta'ala* is in help of His servant as long as he is in help of his brother."
- Allah *ta'ala* created no malady but sent down a remedy to cure it. Knows it who knows, and it remains unknown to who is ignorant."⁵

¹ Abu Dawood, Miskhatul Masabih 2/388.

² Reported by Ahmad, Tirmizi, Abu Dawood, with reference to SHarh al-Taibi 9/2962.

³ Muslim 2/223.

⁴ Agreed upon.

⁵ Musnad Ahmad 1/377, 413.

- “When you enter upon a sick, talk to him as if he is not on the verge of death. (Speaking to him in such a way is just a means of solace for him), it cannot avert his death.”¹
- “As of the permissible, they may differ from one to another, considering their motivating intents.”²
- “Things and acts are to be taken according to the objectives working behind them.”³

Besides this view, there are other discussants who hold the view that medical treatment is no more than an act permissible by the *Shariah*. To them if a patient eschews medical treatment and refuses to use medications merely trusting Allah *ta'ala*, the patient will earn no sin at all, it is never to be treated as the passive euthanasia.

Abandoning medical treatment due to a lack of financial means

Some discussants are of the opinion that while the *Shariah* does not permit to subject the patient to an act of passive euthanasia, it does not obligate the patient, his caretakers, guardians and relatives to carry forward with the medical treatment despite the lack or dearth of the financial means. Such an act will invite no punishment in the Hereafter. Those holding this view include the following:

Mufti Salman Mansurpuri
 Ml. Mumtaz Khan Nadwi
 Ml. Shaukat Sana Qasmi
 Ml. Mustafa Qasmi Awapuri
 Ml. Abu Sufyan Miftahi
 Ml. Rahmatu Allah Nadwi

Mufti Qamaruzzaman Nadwi, and many others. Some of the above discussants have supported their stand by the following Qur'anic verses, principles of jurisprudence and juristic particulars:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا.

Allah does not impose upon any soul a duty but to the extent of its capacity.⁴

¹ Ibn Majah, p. 104.

² Al-Ashbah wal-Nazair 1/78.

³ Op. cit.

⁴ Al-Qur'an, 2:286.

يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا ۝٢٨

Allah desires that He should make light your burdens, and man is created weak.¹

- “If a person had a bowel movement or his eyes got inflamed and he refused to have a medical treatment which enervated him and eventually suffered death, he earned no sin.”²
- “If a person attracted a disease and the physician diagnosed that pigment had overtaken him and advised him to take it out but the patient did not follow the physician’s advice, which resulted in his death, he earned no sin at all. It is because of that the patient was not certain about the efficiency of the mode of the treatment.”³
- “As far as the medical practice is concerned, originally it is lawful; sometimes it may turn recommendable when it gets combined with following the way of the Holy Prophet (SAWS) as he would direct the people to treat the patients medically; or one intends to benefit the Muslims. By so doing, he shall fall under the Divine statement:

وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا .

The practice of the medical profession may turn into an obligation if there is found nobody to practise the same profession, or one has entered into a contract in this regard.”⁴

Juristic Principles

- “Difficulty and hardship attracts ease.”
- “Necessities turn prohibitions into permissible.”
- “Neither the harm is to be inflicted, nor to be suffered.”
- “When the things get narrower, they turn wider.”

(For detail, papers of Mufti Salman Mansurpuri and Dr. Zafarul Islam may be referred to.)

In contrast to this opinion, Mufti Zahir Ahmad of Kanpur and Mufti Iqbal hold that the treatment could only be given up if the

¹ Al-Qur’an, 4:28.

² Fatawa Alamgir 5/355.

³ Op. cit.

⁴ Al-Mausua al-Fiqhiyah, vol. 12 p. 135.

recovery and healing is not certain. To Maulana Shakil Ahmad Anwar, the pursuance or abandonment of the medical treatment has to be left to the discretion of an expert physician. (cf. the papers of Mufti Zahir Ahmad, Mufti Iqbal Ahmad and Maulana Suhail Ahmad.)

Maulana Iqbal Ahmad Qasmi Tankarwi, Mufti Abdur Rashid Kanpur and Maulana Burhanud Din Sambhali are of the opinion that the passive euthanasia forms no sort of sin or wrong as seeking medical treatment is not an obligation ordained by the Shariah. (cf. their papers.)

Removal of ventilator from the patient in critical condition:

In the last stage of his life when the body of patient turns too weak to properly respire though the brain and heart do function, the doctors often put him on the ventilator in order to facilitate him easy respiration and maintain the minimum heat required to prevent the freezing of his blood. This is of course a modern advanced means devised to render the respiration easy. Under the condition given in the question is it permissible to remove the ventilator from the patient?

In response to this question the opinion of some scholars, particularly of Maulana Burhanu-Din Sambhali, Maulana Nazr Tauheed Mazahiri, Mufti Sher Ali Gujrati, Maulana Akhtar Imam Adil, Mufti Saidur-Rahman Qasmi, Mufti Muhammad Suhail Akhtar Qasmi, Maulana Sultan Ahmad Islahi and Maulana Rahmatu- Allah Nadvi, is that since by the artificial respiratory system the respiration is maintained purely on mechanical base, or to be more precise, this life is purely artificial; more so, it is extremely expensive. If the doctors have got disappointed from the restoration of his health, the entire process of artificial respiration apparently holds no good. It, rather, will prolong the agony of death, adding much to his pain. Keeping in view all such negative aspects of artificial respiratory apparatus, it would be better to remove such things. Doing so may be beneficial both in this world as well as in the *Akhirah*.

Using a report from Bukhari Sharif, Maulana Sultan Ahmad Islahi expressed his opinion in the following words:

“In the light of this report a Muslim is at liberty to stay away from receiving treatment even for an actual and normal disease. For

seeking or receiving treatment is an act just permissible. Under the situation given in the question the permissibility of renouncing the artificial and highly expensive modes of the so-called treatment as the artificial respiratory apparatus is even more obvious. Frankly speaking, the removal of the artificial respirator, in most cases, should be considered as obligatory. When the medical experts and experienced qualified doctors express their disappointment from the life of the patient, there remains no real need to use artificial equipments to support his life.”

(For more detail, the study of Maulana Islahi’s full paper is recommended.)

Maulana Nazr Tauheed has opined that if the guardians of the patient are resourceful enough to bear the heavy expenses of the treatments like the one mentioned in the question, the continuation of the treatment shall be in tunes with the high Islamic teachings stressing upon kindness and affections towards the weak and the patients. (See the article of the Maulana.)

Euthanasia and Committing Suicide with the Aid of the Physician: Social & Moral Aspects

By

Dr. Umar Hasan Kasule

Department of Epidemics and Islamic Medical Sciences

Baronai University and Malaya University

Euthanasia is an activity, or inactivity, which intentionally precipitates the death of an incurable patient with the intent to save him/her from the pain and sufferings of the disease the patient is enduring. The active aspect of euthanasia is to kill the patient by administering to him/her a deadly injunction or medicine. The passive aspect of it being the denial of the patient from the medical treatment even in the case of the diseases and illnesses which as such are curable. In the case of voluntary euthanasia it is the patient himself who takes the decision about himself/herself; in involuntary euthanasia it is others (his/her kinspeople, physicians) who take decision about the patient lying unconscious on his/her deathbed. In most cases such decisions defy his/her will and volition. The removal of the medically life support apparatus is also an act of euthanasia. The chief determinant in this regard is the motivating intent of the physician. The act of committing suicide with the aid of the physician is also an act of euthanasia. In such cases the final decision is taken by the patient himself/herself. The role of the physician is limited to giving advice and providing the patient with the required tools and substance.

Euthanasia negates the principle of safety and security of life. Quite obviously, the function of the physician is to treat the patient, not to kill him/her. Euthanasia is also opposed to the principle of the religion and Faith. It forms primary part of our belief that both life and death are in possession of Allah, the Creator. Both active and the passive euthanasia are much the same as both the types share the same motivating intent, that is, the killing of the patient and it is again the motivating intent by which the acts are judged. The act of euthanasia is carried out through the culpable unison of the physician and the kinsfolk of the patient who, driven by their personal interests,

decide to subject him/her to the act of euthanasia. The act of euthanasia may involve an injury to the body of the patient which is unlawful. To tell the truth, the pain endured by the patient suffering from incurable diseases is an evil far too lighter than the precipitation of his/her death.

Euthanasia is also opposed to the common interest of the society. For it promotes the genocide by rendering the human life worthless. Collective interest is preferable to the individual interest. The pain and torments of a disease is by no way a necessity to render the killing of such a patient as lawful. As a matter of juristic principle, necessity is a condition which endangers either one thing out of the five ones of primary importance in the scheme of the sacred law of Islam. They are: life, reason, perpetuation of human race, property, and religion. Euthanasia cannot be sanctioned by the religion as it is opposed to the principles of safety and security of religion and life. Euthanasia is also inconsistent with the age old established traditional norms, which establish it beyond doubt that the function of the physician is to treat the patient by administering medicines to him/her and not to kill him. The physician who follows the directions of the patient who fully knows the implications of euthanasia, active or passive, or offers him the required assistance indeed commits a crime. Such an act done either on one's own instance or at the direction of others is absolutely unlawful. The physician carrying out such an activity is the ultimate operator and responsible in the same capacity. Denial of the medical treatment to the patient, if intended to end the life of the patient, is also an act of euthanasia.

The brief analysis of different aspects of euthanasia establishes it beyond doubt that it has no legal foundations to stand on. As far as the death is concerned, the physician has no role to play in it. It is predestined and preordained by Allah *ta'ala*. Unless the final moment of the death approaches, the diseases shall continue to do their natural function. Each physician is necessarily aware of the function of the mortal diseases. The physician, therefore, is committed to preserve the rest of life according to the best possible standards; his function is never to avert the natural death.

Euthanasia: Important aspects

Origin and meaning of euthanasia

Etymologically speaking, euthanasia is a term of Greek origin, meaning 'good death'. In the English language it denotes to kill somebody, a patient in most cases, under the passions of mercy and pity. The second meaning of euthanasia is to assist somebody in killing himself/herself or in committing suicide. To put it succinctly, euthanasia stands for an activity, or inactivity, intended to put the patient to death in order to save the patient and his kinspeople from the lengthy process of illness and nursing and attending the patient.

Euthanasia and the respective patient

Euthanasia is concerned with two types of patients:

- (a) The patient who is lying in bed with no movement or sensitivity. Though awake, but unaware of his/her surroundings. In most cases the brain of such type of patients does not properly function; he/she is kept alive solely on the artificial respiratory apparatus. The patient may also be given the injections and medicines in order to improve his/her heart and lungs.
- (b) The patient who is suffering from an incurable disease is in the last stage of his/her life and undergoing great suffering and pain, both psychologically and in respect of self-respect, irrespective of that he/she is under artificial apparatus or not.

Who may be instrumental in operating the Euthanasia?

Both the patient and the medical staff may be instrumental in carrying out euthanasia. If the patient refuses to take a diet or medicine, it may constitute the act of euthanasia. Physician or the nursing staff, likewise, if stopped to care for the patient in respect of his/her diet or medicines or rendered assistance, is also an act of euthanasia. Euthanasiating agent, even under the direction of the patient, cannot escape the legal consequences of his doing. For the physician has no right to interfere with the matter of death, an eventual event predestined by Allah *ta'ala*. Sickness will continue in its natural functioning till death. The physician, in most cases, is unaware

of the natural functions of the diseases. Therefore, what is required is to preserve the rest of life as good as possible, not to block the approach of the death.

Active and Passive Euthanasia

The difference between the active euthanasia and passive euthanasia is that in the former the patient is killed; in the latter he/she is left without care and medical help so as to die. Active euthanasia denotes an act intended to bring about the death of the patient, for instance by administering a deadly injection to him/her. Such an act is obviously a crime. As of the passive euthanasia, it refers to the situation in which the patient is left to have an early death. The patient is denied from medicine, diet, water, medical or surgical help so as he/she could die on his/her own.

Voluntary Euthanasia

In the case of voluntary euthanasia it is the patient himself/herself who takes such a decision; in the event of involuntary euthanasia it is others who take such a decision about a patient who is lying unconscious. Notably, such a decision against the will of the patient could not be termed as voluntary euthanasia.

Regarding the Euthanasia the chief determinant is the intent of the patient, doctor, medical staff or the patient's kinspeople

Depending on the intent of the physician and medical staff, the removal of the artificial life support system or the artificial respiratory apparatus may also be an act of euthanasia. Removal of the artificial life support system is based on that the treatment is bearing no fruit. The decision about such an action generally speaking, is taken on the basis of the pain and sufferings the patient is undergoing. But the expressed intention may be different from the implied one. Arguments might be given in support of treatment while the unexpressed intent is to end the pain and sufferings he/she is enduring due to his/her disease. Analgesics and sedatives are being administered to the patient with an expressed intent to relieve his/her of the pain of illness, while unexpressed intent might be to hasten

his/her death. In short, the intent is totally a matter of the physician's conscience, not a subject to an outer measurement.

History of Euthanasia

In the ancient Greek and Rome euthanasia had been a popularly accepted practice. Likewise, the traditions of the Asiatic religions also accept it.

Buddhism, Shintoism and Confucianism see no wrong with euthanasia. In sharp contrast, all the three Semitic religions: Islam, Judaism and Christianity reject it. In every country of the world there exist the supporters and opposers of euthanasia. In the literature of *Seerah* and *hadith* we encounter a story of a person who, in the company of the Holy Prophet himself, fought very bravely. But, strangely enough, the Prophet told his Companions about him that he was destined to Hell. In the course of war he sustained a serious injury. Unable to endure the great sufferings, he killed himself by his own sword and thus was eventually condemned to Hell. This establishes beyond doubt that Islam does not permit the patient to end his life even in the final and highly critical stage of one's life.

Euthanasia: the Moral Aspect

The supporters of euthanasia argue that it is intended only to relieve the patient of the final state of great sufferings and a poor quality of life. Against the active euthanasia two most common arguments are forwarded. (1) Killing a human being, without proper reasons, is absolutely unlawful; it is also an immoral act. (2), Instead of killing a patient human being new ways of relief and new ways of treatment and remedy have to be discovered.

Position of Shariah on Euthanasia

From the Islamic *Shari'ah* viewpoint every act of euthanasia amounts to killing. Those who advance such advices or render any help to bring about it in fact commit the crime of killing. In regard of the prolonged and extremely painful diseases Islam teaches the lesson of taking to forbearance and exercising patience. Barring Netherlands, active euthanasia is illegal in the entire world. In America and Europe there exist differences vis-à-vis its legal position. The pro-euthanasia

argue that unless the rights of others get trampled, no restriction could be put on others' right to exercise their freedom of action. The anti-euthanasia, on the other hand, contests that euthanasia hurts the established concept of human dignity. After its legalization it is feared to be used to execute criminal activities. Sometimes the financial problems, too, might be a genuine reason to subject the patient of the last stage to passive euthanasia. For the artificial life support apparatus involves the wastage of the family, or the state assets on a patient who is destined to die very soon.

Suicide with the assistance of the physician

Committing suicide with the assistance of the physician of course is a mode of euthanasia. While the assistance of the physician is restricted to advance advice, suggest ways and provide the required tools. The final act, however, is carried out by the patient himself/herself.

Euthanasia and physician-assisted suicide (PAS) primarily are much the same. The latter is different from the former only in that in the final stage the physician takes himself away, leaving the patient die by his/her own act.

Excluding the Netherlands, PAS enjoys no legal sanction in all the countries of the world. In the northern region of Australia the PAS was made legal just for some time. Likewise, Oregon, a state of the United States of America, too had conferred legal sanction to it.

Since the PAS is illegal, it is carried out in secrecy. There are patients who desire to die very soon. Some physicians react positively to such a wish evinced by the patient under their care and treatment. But all such things are kept off the record as the prosecution is feared.

In a way the PAS is an illegal act of willful suicide, especially in the case of the patient not bent upon death. Those rendering any help regarding execution of this act, too, deserve death as well. This of course is equally applicable to the case of PAS.

In countries where the PAS is legal the physician may prescribe some deadly medicine for the patient under his care. But such an act will certainly inverse the ethical bond of relationship between the patient and the physician. That is, the physician, instead of treating his patient, perpetrates the act of intentional homicide.

The PAS constitutes a mode of moral degradation. Once it is held legal, evils will stem from it without a check. People bent upon ending their lives for any reason will seek assistance from physicians.

Analysis of Euthanasia and PAS in the light of the objectives of Shariah

Euthanasia is opposed to the preservation of life, a very primary objective of the Islamic Shariah

So far as the principle 'Preservation of Life' is concerned, judging the things from this angle, both the types of euthanasia—active and passive—must stay beyond the sanction of law. According to the principle of 'preservation of life' the life with a better health has to be preserved at all cost. This among other things, include suitable and nutritious diet, water and other required fluids which, in most cases, are a better treatment against diseases. All diseases are curable and more cures might be discovered through further sustained scientific researches. Preservation of life never means to defer death or prolong the life. They indubitably fall to the specific domain of Allah *ta'ala*, the Creator.

Euthanasia is opposed to the concept of religion

Euthanasia contravenes the primary Islamic belief which asks every Muslim to believe in the fact that both life and death are under the direct command of Allah *ta'ala*, and no man has a right to end his life. The same way, the euthanasia is also inconsistent with the principle of Preservation and perpetuation of human generation. The activities like euthanasia against the human life are bound to undermine the concept of human dignity and promote the genocide.

Principle of Intent and Euthanasia

Tacit principle of Right to Self-determination

A sensible and able-minded patient has an absolute right to take a decision about the treatment of his/her disease. For, quite obviously, amidst all the persons, whether his kinsmen or the medical staff, it is the patient himself/herself who is considered to have the

purest intent about himself and his better interest. The right in this context means nothing except endeavouring towards the best interest of the self. To end the life of a patient could by no way be regarded as the best interest of the patient. Euthanasia or the PAS, therefore, could not be included in the scope of applicability of the right towards oneself.

Committing crime under the veil of Renouncing and Amnesia

While in the severe and mortal disease possibilities of error and forgetfulness increase. They need explanation. Human act is judged and determined in the light of the intent working behind it, and the final stage of the act is determined according to the nature of the act itself. By its nature, an act might be *wajib*, proscribed, prescribed, reprehensible or recommended. Lawfulness is the primary rule *vis-à-vis* all things and acts. Every act of human behavior may have two aspects: Committing and abandoning, each one fetching reward or punishment. An obligation, if carried out properly, fetches due reward; by contrast, a neglectful behavior towards it is bound by law to attract due punishment. Involvement in an act held unlawful or reprehensible by the Shariah will attract punishment. Abstention from an unlawful act, likewise, will fetch reward. This makes it clear that committing a crime and abstention from it are of course different in nature. But at the stage of intent this is not essentially found. With the sameness of the motivating intent the Shariah will make no difference between two acts of same nature. Going by this argument, there could be no proper demonstration to draw a line of distinction between active and passive modes of euthanasia.

Active Euthanasia and Passive Euthanasia

While active euthanasia constitutes a type of crime, passive euthanasia is a type of desertion. Since what Shariah takes into account is the motivating intent and not the words and terms, it makes no difference between the active euthanasia and passive euthanasia. For both intend to finally end the life of the patient enduring the mortal illness.

The Behaviour and Intent of the Physician

Regarding the euthanasia the role of the physician is either of an active partner or of an adviser. His intent is primarily to secure his own interest in the best possible way, without taking into account the creed and interest of the patient. The intent of the physician might be often to get rid of a complicated medical case and prevent heavy expenses the treatment at this stage often involves. Also there might be similar other interests of material, political or social implications.

Role and intent of the patient's family members

The members of the patient's family may wish for an early death of their ancestor so that they may own and distribute the estate. They may also wish to evade the heavy expenses on the diseases at this critical stage. In both the cases the intent gets badly corrupted and the element of malignancy supersedes all other motives.

Analysing Euthanasia and PAS under the Principle of Harm

There is an established and universally acclaimed principle. 'No harm and no harming.' Judged from this yardstick, euthanasia is harmful to the life and health of the patient. Also, the death of the patient hurts the members of his family, both emotionally and psychologically. A decision in favour of euthanasia may also encourage his family members to subject him/her to active or passive euthanasia.

What to do in the face of two Harms?

The primary aim of the Shariah is to keep the human beings away from all types of harm within all possible limits. When faced with two evils, the lesser one shall be chosen. The result is clear, the continuance of an extremely tormenting illness is far too better as compared to subjecting the patient to euthanasia, active or passive.

Public Interest vs Euthanasia

The principle of the security of public interest also makes a strong case against the euthanasia. In order to secure the public interest, or to check an illness before its assuming the epidemic

proportions enduring the suffering of a tormenting illness of a patient would indubitably be an evil lesser than to subject his/her to euthanasia. Once the euthanasia is perpetrated, it will open dreadful ways of criminal activities which are feared to lead to genocide. Collective interest has preference over the individual one. To check the evil emanating from euthanasia must have an edge over the interest perceived from committing the euthanasia. When two acts are to be carried out in simultaneity, staying away from indulging in unlawful will be more important than carrying forward a lawful activity. Averting a detriment is more important than securing a benefit. From two evils the minor one has to be adopted.

Analysing Euthanasia and PAS under the Principle of Hardship

‘Hardship attracts ease.’ The *Fuqaha* of the remote past count the tormenting illness of the patient on the deathbed as hardship. No denying of the fact that for a patient suffering from disability and psychological and emotional pressure the situation of the type is extremely difficult and tormenting. Still, it does not form a case of hardship. In cases where hardship assumes the proportions of necessity, the Shari’ah may permit even an unlawful act till the hardship disappears. Precisely speaking, necessity, in the terminology of the Islamic Shari’ah, is the situation in which any one thing out of the five primary ones, i.e. life, property, intellect, race and religion, is in danger. Euthanasia offers no fit case to be placed in the category of ‘necessity’. It itself destroys the life and religion, two things of primary importance.

Analysing Euthanasia and PAS under the principle of tradition and custom recognized by the *Shari’ah*

Custom, or usage, refer only to such social practices as are widely accepted and are in general vogue. When something gains currency in such a wide way, it has to be given common acceptance unless proved otherwise. The Islamic Shariah endorses such customs and usages. The primary objective of the physician is to save the life of the patient. About him it is quite inconceivable to commit an activity like euthanasia to end the life.

Euthanasia and other related Issues

Responsibility of the Doctor

The doctor and physician who carried out the act of euthanasia or lent assistance in this regard to the patient while being fully aware of the implications of the activity did perpetrate a criminal activity. The physician cannot evade the due responsibility of his criminal act with the logic that he only followed the directions of the patient. The unlawful activity will remain so apart from that one committed it on one's own will or one did so on the instance of any other person. In this respect the responsibility of the medical staff is greater still. For the agent carrying out the activity in its final stage shall have to bear the bigger part of the responsibility of that evil act. In other words, the final responsibility shall be of the physician and doctor who executed the act of euthanasia, not of the patient who evinced his wish for it.

Refusal of the treatment by the patient

Refusal of the treatment on the part of the patient may constitute the passive euthanasia if he/she so intended. If the patient declines the offer of the medical treatment and evinces his wish to be subjected to euthanasia in unambiguous words, such a wish deserves no respect. In case there is no proof to substantiate such an intent, the patient possessing sufficient understanding of the Shariah in this regard may be left free to take decision in respect of his treatment, medicines and diet. A person is given the food following his wish. He shall be forced to take food when his life is in immediate danger of extinction. The understanding of the Shariah means that the patient is adult, of sound intellectual and mental faculties, not under duress, in possession of the legal details in terms of medical treatment and the position of the Islamic Shariah on them. However, it is extremely rare to combine all such conditions in the case of a patient enduring dreadful illness at his deathbed.

The Ownership of life and the Authority to control it

The concept of euthanasia involves the issues of the ownership of life and the right to control it. This issue is of kernel import. Is man the owner of his life with absolute authority over it? Does he enjoy an

authority to end his life in a particular case or all circumstances? According to the Islamic standpoint, it is Allah alone, Who is the Owner of the life. Only He grants life and takes it back. No human being, whosoever he might be, can bestow life or take it back. The Qur'an decries Pharaoh and Nimrud. Both the despot monarchs mistakenly regarded themselves to possess the life and death by putting one to death and forgiving another. Man has no say in the question of death. It is Allah alone in Whose Hand lies the final moment of death and the end of life. Hence, man has no right to make effort to hasten or defer it. He is absolutely devoid of such a power or authority. Life is equally respectful for one and all. All activities like suicide, murder, genocide contravene the concept of the respect and dignity of human life. One is not left free to take step in regard of euthanasia due to two reasons.

1. Man is not the master of his life nor the final authority about it.
2. Ending his life is bound to harm his family and society. Individual freedom ends when it turns harmful to others.

Summary of the Discussion

The analysis put above proves it beyond doubt that euthanasia is an activity which is absolutely devoid of sanction. No human being has authority to interfere with the matter of death the exact moment of it is indubitably predetermined by Allah *ta'ala* Himself. The illness is to continue in its natural operation till the death approaches. In respect of each individual case the physician is not necessarily in a position to predict it. What the physician is required to do is to preserve the rest of the patient's life according to the best standards, not to procrastinate the death. The artificial apparatus should also be used with the same thing in mind. Instead of thinking about euthanasia, care has to be given to maintain the remaining life with the best possible way. The most which could be done in the case of the patient enduring some fatal disease on his deathbed is to staying away from taking unusual steps. Still, the patient must not be denied from usual treatment nutritious food stuff and the medicines. This type of usual service might be offered by the hospitals which have a clear policy regarding the use of the artificial life support apparatus and the

admission of the patients with complete disregard to the inhuman considerations of colour, caste, sex, religion, etc.

Position of the Shariah on Euthanasia

A detailed discourse contributed by
Maulana Mufti Akhtar Imam Adil¹

General guidelines and directives of the Shariah

Islam teaches the Muslims never to disappoint from the all embracing mercy of Allah *ta'ala* even in the face of the most adverse situations and extremely bleak and unpromising state of affairs. A number of Qur'anic verses ask us never to get disappointed from Divine mercy. To quote here only one:

قُلْ يٰعِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنْفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ
الدُّنُوبَ جَمِيعًا إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ ٥٣

Say: O my servants! who have acted extravagantly against their own souls, do not despair of the mercy of Allah; surely Allah forgives the faults altogether; surely He is the Forgiving, the Merciful.

"ما يصيب المسلم من نصب ولا وصب ولا حزن ولا أذى ولا غم ، حتى الشوكة يشاكها

إلا كفر الله بها خطاياها." (بخاري على فتح الباري ١٠/١١٠)

Turning to Allah, the Merciful, in all circumstances of pain and pleasure and looking for His all-embracing, infinite benevolence is of course a favour of Allah, never the lot of anyone else other than those believing in Allah and His teachings. A believer is not permitted to wish for death whatever the problems and hardships he is enduring, let alone making arrangement for his death. The Apostle of Allah is reported to have said:

لا يتمنين أحدكم الموت لضرّ نزل به.

Never anyone of you should express his wish for death due a torment that has be fallen him.²

Another *hadith* reads as:

لا يتمنى أحدكم أن يستعذب

Nobody of you should wish for death due to a harm one has received. If one is virtuous, maybe this harm adds more to his virtue. If one is wrong-doer, one may get chances to rectify one's bad character.

¹ Founder Rector Jamia Rabbani, Manorwa Sharif, Samastipur, Bihar India

² Muslim.

Islam, likewise, permits no man to commit suicide due to some fatal illness or worldly difficulty. The Qur'an says:

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ . (٢:١٩٥)

And cast not yourselves to perdition with your own hands.¹

- Haz. Abu Hurairah (may Allah be pleased with him) reported the Messenger of Allah to have said: "One who killed himself with a sharp-edged weapon shall be given the same weapon in his hand with which he shall be stabbing his belly forever."²

Dignity of Human life

Such clear statements of the Qur'an and *hadith* establish it beyond doubt how much dignity and respect does command the human life. No human being is permitted by Islam to do any harm even to his own body and soul. According to Islamic Fiqh a Muslim is not allowed to practice abstemiousness and be sparing in diet to the extent which might enfeeble him, affecting his health so much so that one is no longer able to offer the acts of devotion and worship properly. The Prophet is reported to have said:

"Your soul is your conveyance, so be kind unto it."

The kindness to it means not to harm it by starving it, or by any other way.³

Quite evidently, when it is established that man has no authority or right to kill himself or do any harm to his body, how could one be allowed to kill any other human being or do any harm to him. Islamic teachings have very emphatically outlawed the killing of a human being without a genuine reason. To this effect we find several references in the Qur'an. To cite here just two of those:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ .⁴

And do not kill the soul which Allah has forbidden except for the requirements of justice.

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا .⁴

¹ Al-Qur'an, 2:195.

² Muslim Sharif, 1/72.

³ Ghamz Uyuni Basair, Sharh al-Ashbah wal-Nazair of al-Hamwi 1/102, Majma'ul Anhur 2/524.

⁴ الأنعام : ١٥١ .

Whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men.

The Apostle of Allah has declared:

"لو أن أهل السماء والأرض اشتركوا في دم مؤمن لأَكْبَهُم الله في النار." (الترمذي ، مشكوة ص : ٣٠٠)

If all those in the heavens and those on the earth took part in the bloodshed of a believer, Allah *ta'ala* shall condemn them all to the Fire. ²

Genuine and legal reasons of putting a human being to death

On the authority of Uthman bin Affan (RA) the Holy Prophet (SAWS) is reported to have declared:

"لا يحل دم امرئ مسلم إلا بإحدى من ثلاث : زنا بعد إحصان ، أو كفر بعد إسلام ، أو قتل نفس بغير حق ، فقتل به ." (رواه الترمذي ، مشكوة ، كتاب القصاص)

This is no legal reason to put a believer to death except either one out of three. That is, committing adultery after marriage, turning apostate after entering the fold of Islam; or perpetrating the crime of intentional homicide with no legal reason. (If one found guilty of any one crime out of the three ones just mentioned) He shall be put to death.³

Excepting the three legal reasons, in no case the killing of a human being is lawful.

Euthanasia

From among the moral evils engendered by the western civilization and the moral crisis of Europe an issue of graver implications is that of euthanasia. That is, terminating the life of the patient enduring an incurable disease and thus has become a grave problem for his family and the attendants. In other words, euthanasia refers to the activity of ending the life of such a patient either by administering him any medicine for the purpose, or by staying away from offering any medical treatment to him.

¹ المائدة : ٣٢.

² Tirmidhi, Mishkat, p.300.

³ Tirmidhi, Mishkat, p.301.

In the western world in particular, and in the eastern world in common this tendency is on a constant rise. However, to the Islamic society this concept is quite alien. The society which is raised along the teachings that both life and death are from Allah, the Creator, that enduring the hardships and trials of life constitutes the very demand of Faith; serving the parents ensures the right to Paradise; meting out good behavior to one's kinspeople, attending the sick and escorting those with disabilities are regarded the act of great felicity and serving others is a means of spiritual blessing and peace. To such a society of high moral values the tendering and caretaking of such critical patients really poses no problem. In stark contrast, for a society which is devoid of faith and conviction, which attaches the sole import to its worldly life and regards the pains and pleasure of this life as the only real one, the serving, attending and spending on the patients of above description might of course be a problem of graver proportions. For which kind of reward such a society should prepare itself to endure hardships? What it will get for its sufferings for the sake of others? Then, why should it suffer for others?

Unfortunately, a limited class of the Muslim community, which is largely bereft of the true meaning and message of Islam and is ensnared by the western culture, has a loveful attitude to the act of euthanasia. It has, therefore, become incumbent to analyse the issue of euthanasia in the light of the principles of the Islamic Shariah.

Types of Euthanasia

Euthanasia, that is ending the life of the patient enduring some fatal disease with the consideration to deliver him from the poor quality of life, is of two types:

1. Active
2. Passive

As far as the former type is concerned it involves the doing of an act to end the life of the patient. For example, the patient who is suffering from cancer, or is lying unconscious for long and the medical staff is not hopeful of the restoration of his health is administered such an injection or drug which ends his life.

As of the passive Euthanasia, this refers to the condition in which the patient is not subjected to any activity to hasten his/her

death. The patient is denied only the treatment necessary to keep him/her alive. In other words, the patient is let without treatment to die. To illustrate the point, the patient suffering, for instance, from cancer, unrecoverable unconsciousness, brain damage, brain fever, etc, attracted some more illnesses which are curable but he/she is denied the treatment of the later type of disease with an intent to hasten his/her death. Or, the children with a near total disability caused, for instance, by a damage in the backbone leading to the paralysis of the legs, or the patient has lost control over his/her natural calls, or a child received a serious brain injury at the time of his/her birth. A patient/child with such serious physical and brain infirmities is of course bound to live a life completely dependent on others. Besides such inseparable infirmities, if such patients or children attract other curable illnesses such as pneumonia, they are left without treatment, thereby to precipitate their early death. Or, the people of old age suffering from serious illnesses and the treatment involves much more money. About such people, as mentioned in the lines above, the ideology developing in the West is to leave them without medical treatment.

While the former means facilitating intentionally and deliberately the means of death for the patient and those enduring a poor quality of life, the latter refers to an inactivity. That is, leaving the patient unattended and without possible and available medical help. In the final analysis, both the modes of euthanasia are extremely disgusting, hence condemnable and legally impermissible.

Position of the *Shari'ah* on Active Euthanasia

The Active mode of euthanasia clearly forms the case of intentional homicide. In the Islamic Shariah a Muslim, man or woman, could be killed only for either one reason out of the three ones mentioned in the *hadith* just cited above. Out of those three reasons none includes the extreme and unbearable pain or suffering from an incurable disease.

Security of life constitutes an obligation

The things the Islamic Shariah lays primary emphasis on the security and safety of the life of the human beings is of incomparable

import. It is so much important that even the consumption of the dead meat and other forbidden items has been held permissible if the security and safety of life so requires. To quote a verse which is found at a number of places in the Qur'an:

فَمَنْ أَضْطَرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ١٧٣ .

Food constitutes the most urgent need of the human body to keep it alive. According to the juristic expressions if a person refuses to have the required food intake and starved himself to death, his so doing shall be regarded a grave sin in the eye of the *Shariah*.²

Islamic juristic expressions clearly establish the rule that a partial damage to the body shall be endure to the safety of human life. For example, if the doctors think it unavoidable to cut off an ulcerated part of the body in order to save the life of the patient, such an operation would of course be permissible. To quote on authority here:

و أما ما لا يمكن تحصيل مصلحته إلا بإفساد بعضه ، كقطع اليد المتأكلة حفظاً للروح ، إن كان الغالب السلامة ، فإنه يجوز قطعها ، و إن كان إفساد ، لما فيه من تحصيل المصلحة الراجحة ، و هو حفظ الروح .

If a greater good could not be achieved except at the cost of a partial loss, for instance, dissociation of the ulcer-affected hand, this partial loss shall be endured, if the safety of his life is probably expected. For the safety of life is far too important than the loss of a hand.³

What pain and suffering the incurable patient generally endures is indeed a partial physical loss as compared to the death and the end of his life. Enduring the extreme suffering and the tormenting hardships of the disease is too easier than putting him to death. It would indeed be absolutely imprudent to kill the patient in order that he/she may evade the sufferings and the implications of the fatal disease.

¹ Al-Qurna, 2:173.

² Fatawa Hindiyah, 5/355, Fatawa Bazzazia on al-Hindiyah 6/367, Majma al-Anhur commentary on Multaqa al-Abhur 2/524.

³ Qawaid al-Ahkam fi Masalihil Imam by Imam Izzul Din bin Abdus Salam p.78.

Sufferings of the mortal disease: A kind of Divine Grace

For death the time is already appointed. The sufferings and torments a Muslim has to endure during his mortal illness on the eve of his death do contain aspects of goodness for him. His suffering may turn an expiation for his sins and misdeeds and also may cause the elevation of his position and place with Allah *ta'ala*. There are many persons who are not expected to attain a higher position with Allah *ta'ala* merely on the strength even of their lifelong virtuous deeds. It is the torments of their mortal illness which might raise such persons to those higher positions. This meaningful point has also been mentioned in a number of *hadiths*. Whether it is the severity of illness or inordinate length of its duration, each aspect holds good in the case of the faithful. Whatever he suffers is of course from Allah *ta'ala* and carries good for him. Nobody could be left free to break this Divinely-ordained continuing chain of goodness by ending the life of the patient. Neither the patient nor his kinspeople, nor the medical staff has such an authority or right to do so. Life is an absolute ownership of Allah *ta'ala*. Man is committed to strive every nerve to maintain and preserve the life according to the best possible way, leaving the final outcome to Allah alone. The reversal of this order, that is, making arrangements to bring an early death, for one's own self or for others shall of course be regarded an act of suicide and homicide.

2. Passive Euthanasia

In the second mode of euthanasia no physical act is done, except that the patient's medical treatment and care is stopped, with the result that the patient dies on his own. This mode of euthanasia also deems impermissible. The following are the possible grounds of this viewpoint:

Being concerned for the safety and security of one's life

First of all, the safety of one's life constitutes a primary obligation of everyone else, and so much important being the taking of the required steps. Leaving a patient without medical treatment is of course a type of neglect vis-à-vis the safety of life and will constitute a sin. As the water and food are required in order to save the life against perishing, so being the medical treatment. The Holy

Prophet himself used the medicines and herbs and enticed others into so doing.

عن أسامة بن شريك قال ، قالت الأعراب يا رسول الله ألا نندأوي؟ قال : نعم يا عباد الله! تداووا ، فإن الله لم يضع داءً إلا وضع له شفاءً ، و دواء إلا داءً واحداً ، فقالوا يا رسول الله و ما هو؟ قال : "الهرم".

Usama bin Sharik related that some ruralites asked the Holy Prophet (SAWS) about the position of the *Shariah* on the use of medicines and treatment of diseases. To their query the Prophet (SAWS) replied: "Do treat your illnesses through the use of medicines, O the servants of Allah. For Allah created no illness but made a cure against it excepting one illness." What is that one O the Prophet of Allah? Asked they again. "Old age", the Prophet (SAWS) replied."¹

This *hadith* proves it beyond doubt that no illness is incurable. Old age and the resultant death is the only exception. It is the deficiency of the human knowledge due to which some illnesses may elude successful treatment and cure.

In short, when everything is available and at the disposal of the patient and attendants, these facilities and medicines ought to be used in order to save a deteriorating life.

Positions of *Shariah* on medical treatment and the use of medicines and herbs

The contradicting views of the men of Islamic jurisprudence may apparently be embarrassing to many. To the majority of the *Ulama*, seeking medical treatment and the use of medicines is permissible. The Shafites, however, regard it, at the most, as recommendable.²

In the juristic literature we often encounter the particulars which read that if a patient did not undergo the medical treatment and resultantly suffered death, he actually earned no sin.³

Reconsidering the proposition

On the surface, the purport of such juristic particulars is that the medical treatment of the diseases constitutes no religious obligation. Leaving the illness without medical treatment will,

¹ Tirmizi with Tuhfatul Ahwazi 3/158.

² Mausua Fiqhiya 11/117.

³ Raddul Muhtar 5/343, Fatawa Alamgiri 5/335, Bazzazia alal Hindiya 6/367, Majmaul Anhur, Sharh Multaqa al-Abhur 5/524.

therefore, constitute no wrong. However, on the reconsideration of the issue it gets clear that what such juristic particulars read is not the complete reality. The core point of the proposition in fact is to determine the amount of certainty of cure and recovery of health through the use of medicines. Diagnosing of illness and the prescription of medicine depends on the experience, researches and examinations of the doctors and medical experts. In most cases the patient or attendants have hardly any say *vis-à-vis* the diagnosis, examinations reports and the prescription of the medical experts. How far these things are real is not to be determined by outside measures; the real knowledge rests with Allah alone. As far as the juristic expressions are concerned, they primarily centre round the amount of certainty in curing and healing the illness. Quite obviously, the amount of certitude of the removal of hunger by a food intake is incomparably higher than what is expected from the use of medicine. The difference between the two lies in the fact that in the latter the entire operation from diagnosis, medical examinations and prescriptions to the whole process of treatment rests upon the understanding and power of inference which, in the final analyzing of things, is purely conjectural. The former one, by contrast is certain.

The conjectural and probable and the certain and definitive were not to be treated as equal. Most juristic expressions of the type which see no wrong with the patient who gives up the medical treatment of his illness are justifiable on the point that to them the recovery of health by the use of medicine was not certain.

Referring to the Fatawa Qazi Khan, the Fatawa Alamgiri brings a short citation which explains the proposition in the following words:

“If the patient did not comply with the directions of the doctor and suffered death, he in fact did no wrong, for he was not certain of recovery.”¹

Making clear difference between leaving to eat and leaving the use of medicine, the Fatawa Alamgiri quotes the Fatawa Zahiriya in the following words:

“The difference between the two is that while eating the food, proportionate to one’s diet, is a certainty removing the hunger, giving

¹ Alamgiri, 5/354-355.

up it will be tantamount to destroying the self, the care of giving up the medical treatment and the use of medicines is not so certain.”¹

The same point has expressly been made to mark a difference between the two:

“Non-destruction of the human life by eating the food is certain, while the restoration of health by the use of medicine is conjectural.”²

Actually, such expressions are to be found in other juristic works of the Hanafi School as well.³

From *Fusul-e-Imadiyah*, the *Alamgiri* has cited a thematic discourse in this context. To summarise it here:

“The means whereby a detriment might be removed could be of three types:

1. Certain and categorical, e.g. the food and drink. They are the categorical means to satiate the hunger and thirst.
2. Conjectural and probable. That is, those means which are believed to remove the detriment in all probability, for example, receiving and seeking medical treatment and the use of medicines to regain health.
3. Imaginary and fanciful. That is, those means as are neither certain nor likely to rid one of the harms; they are mere imaginary and fanciful, like amulets, incantations, charms etc.

About all the three means the ruling of the *Shariah* is naturally different. As far as the means of the first category are concerned, their use is obligatory, and relinquishing them shall constitute a grave sin. For, in most cases, it is bound to result in the destruction of life.

As regards those of the second category, adopting them is lawful. That is, one is free to take or not to take them. Even adopting such means may also be recommended in some cases, depending on the situations and the persons.

As of those of the third category, adopting such means is opposed to the concept of reposing one’s trust in *Allah ta’ala*.⁴

¹ *Op. cit.* 5/355.

² *Bazzaziya on al-Hindiyah* 6/367.

³ *Cf. Raddul Muhtar* 5/343, *Majmaul Anhur Sharh Multaqa al-Abhur* 2/525, etc.

⁴ *Alamgiri* 5/355.

Advanced medical sciences of the modern age

All such discussions actually are meant to determine the element of certainty to be achieved by receiving and seeking the medical treatment. The age in which the *Fuqaha* had carried out such discussions was not so much developed and advanced as it stands today. In those days the diagnoses and the examinations of the diseases, and the medicinal prescriptions were chiefly based on the experiences and the conjectures of the doctors and physicians. However, now the situation has drastically changed. The medical sciences have made very considerable advancement. Now the basis of diagnoses are not mere the personal experiences or speculative contemplations but clear observation and the mechanical analysis. Considering the nature and case, separate medicines are prescribed for each illness; the doctors may declare, with a great amount of certainty, about the illness that if it was left without medical treatment the situation might assume dangerous proportions. It needs not to be reasserted that the changed situation of medical advancement shall bring a change to the ruling of the *Shariah* as well. In the older days the *Fuqaha* lacked a certain standard ground to base their opinion in this context. So, they declared the receiving and seeking of medical treatment as permissible or recommendable. For it, then, offered no certain means for the safety of life. However, now with the change of standard in respect of the efficiency of medical treatment, which has enabled the doctors to predict the success of their treatment in a trustful tone, it will not be in the fitness of things to uphold the earlier juristic views even in lines with the expressions and justifications of the earlier *Fuqaha* and scholars.

Here we think it proper to bring in this context an important citation of Shaikhul Islam Hafiz Ibn Taimiyah from the great collections of his *Fatawa*. Discussing the position of *Shariah* on the use of medicines and receiving and seeking the medical treatment in a scholarly way, he writes:

فإن الناس قد تنازعوا في التداوي ، هل هو مباح أو مستحب أو واجب ؟
والتحقيق أن منه ما هو محرّم ، و منه ما هو مكروه ، و منه ما هو مباح ، و قد يكون منه ما هو واجب ،
وهو ما يحكم أنه يُحمل به بقاء النفس لا بغيره ، كما يجب أكل الميتة عند الضرورة ، فإنه واجب عند الأئمة الأربعة

و جمهور العلماء ، وقد قال مسروق : "من اضطر إلى أكل الميتة فلم يأكل حتى مات دخل النار ، فقد يحصل أحياناً للإنسان إذا استعير المرض ما لم يتعالج معه مات، والعلاج المعتاد تحصل معه الحياة ، كتغذية الضعيف ، و كاستخراج الدم أحياناً.

Regarding the treatment of the illness the juristic views are different if it was permissible, recommendable or obligatory. The fact, however, being that it may be impermissible, reprehensible or permissible. It may sometimes turn into an obligation; it is when the medical treatment turns the only remedy to save the life of the patient, much the same as eating the carrion becomes obligatory if the situation so necessitates. Under such a set of circumstances doing so becomes an obligation according to the unanimity of the juristic opinions of the Four Great Fiqhi Imams and the overwhelming majority of the Ulama. Masrooq said:

"If one is felt obliged to eat the dead meat but one refused and resultantly succumbed to death, such a person merited the Hell fire." Sometimes a man might be struck with an illness which, if left without treatment, might develop into the cause of death of the patient, and through the course of normal treatment the health might be restored, much the same as feeding the man of advanced age, or taking out the blood in times of need.¹

The above furnished detailed discussion makes it abundantly clear that juristic view holding the medical treatment as just permissible pertains only to those circumstances when the safety of life of the patient does not depend on it and the restoration of health is not certain, or probable in the least. If there are sufficient reasons to believe that the health may be restored or the treatment turned the only means to save the patient's life, the medical treatment shall turn an obligation and by neglecting it one will be committing a graver sin.

Similarly, if a patient who is suffering from an incurable disease yet his life is out of immediate danger of extinction attracted an illness which in itself is curable and which, if not treated, is feared to lead to death, now it will be improper to insist on the permissibility of the medical treatment. Under such a set of circumstances it will turn an obligation. For according to medical examination report, which in most cases is accurate, certain, or probable in the least, the safety of the patient's life depends on it.

¹ Majmu Fatawa Shaikhul Islam Ibn Taimiyyah 12/18.

Intentional fleeing from medical treatment and not using the medicines under such condition will indeed be regarded a sort of intentional homicide; and if this was done with the permission of the patient, it shall constitute a case of suicide.

The late Qazi Mujahidul Islam Qasmi has also treated this question in scholarly manner. Following is an excerpt from his writing:

“A patient is suffering from a disease which, according to the medical examinations, is incurable but poses no immediate threat to life. In the meanwhile the same patient attracted another disease which, too, medically is deadly. But, in terms of medical sciences, is fully curable as the proper medicines have been developed through the use of which the healing is probable and the life of the patient could only be saved by the use of those medicines and the medical treatment, if such conditions obtain, it now will become out of context to stick to mere the notion of permissibility of the medical treatment citing some decontextualised expressions of the jurists. The correct and proper course of action now shall be the use of medicines and receiving the medical treatment. Doing so now shall turn binding, and desistance shall constitute a sin.”¹

Impermissibility of a misuse of the permissible

Whether the treatment of illnesses is permissible or mandatory, an important point must be kept in view. That is, the situation under discussion is to lead the patient to death by refraining from the medical treatment. In normal situations it might be regarded just permissible by law, yet under the specific conditions, as those under discussion, for example, the desistance from medical treatment shall no longer remain permissible. For now it is becoming instrumental for committing an act already declared proscribed by the *Shariah*. According to the normative principles of the *Shariah* which read:

إنما الأعمال بالنيات .

Acts are to be judged according to their motivating intents.

الأمر بمقاصدها .

Things are to be judged in view of their ends and objectives.

¹ Mabahith Fiqhiyah p. 401.

The *Fuqaha* have clearly specified that the position of the *Shariah* on 'permissible' is subject to change according to the change in situations. To quote Ibn Nujaim al-Misri here:

و أما المباحات فإنها تختلف صفتها باعتبار ما قصدت لأجله .

"The permissibles are subject to change in accordance with the ends they are intended for."¹

To summarise, even if the receiving and seeking of medical treatment is permissible, its refusal will turn absolutely unlawful if it is intended for homicide or suicide.

Desistance from doing an act is also an act in itself

The third point raised by the Qazi Sb. is to be studied in his own words:

"Under this specific condition avoiding the medical treatment is not mere a non-adopting the course of an act, it is indeed an act of refraining and desistance. In other words, not doing an act is not an act as such subject to the law of permissibility or impermissibility. But refraining oneself from doing an act is undeniably an act in itself, though psychic and not physical, directly associated with the intention of heart, attracting the reward and punishment. As a matter of principle, as the human being is obliged to do the physical acts, so he is responsible for his psychic acts as well. To put it differently, not indulging in the prohibitions of the *Shariah* constitutes no act at all, yet restraining oneself from doing them does constitute an act which is technically termed as *Kaff* (desistance) and attracts reward from Allah. To quote a juristic authority here:

"إن الكف فعل النفس ، فإن الفعل كما يُنسب إلى الجوارح يُنسب إلى النفس ، فحينئذ فالتك من حيث هو لا يُتصور أن يكون مثاباً عليه ."

Keeping oneself away from committing an act is of course an act of the soul. Doing an act is as much attributed to visible physical organs, so is attributed to the *nafs*. So, not doing an act as such shall carry no reward.²

¹ Al-Ashbaah wal-Nazair with al-Humwi 1/78.

² Al-Ashbaah, with Hamavi's footnotes.

In contrast, refraining oneself from doing an act is of course an act which as such may attract reward or punishment. Substantiating his viewpoint, Hamavi has cited the Qur'anic verse:

إِنَّ قَوْمِي اتَّخَذُوا هَذَا الْقُرْآنَ مَهْجُورًا ٣٠

In the verse quoted *hajr* has been described as the act of his people. In the *hadith* the securing of the tongue (that is, from ill talking and telling a lie, etc) has been attributed to be the best of acts. In the point under discussion refraining from receiving and seeking medical treatment is undoubtedly an act intended to waste the life of the patient. Precisely speaking, the active mode of euthanasia while constitutes an active physical act, that is, administering a lethal injection or medicine to the patient, the passive mode of it, that is, refraining from medical treatment refers to an activity which is not physical but *aml nafsi*, psychic act. Both the activities aim at achieving the same goal, that is, ending the life of the patient, hence unlawful."¹

When treatment turns fruitless

However, if the illness turned so challenging that the medical staff, too, got disappointed from recovery of the patient's health, the continuation of treatment has become fruitless, and the patient's respiratory system is working merely on the artificial apparatus, carrying out the activity of the medical treatment shall no longer remain a duty on his attendants. It now shall become only permissible. For the treatment is no longer a source of his life; it now will become a wastage of money for the continuation of an artificial life. Under such a condition it will be a better choice to remove the artificial apparatus and stop the treatment.

¹ Mabaahith-e-Fiqhiyyah, p. 481-482.

The philosophy of Health and Illness and the Activity of Euthanasia

By
Mufti Nazir Ahmad Kashmiri
Jamia Rahimiya, Srinagar, Jammu & Kashmir

Preparatory note

This world is a place meant for trial and test; here, despite an abundance of means and resources, one could hardly escape the trial and test. The persons graced with multiplying resources and means often face the problems as much. As trials and tests strike the people without faith, the faithful too cannot escape the natural course of trials and tests. The Qur'an expresses this phenomenal fact in its following words:

وَلَنَبْلُوَنَّكُمْ بِشَيْءٍ مِّنَ الْخَوْفِ وَالْجُوعِ وَنَقْصٍ مِّنَ الْأَمْوَالِ وَالْأَنْفُسِ وَالثَّمَرَاتِ
وَبَشِّرِ الصَّابِرِينَ ۚ إِذَا أَصَابَتْهُمُ مُصِيبَةٌ قَالُوا إِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ ١٥٦

And We will most certainly try you with somewhat of fear and hunger and loss of property and lives and fruits; and give good news to the patient. Who, when a misfortune befalls them, say: Surely we are Allah's and to Him we shall surely return.¹

Interruption of the health by types of illness is also an aspect of trials and tests. The illnesses the man suffers from are indeed a very effective and stronger means to make him truly value and appreciate his health. For this makes a conscious man realize the infinite power of Allah and His wisdom on one hand and know his helplessness and sharp limitations of his being on the other. Taken from this angle, every human being is essentially passing the tests and trials; some by being graced with wealth and social standing; others by way of destitution and poverty; still others being favoured with health and sound physique, and others by putting to the test of illness and ill health. The Believer cannot escape either one condition out of the two ones: sound health and peace, or restlessness, ill health and similar other reasons disrupting his peace of mind and soundness of his body.

¹ Al-Qur'an, 2:155-156.

In the former condition he is asked to exhibit, through his acts, the quality of thankfulness towards Allah *ta'ala*; in the later condition he shall be required to cultivate in himself the high qualities of forbearance and patience.

The life is an incomparably important trust. Leading it as such is of course the primary demand of a Muslim's faith in Allah. Therefore, however painful is the illness and disease, rendering the life hard in the extreme, a Muslim is not free to take any decision about his life in contravention to the teachings of his religion. Otherwise, he is feared to breach this important trust.

In the light of this note, now we must proceed to learn the answer of the question: Is a patient suffering from an incurable illness, or his relatives are free to opt for anyway to end not just his illness but his life as well, either by administering to him any fatal injection or medicine or abstaining from seeking and receiving the medical treatment which, in terms of the medical ethics, is termed as Euthanasia? By considering the express provisions of the Shariah, history of the medical treatment and the Islamic teachings on the importance of the human life what becomes clear is that both the modes of euthanasia should be impermissible. The supporting arguments and the reasons are as follows:

The concept of Trust about life with man from Allah *ta'ala*

It is an established fact that the body, along with all of its parts and organs, is a trust of Allah *ta'ala* with human beings. In subjecting his body, or his organs, to any type of dispositions he is asked by the law of Islam to strictly abide by the commands and directions of Islam itself. The Islamic *Shariah* grants man no authority to cut off any organ or to destroy any power or faculty of his body, let alone destroying the life in its entirety.

Islamic concept of dignity and reverence of mankind

According to the teachings of Islam the human kind is a respectable and dignified creation of the Creator. To cite only two references from the Qur'an here:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ
عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ٧٠

"And surely We have honored the children of Adam, and We carry them in the land and the sea, and We have given them of the good things, and We have made them to excel by an appropriate excellence over most of those whom We have created."¹

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ ٤ .

"Certainly We created man in the best make."

This obviously demands that it should be saved, guarded and protected against all such dispositions as are in contravention of the law of Islam. If this dignified being and respected entity ever faces an illness or disorder, remedial steps be taken to bring his body in order. In the Islamic scheme of things there could be no room to make any intention to harm the human life by any way or committing an act of breach of this Divine trust. Any act harming the human life, or intending to terminate it will constitute stark opposition to the noble concept of Divine Trust. Medicines and remedies is a very significant chapter of the *hadith* literature. There exists a fair number of *hadiths* which are soundly reported. For instance,

لكل داء دواء .

For each illness there is a medicine.³

Another *hadith* reads:

لكل داء دواء ، فإذا أصيب الداء برئ بإذن الله .

Against each illness there exists a medicine. When the medicine reaches the illness it cures the patient of his illness under the command of Allah.⁴

The entire medical history tells us that in each age of human history there have been many diseases and illnesses which were considered incurable. However, with his sustained pursuance and continuing research in the area of medicines, man triumphantly succeeded in finding the proper remedies and medicines to cure those illnesses regarded earlier as incurable. A very conspicuous example in this regard is the tuberculosis (T.B.). For a longer time in the medical history till recently it was regarded absolutely incurable. But now it is fully curable. The diseases which are regarded as incurable today may

¹ الإسراء : ٧٠ .

² التين : ٤ .

³ Bukhari, Muslim

⁴ Muslim.

successfully be curable in the future. In fact, the illness and health, medicine and its curability is fully under the command and intention of Allah *ta'ala*.

Categorical impermissibility of suicide

The *ahadith* expressly proscribe and prohibit committing suicide, making no exception whatsoever. To quote a *hadith*:

- “Nobody of you should wish for death due to a harm one has received. If one is virtuous, maybe this harm adds more to his virtue. If one is wrong-doer, one may get chances to rectify one’s bad character.”
- “Nobody of you should ask for death owing to an injury one has sustained.”¹
- Haz. Abu Hurairah (may Allah be pleased with him) reported the Messenger of Allah to have said: “One who killed himself with a sharp-edged weapon shall be given the same weapon in his hand with which he shall be stabbing his belly forever.”²
- One who killed himself by consuming the poison, Allah *ta'ala* will place the same poison in his hand on the Day of Judgement which he shall be consuming forever.”³
- “In no circumstances the blood of a Muslim could be shed excepting that he committed intentional homicide, perpetrated the adultery while he is married or turned apostate and thus severed himself from the Community.”⁴
- If all those in the heavens and on earth share the killing of a single believer Allah *ta'ala* will condemn them all to the Fire of Hell.”⁵

(For detail, see the papers of Mufti Sanaul Huda Qasmi, Mufti saidur Rahman, Ml. Mufti Akhtar Imam Adil)

¹ Bukhari with Fathul Bari, 10/110.

² Muslim Sharif, 1/72.

³ Tirmizi Sharif.

⁴ Agreed upon, Bukhari 3/1016.

⁵ Mishkat, p. 300.

- Jabir bin Samurah related that a person killed himself with a knife. The Holy Prophet (SAWS) reacted: "As of myself, I will not perform a funeral prayer for him."¹
- Haz. Abu Hurairah (may Allah be pleased with him) related, 'We took part in a battle, that is, the Battle of Hunain, with the Prophet of Allah, About a person pretending to be a Muslim the Prophet informed us that he was out of the people of Fire. When the war broke out the person fought valiantly and received a fatal injury. The valiant fighting of him was reported to the Holy Messenger of Allah in the following words: "O the Messenger of Allah! About whom you had declared that he was out of the people of the Fire gave a valiant fighting to the enemy during the battle and eventually suffered death." 'He was consigned to the Fire of Hell', the Prophet (SAWS) replied, "He did not meet the death of martyrdom. During the war he had received a fatal injury. In the night when his pain turned more unbearable, he could not endure it and killed himself."²

(For more detail, see the paper presented by Maulana Mumtaz Khan Nadwi)

- "If a believer has to endure pain due to any type of sickness, or anything painful less than sickness, by this pain Allah *ta'ala* removes his sins like the tree which sheds its leaves during fall."³
- Abu Saeed Khudri reported the Prophet (SAWS) to have said, 'No hardship, discomfort, problem, injury, affliction or anxiety, is endured by a believer, even if a thorn by which he is pricked, but Allah *ta'ala* turns it a penance for his sins."⁴
- "Those given to be kind and merciful to others are treated with mercy and kindness by Allah, the Merciful. So, be kind

¹ Nasai.

² Bukhari, Book of Jihad.

³ Mishkat, 134.

⁴ Agreed upon, Mishkat, vol. 1/134, Bukhari with Fathul Bari 10/110.

and merciful to those on the land, you, in turn, will receive mercy and kindness from the One in the Heaven.”¹

(For more discussion, recourse may be made to the papers of Mufti Habibullah and Ml. Akhtar Imam Adil.)

- In the nations preceding you there was a person. He received an injury the pain of which he could not endure. So, he took a knife and cut his hand; the blood of which did not cease and eventually, he suffered death. Allah *ta’ala* declared, ‘My servant prompted about himself (and killed himself), so I debarred him from Paradise.”²
- One the Day of Judgement, when the people of sufferings (those who had undergone the sufferings and hardships during the worldly sojourn of their lives), shall be granted the reward in plenty, those who lived here in peace and health shall express their wish as: “were it their skins would be cut with scissors.”³
- “Whoever of you is able to be of any benefit for his brother he ought to do it.”⁴
- “Keep away from the seven deadly sins”, the Holy Prophet (SAWS) commanded. About those seven deadly sins he was asked to explain, he said: “They include the association of others than Allah with Him as partners and peers, playing necromancy and killing any human being except by the right of Allah Himself.”⁵

No one of you should ever wish for death owing to any affliction befalling him. He instead should say: “O Allah keep me alive as long as the life is good for me, and end my life when it is better for me.”⁶

All ways of killing oneself have clearly been prohibited in *hadith*. To quote a very sound *hadith* here:

He who intentionally killed himself this world using a deadly thing, on the Day of Judgement he shall be put to the

¹ Abu Dawood.

² Bukhari, Had. No.3276, Ibn Habbab, 5988, Baihaqi: 16307.

³ Tirmizi.

⁴ Muslim, 2/223, 224.

⁵ Bukhari, Muslim.

⁶ Tirmizi, Book of al-Janaiz 1/19.

torment with the same deadly mode. So, if one killed oneself by the use of an arm made of iron, one shall be given the same arm to kill oneself, and one shall be stabbing it into one's body for ever in the fire of Hell. If someone ended his life here by consuming a poisonous drink he shall be left, in the Fire of Hell, to suck the same lethal mixture for ever. If a person, in the like manner, dropped himself from a mountain, the same shall be meted out to him for ever amidst the Hell Fire.

In spite of the normal fact that the suicide is committed only under extremely imbalanced conditions of mind, body or financial stresses, and committing suicide has expressly been held prohibited, entailing grave punishment in the lasting life of the Next World. So, if a patient is enduring an incurable illness he has no other option than to exercise patience and bear all sufferings with fortitude and forbearance. Committing suicide, or doing an act of the type, could never be an option for him from the *Shariah*. The Holy Qur'an has declared it in the following words:

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ٢٩

"And do not kill your people; surely Allah is Merciful to you."

1

In the light of the express provisions cited above, and indeed many others to the same effect, establish beyond the least of doubt the prohibition of suicide, or the act of Euthanasia with both of its types.

Haz. Khabbab bin al-Aratt, a very noted Companion out of those who entered the fold of Islam during the very earlier phase of Islam, endured worst type of persecution from the Pagan Quraish. He often was subjected to such atrocities and heinous inhuman crimes as make one's hair stand of end due to fear. This great Companion had long been suffering from an extremely painful disease. In order to get rid of this disease he even underwent seven times the treatment by fire, and still was not cured of the disease. He led his entire life with this dreadful disease. Very often he would say: "Had not the Messenger of Allah stopped us from wishing for death, I would have wished for death."²

النساء : ٢٩ . 1

² Tirmidhi, Muslim, etc.

The said Companion was suffering from an incurable disease and still remained alive and never expressed a wish for death. We have a yet another *hadith* in the Muslim:

لا يتمنين أحدكم الموت لضرّ نزل به.

“Never anyone of you should express his wish for death due a torment that has be fallen him.”¹

When a Muslim is not permitted to express wish for death even in the face of the most painful and tormenting situation, how, then, could Islamic *Shariah* permit him to adopt ways leading to categorical death. Hence the euthanasia is prohibited.

Proceeding to death by one’s own initiative is impermissible even in the face of a categorical death from all sides

Instead of committing suicide, or taking any step leading to death by one’s own act even when one is lying in the net of death with no way to escape an imminent death, a Muslim must opt for the way of patience and fortitude. The following citation from a leading juristic authority makes the point clearer still:

إذا كانت الغزاة في سفينة فاحترقت السفينة حكموا فيه غالب رأيهم ، فإن غلب على رأيهم أنهم لو طرحوا أنفسهم في البحر لينجوا بالسباحة وجب عليهم الطرح لينجوا ، و إن استوى جانباً الحرق و الغرق بأن إذا قاموا حرقوا ، و طرحوا أغرقوا فلهم الخيار عند أبي حنيفة و أبي يوسف ، وقال محمد : لا يجوز لهم أن يطرحوا أنفسهم في الماء ، وجه قوله أنهم لو ألقوا أنفسهم في الماء لهلكوا ، و لو أقاموا في السفينة لهلكوا أيضاً ، إلا أنهم لو طرحوا لأهلكوا أنفسهم ، ولو صبروا لهلكوا بفعل العدو ، فكان الصبر أقرب .

Suppose a band of *mujahidin* is aboard a boat and the boat got fire. How to save themselves shall be decided on the basis of the majority opinion. If the majority opinion suggested that they should jump into the sea so that they might save themselves by way of swimming, they shall stand obliged to cast themselves into the water so that to save their lives. In case the possibilities of their destruction by fire and drowning stand equal, that is, if the people on board stay inside the boat seem destined to be burnt by fire, and if jumped into the water are as much to face destruction, they according to Imam Abu Hanifa and Abu Yusuf, are at liberty to choose either one option out of

¹ Muslim.

the two at their disposal. Imam Muhammad, however, does not permit them to cast themselves into the water. He justifies his opinion as: "If they cast themselves into the water, they are destined to face destruction, and if they stayed inside the boat, destruction the very is the ultimate fate they are destined to face. But in the former case it is they who are destroying themselves by their own act. In the latter case, if they maintained patience and faced the situation with a maximum fortitude and forbearance and suffered death, it would be the act of the enemy that caused their destruction. Fortitude, therefore, would be the best option.¹

The long and short of it being that the Islamic *Shariah* can never permit a human being to take a step which may lead him to a categorical death even though he is in the face of a certain death by reasons and acts to be committed by others than his own self, without his consent. In the event of such an unfortunate situation a Muslim is always asked by the Islamic teachings to face it with the possible courage and forbearance. This establishes it beyond any shadow of doubt that neither type of euthanasia could be approved of by the Islamic *Shariah*. Rather, the Islamic teachings urge the patient as well as his relations to do their best to seek and receive the medical treatment within their normal means and resources, believing firmly that the cure is subject to the command and decision of Allah *ta'ala*. A companion relates:

كنت عند النبي صلى الله عليه وسلم وجاءت الأعراب ، فقالوا : "يا رسول الله أنتداوى؟" فقال : "نعم ، يا عباد الله، فإن الله عزّ وجلّ لم يضع داءً إلا وضع له شفاءً غير واحد ، قالوا: "وما هو؟" قال: "الهزم".²

Another *hadith* reads as follows:

إن الله لم ينزل داءً إلا نزل له شفاءً ، علمه من علمه ، و جهله من جهله .³

That is, when man, through his discovery voyage and experimental endeavours, develops proper knowledge about a medicine as a cure against a particular disease he benefits from it and uses it in order to cure himself of the disease he is facing. But unless

¹ Badai-us-Sanai, Book of Jihad.

² Musnad Ahmad, Tirmidhi, Abu Dawood, Nasai, Ibn Maja.

³ Musnad Ahmad.

he discovers it and develops proper knowledge how to use it, its beneficial use remains beyond his reach.

The *hadiths* cited above obviously intend to emphatically impress upon the Muslims that the medicinal treatment of the illness has to be continued irrespective of the circumstances. If, under the command of Allah *ta'ala*, the medicine cured the illness, so far so good; if otherwise, a Muslim is expected to successfully come out of the unimaginably hard conditions of the real life of the Next World, and attract the special benevolence from Allah *ta'ala*. As a pretty good number of the *hadiths* speaks well, no suffering of the believer is without a gain, even if it is as minor as being pricked by a thorn, for which the reward of a charity work has been promised. Fever, likewise, has been described as the charity of the human body. If so, then, why not an extremely tormenting illness will carry a heavier reward? Instead of impressing the importance of illness and the greatness of the reward the patient is promised to receive in the lasting life of the Next on the patient if the patient's relatives, attendants or the medical staff adopt measures to push him to death, keeping him in darkness, it would of course be an act of homicide. It is a known fact that intentional killing of a single person without a proper legal ground, according to the clear expressions of the Holy Book of Islam, amounts to the killing of the entire mankind. The active mode of euthanasia would indubitably constitute the crime of homicide. As regards the passive mode of euthanasia, this one, too, is not consistent with the teachings of Islam. Islam has clearly defined the rights of all human beings in relation to their differing situations and varying states. Sick persons' rights, too, have not been left undefined. That is, serving the patient and caring him and leaving no stone unturned to provide him the best possible medical treatment and nursing. Much as the careless attitude of the attendants towards the patient and his denial of the available medical treatment could not hasten or procrastinate his life even by a single moment, yet doing so would constitute a graver wrong towards him, an open violation of his moral, social and legal rights, that is, saving his life against danger. This act, though seemingly quite insignificant, would be a silent crime leading ultimately to the death of the patient on the part of those who were asked by law to spare no effort and means to do the best to him.

In the present modern age we are witnessing a strange phenomenon of diminishing of the spirit of human brotherhood and the animal temperament is gaining strength with every day break. The

human values of sympathetic consideration towards each other, rendering humanitarian services and relieving the afflicted are falling apart; and the bad traits like selfishness, utilitarianism, and severance of social and blood relationships are gaining currency in the human society. Compared to the Eastern world, this phenomenon has become still more obvious in the Western nations. Parents are being regarded an obstacle by their children who have no other end of their life except living a dissipated life. For the most the children want to get rid of their parents while they are still teenagers. Under such inhuman society even a conditional permission of the euthanasia is of course bound to worsen the social condition of the human society in the east and west beyond control, and would impair the natural and social relationships beyond repair. The permission, though with detailed, specified conditions, would provide a legal covering to the feigned 'mercy killings' perpetrated, under false sighs and unreal tears, with a pure intent to do away with the patients, especially those unfortunate ones as have long been suffering from the diseases the treatment of which require inordinate care and a heavier amount of money. Even, the patients suffering from ordinary illnesses are also feared to be subjected to the 'mercy killing'.

To put the long story short, the natural and humanitarian teachings of Islam can never afford to bestow legal cover on the merciless killings of the patients with terminal or ordinary but prolonged, illnesses committed under the beautiful and misleading name of 'mercy killings'. Precisely speaking, neither mode of Euthanasia merits permissibility. Seeing the euthanasia is of course a travesty of the purely humane Islamic teachings enshrined by the Qur'an and *Sunnah*.

Position of Shariah on Euthanasia

As discussed and viewed by
Maulana Muhammad Mustafa Abdul Quddus Nadvi
Department of Hadith and Fiqh, al-Ma'ahad al-Aali, al-Islami Hyderabad,
India

From among the moral and social issues the present civilization and culture has engendered the one of grave moral dimensions is that of Euthanasia. Although western in origin, it, with each passing day, is gaining currency in the eastern world as well Muslim society, too, is not an exception. The Muslim society is in need to know of the position of the *Shariah* on the Euthanasia so that to keep itself away from falling into this grave moral sin due to the lack of proper knowledge. First, we will briefly explain the various dimensions of the issue and then will proceed to critically examine it in the light of the provisions of the Islamic *Shariah*.

What does Euthanasia stand for?

Euthanasia refers to the activity of hastening the death and putting an end to the life of the patient enduring a prolonged, tormenting illness with no hope of cure, or the children unusually disabled and therefore apparently no more than a burden and liability on the society. The life of such unfortunate patients and children is normally ended by administering a lethal injection or medicine to them with the stated intention and motivation to relieve their relatives and attendants of the pain of hardship, exhaustive care and nursing and the heavy expenses involved.

The above pretty detailed definition of the euthanasia gives rise to the following two important questions:

1. Does Islam permit, in any set of circumstances including the one just mentioned, to do any act, to end the life of a person enduring a tormenting illness or an extremely hampering and pathetic disability with the intent to relieve such persons of their torments and sufferings?

2. Is it permissible to Islam to stop the medical treatment of those patients who are enduring the terminal illness with the intent they may die on their own?

This way the euthanasia may have two types: Active Euthanasia and passive Euthanasia.

Active or Practical Euthanasia

This may possibly have two variants.

Variant First

Patient's committing any act of suicide and self killing by administering to himself a deadly injection or killing medicine. Such an act is in stark contravention of the principles of the Islamic Shariah, hence unacceptable to it. The life is a trust from Allah to man and merits all respect and safety. Killing oneself, therefore, would constitute a graver sin and disobedience to Allah and His law, no matter the self-killing is committed by the use of an arm, fire, electric shot, jumping into a river, felling oneself from a mount, high building or bridge, by colliding with train or other similar vehicle, or consuming a deadly and poisonous medicine in order to rid oneself from painful illness and extreme mental stresses. Any attempt of this type with an intent of self killing would constitute the act of suicide forbidden by Islam in categorical terms. To quote a verse of the Qur'an:

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ٢٩

A do not kill your people; surely Allah is Merciful to you.¹

The Messenger, the true Benefactor of Humanity, is reported to have declared:

He who intentionally killed himself this world using a deadly thing, on the Day of Judgement he shall be put to the torment with the same deadly mode. So, if one killed oneself by the use of an arm made of iron, one shall be given the same arm to kill oneself, and one shall be stabbing it into one's body for ever in the fire of Hell. If someone ended his life here by consuming a poisonous drink he shall be left, in the Fire of Hell, to suck the same lethal mixture for ever. If a person, in the like manner, dropped

¹ Al-Qur'an, 4:29.

himself from a mountain, the same shall be meted out to him for ever amidst the Hell Fire.

There is a yet another *hadith* which clearly prohibits from taking any lethal medicine or herb aiming at suicide.

The use of a poisonous and deadly medicine has specially been declared to be prohibited by the Prophet (SAWS). The enormity of the crime of suicide might be realized by that the Holy Prophet (SAWS) declined to offer the funeral prayer for a Companion who had killed himself. This is so grave a wrong the curse of which continually chases the perpetrator from this world to every stage of the Next Life. This act is counterproductive. The suicider commits this act in order to relieve himself from the pains and stresses of this life. But, in effect, he places himself in still more painful and enduring sufferings of the Actual Life of the *Akhirah*.

The other variant

The other variant refers to the condition that the patient be killed by the medical personnel, or by his friends or kinsmen by administering a deadly injection or medicine to him. Doing so would constitute a heinous crime of intentional homicide, one out of the deadly sins. Denouncing the sin of homicide, the Qur'an says:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ
عَذَابًا عَظِيمًا ٩٣

"And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement."¹

Haz. Anas bin Malik (may Allah be pleased with him) related that the Apostle of Allah (SAWS) said:

"I have been commanded to fight the people till they announce that there is no god except Allah. When they so did and offer prayer in the direction of the Ka'aba as we do and start slaughtering their animal as we do, their blood and properties shall turn unlawful for us except under the responsibility and right of the law. And their accounts are with Allah."

On committing this act within the territorial boundaries of the Islamic government, whether the doer is doctor, kinsman or a friend,

¹ Al-Qur'an, 4:93.

the doer shall be prosecuted under the law of *qisas*. The Qur'an declares:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ
وَالْأُنثَىٰ بِالْأُنثَىٰ .

“O you who believe! retaliation is prescribed for you in the matter of the slain, the free for the free, and the slave for the slave, and the female for the female.”¹

Passive Euthanasia

The passive euthanasia is the stopping of the medical treatment. In other words, no active measure is taken to end the life of the patient; he is left without a medical care with the intent that he may die an early death so that the patient, his kinsfolk and attendants get relief from the sufferings and the expenses involved. This gives rise to the question: Does Islam permit to stop the medical treatment under a purposely intent as expressed in the question?

Apparent clash between the *ahadith* related to treatment and the use of medicine to cure an illness

We notice an apparent discord between the *ahadith* scattered about in the *hadith* literature. On one hand, we find the *hadith* which read. “He who or called upon an enchanter, he disowned the trust and Belief in Allah.” In striking contrast, we have a number of *ahadith* which ask the people to use medicines and undergo the treatment to cure the illnesses. To quote just one here:

“O the servants of Allah! Do treat your illnesses. For Allah ta’ala created no disease or illness but created a cure against it. Other variants of the report make exception of death and old age from cure.”

Between the two contradicting *ahadith* the scholars of *hadith* have brought a reconciliation and explained that the *ahadith* speaking of the impermissibility of seeking medical remedies for the diseases and illnesses the man suffers from actually intend to impress the importance of the trust in Allah and the Belief in predestination. As for those *ahadith* which entice the people into seeking medical

¹ Al-Qur'an, 2:178.

treatment and the use of medicines, they are intended to establish the permissibility and recommendability of the treatment of diseases. In reality, seeking or receiving medical treatment is never in contradiction to the concept of trusting in Allah, much the same as eating and drinking in order to satisfy the two immediate needs of the human body do not contravene this primary concept of Islamic teachings. In other words, seeking cure through the use of medicine and the process of treatment is as much a natural routine act as satisfying the hunger and thirst by food and water. To the same opinion does subscribe Haz. Imam Ghazali (may Allah deal him with His special mercy). To give the gist of his statement here:

The use of medicine and seeking the cure through the process of medical treatment is by no way opposed to trusting in Allah. Quite obviously, if the scorpion crept into one's clothing, or the snake crawled into one's house, driving out the scorpion and snake from one's clothing and house is not opposed to the trust in Allah. Trusting in Allah does never postulate to leave the scorpion or snake in one's clothing and house. The process of medical treatment and the use of medicines to cure one's illness is of course part of the Divinely created law of causation, hence adopting it will not harm the doctrine of trusting in Allah. Trusting in Allah, in reality, is never the abandonment of the natural means and resources. Placing one's trust in Allah means to have an unflinching faith in the fact that the means and causes treatments and causes are carry no effect in themselves whatsoever. Their efficiency is totally dependent on the command and will of Allah.

Passive Euthanasia

A cursory examination of the passive euthanasia reveals that it might possibly have four grades:

- (a) The patient is suffering from an incurable illness, and there exist little chances for improvement.
- (b) The patient is suffering from an illness which is curable but the improvement of his health is no more than an illusion.
- (c) The illness in itself is curable but due to other reasons, the improvement of his health is not very much hoped.
- (d) The illness is curable and the healing is almost certain.

In the first three conditions it would be permissible not to undergo a medical treatment. In other words, in earlier three conditions the patient may be left without unnecessary medical care upto the decision of Allah that He may end his life if so is good and expedient for him; or grant him life, with His miraculous bounty, if so is deemed better for him. As regards leaving the patient without proper medical help with the intent to hasten his death and to relieve the patient and his attendants of the pains they are bearing, this willful abandonment of the medical treatment will constitute a sort of disobedience to Allah *ta'ala*. Actually, the acts are to be judged strictly according to their motivating intents. The Prophet (SAWS) has cleared this important principle in his following *hadith* which has been reported to us through a categorical chain of narrators.

إنما الأعمال بالنيات

From same *hadith* has been derived the following important doctrine of the Islamic Fiqh:

الأمر بمقاصدها.

Things are judged in the light of their ends and objectives.

While a good and pious intent fetches reward from Allah, an evil intent may turn the same act into a sin.

As of the fourth condition, that is, the cure is certain or at least probable, in such a condition leaving the medical treatment will not be in the fitness of things. More so, should a patient refuse to receive the medical treatment and the use of the prescribed medicines and consequently suffered death, it will amount to committing suicide, hence an act of disobedience. So because the patient himself has actively contributed to his death. If the patient wishes to receive the treatment, but the doctor or his nearest kinspeople left him without medical care and proper treatment so that he may face death and they get relief from the pains and expenses of his care, all will be earning sin and shall be held accountable with Allah for they intentionally evaded the responsibility Allah *ta'ala* had placed on them.

Recapping the important points established through the detailed papers furnished in the foregoing pages, let's recall here the decision of the Academy on the Euthanasia, both Active and Passive, placed in the very outset of the monograph. It needs not mention that

the Academy's decision is based on the papers contributed to the Seminar by the discussants.

The papers we have just furnished in the foregoing pages reaffirm the decision of the Academy in quite unambiguous terms. To all the discussants and the authors of the papers cited above the Euthanasia, both active and passive, is unacceptable and in no case Islamic Shariah can afford to permit it. The Active Euthanasia is indubitably an act of intentional homicide, a heinous crime against humanity, a graver sin among the few deadly ones.

As regards the passive Euthanasia, it is also impermissible. Although the use of medicines and receiving and seeking the medical treatment is not mandatory or binding, still, the Islamic teachings can never tolerate the denial of a patient from the available modes of treatment if the motivating intent is to hasten his death. If the patient or his kinspeople, opt for not treating the illness due to their financial inability or placing a stronger trust and total submission to Allah *ta'ala*, doing so will constitute no wrong, it may be regarded as a commendable act instead.

Brief Answer to the Questionnaire

- 1) It is categorically prohibited to bring about the death of a living person, whether a patient or healthy, by any physical activity. So doing will of course constitute an act of intentional homicide, that is, killing a human being whose blood deserved every respect. This has expressly been declared as a categorical prohibition in a number of the Qur'anic verses. To cite here just one

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ^١.

“And do not kill the soul which Allah has forbidden except for the requirements of justice.”

Since in normal conditions seeking or receiving the medical treatment is not binding, leaving the treatment might be permissible in the Shariah of Islam. Doing so will constitute no sin or wrong at all. It shall be incorrect to draw an analogy between leaving the medical treatment and the consumption of the dead meat and the likes under necessitating conditions which turn a legal obligation in order to save

¹. الأنعام : ١٥١.

life against impending perishing. The removal of the artificial respiratory apparatus shall be entailing no sin whatsoever. One, however, might be called to account in the Hereafter if the removal was intended to hasten the death of the patient.

(This brief answer has been contributed by Maulana Md. Burhanud Din Sambhali, a noted Islamic scholar of India and a renowned teacher in Hadith and Islamic Fiqh at the Darul Uloom Nadwatul Ulama Lucknow, India)

Euthanasia and the Teachings of Islam

Mufti Md. Arif bi-Allah Qasmi

Human life is incomparably important

As far as the first question, that is, the active euthanasia, is concerned, it is absolutely impermissible, no matter the agent is the patient himself or any other person, doctor, attendants or the patient's kinspeople perpetrating this activity either on their own accord or at the instance of the patient. This categorical standpoint of the Fiqh has been formed along the express Islamic teachings which speak of the dignity of human life and the incomparable import which the Islamic teachings accord to the life of the human beings, apart from that the life is of an adult, a child, a woman, a youth and robust or old age senile or patient. Any attempt on the life of a human being or its exploitation by any way shall constitute a graver wrong. The human life is highly respectable and shall be enjoying this special grade of respect and dignity unless it tramples upon its respect by committing any wrong regarded as a sufficient reason to withdraw this cover of innocence and respect and bring it to justice. In the Holy Qur'an there exists a number of verses which seek to prohibit the homicide in any form. To quote here just one of them:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ .¹

The verse above cited is best explained by the following *hadith* of the Holy Prophet (SAWS):

لا يحل دم امرئ مسلم شهد أن لا إله إلا الله و إني رسول الله إلا بإحدى ثلاث ، النفس بالنفس ، و الشيب الزاني ، والمفارق من الدين ، التارك للجماعة .

No Muslim who bore witness that there no god but Allah, and I, Muhammad, am the Messenger of Allah could be subjected to killing except there exists either one ground out of the three ones: he is guilty of intentional homicide, he is found guilty of adulteration; the one who repudiated the religion and severed himself from the community.²

Quite obviously, being a patient is never a reason out of the three ones expressed in the *hadith* as legal grounds for putting a

¹ الأنعام : ١٥١ .

² Bukhari 6484, Muslim 1676.

Muslim to death. It established beyond any shadow of doubt that leading a patient to death by the use of an active or passive way is wrong and absolutely unacceptable to the teachings of Islam and Islamic ideology.

Even the patient himself is not permitted to undertake any activity in order to end his life fleeing the torments and pains of his illness. Any act of this type shall of course be regarded an attempt to suicide and self killing. The Holy Prophet (SAWS) has expressed his strong dislike and displeasure towards even to express such a wish, let alone committing suicide.

لا يتمنين أحدكم الموت من ضر أصابه .

Expressing the fate of a person from among the people of yore who had committed suicide under a wish to evade the torments and sufferings of his prolonged and painful disease, the Holy Prophet (SAWS) says:

- “Nobody of you should wish for death due to a harm one has received. If one is virtuous, maybe this harm adds more to his virtue. If one is wrong-doer, one may get chances to rectify one’s bad character.”
- “Nobody of you should ask for death owing to an injury one has sustained.”¹

Opinions of the Prominent Jurists

Izzud-Din bin Abdus Salam writes:

لو أصابه مرض لا يطيقه ، لفرط ألمه لم يجوز قتل نفسه .^٢

Shaikh Ibn Daqiqul Id writes:

إن جناية الإنسان على نفسه كجنايته على غيره في الإثم ، لأن نفسه ليست ملكاً له ، بل هي لله تعالى ، فلا يتصرف فيها إلا بما إذن فيه .^٣

“A human being’s offence against his own self, too, as much grave, in respect of legal consequences, as one’s wrongdoing against other than one’s own self. It is because of the fact that his being is not his own ownership; it is of Allah in its entirety. In view of this

¹ Bukhari with Fathul Bari, 10/110.

² قواعد الأحكام ص : ٨٥.

³ فتح الملهم .

rudimentary principle of Islamic teachings, the man is allowed to undertake just those dispositions vis-à-vis his body as are permitted by the *Shariah*.¹

All such unambiguously clear statements prove it that in no set of circumstances, however tormenting and agonizing they might be, the man is permitted to adopt any such measure as leads him to death in order to relieve himself of the hardships and torments he is undergoing. Even expressing such a wish has been condemned as displeasing to Allah *ta'ala* in the extremity. When the patient himself is not permitted to do so, for others than him the degree of prohibition shall of course be stronger still. Worse, it is bound to engender various other evils. For instance, an heir may adopt such steps to dispense with his legatee so as to inherit his legacy earlier than expected. In the case of a legatee enduring the pains of his diseases the legatee may think of such an opportunity as the best one to seize upon and secure the estate of the deceased. This is not mere apprehension; there is a very strong likelihood that once the euthanasia is declared legal and permissible, the human life will turn cheaper and endangered. Islamic teachings can never afford to bestow the cover of legality upon Euthanasia, active or passive.

Point Second

Islam could never hold as permissible to stop the use of medicines and seeking and receiving the medical treatment and care if this passive measure is being taken with the view to precipitate the death of the patient. There is very fundamental rule of the Islamic law that it is the intent which accounts for the act. Quite evidently, stopping the medical treatment here is intended to lead the patient to death, which in itself is an evil intention, hence unlawful.

In short, going by the rudimentary principle, "Things are judged in the light of the motivating ends", both the modes of euthanasia are not permissible in the *Shariah* of Islam. For the motivating intent behind them is much the same.

The concept of euthanasia is the product of those minds as neither believes in Allah, the Supreme Being, nor in His Omnipotence. We often come to know that the medical experts expressed their disappointment in the cases of the patients under their medical care.

¹ Fathul-Mulham Sharh Muslim.

But to the surprise of those experts, Allah *subhanahu wa ta'ala* bestowed His mercy upon them and they regained their lost health. There have been many patients who, in complete disappointment, believed themselves on the gateway of the impending death. But Allah *ta'ala*, absolutely out of His power, cured them of their diseases and then they lived a longer life.

وَهُوَ الْفَاحِرُ فَوْقَ عِبَادِهِ وَهُوَ الْحَكِيمُ الْخَبِيرُ ۝ ١٨ .

“And He is the Supreme above His servants; and He is the Wise, the Aware.”¹

Summing up the whole discussion, it would of course be safe to declare that:

1. Islam can never permit to do any act meant for ending the life of a patient with an intent to relieve him of the torments and sufferings of his disease. No contrivance, whether material or otherwise, is permissible, neither for the patient himself nor for others than him; patient's kinspeople or the medical staff.
2. Stopping the remedial measures and medical treatment shall also share the law of prohibition if the stopping is intended to lead the patient to an earlier death.

Summarizing the Discussion

The foregoing entire discussion on the position of Islamic Shariah on Euthanasia, both active and passive, and the papers presented here to support the decision adopted and declared by the Islamic Fiqh Academy of India might be summarized well in the following lines in two portions, in formal compliance with the Questionnaire of the Academy:

1. According to the Islamic concept of life and the Revelation-based Islamic ideology, the human life is not the property and ownership of the human beings. This important

¹.al-An'am 18.

ideological principle simultaneously establishes the fact that no human being is of the right and authority to end his life by committing any act with the intent to bring about his death. In the light of this rudimentary principle neither the patient, however tormenting and painful his illness might be, and whose life has lost all meanings of living for him and for others, nor the others are authorized to end his life by any means, liquid or non-liquid medicinal compound, an injection or by way of surgical operation, etc. In this regard there exists a large number of unambiguous and categorical verses in the Qur'an and clear statements in the *hadith* literature. All are purportable that the committer of suicide and homicide entitles himself to the Hell fire, where he/she shall have to stay and endure the tormenting and agonizing chastisements for a very longer time than human conception and perception. Such a person shall be delivered from the Hell fire only when the Divine Mercy deems it fit. The following two events should serve as an eye-opener and a lesson to be kept in mind.

Haz. Abu Hurairah (may Allah be pleased with him) related, 'We took part in a battle, that is, the Battle of Hunain, with the Prophet of Allah, About a person pretending to be a Muslim the Prophet informed us that he was out of the people of Fire. When the war broke out the person fought valiantly and received a fatal injury. The valiant fighting of him was reported to the Holy Messenger of Allah in the following words: "O the Messenger of Allah! About whom you had declared that he was out of the people of the Fire gave a valiant fighting to the enemy during the battle and eventually suffered death." 'He was consigned to the Fire of Hell', the Prophet (SAWS) replied, "He did not meet the death of martyrdom. During the war he had received a fatal injury. In the night when his pain turned more unbearable, he could not endure it and killed himself."¹

In the nations preceding you there was a person. He received an injury the pain of which he could not endure. So, he took a knife and cut his hand; the blood of which did not cease and eventually, he

¹ Bukhari, Book of Jihad.

suffered death. Allah *ta'ala* declared, 'My servant prompted about himself (and killed himself), so I debarred him from Paradise.'¹

This clearly establishes it beyond doubt that no outward act is permissible to end the life of a patient. Neither the patient himself nor the doctor or the patient's kinspeople are permitted to do so, in view of his supposed expediency.

2. According to the Islamic concept of health and illness treatment of the illnesses, under normal conditions, is not mandatory and binding upon the patient or his kinspeople; it is just permissible. This viewpoint is better supported by the condition of the woman Companion who often had to endure the fits of *mirgi* as extreme as laid her body bare. She asked the Holy Prophet (SAWS) to pray to Allah *subhanahu wa ta'ala* to cure her from that illness. In reply to her request the Holy Prophet (SAWS) addressed her: "If you wish to be cured, I may pray to Allah to grant you health and remove your suffering. The other option, however, is that you endure the illness with forbearance and patience and receive the reward of paradise." The fortunate lady preferred to be graced with paradise for getting cure. She, nonetheless, requested the Holy Prophet (SAWS) to make prayer to Allah not to let her illness open her body before others. The Prophet granted her request and prayed to Allah as she had requested.²

In the light of this *hadith* the Muslim is at full liberty to stay away from treating any actual illness physical or mental.

. In the condition given in the Academy's Questionnaire this liberty exists even at a wider measure. The treatment of a terminally ill patient may be stopped, and the ventilator and other artificial respiratory apparatus be removed. Rather, it has to be done in most cases. According to the expert and trustworthy doctors if there is no hope for any improvement in the condition of the patient, there is no actual need to keep him alive through the use of artificial apparatus. Apart from other harms this artificial life involves huge expenses without an actual, legal or social, need.

¹ Bukhari, Had. No.3276, Ibn Habbab, 5988, Baihaqi: 16307.

² Bukhari, Kitabul Marza.

Proposition Second

Brain Death and the Artificial Respiratory Apparatus

Among the new medical issues on which the Islamic Shariah has to take its stand to solve the associated legal problems are those of the Brain Death, the fact of death, and the limits of the use of Artificial Respiratory system. The sixteenth Seminar of the Islamic Fiqh Academy of India, held in the Jamia Islamia Darul Uloom, Muhazzabpur, Azamgarh (U.P. India) at the earnest invitation of its founder-administrator Maulana Mufti Habibullah Qasmi, among other things, discussed these problems. After an elaborate discussion of the problems and the aspects associated, both oral and written, the Seminar issued the following three-point resolution:

The Questionnaire

Introductory

The human being is the combination of a physical structure and spirit. With the infusion of the spirit into the physical structure begins the human life; with its departure does occur the death. While the physical structure is completely material and visible, nothing could be said of spirit. It is a closed secret, the 'command of the Lord', according to the Qur'anic expression. Some Ulama have described it to be a subtle, immaterial and respondent object permeating through the physical structure as does the verdure through a verdant bough. Notwithstanding the fact that there exists a number of signs even common to the laymen, which may make others easily distinguish the dead from the living and can tell who is alive and who is dead, in specific conditions there may emerge the situations when it becomes very difficult to identify and ascertain the occurrence of death, not just for the commoners, but for the medical experts as well. They, too, find very difficult to decide if a person has actually died, for instance, in the cases of the consumption of venomous substances, deep wounds a person may inflict upon himself as a result of accidents. The patient may fall into a longer death soon, the apparent signs of death turn visible, and only a deeper investigation reveals that the patient is still alive.

Generally speaking, stopping the heartbeat, failure of the blood circulation and the collapse of the respiratory mechanism have been regarded the signs of death. However, the modern medical science has invented such devices which are able to artificially maintain the heartbeat for a good time. From this has stemmed the concept of the brain death in the modern medical science. It has now become possible to interrupt the natural heartbeat for a specified time and use the artificial heart and lung for the blood circulation and to maintain the respiratory system. This experiment gave birth to the concept that actually the death is not the collapse of the respiratory system and the ceasing of the blood circulation; the actual death is the collapse of the brain stem. This being the part of the human brain which is the centre of thinking and conscience the very system which controls the entire operative mechanism of the human body. Should the brain fail to

receive the blood supply even for as shorter a time as four-five minutes, the brain stem starts melting and ceases to live. After the death of the brain stem both the heartbeat and the blood circulation may be maintained through the artificial apparatus. But this artificial heartbeat shall of course be a short lived activity not lasting longer than hours or, at best, a few days, with no question of his return to life again. In contrast, if the brain stem is not dead, and the heartbeat has ceased for a limited time and the blood circulation is being maintained through an external artificial act, the man will stay alive. This experiment accounts for the modern medical concept that the centre of human life is brain instead of the heart.

The question of the life and death of a human being is closely related to a couple of juristic issues. When someone is declared to be dead is of great import, taken from a juristic standpoint. In context of this question the questions we may face may roughly be placed in three types. In the type first the questions are mainly related to the distribution of the estate, start of the *iddat* period and the related matrimonial claims. The type second covers the questions associated with the transplantation of the human organs. According to the medical research the human organs withhold life for sometime even after the collapse of the natural respiratory system. If the brain stem is dead, the heartbeat and the respiratory system may be maintained through artificial apparatus to keep the organs alive for a duration in which the useful organs might be taken out of his body in a usable condition.

The third type of the issues is related to the artificial life support system. If a patient is on the ventilator, a comparatively much costlier method of treatment, in what condition the ventilator and other instruments are to be removed from the patient? If the patient's natural respiratory system and the heartbeat turn operational, the apparatus shall obviously be removed. Same way, if the patient on the ventilator dies and his heartbeat ceases, the removal of the artificial support system is definite. The case gets complex when the respiratory system and the heartbeat become dependent on the ventilator and the medical experts have not yet got disappointed from his life. Under such an unclear condition when the ventilator is to be removed?

In the light of the detailed perspective furnished above, the following important questions emerge and need proper solutions in the light of the normative principles of Islamic Shariah:

1. How far the modern medical experts' concept that the actual death is the death of the brain stem is right according to the principles of the Shariah? To put it differently, if the brain stem is dead and still the heartbeat and the respiratory system are being maintained through ventilator, shall the person of such a description be treated as living being or dead?
2. In case the brain is not dead; the brain stem is functioning but the heartbeat has completely ceased and the respiratory system, too, has collapsed, shall such a person be subjected to the rulings pertaining to a living human being, or to those germane to the dead?
3. The patient whose respiratory system has totally become dependent on the ventilator but the medical experts have not yet expressed their disappointment from his life, when does the Shariah permit to remove the artificial respiratory apparatus from such a patient? And if the kinspeople of such a patient are unable to afford this very expensive way of treatment, will the removal of the artificial respiratory system from this patient after the permission of his kinsmen constitute a case of intentional homicide?
4. The medical experts have expressed their disappointment from the restoration of the patient's health; it is now only the artificial respiratory apparatus through which his respiratory mechanism might be maintained for a number of days, will it constitute a case of obligation or permissibility or prohibition to benefit from the artificial apparatus?
5. Whence are to begin the rulings pertaining to the deceased— that is, the execution of his/her testament, distribution of the estate, commencement of the waiting period and the like— from the death of the brain stem,

natural death of the heart, or after the collapse of the respiratory system and ceasing the heartbeat following the removal of the artificial respiratory apparatus?

Decision of the Academy towards death and the use of artificial respiratory apparatus¹

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 distributed among the deceased's heirs and the period of *Iddat* will also be counted from that time.
2. When the patient is on the artificial respiratory system and the physicians are hopeful that his natural respiratory system might 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.
3. If the patient is on the artificial respiratory system and the physicians have lost hope for his/her life, the relatives may ask for the removal of the artificial respiratory apparatus.

Summarizing the Papers - Received from the Scholars

In response to the Questionnaire, the Academy received total thirty five papers. In the following lines a summary is being presented. The summary is intended to present different juristic aspects expressed by the scholars in their papers vis-à-vis the questionnaire served to them.

As far as the first question is concerned, the majority of the scholars have rejected the modern medical concept that the actual death is the collapse of the brain. As long as the heart is beating and the respiratory system is functioning, the patient shall be treated as living, though the brain stem is declared dead by the medical experts. This view is held by the following scholars: Ml. Md. Salman Mansurpuri, Mufti Habibu Allah Qasmi, Ml. Sultan Ahmad Islahi, Ml. Arshad Madani, Ml. Md. Burhanud-Din Sambhali, Ml. Mufti Akhtar

¹ 16th Fiqhi Seminar (Muhazzabpur – Azamgarh) 30 March 2 April 2007.

Imam Adil, Dr Bahaud-Din Muhammad Nadwi, Dr Zafarul Islam Azami, Shaikh Abdul Qadir Abdullah al-Qadiri, etc.

Contrastively, the following scholars subscribe to the opinion that such a person whose brain is declared dead by the medical experts, though his heart is beating and the respiratory system is functioning on the ventilator shall be treated as dead: Mufti Mahboob Ali Wajihi, Ml. Zakau-Allah Shibli, Mufti Jamil Ahmad Naziri, Mufti Abdur-Rahim Qasmi, Mufti Shahid Ali Qasmi, Mufti Tanzim Alam Qasmi, Ml. Ata Allah Qasmi, M. Muhammad Azami, Mufti Arif bil Allah Qasmi, Ml. Muhammad Iqbaal Tankari, Ml. Naim Akhtar Qasmi, Mufti Shaukat Sana Qasmi, Ml. Wasim Ahmad Naziri, and Maulana Abul Qasim Abdul Azim.

To the holders of the former opinion the determinant of the death is not the death of the brain system; it is definitely the death of the heart, and the common observation and the generally held experience shall be taken into account.

From among the holders of the latter opinion Mufti Abdur Rahim Qasmi, Mufti Tanzim Alam Qasmi and Maulana Muhammad Iqbaal Tankarvi are of the opinion that in such a situation the determination of the death shall be based on the certification of three medical experts.

Taking into account the context of the theme, various discussants have mentioned, referring to the ancient exegetical and hadith literature, the signs of death. In order to support their standpoint vis-à-vis the actuality of death, some scholars have incorporated in their papers the relevant medical researches of some of leading medical institutions of Europe and America.

In case the brain is not dead; the brain stem is functioning but the heartbeat has completely ceased and the respiratory system, too, has collapsed, shall such a person be subjected to the rulings pertaining to a living human being, or to those germane to the dead?

Like the question first, opinions of the discussants differ in connection with the second question as well. According to the following scholars the patient, in the case mentioned in the question, shall be regarded as living:

Ml. Arshad Madani, Ml. Mufti Akhtar Imam Adil, Mufti Abdur Rahim Qasmi, Ml. Muhammad Salman Mansurpuri, Mufti Sher Ali

Gujrati, M. Khurshid Anwar Azami, Ml. Zahir Ahmad Qasmi, Mufti Anwar Ali Azami, M. Abdur Rashid Qasmi, Ml. Wasim Ahmad Naziri, Mufti Tanzim Alam Qasmi, Mufti Shahid Ali Qasmi, Mufti Arif Bil Allah Qasmi, Mufti Shaukat Sana Qasmi, Ml. Muhammad Iqbaal Tankarwi, Ml. Naim Akhtar Qasmi.

Opposed to this opinion, there are the scholars who hold that such a patient is of course dead, hence subject only to the rulings developing from the death of a person. They are: Ml. Sultan Ahmad Islahi, Mufti Nazr Tauhid, Ml. Burhanud-Din Sambhali, Ml. Muhammad Azami.

According to the following scholars the situation mentioned in the question is unconceivable: Dr Zafarul Islam Azami, Ml. Mufti Md. Salman Mansurpuri, Ml. Md. Asjad Qasmi, Nadwi, and Ml. Mufti Mahboob Ali Wajihi.

According to the following scholars the death in the situation mentioned shall be declared only if the signs of the death are visible: Dr Zafarul Islam Azami, Mufti Mahboob Ali Wajihi, Ml. Abu Sufyan Miftahi, Mufti Habibu Allah Qasmi.

The patient whose respiratory system has totally become dependent on the ventilator but the medical experts have not yet expressed their disappointment from his life, when does the Shariah permit to remove the artificial respiratory apparatus from such a patient? And if the kinspeople of such a patient are unable to afford this very expensive way of treatment, will the removal of the artificial respiratory system from this patient after the permission of his kinsmen constitute a case of intentional homicide?

In answer to this question the majority of the scholars have expressed the opinion that if the recovery of the patient's health is probable, and his kinspeople are resourceful enough to bear the expenses the use of artificial respiratory apparatus involves, it would be improper to remove the artificial system. In case it is removed, it would be constituting no case of intentional homicide; in the most it would be a case of stopping the activity of treatment held as permissible. Only the Shafites regard it as recommendable.

In case bearing the heavy expenses of this method of treatment is beyond the capacity of the patient's kinsmen, the removal of the ventilator shall be creating no case of sin whatsoever. In support of

this opinion a conclusive demonstration has been offered by the Qur'anic verse:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا

“Allah does not impose upon any soul a duty but to the extent of its ability.”

In case the patient's kinspeople are resourceful enough to bear the heavy burden of this way of treatment, it will be impermissible to remove the artificial system from the patient. This view has been expressed by Mufti Habibu Allah Qasmi, Mufti Mahboob Ali Wajihi, Mufti Sher Ali Gurati, Mufti Arif bi Allah Qasmi, Ml. Arshad Madani.

Mufti Habibu Allah Qasmi, Ml. Arshad Madani (of Champaran, Bihar) and Mufti Arif bi Allah Qasmi have gone as far as to declare the removal of the artificial apparatus in the given situation will be constituting a case of intentional homicide.

Giving preference to the security of life, a highly important fundamental principle of the Shariah, Ml. Arshad Madani, Mufti Mahboob Ali Wajihi, Ml. Khurshid Anwar Azami and Ml. Abu Sufyan Miftahi are of the opinion that if the patient's kinsmen are resourceless they must do their best to receive the required financial support from the government and other welfare institutions.

The medical experts have expressed their disappointment from the restoration of the patient's health; it is now only the artificial respiratory apparatus through which his respiratory mechanism might be maintained for a number of days, will it constitute a case of obligation or permissibility or prohibition to benefit from the artificial apparatus?

Addressing this question most scholars have expressed the opinion that in this case the use of the artificial respiratory devices will not exceed the limit of the permissibility.

In contrast, to the following scholars the use of the respiratory devices will be impermissible: Mufti Mahboob Ali Wajihi, Mufti Nazr Tauhid, Mufti Tanzim Alam Qasmi, Ml. Ata Allah Qasmi.

To Ml. Sultan Ahmad Islahi the use of the artificial respirator shall be regarded permissible only if the patient is in his sense, able to engage himself in asking forgiveness from Allah and making atonement for his past lapses. If the use of the respirator is worsening the condition of the patient, the use of it shall be regarded prohibited.

To Mufti Muhammad Shahid Ali Qasmi the use of such devices is no more than an absurdity.

According to Ml. Muhammad Asjad Qasmi Nadwi not using such devices is better than its use. For it might be painful for the patient. To Ml. Arshad Madani, the kinspeople of the patient have no reason to get disappointed from the healing of thir patient even after the expression of disappointment by the medical experts. For, as he says, the Qur'an forbids us to get disappointed, whatever the case.

Disappointment from Allah is a trait of the disbelieving community.

إِنَّهُ لَا يَأْسُ مِنْ رَوْحِ اللَّهِ إِلَّا الْقَوْمُ الْكَافِرُونَ ٨٧ .^١

“Surely none despairs of Allah’s mercy except the unbelieving people.”

لَا تَقْنَطُوا مِنْ رَحْمَةِ اللَّهِ

“Do not despair of the mercy of Allah.”

Whence are to begin the rulings pertaining to the deceased — that is, the execution of his/her testament, distribution of the estate, commencement of the waiting period and the like— from the death of the brain stem, natural death of the heart, or after the collapse of the respiratory system and ceasing the heartbeat following the removal of the artificial respiratory apparatus?

To the majority of the scholars the rulings pertaining to the post death period shall have to be executed only after the collapse of the respiratory system when the heartbeat has completely ceased. Ml. Mufti Muhammad Salman Mansurpuri and Ml. Asjad Qasmi Nadwi, however, are of the opinion that the death shall be declared only when both the brain and heart cease to function, and the ensuant rulings shall be executed thereafter. Mufti Habibu Allah Qasmi, Dr Zafarul Islam Azami, M. Mufti Muhammad Salman Mansurpuri and Ml. Asjad Qasmi, Nadwi are of the view that the death shall have to be declared when the common signs of death become apparent.

To Mufti Tanzim Alam Qasmi, Mufti Shahid Ali Qasmi, Ml. Naim Akhtar Qasmi, Mufti Abdur Rahim Qasmi and Ml. Wasim Ahmad Naziri the rulings ensuing from death shall be executed only when both the heart and brain stop functioning.

¹. ٨٧

Detailed Answers to the Questionnaire Regarding the Brain Death

A Critical Analysis of the questions

By
Dr Zafarul Islam Azami¹

The following points are intended to critically examine the questions raised in connection to the fact of the death whether it is to be determined after the brain death or after the death of the heart and the collapse of the respiratory system. These points shall be of a considerable help in properly understanding the questions and their answers.

1. The preparatory lines in the questionnaire apparently seem to be inconsistent, "It has now become workable to stop the beating of the heart for some time and replacing it with the artificial heart and lungs for the blood circulation and respirations." Then, in the same breath, we read, "This experiment gave birth to the concept that the death in fact is not the collapse of the respiratory system and the cessation of the heartbeat; death actually is the dying out of the part of the brain called 'brain stem'. To me it is absolutely incomprehensible to make the death of brain as the determinant of the death of the patient simply on the ground that the heart may artificially be stopped from working for a while. Quite obviously, the cessation of the heart is entirely different from ceasing, (the former being the result of the outside agent; the latter, contrariwise, occurs on its own, without an outside interference.) As far as we know, it is hard to find even a single example of that once the heart got stopped completely, it was restarted applying any research of the modern advanced medical instruments. It is therefore, improper to declare the brain as the centre of the human life merely on the ground that the modern

¹ Ex-Shaikhul Hadith & Principal, Darul Uloom Mau, UP India.

medical science has devised some apparatus to maintain the blood circulation and respiration for some time.

2. When the heart ceases to beat it is the heart itself which the doctors try to activate and restart. This amply speaks of the fact that it is the heart which is the centre of human life.
3. It is unanimously agreed upon that the functioning of both the heart and brain is interdependent. If brain controls the entire functioning of the human body, the heart is the source of consciousness to all parts of the physical structure including the brain. In its very life and entire functioning the brain is dependant on the heart itself. If the heart is dead and the respiratory system has collapsed, the brain too shall die within seconds. For without blood supply it shall obviously cease to live and turn dead.
4. All the artificial means and apparatuses devised to extend the duration of the human life are meant to support the heart alone; no device is meant for the support of brain.
5. As compared to the function of the heart, the function of the brain is far wider, yet the function of the heart is incomparably important, so much so that the existence of life does depend on it. No denying of the biological fact that the faculty of consciousness is totally associated with the brain even the pointing by our fingers. In order to extend the very existence the ways of slaughtering the animals and killing the human beings (under legal situations) are different. In ritual slaughtering of the animals three veins are cut to maintain the blood supply to the brain and prolong the sensefulness of the animal till the blood flew out of its body. On the contrary, when a human being is put to sword for a crime, his neck is hit from back to end the function of senses and cut his brain off his body, thereby to lighten his suffering and pain. Towards this end injection and medicines have been prepared which are administered to him before killing.
6. As soon as the heartbeat comes to stop, the flow of the blood through the body stops and starts freezing in the blood vessels.

7. Life and consciousness are not necessarily the same. They are two different things. With the ceasing of the heartbeat the life comes to an end. But the partial sensitiveness and is not fit to be termed as life.
8. In the event of the heart surgery the medical experts may need to stop the natural heartbeat replacing the natural heart by an artificial one. This cessation cannot be termed as the death of the health. It is just the replacement of it which is functioning in place of the original heart. The replacement of course is much the same as the original one, and no activity of surgery is workable without the heart, whether original or artificial.
9. The remains of life following the death for a short while is not the life in reality; it is no more than the remains of life, or the life in cells which might be extended for some time through an external activity. This activity might make possible to take out the useful parts of the body in a useable condition.
10. The reinforcement provided to the heart after coming its natural function to a stop works only as support. If the heart has lost its life altogether, the artificial means of support shall turn useless.
11. In his historic book al-Qanun Bu Ali bin Sena writes that the blood is the vehicle of the spirit 'And it is admitted without contention that the flow of blood is associated with heart. Based on this, the spirit, too, is connected to the heart. It seems in order here to cite some definitions of the life and death.

"Life refers to the natural existence of living conditions of the natural, sensual and animal soul in the human physical structure."

"Life stands for respiration and feeling."

"Death refers to the perishing of the forces existing in an animal body."

Death means the total disintegration of the natural physical structure."¹

Describing the death, Allama Zamakhshari writes:

¹ Mualajaatul Buqratiya, Chap. 37 p. 112-113.

"الحياة ما يصح بوجود الإحساس ، والموت عدم ذلك ."

Life comes into existence with the existence of feeling, death is the dilution of it.

But Nafisi describes the death in the following words:

"مادامت هذه القوة باقية فيه ، و في القوة الحيوانية التي بها حياة البدن ، و مبدؤها القلب ، لأنه أول عضو يتكون و يتحرك ، و آخر عضو يسكن عند الموت ، و هذا يدل على أنه معدن الحياة ."

The life exists as long as this force is existent in the physical structure. This being the animal force by which stands the life in the body; the origin point of this life is the heart. For the heart is the first ever organ which assume shape and becomes active; and it is the last organ to turn still at death. This establishes that the heart being the source of life.¹

In his footnotes on the Nafisi Abdul Halim of Frangi Mahal writes:

القلب متكوناً أولاً و ساكناً آخراً ، يدل على أنه معدن الحياة ، فإن الحركة في عضو منوطة على حصول الحياة فيه .

"Since the heart is the first organ to assume shape, and the last one to turn still, it makes it an established fact that it is the source of life. Motion in any part of the body depends on that the heart is alive."

In addition to what we have just offered to substantiate the centrality of the heart in connection with human life, the modern concept about the centrality of brain is not a unanimous one. To quote an authority here:

"For the same reason the death is described as the complete ceasing of the acts of brain, heart and the lungs, and not of that of the brain alone."²

As regards the brain death, about it a medical expert writes:

" إن الأقرب للصواب هو أن الحياة الإنسانية تبدأ مع نفخة الروح في الجنين ، و ذلك لا يتم إلا إذا كان مكان الروح ممكن النمو ، و مكانها هو المخ ، قياساً على نهاية الحياة الإنسانية

¹ Nafisi p. 70.

² Medical Jurisprudence and Toxicology p. 111 by Dr N.J. Modi.

وهي نهاية حياة المخ ، ولكن على الرغم من ذلك ، فإن هذه افتراضات ، لا تصل بنا إلى مرحلة اليقين . "

The closer to accuracy is that the human life begins with the infusion of the spirit in the embryo. This cannot take place except that the place of spirit is potent enough to expand and grow. The place of spirit, therefore, is the brain, by analogy with the end of the human life which is the end of the life of the brain. But, notwithstanding all this, such are mere assumptions still devoid of certainty.¹

The citation above furnished makes it clear that basing the decision of human death on the brain death is not yet a point of certainty; this does not exceed to be a conjectural, or, to say the most, to be a probable one. This leads us to maintain that this conjectural matter fits not to be taken as base for the execution of the matters and issues of the Islamic Shariah of far-reaching legal implications ensuing from the death.

Furthermore, Islam is a religion which is easy to follow. To abide by its rules and commands we need such means and tools which are easily available and reachable without hardship. If we are to base the decision of the human death on the death of brain, we cannot evade difficulties. In the first, the very death of brain continues undecided. In the second, medical experts are not easily available everywhere. A single doctor is not legally competent enough to declare the death of a patient, especially in complex situations. A committee of the medical experts shall be required to examine the body of the patient and declare his death. This of course is a very difficult way to follow. Therefore, it seems safe to base the decision of death on the disappearance of the apparent signs of life. For the commands of the shariah are mostly related to the outside. The soundness of this viewpoint might be supported from the following citation:

وإن اشتبه أمر الميت اعتُبر بظهور أمارات الموت ، من استرخاء رجليه و انفصال كفيه و ميل أنفه و امتداد جلدة وجهه و انخساف صدغيه .

In case the matter of death has become dubious, it is the signs of death which shall be taken into consideration. The signs of death might be like the slackening of his legs, disjunction of his palms,

¹ Bidayatul Hayat wa Nihayatuha p. 82.

bending of his nose, stretching of the skin of his face and sinking of his cheeks.¹

In his aforementioned book, Dr Modi writes:

“It appears that a common sense decision would perhaps be the best for all concerned.”²

Al-Mausua-al-Fiqhiya (published by the Government of Kuwait) is also supportive of what we have cited from al-Mughni (vol. 39, p. 248.)

After this preparatory note, which holds great good in clearing the ambiguous aspects in the questionnaire, the answers to the questions follow in an orderly manner:

1. The detail furnished above strongly supports that the end of life in actual is the death of heart. If brain is dead and the heartbeat and the respiratory system is being maintained through the artificial respiratory apparatus, the patient shall be treated as living as no sign of death is apparent on him yet.
2. It tends to be impossible that the brain stem is active even after the heartbeat has completely ceased. As far as I think, such a person shall be treated as dead, unless the signs of life or noticeable.
3. In such a case the final decision shall be taken by a team of the relevant medical experts after deeply examining the condition of the patient. If the improvement of his health is probable, the artificial equipments may be removed only with the permission of the patient's kinsmen. In case the doctors are not much hopeful, the equipments should be maintained except that his heirs evince their unpreparedness to carry forward this type of very expensive treatment due to their poor financial condition. If the patient, on the removal of the artificial life support equipment died, this by no way shall be constituting a case of homicide. The shariah obligates nobody beyond his capacity.

¹ Al-Mughni with commentary vol. 7, p. 308.

² N. J. Modi: Medical Jurisprudence and Toxicology, chap. 5, p. 111.

4. On the patient's kinsmen the use of the ventilator in the interest of the patient is never binding; it is just permissible.
5. The injunctions ensuing from death, such as the implementation of will, distribution of the estate, commencement of his widow's waiting period, etc., should take effect only after the natural death of the heart. More cautious, however, would be to proceed with the implementation of such injunctions when the signs of death turn fully clear.

The problem of Brain Death and the Islamic Shariah

MI. Mufti Akhtar Imam Adil

Abstract

According to MI. Mufti Akhtar Imam Adil it is the traditional stand of the Islamic scholars on the occurrence of death that holds good and hence more considerable than the modern viewpoint. Let me recall here that traditionally it is the heart which has been regarded as the centre of the human life, and on the death of it the end of the human life is declared and the ensuing injunctions of the Shariah take effect. Opposed to the traditional view, which is based on no categorical or indisputable proof, the modern medical science regards the brain as the pivotal point of the human life, and to the modern medical science it is the death of brain stem on which comes the life to the final end, irrespective of that the heart is beating and the respiratory system is made to function under artificial arrangements. The writer maintains that since the death is an innermost experience, nothing could categorically be said of it. It is only some signs on the appearance of which the death of a person is declared.

Essence of Death is not known

Whether it is the heart or the brain which might be taken as the source and centre of life, the death is an innermost experience the essence of which is not known, nor does exist anything in the entire corpus of the Islamic learning to tell us any categorical thing to be regarded as conclusive in this context, except some apparent signs. The death has traditionally been defined in the following comprehensive words:

"هو مفارقة الروح للجسد."

"Death is the departure of the spirit from the physical structure."¹

¹ Al-Majmu Sharh-al-Muhazzab vol. 5, p. 105, Mughni-al-Muhtaj 1/32.

The ancient philosophers, too, have tried to explain the death. To them, the death is a highly subjective experience, not directly observable and conceivable.

When a human being is to be declared dead?

Any discussion on death shall remain incomplete until the life (the end of which is death) is discussed. In this connection we think it in the fitness of things to cite some lines here from the scholarly writing of the acclaimed jurist of the recent past, the great Islamic Scholar of exceptional knowledge of the sources of Islamic teachings the late Qazi Mujahidul Islam Qasmi. He has attempted a commendable analysis of the human life and death. He writes:

“The human life (the end of which is termed as death) is perceivable in a number of manifestations. To mention them here:

- (1) The life which is found in the state of wakefulness. In this life the sensitivity, consciousness and motion are found in full.
- (2) The animal life; or the state of sleeping. This state is of more stages than one. The primary stage of sleeping being the one in which a certain type of wakefulness, along with sensitivity and motion, is noticeable. In the state of deep slumber the sensitivity and motion get lost, even the human consciousness, too, is largely lost.
- (3) Partial life. This life refers to the remains of life which, for a certain time differring from person to person are found in some parts of a human being even after his death. It may possibly be found in the condition of the death of brain stem when the heartbeat and the respiration is maintained by artificial organs and equipments. Actually, this sort of life is not the life of a human being as an individual entity; it is no more than a partial life which may be maintained in the chief organs of the body for a limited period by supplying them with the dietary support regularly as it was usual during his life time.
- (4) The fourth sort of life is termed as the Tissues’ life. This refers to the type of life which is found in tissues collectively.

- (5) The fifth type of life is that which is termed as the cellular life. That is, the particular life of a human subject to the experiments carried out in the research laboratories. On contemplation, it appears that the human life begins with the cellular life. That is, first a single cell comes into being. Then the numbers of the cells increases gradually till it get to the stage of tissue life, then do develop the organs and parts and the partial life comes into being; then the spirit is infused into it. Then the animal life develops to the stage of sleep and wakefulness. This being the grading of life. Quite opposed to the grading of life, when the death occurs, the dying human being first is deprived of the stage of full wakefulness; then the partial life and the tissue life vanishes. Ultimately, the death takes on the cellular life, bringing the entire life to an end."

About the end of human life the Announcement made on the occasion of the 22nd conference of the World Union of the Medical Practitioners, held in Sidney (Australia) in 1968, too, is of considerable significance. The late Qazi sb. has also referred to it in his writing. Excerpt follows:

"Death at the level of cells or tissues is a gradual process. In withstanding their deprivation from the oxygen the tissues are different from each other. The problem is not to determine the time of the death of different parts or of the cells put together; the question is to make sure if the activity of death has reached the point where it is impossible to stop it by using anyway and any means and equipments of treatment. If a part of his body or any cluster of his cells, is still alive, it is not to be construed as the human being is still living."¹

The detail furnished above makes it evident that, like the life, the death, too, is a gradual process and it turns complete passing through a number of stages. It will, therefore, be naïve to believe that with the death of the heart and brain the process of death gets complete. However, the completion of the subsequent stages is never

¹ Mabaahith-e-Fiqhiyya p. 374.

a uniform process, it may differ from person to person, subject to the use of artificial systems, and, finally, to the will of the Creator.

When a person is to be declared dead?

The question when a person is to be declared dead primarily falls within the jurisdiction of the medical science. But there are some important issues which are associated with the occurrence of death. In this context the following paragraph of the Sidney Announcement is of great import. To reproduce the relevant paragraph here again:

“The important matter is to get sure if the process of death has reached the point where it turns impossible to stop it by using any type of means of the treatment; of course, if the remains of life are found in any part of the body, or in any clustre of the cell group, it is not necessarily to mean that the person is living.”

“On the development of this situation with a person it will have to be maintained that the process of his death has started and no power of the world could turn him to life again. But mere the start of the death process is not enough to declare the dying person as dead until the death overtakes him completely.”

Importance of Heart and Brain in the Human Physical structure

In connections with the completion of the death process both heart and brain are of incomparable import. While the heart is the source of life, the brain is the source of consciousness and sense. The function of the heart is to supply the fresh blood to the entire body, including the brain. Through the blood supply the brain gains life. In the event of cut of the blood supply to the brain, even for a duration not extending five minutes, it will cease to live and start melting.

It being a commonly known fact of the human physical structure that the function of supplying blood to all parts of the body is of the heart alone, and it is the supply of the blood on which does depend the life of the entire body, including the brain. The system of sensation and knowing the things and collecting information is associated with brain. Should the brain cease to function, the entire body turns dysfunctional. If the relation of brain is severed from body, the body will turn senseless but not dead, much the same as the part

of the body turns after getting the administration of an anesthiating medicine or injuction to it. Much as this part is senseless, still not to be termed as dead.

A study of the discussions spread over the traditional medical literature makes us recognize the fact that the concepts of the ancient medical experts about the heart and brain hold a greater amount of accuracy and soundness. According to the ancient medical concepts heart is maintained to be the source of life and the brain to be subordinate to it. So because, as it has already been stated, the brain's life rests on the life of the heart and vice versa. If brain fails to receive its supply from the heart, even for a few minutes, it will die forthwith, and with the death of the brain there is little chance to regain the life.

By devising the artificial heart the modern medical science has not lightened the importance of the heart; artificial heart is the replacement of the original natural heart and undertakes the same function, that is, supplying the blood to the entire body.

No clear statement is found in the Qur'an or hadith whether it is the heart or the brain the failure of which accounts for the death of a human being. It is, nonetheless, the heart which has been accorded the central importance in the entire human physical structure. Of this superordinary importance of heart a sizeable number of the Qur'anic verses does speak. To cite here just one:

أَفَلَمْ يَسِيرُوا فِي الْأَرْضِ فَتَكُونَ لَهُمْ قُلُوبٌ يَعْقِلُونَ بِهَا أَوْ آذَانٌ يَسْمَعُونَ بِهَا فَإِنَّهَا لَا تَعْمَى الْأَبْصَارُ وَلَكِنْ تَعْمَى الْقُلُوبُ الَّتِي فِي الصُّدُورِ^١

Have they not travelled in the land so that they should have hearts with which to understand, or ears with which to hear? For surely it is not the eyes that are blind, but blind are the hearts which are in the breasts.

A *hadith* of the Holy Prophet (SAWS) reads:

أَلَا وَ إِنَّ فِي الْجَسَدِ مَضْغَةً إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ ، وَ إِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ ، أَلَا

و هي القلب .

Beware of that there exists a clot in the body. If it is sound, the entire body is sound. But, if the rot sets in it, the rot is bound to set in the entire body. Beware of that it is the heart.²

الحج : ٤٦ .^١

² Bukhari and Muslim.

In the two clear statements of the Qur'an and *hadith* pivotal importance has been accorded to the heart. The verse holds the heart as the source of wisdom and the *hadith* has described it to be source of virtue and vice. Yet both these facts are not of the outward physical life; but of meaning and incorporeal moral conditions. Heart of course is the source of all perceptions, knowledge and immaterial moral conditions, and the brain is the source of sensation, but only as long as it is able to receive its supply from the heart. To put it differently, the heart holds the position of king in the entire human physical structure. In its domain, that is the body, it obligates various organs of the body with different responsibilities. As the sources of consciousness, sensation and understanding the brain is subordinate to the heart, the source of all perceptions. Explaining the verse cited above, Imam Fakhrud-Din Razi writes:

"The verse is suggestive of that the heart is the instrument of understanding and perceptions. This requires that the heart should be regarded to be the source of wisdom and reasoning."¹

Summarizing what has just been put above in connection with the function of heart and brain, it may safely be said that when the natural relation of brain with the parts of the body is cut, the relation of the parts and organs with the heart is also cut. Although after the severance of the parts of the body from brain and heart the remains of life may be found in parts and cells of the human structure, yet as a living human being he is no more and his life has come to an end.

Relation of death with heart and brain

"The Fuqaha and the Muslim scholars, generally speaking, have not touched the point whether it is the heart the stopping of its beating accounts for the death or it is the brain the freezing of which is reason of the end of the human life. The departure of the spirit from the physical structure is termed to be the death. The death is explained as the organs of the body cease to be in obedience to the spirit and stop to follow the natural commands of it."²

The late Qazi Mujahidul Islam Qasmi writes:

¹ Al-Tafsirul Kabir 11/292.

² Al-Ghazali, Ihyau-Uloomid Din 5/535.

“What is said of the function of the spirit in the human physical structure in effect is much the same as of the brain stem according to the description of the modern medical experts. We may easily say that the departure of the spirit from the physical structure results in that the parts of the body are no longer under the command of the human brain. The brain stem is instrumental for the spirit to control the physical structure. Naturally, in order to get its commands translated into action every immaterial thing employs something material. According to this natural principle, the human spirit makes the brain stem its centre to make dispositions in the entire body. As the brain stem ceases to exist, the spirit leaves it, and the death occurs.”¹

The above explanation of the death makes it clear that the death of the brain stem accounts for the death of the human being and not the death of the heart. But, as has just been put above, both the heart and brain hold primary importance in the human physical system and the parts of the body are linked to the heart through the medium of the brain. On turning the brain inactive it loses its natural link with the heart, even though the heart is still beating, and the parts of the body too are alive, yet, due to the missing of connectivity between brain and heart the directions of the heart fail to reach the organs, which, despite being alive in themselves, are no longer interconnected.

Since the Islamic Shariah has not expressly declared that the completion of the process of death depends on the death of the heart or brain, the cautious way would be to associate the matter of death with both the heart and brain. To put it in even clearer words, no human being should be counted as dead until both his heart and brain are dead. If the heart ceases to function prior to brain, and the brain is being fed through the artificial equipments and is properly working, the man is living without doubt. For the functionality of the parts of the human body is dependent on the life of brain. In case it is the brain which dies first and the heart is made to function on the strength of the artificial apparatus, and so are being fed the rest parts of the body, the man shall be regarded as living unless the heart too turns dysfunctional. This may also be put as that the death of either the heart or of the brain, no matter whichever occurs first, is just the beginning of the process of death; this process completes on the death

¹ Mabahithe Fiqhiyyah p. 374-75.

of the other. The period between the two is the period of completion. Before the death of both heart and brain the person must not be treated as dead; rather, he should be medically treated according to the means and resources at the disposal, and taking out his parts and organs for the purpose of transplantation shall not be permissible.

Answers to the Questions

After this important rudimentary talk the answers to the questions raised in this regard are as follows:

1. The death of the brain stem in fact is a part of the process of death; this process will complete at the death of the heart. So, if the brain has died and the heartbeat and the respiratory supports are being maintained through the help of the artificial apparatus, the person in question shall not be regarded as dead.
2. In case the brain stem is still working, though the heartbeat and the respiratory system has completely stopped, under such a situation, too, the person in question shall not be regarded as dead and shall not be subjected to the ruling of the shariah ensuing from death.
3. The patient the respiratory system of whose is functioning only on the strength of the ventilator but the medical experts have not yet got disappointed from him may be kept under this costly treatment, subject to the condition that the patient's heirs and survivors are financially strong enough to bear the heavy expenses involved. Otherwise, the artificial apparatus may be removed and the removal will constitute no wrong at all. For according to the majority standpoint of the Muslim scholars, the treatment, in normal condition is not an obligation. To the *jumhur* it is just permissible, to the Shafites, however, it is recommended.¹

More specifically, the treatment of the patient may be a duty if the recuperation is certain, or at least, probable.²

¹ Al-Mausua al-Fiqhiyah 11/117.

² Fatawa Alamigiri 5/355.

Under the given situation the recuperation is neither certain nor probable. More so, all legal obligations of the Shariah are subject to the capacity.

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا.

“Allah does not impose upon any soul a duty but to the extent of its ability.”¹

4. In the event of disappointment of the medical experts, the utilization of the artificial apparatus may at best be regarded permissible.
5. The injunctions of the Shariah ensuant on the death, like the execution of his will, distribution of his estate, commencement of the waiting period, etc, will take effect only after the removal of the artificial equipments, getting sure of the completion of the process of death, which turns complete after the death of both the heart and brain. The person still showing the signs of life, however fainting they are, shall be considered as living. In some cases the duration of the process of death might be unusually longer. It, therefore, would be in the fitness of things not to regard the death of only brain or only heart as the complete death; it is just the beginning of the process of death.

¹. ٢:٢٨٦

Brain Death and the Position of the Islamic Shariah

Views expressed by
ML. Tanzim Alam Qasmi

Department of Hadith Darul Uloom Sabil-as-Salam Hyderabad, India

“Spirit and its departure from the human physical structure is a matter not clear for the human beings. No specific statement in the Holy Qur’an or *hadith* has occurred in this regard. That is why neither book of the Islamic Fiqh touches upon this matter by pointing out a particular time or a decisive sign of death as distinguishing it from life. It is only the signs of death which are generally found and on which the death is declared. To mention a few of them here:

Ceasing the heartbeat, collapse of the respiratory system, loosing the body, sinking of the temples, getting the eyes motionless, bending of the nose, turning the body still, spreading of the mouth, and so on.”¹

Since there is no decisive discernment of death, the signs mentioned above were regarded sufficient to announce the death of a person. However, later, the advanced medical researches established it beyond doubt that mere ceasing the heartbeat or the stopping of the respiratory system is not the actual death; the actual death being the death of the brain stem. It is the brain stem which acquires knowledge and consciousness and controls the operations of the entire body. In cases, it may happen that a man is still living despite that his heartbeat has stopped and the respiratory system, too, has collapsed. The brain, however has not yet dead. In such cases the respiration and the heartbeat may be maintained on the strength of the artificial mechanism. If this is maintained, the lung will provide the necessary amount of oxygen and the blood to the brain which, thanks to its natural capability, shall be able to carry out the entire internal and external operations of the body. In case the proper supply of blood and oxygen to the brain is interrupted even for a span as shorter as

¹ Al-Mausuah -al-Fiqhiyah 16/5.

four-five minutes, the brain starts melting gradually and, eventually, turns worthless, leading to the completion of the death process.

According to all the medical experts, now there is no possibility of the return of life to such a person again even though his heartbeat and the respiration is artificially maintained and the effects of it are recognizable on the body and the major parts of the body seem functioning. This condition as such may last for days or even for months. For with the death of the brain cells the central nervous system stops operation. This is of course the borderline between the life and death.

After the death of the brain stem it will be a worthless activity to maintain the heartbeat and the respiration on the strength of artificial apparatus. This being an absolutely mechanical exercise carrying no benefits whatever. More so, this may be a gesture of disrespect towards the dead. Therefore, with the certainty of the death of the brain stem, it will be in the fitness of things to stop the use of the artificial apparatus, no matter it is costly or cheap, and the removal of such equipments in no case shall constitute the crime of homicide. However, for the purpose of transplantation, the activity of maintaining the mechanical life might be continued, thereby not letting the partial cells die out for the want of the required oxygen. For according to the established medical researches a degree of life is found for certain time, in the parts of the deceased but only with the passage of time differing in each case from person to person which die out. If this shorter time was availed to rapidly complete the transplantation operation, the transplantation operation may be a success and the transplanted parts may be useful, otherwise they are destined to lose their worth. Since after the death of the brain stem as well as of the man as an entity the only benefit of keeping the body on the ventilator is nothing other than the transplantation of the organs. Compelled by this valid reason, the majority of the contemporary Muslim scholars and jurists hold as permissible the removal of the artificial apparatus from the body. So because the death to them is the death of the brain stem. The Tenth Session of the al-Majmaul-Fiqhi-al-Islami, an international institution subordinate to the World League of the Islamic Countries, held in the Holy City of Makkah in 17-21

October, 1987 the following decision with a complete unanimity of the *Ulama*, announced:

“If the brain of the patient on the artificial life support apparatus stops working completely and at least three medical experts are agreed to the effect that the function of the brain could not be restored, the artificial apparatus may be removed from the body, no matter the heart is beating and the respiration is still functioning. But the patient shall be regarded dead only when the heart and the respiratory system cease to function after the removal of the artificial apparatus.”¹

It would be worthwhile to know that the concept of the brain death was first expounded in 1959 by a team of the medical professionals of a French medical college. After the authentication of the French Ministry of Health the same was enforced in 1968 in the country. In 1968 the Harvard University of the USA constituted a committee to deliberate on the concept of the brain death. The committee conducted a thorough research into the matter and compiled the relevant details. In 1971 the experts at the Menutia University, too, compiled the details. In 1981 the American President Ronald Regan constituted a committee, comprising the medical expert, known legal experts and some religious leaders, to take into consideration the various aspects of the problem, which eventually certified the concept of the brain death. This paved the way for its promulgation in the USA, Britain and other countries of the world. In Japan it came into effect in 1997 after the parliament conferred its approval on it. In the Islamic world, Jordan, Kuwait and Saudi Arabia hosted conferences in 1985 to discuss the matter and the implications of it which eventually authenticated the new medical research on the death. The Islamic Fiqh Academy, which works under the care and management of the World League of Islamic Countries, also authenticated the new standpoint on the death. In Indian hospitals the usual practice is that the death of the patient is announced after a panel of three medical experts certifies the occurrence of death. All the three medical experts write their individual reports. This panel does

¹ Makkah Mukarramah ke Fiqhi Faisale p.185.

not include the doctors which are related to the department of the transplantation.

There have been cases that as a result of consuming the poison, or sustaining a severe brain injury the patient went into longer silence, even the signs of death, such as the stoppage of the heartbeat and the respiration, too, become visible, yet a deeper examination disclosed that actually it was not the case of death. The artificial apparatus were used to activate the heartbeat and the respiratory system, and after a couple of days the natural heartbeat and the respiratory system was restored. In the event of the complete brain death, contrariwise, there is not even a single example to the effect that the respiratory system was restored on the strength of the artificial apparatus, bringing the man to life again. Now it could confidently be claimed that the cessation of the heartbeat and the collapse of the respiration etc. are just the signs of death and not necessarily the completion of the process of death. In the common juristic opinion too such things have also been held as mere the signs of death.¹

In case the brain has died, the ventilator and other equipments are of no avail, the heartbeat and the respiration could not be restored now. It will, therefore, be advisable that once being sure of the brain death, the artificial apparatus should be removed as it now be mere a waste of time and money for nothing.

Summary of the Discussion

- (1) The modern medical concept that the actual death is the death of brain is acceptable to the principles of the Shariah. The *Ulama* and the scholars outside India, too, see no wrong or inconsistency in it with the norms of the Islamic Shariah. So, if the brain death has been certified by three pious medical experts, the person shall be treated as dead even if the heartbeat and the respiration are being artificially maintained.
- (2) If it is established that the brain is still living and functioning, the person shall be regarded as living even though the respiration has collapsed, and shall not be subjected to the injunctions ensuant on the death. But this

¹ Shaami 3/78, Alamgiri 1/157, al-Mughni of Ibn Qudaama 2/308.

might be feasible only where such higher medical facilities are available as to deeply examine the death of the brain in a way beyond doubt. At places lacking such facilities, the stopping of the heart and the collapse of the respiration shall be taken as a sufficient reason to regard the patient as dead.

- (3) It will be impermissible to remove the artificial respiratory apparatus from a patient whose brain stem is still functioning, no matter the removal is meant to put him to death intentionally or otherwise. Such a move will amount to push a living human being to death. The removal shall, however, be permissible if the patient's heirs are not resourceful enough to bear the heavy expenses involved. For the Shariah does not charge the human beings beyond their capacity. Under such a situation no heir, or the attending medical expert shall be held responsible for the death of the patient.
- (4) If the medical experts have expressed their disappointment from the life of the patient, that is, his brain stem has completely died, the patient shall instantly be declared dead. The artificial respiratory equipments should immediately be removed from his body. Now after the brain death the continuation of the mechanical operation shall turn impermissible. Such an operation not just will now be an unreasonable drain on resources and a waste of time, but a gesture of disrespect towards the dead as well.
- (5) When it became established that the actual death of a human being is the death of his brain stem, the injunctions resulting from death will take effect ever since becoming sure of his brain death. Stopping of the heartbeat, collapse of his breathing system, or the removal of the artificial respiratory apparatus, will make no difference in this respect.

Process of Death and the Place of Heart the position of the Shariah

(Discourse contributed by
Ml. Mufti Abdur Rasheed Qasmi

To the contributor, the heart is the origin point of the virtue and vice, good and evil, faith and infidelity. So, to him it is the death of the heart which is to be counted as decisive in the process of death.)

Position of heart in the human physical structure

In the light of the Qur'an and *Hadith* the well-established fact is that it is the heart which is the fountain-head of the good and evil, virtue and vice, Belief and Disbelief, sincerity and hypocrisy. But nowhere in the Qur'an or *Hadith* the heart has been mentioned as the centre of life and death.

The Qur'an says:

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ ١٠٦

He who disbelieves in Allah, after his having believed, not he who is compelled while his heart is at rest on account of faith.¹

فَإِنَّهَا مِنَ تَقْوَى الْقُلُوبِ ٣٢

This surely is (the outcome) of the piety of hearts.

The Messenger of Allah is reported to have said:

التقوى ههنا ، التقوى ههنا ، التقوى ههنا .

"Piety is here, piety is here, piety is here," (pointing to the heart.)

The importance of the heart in the human physical structure is well understood by the following *hadith* of the Prophet:

أَلَا إِنَّ فِي الْجَسَدِ لَمَضْغَةً ، إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ ، وَ إِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ ، أَلَا وَ هِيَ الْقَلْبُ .²

This fact is quite common sense, everyday experience and observation. By doing good it is the heart which feels good, and, by contrast, having perpetrated an evil it is again the heart which takes to grief and feels uneasy. If the medical experts are agreed to that the

¹ al-Nahl.

² متفق عليه .

death of human being actually being the death of his brain stem, this concept does not contravene the established normative principles of the Shariah.

When a human being is regarded to be dead?

In its fourth Resolution the Jeddah-based Islamic Fiqh Academy made the following decision:

إن الموت يشتمل حالتين : (١) موت الدماغ بتعطل جميع وظائفه تعطلاً نهائياً لا رجعة فيه طبياً .
(٢) توقف القلب والتنفس معاً توقفاً تاماً لا رجعة فيه طبياً .

“The death comprises two conditions: (1) The brain death. With the death of the brain, it turns finally dysfunctional, with no possibility of recuperation from the medial viewpoint. (2) Stoppage of the heart and the respiratory system in a complete way, with no possibility of the restoration from the medical standpoint.”¹

According to this decision if either one sign becomes clear, the patient shall be regarded as dead. The same point has been explained more clearly elsewhere in the same book under the headline, ‘When a person is to be declared dead’, the author that is Dr Wahba Zuhaili of Syria, writes:

"يعتبر شرعاً أن الشخص قد مات و تترتب جميع الأحكام المقررة شرعاً للوفاة عند ذلك إذا تبينت فيه إحدى علامتين التاليتين :

- (١) إذا توقف قلبه و تنفسه توقفاً تاماً ، و حكم الأطباء بأن هذا التوقف لا رجعة فيه .
- (٢) إذا تعطلت جميع وظائف دماغه تعطلاً نهائياً ، و حكم الأطباء الأخصائيون الخبراء بأن هذا التعطل لا رجعة فيه ، و أخذ دماغه في التحلل ، و في هذه الحالة يسوغ رفع الأجهزة الإنعاش المركبة على الشخص ، و إن كان بعض الأعضاء ، كالقلب مثلاً ، لا يزال يعمل آلياً ، بفعل الأجهزة المركبة ."

Translation :

“The person shall be regarded as dead, from the Shariah standpoint, and shall take effect all the injunctions of the shariah ensuant upon death if any sign out of the following two ones became evident in him:

¹ Al-Fiqhul Islami wa Adillatuhu, vol. 7.

- (1) When his heart and the respiratory system has completely stopped, and the medical experts have declared that the collapse of the system was final, with no possibility of restoration.
- (2) When his brain turned completely inactive and all its operations come to a final stop, and the experienced medical experts declare that the deactivation was final with the least possibility of recuperation, and the brain has started melting. Under such a condition shall be permissible to remove the artificial respiratory apparatus from the person, even if some parts, such as the heart for example, is still artificially working on the strength of the apparatus.”¹

The decisions of the Jeddah-based Islamic Fiqh Academy makes it abundantly clear that the actual death is the death of brain and with the death of the brain the person shall be regarded dead, and all the ensuing injunctions too shall take effect even if his heart is beating on the artificial respiratory apparatus.

However, the decision of the prestigious Academy is neither satisfactory nor complete. It needs due modification. As regards the permissibility of the removal of the artificial respiratory devices from the person whose brain stem is dead but still is breathing through artificial devices, such a patient is of course dead, and the removal of the devices would be better and prudent to avoid the wastage of the financial means for nothing. Nonetheless, his beating heart and active respiration do deserve respect. If not, it might happen that the person is breathing on the ventilator on one hand, and his estate is being distributed and his wife has started the waiting period on the other. Is is not an absurdity?

In respect of the implementation of the injunctions of the Shariah ensuant on the death it seems in the perfect fitness of things to wait the stoppage of his breath and the ceasing of his heart, no matter the patient is on the artificial devices or not, and the injunctions, such as the distribution of the estate and the commencement of the waiting period, etc, should take effect only after getting sure of that his heart, too, has died.

¹ Al-Fiqhul Islami wa Adillatuhu 7/10-15.

From reliable sources it has repeatedly been heard that some patients on the ventilator breathe even for a period as long as six months; many patients went to coma for a longer time and then recuperate. It sometimes happened that the medical experts expressed their disappointment and declared their brain death, yet other doctors took the case, and initiated the treatment and the treatment bore positive results.

In this age of constant scientific and medical advancement we cannot exclude the possibility of coming into existence a device enabling the patient, even after his assured brain death, to breathe for a couple of months. Will, then, stand to reason to treat such a patient as dead and implement the injunctions of the Shariah on him — distribution of his estate, and the commencing of the waiting period, and letting his woman free to remarry after the waiting period is over while her husband is still alive, breathing on the ventilator? Recently, a noted man of Islamic learning was on the ventilator and remained on it for a period of almost four months. While on the ventilator he opened his eyes more times than one and tried to identify the people. The medical experts had no difference amongst themselves about the fact that his brain was dead and that the removal of the artificial devices would result in the stop of his heartbeat and the collapse of his respiratory system. In view of the facts mentioned above, it would be a safer course of action to respect his breaths. He is of course alive, though on the ventilator.

Responses to the Questionnaire

(1) Modern Medical concept of Death

The modern medical concept of death of taking the brain death as the actual death is not inconsistent with the principles of the Shariah. In the event of a person's brain death, if he is put on the ventilator, his heart is beating and his breathing system is functioning on the strength of the artificial apparatus, such a person should not be treated as dead one as regards the implementation of the post-death injunctions. Yet he is dead in so far as the continuation of the life support system with him. From such a person the devices should be removed.

(2) If the brain stem is still functioning

In case the brain stem is still working, but the heart is beating and the breathing system is also functional, such a patient is living and shall be subject to the injunctions pertaining to all living human beings. Should the brain stem is still functioning, there exist all possibilities that by using the artificial means his natural respiration and the heartbeat might be restored. The cautious way, therefore, would be not to subject him to the injunctions ensuant on death.

(3) Removal of ventilator from the patient

Use of ventilator is no more than a way of treatment provided to a patient. And to the majority of the *Ulama* of the *Ummah* facilitating the medical treatment to the patient is just permissible, not an obligation even though the recuperation is more probable. In other words, seeking or receiving the medical treatment is absolutely lawful, and does not contravene the doctrine of reposing the trust in Allah alone. Removal of the artificial life support system from such a patient is nothing more than leaving the treatment which is equally permissible. So, removing the artificial apparatus from a patient about whom the medical experts have not yet expressed their disappointment but the removal leads to interrupt his breathing and the heartbeat shall be considered lawful even if the heirs of the patient are resourceful enough to bear the heavy expenses of this type of artificial way of treatment. This removal by no way shall constitute a wrong of intentional homicide.

(4) Using artificial apparatus in the case of the patient not much hopeful of recuperation

In the case of the patient disappointed from his life the use of the respiratory devices and the artificial life support system shall be regarded just lawful at the most, and never a duty or obligation on the patient's heirs. For providing the medical treatment even for a patient whose recuperation and the restoration of whose health is more probable does not cross the limit of permissibility or, at best, the recommendability. Such a patient whose brain is dead and whose heartbeat is entirely dependent on the artificial life support system is regarded dead by some scholars, that is, the Arab *Ulama*. Spending on such a patient could never be a wiser move. The preferable course, of course, would be to avoid such a fruitless spending. A still deeper study of the situation dictates that carrying out the medical treatment

on such a patient should be prohibited. For he is dead according to the majority of the Arab Scholars which means that he now should be subject to the injunctions resulting from death, such as the commencement of the waiting period and the distribution of his estate. Would it not be wiser to remove the artificial devices from his body so as to let the process of death be complete, and he might be subjected to the injunctions of the *Shariah* in a consensual way? To put it differently, continuation of the artificial equipments on the body of a person whose brain is definitely dead is not just an act of unwise spending of money, but also an act which, in most cases, is bound to result in confusions vis-à-vis the *ahkam* of the *shariah* which definitely take effect after the death has taken place.

(5) When the post-death injunctions are to take effect?

When it become evident that the matter of death is subject to a slight technical difference, the more cautious way in respect of implementing those *ahkaam* as depend on the occurrence of death, therefore, would be to wait the completion of the process of death. That is, the death of the brain stem and the collapse of the breathing system, either naturally or after the removal of the ventilating equipments. In other words, if the brain stem has died but the respiratory system has not yet collapsed due to being the patient on artificial equipments, he still will be subject to those commands of the *shariah* as are related to the life. The person with a dead brain stem is of course dead in the sense that he merits no treatment or being put to the artificial respiratory apparatus. Nevertheless, if such a person is breathing on the ventilator, the injunctions pertaining to the post-death period, shall remain pending until the complete collapse of his breathing mechanism.

Book Two
The Plastic Surgery
Concept and Practice

The Plastic Surgery Concept and Practice

This book will exclusively discuss the issue of the plastic surgery and the position of the Islamic *Shariat* on it and its various aspects in the light of the papers contributed by the discussants in the Eighteenth Seminar of the Islamic Fiqh Academy of India, held at Madurai in February-March 2009.

The decision of the Academy adopted towards the end of the Seminar is of course based on those views expressed in the papers contributed to the seminar, which largely are in agreement with each other. The differences are minor, pertaining to the marginal aspects of the issue. On the core of the issue all are unanimous.

Besides the introductory items, the following comprehensive papers have been rendered into English in order clear the important aspects of the issue.

- (1) Paper of Ml. Khalid Saifu Allah Rahmani. The paper is pretty lengthy, insightful and discusses all important aspects of issue in a fair detail.
- (2) Of Ml. Md. Mustafa Abdul Quadus Nadvi.
- (3) Of Dr Md. Razi al-Islam Nadvi. A thought-provoking paper as it is, it offers a short historical sketch of the origin and development of the plastic surgery, a very important branch of the modern medical sciences.
- (4) Short paper of Mufti Mahboob Ali Wajihi. This paper is short; we have included it in the present monographic presentation as a summary of the longer answers.

In short, present section is an attempt to present in the English language the stance of Islamic Fiqh Academy of India on the issue of plastic surgery.-(Ed.)

Prefatory Note

Allah *Subhanahu wa ta'ala* has created the human kind in the best physical structure. In His Book, the Qur'an, this fact has been mentioned in the following beautiful words:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ ؕ

“Certainly We created man in the best make.”

In order to enhance his natural beauty the man has been vested with a keen sense of beautification accompanied by the art of satisfying his natural instinct of self-beautification and improving his appearance. Going by his instinctual, innate demands, the man has been applying different ways to improve his appearance ever since the earlier phase of his history on this earthly plant. From the Qur'an itself we learn that when Adam and Eve, the first ever human pair, were driven out from Paradise and were divested from their heavenly clothing, they started covering their bodies with the leaves of the tree. This fact finds mention in a number of the verses across the Qur'an. To quote here just one:

فَأَكَلَا مِنْهَا فَبَدَتْ لَهُمَا سَوْءُهُمَا وَطَفِقَا يَخْصِفَانِ عَلَيْهِمَا مِنْ وَرَقِ الْجَنَّةِ

“Then they both ate of it, so their evil inclinations became manifest to them, and they both began to cover themselves with leaves of the garden.”¹

This verse, on one hand, tells us that modesty and shyness forms part of the primary human nature, it clears on the other that the human nature has an innate wish to dress his body. The human clothing, besides being a covering, is an article of beautification. Elsewhere, the Qur'an itself clears it and describes the human clothing as *Zeenat*, beauty.

خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ

Then, with the passage of time, as man experienced the life more deeply, making other resources and means of life the subject of his constant labour and gave expression to his inner potentials in various fields of life, so came into being newer and newer ways and techniques in the area of beautification and improving the appearance. In the contemporary world the plastic surgery this type of medical treatment has turned out a flourishing industry and such means have assumed extraordinary import. In some western countries the sums spent by people on satisfying their aesthetic taste are much heavier as compared to those they spend on meeting their dietary needs. Some ways of the aesthetic surgery are meant to bring permanent changes to the human body; in other ways the changes are temporary. Sometimes the difference between the natural and artificial conditions is easily

¹ Taha Verse No. 121.

recognizable; other times the change is not recognizable and the common eyes are deceived.

The aesthetic surgery sometimes is intended to remove some unnatural flaws; other times it is meant to enhance the outward beauty. In short, the newer modes of the aesthetic surgery are pretty different. Among those modes an important one being the plastic surgery. In this mode of surgery a piece of skin, flesh or bone of one part of the body is grafted to another part of the body. This may have a number of motives —hiding one's identity, dispensing with a defect and physical injury, removing the indispensable natural changes to improve one's appearance, and so on. Under such motivations the plastic surgery is fast gaining currency across the globe. Since the health sector has now become an industry and a vastly promising business, such operations are being encouraged through advertisements and the people are being freely enticed into benefiting from this medical sector.

A very distinctive feature of the Islamic teachings is the marked moderation. While Islam pays due consideration to the natural taste of aesthetics placed naturally in human beings, it disapproves of excessiveness. Islamic Shariah does permit the woman to wear ornaments, use dark colours wear, silky clothings, apply henna, etc., man too is permitted to use silver rings. A great measure of liberty has been granted in respect of the colours and patterns of the clothing. But, on the other hand, it is not permitted men to apply black hair dye, to add hair of another human being to one's own, artificially sharpening one's eyebrows, etc. This prohibition intends to save the human beings from damage as most methods of artificial beautification are harmful to the human health, and widen the trends of consumerism, leading the people spend more of their hard-earned money on such unreal wishes than meeting their real needs. With this perspective, the Islamic Fiqh Academy of India discussed, among other issues, the issue of Plastic Surgery in its Eighteenth Seminar, held at Madurai in February-March 2009. An eight-point questionnaire was served to the noted men of Islamic scholarship. In response, approximately seventy *Ulama* addressed the points of the questionnaire.

Around this topic there has been an acute dearth of the literature. It is hoped that the present collection of scholarly papers shall be informative, both for the *Ulama* and the common people interested in the Islamic Studies.

We pray to Allah *ta'ala* to uphold the continuation of the services of the Academy intended for the guidance of the *Ummah*.

Plastic Surgery Reconstructive and Cosmetic Surgery

The Questionnaire

The physical structure of mankind is indeed Allah's trust with it. Protection of this body constitutes a legal and moral obligation of man. Treating the diseases and illnesses is an important aspect of the concept of protection. As it is a mode of illness that affects the function of the affected part of his body by stopping or hampering it, so being which makes man look awkward, somewhat deformed and ugly. The latter type of the diseases has also been forming the subject matter of the medical science ever since the earlier days of human history and the patients and doctors have been giving due attention to treat such physical defects. No denying that with such physical defects man can live without bearing with the pain. Such defects, nonetheless, often make him suffer from mental agony, a thing no less painful than the physical injuries.

Our contemporary world is witnessing the fast development of a hitherto unknown mode of treatment, termed as Plastic Surgery. In this mode of treatment the defective part of the body is reconstructed and improved by taking of a bit of some another part of the same body. Since this mode of treatment now is fast gaining currency, in this connection the following questions need to be addressed.

1. In the event of the inborn defects turning the appearance of a man ugly, unusually disproportionate with the general law of nature, or, congenital abnormalities, to use the medical term, such as the cleft lip, cleft palate, congenital hand or foot deformities, nasal obliquity, etc., would it be permissible to undergo a surgical operation for this constructive purpose?
2. Such defects and deformities may sometimes develop later due to accident or sustaining an injury. Would it be permissible to undergo a surgical operation in order to treat such deformities and physical defects?
3. The defects which grow in the human body as a natural course due to the advancing age such as shrivelling up the

facial skin or being one's nose less chiselled, and the defects of the like. Shall it be lawful to undergo a surgical operation in order to dispense with such defects which are largely natural?

4. Shall it be permissible to remove the deformity of a part of the human body or to cure a disease by way of grafting the flesh, skin, bone or any part of his own body?
5. What would be the legal position of the plastic surgical operations carried out in order to remove the physical defects and flaws?
6. Would the doing of minor physical changes in order to improve the physical appearance be permissible and tolerable by the Shariah?
7. Sometimes the plastic surgical operations are carried out so as a man may look less aged and handsome so that he/she could find a good match. Does the Shariah permit such plastic surgery operations?
8. In cases some people may resort to plastic surgical operations to conceal their identity, as a criminal who wants to conceal his identity to evade the due punishment; or a wronged person fearing repression on the part of a wrongdoer, if identified. What would be the stance of the Shariah on the surgical operations carried out under such compulsive situations?

Academy's Resolution on the proposition of Plastic Surgery¹

1. It is permissible to have the plastic surgery to remove physical deformity. Defect/deformity means a deformity in the body that makes the physique different from common and normal shape of creation, whether it is a defect by birth or it manifests afterwards.
2. To remove physical deformity, if the physician so advises, taking the route of plastic surgery is permissible.
3. It is not permissible to have the plastic surgery to get rid of the wrinkles or changes that are the result of wear and tear in the physical appearance due to advancing age.
4. If nose and other parts of the body are not attractive and unpropertionate but not beyond the common and popular creation, it will not be permissible to opt for plastic surgery just for the sake of an attractive appearance.

It will not be permissible, to resort to plastic surgery to conceal ones identity, save that a victim is desperately in need to save him/herself from repression and avert an undue persecution.

¹ 18th Fiqhi Seminar (Madurai – Tamil Nadu) 28 Feb 2 March 2009.

Position of the Shariah on the Practice of Plastic Surgery

MI. Mohammad Mustafa Abdul Quddus Nadwi

Questions 1 and 2

With the intent to remove the physical defects and deformities, whether the defects are congenital or accidental, undergoing a surgical operation is quite permissible and forms no case of sin or contravention to the established norms of the Shariah, because it does not essentially involve any alteration and change in the creation. In some cases defects may set in the process of creation due to reasons known and unknown resulting in the deformity of the normal appearance, with differences taking the physique beyond normal course of creation. Such operations are meant to rectify the physical abnormalities by bringing it to the normal shape according to the Divine Law governing the nature. Such operations, however, are subject to the condition that the chances of their success are probable at least, if not certain. In this medically advanced age the chances of failure are quite rare.

On the permissibility of the constructive operations meant to remove the physical defects and abnormalities, congenital or accidental, the report related by Haz. Arfajah, a Companion of the Prophet (SAWS) speaks well. To cite it here:

عن عرفة بن أسعد قال أصيب أنفي يوم الكلاب في الجاهلية ، فاتخذت أنفاً من ورق فانتن علي ، فأمرني رسول الله صلى الله عليه و سلم أن اتخذ أنفاً من ذهب .

Arfaja bin As'ad related, "At the juncture of al-Kilaab during the pagan age my nose was cut. I got a silver nose. But it Then the Messenger of Allah (SAWS) advised me to get a nose of gold."¹

¹ Tirmidhi, Sunnan, al-Libaas, Chap. Ma jaa'a fi Shaddil Asnaan bil-Zahab Report No. 1770, Abu Dawood, al-Khatam, Report No. 4233, Musnad Ahmad 5/33, Ibn Habbab, al-Sahih, al-Zinah wa-al-Tatayyub, Report No. 5463, Jami al-Usul 4/731-32.

Getting rid of creational malformation and abnormalities

In the original creation hair does not grow on the face of woman; the beard or mustaches, in the like manner, are inconsistent with natural creation of woman. Should hair grown on her face, under her lip or above her chin, it shall definitely be regarded as a creational abnormality, and to most of the Muslim scholars, removal of such unwanted hair is permissible, rather recommendable. Allama Shami says:

"إزالة الشعر من الوجه حرام ، إلا إذا نبت للمرأة لحية أو شوارب فلا تحرم ، بل تستحب ، و في التاتارخانية ، و لأبأس بأخذ الحاجبين و شعر وجه ما لم يشبه المخنث ."

"Removal of hair from the face is impermissible, excepting that the beard or mustaches grow on the face of a woman. The removal of the beard or mustaches from the face of the woman is recommendable. According to the Fatawa Tatarkhania, "the eyebrows and the facial hair may be reduced with provision that similarity with the *mukhannathin* is not being sought."¹

According to one statement of the Hanbalites, woman is at liberty to remove her facial hair for the sake of her husband's pleasure, if he has asked her after looking at her face. To cite here the words of Shaikh Abdul Wahhaab bin Mubarak Anmati:

"إذا أخذت المرأة الشعر من وجهها لأجل زوجها بعد رؤيته إياها فلا بأس به."²

Removal of such minor creational anomalies is undoubtedly lawful and permissible. Creational anomalies may be greater the removal of which might require the flesh grafting, for instance, the cases of cleft lip, cleft palate, nasal cut, etc. Such cases of course shall inevitably involve the flesh grafting from one part of the body to its other parts. Seeking treatment of such greater creational anomalies by undergoing the reconstructive surgical operations will be as much permissible with the same token and arguments just furnished. As regards the purity and impurity of the segregated part of the human body, despite a point of difference among the Fuqaha, the Malikites, Shafites and Hambalites according to the reliable and more preferable statements and to the latter Hanafites as well, it is pure. The only condition is that such surgical operations should not be leading to

¹ Raddul Muhtar 9/536.

² Ahkam al-Nisaa 16.

open destruction of the life or rendering the affected part useless. For the protection of both the life and limb is an obligation on the man.

To conclude, removal of the defects, congenital or accidental, creational abnormalities and malformation in the human physical structure is of course a genuine need. Much as a human being can live with such creational anomalies, yet with great psychological stresses and a greater amount of embarrassment and the lack of mental peace.

Question 3

The third question is about such minor and insignificant creational abnormalities such as not being one's nose so beautiful and smart, or those inevitable natural changes, wrinkles, the wear and tear resulting from the growing age. On the surgical operations intended to remove such minor abnormalities and the natural wear and tear the position of Shariah has been sought.

As far as I think, this end seems not a legitimate and proper reason to undergo a surgical operation. The objective behind this operation is not proper. So, going by the juristic norm *الأمر بمقاصدها* "things are judged according to their motivating objectives", the operation for this purpose deems impermissible. Besides this, it has an aspect of deception and imposture, a thing absolutely prohibited.¹

For the same reason applying black substance for dying the hair has been held reprehensible, as is evident from the following report:

"At the juncture of the conquest of Makkah Abu Bakr al-Siddiqu's father was brought before the Holy Prophet (peace be upon him). Owing to his advanced age the hair of his head and beard had grown absolutely white. Looking at him the Prophet (peace be upon him) ordered to change the colour of his head and beard by applying any hair-dye, but the black one should be eschewed."²

In case of a woman is abnormally flat-nosed and this creational anomaly is proving to be an obstacle in getting a suitable match, such a woman might be permitted to undergo a surgical operation to raise her nose somewhat and improve her appearance. In respect of such a

¹ Al-Qurtubi 5/252, Fathul-Bari 10/439.

² Muslim Sahih, chap. *'Istihbaab al-Sheeb, Safrah, wa Humrah wa Tahrimih bil-Siwaad'* 2/199.

woman the surgical operation shall be a legitimate need rather than a gesture of deception and imposture. The same ruling will be applicable if the woman is married but has failed to win the attention of her husband and is victim of harassment on his part merely due to her ugly appearance. To have a surgical operation is undeniably a need, which, in some cases, may turn into a necessity. Under necessitating situations man may be permitted to do things as are normally prohibited, in usual conditions.

الحاجة تنزل منزلة الضرورة ، عامة كانت أو خاصة.

“The need may assume the status of necessity, whether it is common or particular.”¹

As of the men undergoing the plastic surgical operations for the removal of such minor and insignificant abnormalities, or, rather individual features, in their case the plastic surgical operations are a legitimate requirement; the objective is no other than improving their appearance and look smarter. For this purpose a prohibition cannot be taken as permissible.

Question No. 4

Shall it be permissible to remove the deformity of a part of the human body or to cure a disease by way of grafting the flesh, skin, bone or any part of his body?

No doubt that undergoing the surgical operations for the purpose of removing such defects and deformities by using and replacing the pieces of flesh, bone, skin, etc., of one part of one’s body to another part of the same person. The permissibility however, is subject to two conditions: that such surgical operations do not involve the risk of destruction of life or of the part of the body from which the flesh, bone, skin etc. has been taken in order to carry out this constructive surgery. The provision is based on the clear Qur’anic expressions and the established rudimentary norms of the Islamic Fiqh, which seek to obligate all human beings to protect their lives and limbs against destruction and damage.

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ

“And cast not yourselves to perdition with your own hands.”²

¹ Al-Ashbaah wal-Nazair, Ibn Nujaim 1/31.

² Al-Qur’an, 2:195.

وَلَا تَقْتُلُوا أَنْفُسَكُمْ

“And do not kill your selves.”¹

الضرر لا يُزال بالضرر .

“No damage shall be redressed for the one similar to it.”²

The other condition for the permissibility if the surgical operations of the type is the certainty or, at least, the probability of its success.”³

As of the reasons justifying the surgical operations for the purpose, they may be as under:

- The piece of bone, flesh, skin, etc. segregated from a part of the body is pure, as has already been established in the light of the expressions of the Malikites, Shafites, Hambalites and of the later Hanafites.
- If carried out to get rid of a serious illness, a surgical operation might assume the status of necessity if no other treatment is available and the illness is dangerous. And, as an established juristic principle, under necessitating conditions the prohibitions turn permissible.

الضرورات تبيح المحظورات .

“Necessities make the prohibitions permissible.”⁴

- If the surgical operation is meant to dispense with a physical defect, it will be regarded a need. No denying of that a man, or woman, can live in society with physical defects. But equally true is that a human being with physical defects feels immensely embarrassed living amidst the society and a complex of inferiority always overtakes him. Often, such a person turns a psychotic patient. The need too may assume the position of necessity. For such a person committing such things may be permissible as not allowed in normal course of life.

¹ Al-Qur'an, 4:29.

² Al-Humwi, al-Ashbaah wa-al-Nazair 1/155-56.

³ Durr-e-Mukhtar with Radd-al-Muhtar 5/479, Alamgiri 5/360.

⁴ Ibn Nujaim : al-Ashbaah wa-al-Nazair 1/78.

Question No. 5

The fifth question asks the bounds of permissibility of undergoing a plastic surgical operation in order to remove the physical defects and flaws.

The question is very much similar to the one discussed above. Much of the above discussed ruling shall therefore be applicable to it. To put it rather differently, the physical defect is either fatal or serious and uninsurable, a surgical operation of course will turn a necessity or requirement. In both cases it will be permissible.

Question No. 6

The sixth question asks the legal position of the Shariah on making small and insignificant physical adjustments by way of undergoing plastic surgery.

The plastic surgical operations carried out for making minor physical adjustments form neither a case of necessity nor of the legitimate need. In most cases such operations are meant to improve the outward appearance and to satisfy the aesthetics of the man and woman. Insignificant physical differences pose no extraordinary problem in undertaking the usual work. This is completely an aesthetic purpose and for the sake of such purposes the prohibitions of the Shariah could not be violated.

Question No. 7

In some cases the plastic surgical operations are endured in order to improve one's appearance and look smarter, thereby to attract a better match. Is this a justifiable reason in the eye of the Shariah to permit such operations? This being the sum and substance of the seventh question.

This objective for undergoing a cosmetic surgical operation is not in consonance with the nature, taste and temperament of the Islamic Shariah. According to the norms of the Shariah such an uncalled for artificial act shall be regarded a sort of deception and imposture, held absolutely unlawful. No doubt that such operation is cosmetic, and a cosmetic and aesthetic act may be permissible only if the motivating intent is regarded valid by the Shariah, involving no prohibition. Such an operation will obviously result in bringing

changes to the creation of Allah, condemned in the Holy Qur'an to be an act of the Devil. To quote the relevant Qur'anic verse here:

وَلَا ضَلَالَةَ لَهُمْ وَلَا مَنِيَّةَ لَهُمْ وَلَا مَرْتَبَ لَهُمْ فَلْيَبْئُكُنَّ ءَادَانَ الْأَتْعَمِ وَلَا مَرْتَبَ لَهُمْ فَلْيَعْيِرَنَّ خَلْقَ اللَّهِ
وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِّن دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُّبِينًا ١١٩

" And I will lead them astray and excite in them vain desires, and bid them so that they shall slit the ears of the cattle, and most certainly I will bid them so that they shall alter Allah's creation; and whoever takes the Shaitan for a guardian rather than Allah he indeed is doomed to suffer a manifest loss."¹

Question No. 8

The eight and the last question seeks the position of the shariah on the plastic surgical operation intended to conceal one's identity in order to evade the due punishment of a crime one has been convicted for. Or, a wronged too may be obliged to resort to plastic surgery to conceal his identity so as to evade further wrong from a despot wrongdoer.

As far as a criminal's concealment by way of plastic surgery is concerned, it is absolutely impermissible. By concealing himself, the criminal will only be multiplying the enormity of his crime. By committing a cognizable crime he has trampled upon the limits set by Allah *ta'ala* and he must receive a due punishment. Undergoing the plastic surgical operation as an evasive just is bound to make his crime worse still, it is indeed an act of altering the creation of Allah, an expressed prohibition. The plastic surgeon carrying out such operations shall also be liable before Allah and the law. For it is he who is offering help to the criminal on his crime by concealing his identity through conducting a surgical operation. According to the principles of the Law of Allah aiding and abetting a crime also constitutes a crime as well. To quote the Qur'an:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

"And help one another in goodness and piety, and do not help one another in sin and aggression."

The criminals and wrongdoers deserve discouragement and curse and never the sympathy and feelings of mercy and compassion. As of the case of the wronged fearing further repression on the part of

¹ Fathul Bari 10/439, Imam Razi, Exegesis 5/452, al-Qurtubi 5/250, 51, 52.

the oppressor and the nature of the wrong involves risk to his life or limb in a certain way, such an oppressed person and victim of constant repression may be permitted to alter his appearance in order to escape further repression. For, quite obviously, every human being is asked by law to protect himself against all types of destruction, and for this genuine purpose he may take steps and adopt measures as dictated by the situation one has to face. Even he is permitted to commit the things held prohibited by the law of Islam. The Islamic Shariah bestows fuller authority on man to protect his life and limb and property against destruction and damage. If a person suffered death at the hands of the attackers protecting his life, limb or property, the Holy Prophet (SAWS) has described such a death as of martyrdom.

عن عبد الله بن عمرو ، قال : سمعتُ رسول الله صلى الله عليه و سلم يقول : "من قُتل

دون ماله فهو شهيد ، و من قتل دون دمه فهو شهيد ."

Abdullah bin Amr related: I heard the Holy Apostle of Allah as saying: "He who is killed for the sake of his property or life is indeed *Shahid* (a martyr).¹

If the attacker is killed by the victim in the struggle, his blood shall create no liability.

The plastic surgery will not be a necessity or need for a victim to conceal himself from the eyes of the oppressor if the nature of the oppression he fears involves no probable danger to his life or limb. Under such a situation the better course for the oppressed would indeed be the eschewal from undergoing a plastic surgical operation.

¹ Bukhari, Mazaalim, Muslim, Imaan Hadith No. 361, Abu Dawood, Sunnah, Hadith No. 4772.

Plastic Surgery Stance of the Islamic Shariah

Dr Mohammad Razi al-Islam Nadwi

(This paper is a comprehensive, though brief, study of the issue of plastic surgery. It not just seeks to arrive at right conclusions in finding out a correct solution to the issue and the associated aspects in the light of the direct and original sources of the Islamic Fiqh, but also touches upon the origin and history of the plastic surgery right from the ancients times in different parts of the globe up to the last century. Since this comprehensive paper stands out to be a prominent one amongst all the papers contributed to the seminar around the topic, the choice of the editor of the English edition felt upon this to incorporate it in the abridged English edition. Editor)

The branch of the medical sciences concerned with the reconstructive and aesthetic surgery of the parts of human body is terminologically called Plastic Surgery Etymologically speaking, plastic is derived from plasticos, a word of Greek origin, meaning to mould, to shape.

Historical Background

Man instinctively wishes to stay healthy, unaffected by any disease, with the parts of his body keep functioning according to their natural assignments facing least disruption. Besides his strong physical health, he loves to be seen with no defect or flaw in his outward appearance and in other people's sight he is attractive and lovely. In case any part of his body develops any amount of deformity or structural disorder, he does whatever at his disposal to remove it. If a part of his body turn dysfunctional, or its natural function is disrupted, man leaves no stone unturned to set it in the right order through seeking all possible treatments.

Traces of the science of medicines have been found in almost all the nations of the world. History tells us that, among all other branches, the plastic surgery, too, constituted part of the medical reconstructive methods of treatment in the ancient days. According to the medical historians, the history of the plastic surgery in India could be traced back two thousand years BC. As early as the six century BC

the known Indian doctor 'Sushruta' rendered prominent services and achieved great feats in the area of plastic surgery. In the ancient Egyptian medical science some important details are found about the facial surgery. In the Roman Science of medical treatments, during the first century BC, traces are found of a simple technique of the plastic surgical treatment. In those days the surgical operations were mostly carried out to reconstruct the injured and damaged ears. In the area of plastic surgery the Indian technique was rightly regarded excellent and the proficiency in this area was vastly recognized and benefited the world over. The medicinal literature of Sushruta and Charak (b. 300 BC) was rendered into Arabic language during the early phase of the Abbasid Caliphate and the Arab doctors made much use of it. In later ages these Arabic translations reached Europe and were fully used there to develop this branch of medical sciences.

It is stated that during the 15th century the Branca Family of Sicily and Gaspare Taglia Cozzi of Italy were well aware of the Sushruta technique of Plastic surgery. Toward the end of the eighteenth century some British doctors visited India to closely observe the surgical operations of the nose which the Indian professionals undertook here in lines with the local techniques. Their observations and the experiences they had in the coordination with the Indian doctors were reported and published in Gentleman's Magazine.

In order to study and observe the Indian local techniques of carrying the plastic surgery Joseph Constantine Carpue (1764-1846) stayed in India for a period spread over two complete decades. Since the plastic surgical operations involved a lot of dangers, particularly when the object of surgery was head or face, the plastic surgical operations were undertaken only under unavoidable situations.

During the nineteenth century the plastic surgery gained more currency, with the invention of newer and hitherto unknown techniques and newer experiments were carried out in this area. The following land mark accomplishments of the nineteenth century in the area of plastic surgery will speak volumes of this development.

- In 1815, Joseph Carpue carried out the plastic surgical operation of the nose of a British army officer who had lost his nose as a result of infection from mercury treatment.

- In 1818, a German surgeon Carl Ferdinand Von Graefe (1787-1840) published his book Rhinoplastic. In this book he effected some changes into the Italian method of surgery and, in the stead of original delayed Pedicle Flap, introduced the method of free skin graft.
- In 1827, an American surgeon, Dr John Peter Mathauer (1787-1875), carried out a palatal cleft surgical operation using the equipments and tools he had himself devised.
- In 1845 Dr Johann Friedrich Dieffenbach (1792-1847) wrote a detailed and exhaustive monograph titled Operative Chirurgie. This book expounded the concept of improving the aesthetic appearance of the reconstructed nose by subjecting it to a second operation.
- In 1889, an American surgeon George Monks (1853-1933) undertook an experiment of improving the saddled nose using the method of Heterogeneous free bone grafting.
- In 1891, an American otolaryngologist, John Orlando Roe, (1848-1915), performed a plastic surgical operation to reduce the back protuberance of the nose of a young woman.
- In 1892, Dr Rober Weir conducted an experiment to rectify the sunken nose using the Duck Sternum, technically called Xenograft. The operation, however, was a failure.
- In 1896, the German surgeon James Adolf Israel (1848-1926), in the manner of the American surgeon George Monks, performed a surgical operation to remove the defect of the nose by using the piece of bone from the part other than that of the nose.
- In 1898, a German Orthopedic surgeon, Jacques Joseph, (1843-1907) published his successful maiden experiment he had carried out on Reduction Rhinoplasty.

New Age, New Problems

The twentieth century witnessed an all-round development in the area of plastic surgery. It is believed that the a British army man Walter Yeo perhaps is the first person on whose face a successful plastic surgical operation was performed in 1917, using the skin graft technique.

The World War I (1914-1918) brought unimaginable devastation in its wake. Numerous people suffered death and a much larger number of people sustained injuries. A great number of the army men lost their hands and feet and suffered burns on their faces and bodies. This situation gave impetus to the medical community, particularly in the western countries, to undertake successful experiments in the area of plastic surgery. The same situation, with still wider dimensions, resulted from the World War II (1939-1945).

A New Zealander surgeon and otolaryngologist, Sir Harold Delf Giuies, developed a number of new methods of modern plastic surgery, whereby he was able to improve the appearance of the soldiers of the World War I, who during the course of war, had sustained deep wounds and got inflicted upon them physical deformities.

In the United States Dr Hilary Papin Blair (1871-1955) performed successful operations to rectify the complex Maxillofacial Injuries. Through his persisting efforts a separate department of plastic surgery was established in the American Military Hospital. Then Britain, France, Canada and other countries of the world incorporated such departments in their hospitals. After the World War II Sir Archibald McClendon (1900-1960), a New Zealander surgeon and a student of Sir Harold, provided primary treatment to the Royal Air Force soldiers who had sustained deep burns on their bodies.

Soon after these developments in the area of the plastic surgery an organization of the surgeons associated with the facial surgery and the plastic surgery was constituted in America, named American Association of Oral and Plastic surgery. Later, the organization went into two sub-organizations:

- (1) American Association of Plastic Surgeons.
- (2) American Association of Oral and Maxillofacial Surgeons.

However, in spite of such developments and landmark achievements, the plastic surgery had thus far been a particular and limited branch of the medical science meant to undertake mainly the reconstructive operations in order to remove the physical defects and deformities. In situations of war and natural calamities the number of the patients needing the plastic surgical operations would of course

increase. Under normal situations, the number of such patients, however, remained very limited.

Yet, ever since the introduction of a new sub branch of the department of plastic surgery meant for improving the appearance of the body and enhancing the outward beauty, the plastic surgery has increasingly been gaining popularity amongst the people, particularly the young generation of male and female alike. Every person is born with an instinctive wish to look beautiful and smart, his physique handsome, his organs active, bearing least impact of the natural wear and tear of the advancing age. This new branch of the cosmetic surgery seemed promising to the people of such aesthetic taste and satisfying to their natural wishes. The beauty pageants organized worldwide at various levels, the honours awarded to the film stars, the dissipate trend of living style gaining popularity amongst the young male and female generation of the contemporary world and such like other factors and motives increased unimaginably the number of those queuing for the plastic surgery. As a result, the plastic surgery turned out a highly productive and beneficial business. The soaring grafts of this overwhelming popularity might be assessed well by the fact that in the course of the year 2006 only almost eleven million plastic surgical operation were performed in the United States. The plastic surgery for cosmetic purposes when established as a successful business, the wishers started looking for the countries where such cosmetic plastic surgical operations might be had at comparatively less cost. Cuba, Thailand, Argentina, India and some countries of the Eastern Europe were located where the plastic surgical operation facilities were available at a cost considerably lower as compared to the countries considered advanced like America, Britain and other Western countries. Surgical operation as such is a risky activity involving many complexities. But with a total disregard to the risks, the number of those wishing to undergo such cosmetic and aesthetic operations is on a constant increase.

Objectives of plastic surgery and the areas of activity

Mainly the plastic surgery is meant for two objectives:

- (a) **Reconstructive surgery.** This is carried out to remove the physical defect and creational abnormality which makes a man look ugly; or to restore the lost or damaged utility of a

part of the body. Such defects and deformities may be congenital as well as accidental.

The cases in which the affected persons may generally resort to seek such type of surgical operations are numerous. To mention here a few:

- Congenital abnormalities like cleft lip, cleft palate, missing the outer part of the ear, craniosynostosis, congenital hand deformities, etc.
- Children's developmental abnormalities.
- To remove the ugliness resulting from the injuries sustained on the head and face; craniofacial skeleton fracture.
- Burns.
- Breast cancer, craniocervical cancer, skin cancer, etc.
- Baldness.

(b) Cosmetic or Aesthetic surgery

The other objective of the plastic surgery is to make the appearance of a man more beautiful and attractive by bringing suitable changes in the structure of the parts of his/her body. In the like manner, with the advancing age the parts of the human physique develop a type of lossiness and deformity. To remove such natural wear and tear the cosmetic surgical operations are also sought.

The latter type of surgery is meant for many cosmetic purposes. To mention here some of them:

- Abdominoplasty
- Blepharoplasty
- Breast Augmentation
- Breast Reduction
- Mastopexy
- Buttock Augmentation
- Otoplasty
- Rhinoplasty
- Rhytidectomy
- Chin Augmentation
- Cheek Augmentation
- Laser Skin Resurfing
- Male Pectoral Gimplant
- Chemical peel

- Labia Plasty
- Suction-Assisted Lipectomy

How the technique of plastic surgery is applied to cosmetic purposes?

The plastic surgical operations are performed to remove the apparent defects and minor flaws from the body. Following are some common variants of the plastic surgery:

- In case of fat, the extra fat is removed from the body to make the body smarter.
- In order to augment the buttocks, the fat from other parts of the body is used.
- In the case of serious burns the highly tense fibrous tissues are removed and the unaffected skin from both sides is joined.
- In order to improve the appearance of the skin the Laser Technique is used.
- A more common and important way is called Microsurgery. This refers to the technique which the tissue of a fresh part of skin, bone, fat or muscle is transmitted to the affected point and the blood supply is restored by joining the blood vessels. In case of the skin grafting this technique is commonly used. It has three modes:
 - (a) Autografts. This refers to the use of the skin of the same person from one part to another.
 - (b) Allografts: Grafting a healthy man's skin on the body of other person.
 - (c) Xenografts: Grafting animal's skin on a human being.

Stance of the Shariah on different Modes of plastic surgery

The problems and issues associated with the plastic surgery fall to the category of the issues posed by the contemporary modern age. Quite obviously, the classical Fiqhi literature is largely wanting on this count. It is only the fundamental teachings of Islam the implications of the Qur'anic expressions and the reports from the Holy Prophet (SAWS) from which we derive solution to the problems of the type. In the following lines some issues of the type are being discussed.

Creational Anomaly contravening the common law of Nature

Sometimes the congenital defects are found in some people lending a greater amount of deformity to their outward manifestation. Such defects often are in open discord with the normal natural shape of creation, like lip cleft, palatal cleft, extra finger in hands or feet, extra tooth, or being one or more teeth unusually longer, and suchlike other creational defects. What does Shariah say about removing such deformities?

According to Qazi Ayaaz (d. 544 AH) is of the view that no human being is permitted to make any change in his body, or its parts and organs against the creation and shape given to him by Allah even if his creation is defective.

إن من خلق بإصبع زائد أو عضو زائد لا يجوز له قطعه ولا نزعه لأنه من تغيير خلق الله تعالى .

“If a person has been created with an extra finger or part, it will be impermissible for him to get it cut or seek its removal. Doing so will form the case of bringing a change in Allah’s creation.”¹

To the same opinion does subscribe Imam Abu Ja’afar Tabri (d. 310 AH):

لا يجوز للمرأة تغيير شيء من خلقها التي خلقها الله تعالى بزيادة أو نقصان ... كمن تكون لها سن زائدة فتقلعها ، أو طويلة فتقطع منها ... فكل ذلك داخل في النهي من تغيير خلق الله .

“... For a woman it would be impermissible to do any change in her creation given to her by Allah *ta’ala* with something extra or less than the normal. For example, she has an extra tooth or one is awkwardly larger. Taking it out or doing any change to it is included in the prohibition pronounced by the Qur’anic verse.”²

To the scholars and *ulama* holding this view the impermissibility is associated with that the extra tooth or finger is removed with the intent of removing the deformity. However, the extra finger or tooth or indeed the likes, poses problem and hampers

¹ Qurtubi, al-Jami li Ahkamil Qur’an, 5/393.

² Asqalani, Ibn Hajar, Fathul Bari commentary on the Sahih of al-Bukhari, Dar al-Ma’arif, Beirut 10/377.

the doing of usual work, or causes pain, the extra tooth or finger could be dispensed with. To quote Tabri again:

ويستثنى من ذلك ما يحصل به الضرر و الأذى ، كمن يكون لها سن زائدة أو طويلة تُعيقها في الأكل ، أو إصبع زائدة تؤذيها أو تؤلمها ، فيجوز ذلك، والرجل في هذا كالمراة .

“Exempted from this general law of prohibition, however, is the situation in which the extra items turn painful and harmful. For example, a woman has an extra tooth, or any of her teeth is disproportionately larger and is an obstacle in eating, or the extra finger has become a source of pain and problem. In such cases the removal of such extra items would be permissible without doubt. This rule is equally applicable to both the sexes at the same footing.¹

The Hanafites, however, do not postulate such a condition. They permit the removal of the extra organs even if it poses no immediate danger to the life. To quote an authority:

"إذا أراد الرجل أن يقطع إصبعاً زائداً أو شيئاً آخر ، قال نصير رحمه الله تعالى : إن كان الغالب على من قطع مثل ذلك الهلاك فإنه لا يفعل ، و إن كان الغالب هو النجاة فهو في سعة من ذلك ."

If a person wants to get cut his extra finger, or indeed anything extra, Imam Nasir (may Allah deal him with mercy) says: "If the removal involves a probable risk of life, it would obviously be impermissible. But if the probability is of escaping the destruction, he is at liberty to do so and pursue the operation."

As far as I think, for the permissibility of the removal of any type of physical deformity the condition of being it a source of only physical trouble or hindrance seems rather improper. Mental and psychological agony too has to be regarded a valid reason of it. Obviously, any deformity is of course runs contrary to the normal and usual course of the natural law of creation, and this deformity and creational defect makes the affected people feel themselves inferior as compared to others. The mental and psychological pain and agony the affected man feels is never less than the physical pain. The removal of the deforming extra organs and bringing them in conformity with the natural law of creation, therefore, should be regarded as permissible.

To conclude, the creational anomalies found in the physical structure of a human being form undoubtedly the cases of illness and

¹ Ibn Hajar 10/377, Qurtubi 5/343.

disease for which the Islamic shariah not just permits to seek treatment, but also encourages the Muslims to do so.

Physical Deformities and Defects acquired later

This physical defects and deformities might be the result of mishappenings and accidents people might have in later stages of their age. In accidents people might break their nose or ear; the house caught fire and the inmates suffered burns; some part of the body lost its flesh while combating the attacking robbers and so on. All defects resulting from accidents and mishappenings of course form a case of disease and physical illnesses. Treating them medically would indubitably be permissible.

On the occasion of the Battle of Trenches the Companion Haz. Sa'ad bin Mu'aadh was hit by an arrow from the enemy camp and sustained a deep wound in one of his arms. The Holy Prophet (SAWS) kept him in a camp in his *masjid* and left no stone unturned to provide him the best treatment possible.¹

In a war, known in the annals of the Pre-Islamic history, as kilaab, Haz. Arfaja bin As'ad a companion of the Holy Prophet (SAWS), lost his nose and he got replaced it with a silver nose. After a time it started smelling bad. The Holy Prophet (SAWS) advised him to replace it with a nose of gold.²

During the battle of Badr, an arrow hit Haz. Rafi bin Malik and injured one of his eyes. He stated that the Holy Prophet (SAWS) applied his blessed saliva to the point of my injury and since then I felt no pain in my that eye.³

At the juncture of the battle of Uhud the blessed group of companions who defended the Holy Prophet (SAWS) included Haz. Qatada. An arrow hit his eye and it was out. Saddened by his tragic injury, the Companion made an earnest request to the Holy Prophet (SAWS): "O the Apostle of Allah! I avidly love a woman. If I visit her in the same condition of my eye, she would derided me as 'one-eyed' and would dislike me." "If you wish, bear with this, the Prophet (SAWS)

¹ Sahih Bukhari, al-Maghazi, chap. Marjaun-Nabi minal-Ahzaab 4122.

² Abu Dawood, Sunnan al-Khatam, Chap. *maa jaa'a fi rabtil asnaan bi-Zahab* 4232, cf. Tirmidhi 1770, Nasai 5161, 5162. The report has been evaluated by Allama Albani as hasan.

³ Ibn Kathir, al-Siratun Nabaviyyah.

said to him, and you would be rewarded with Paradize, and I may pray to Allah to cure your injured eye."The Companion begged, "Paradize is indeed the best reward and an uncomparable Divine gift. I stand ensnared in the love of that woman. Please ask from Allah the Paradize for me and pray to Him to cure my eye as well." Complying to his request the Apostle prayed to Allah to grant him both the things."¹

All such reports amply speak of that the Shariah associates as much importance to the pain and psychological agony one feels due to suffering from such defects and physical deformities as it does to the physical pain and trouble. And as it permits the removal of the defects causing physical pain and trouble, so it does with regard to those defects and deformities as are a source of mental trouble and psychological agony.

To illustrate the point in even still plain words, a person was caught by smallpox and, as a result, he had visible and deep blemishes on his face. Or, one sustained deep wound on one's face which left spots even after healing; a miscreant threw acid on one's face which burnt his face. A woman, for example, suffered from cancer in her breast which led the doctors cut her teat—under all such circumstances the affected persons shall be permitted to undergo the plastic surgical operations so as to get rid of the physical deformity which has actually spoilt their appearance and blemished their natural beauty.

About making changes and modifications in parts of one's body

It being a very obvious fact that the pattern running through the creational process of the human beings is that every human individual is born with physical features differing from other members of the human race in respect of the sizes of his organs and the parts of the physical structure. Some are born white; others are black. Some are fat; others are smart and thin. Some are born with the raised nose; others' nose is sunken. Many people have raised chin, others possess the lowered. Some have heavier hips; others, however, are with gaunt hips and buttocks. Some are gifted with a wider chest, but others have narrow. But such partial differences, generally speaking, pose no problem and create no obstacle in carrying out the

¹ Al-Siratul Halabiyah.

functions naturally associated with them. Nor such minor and insignificant differences are regarded as opposed to the common law of nature. Some of the differences mentioned above are liked and regarded as features of beauty; others are disliked and regarded the features spoiling the natural beauty. In the modern age the plastic surgery has developed as an important branch of the medical sciences which offer the facility to change and modify different parts of the body as one wishes. The number of the beneficiaries from this technique is augmenting steadily, and the plastic surgery has emerged out as a highly profitable business. This gave rise to the question: how does the Islamic Shariah look at this trend and what would be the position of the Shariah on seeking such aesthetic surgical operations?

The concept of the Divine Trust

According to the Islamic concept of life the physical structure is a trust from the Creator, Allah *ta'ala* with the human beings. Different usufructs and functions are associated with different parts of the body. The Holy Qur'an, time and again: mentions various parts like eye, ears, tongue, lips, hands, feet, heart, brain, etc. as Allah's favours unto human beings. The verses mentioning it feature in a number of the Qur'anic surahs like al-An'aam 46, al-Araaf 179, al-Noor 24, al-Hajj 46, Yaseen 35, 65. Qaaf 37, al-Balad 8, 9 and so on. All such verses are meant to impress upon mankind the extraordinary import of those parts and organs in the physical human structure and the special kindness of the Creator towards human beings. This must make them recognize His favours unto them and feel deeply thankful to Him, by offering all acts of worship and devotion to Him also without associating none with Him. For it is Allah, the Creator, alone, Who has gifted them all such priceless favours. If they do not recognize their real Benefactor and adopt an attitude of ingratitude unto Him and join partner with Him, they shall be questioned on the Day of Judgement and shall be condemned to the Hell-fire forever.

إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا ۚ ٣٦

"Surely the hearing and the sight and the heart, all of these, shall be questioned about that."

On all such is based the concept that the human beings enjoy no proprietary rights *vis-à-vis* their body, its parts and organs, hence

never permitted to undertake any disposition in it. The human beings are authorized to apply their organs only in carrying out their functional operations. This clearly suggests that changing one's organs and parts of his body according to one's wishes, is in total discord with the fact that and the body, along with all of its parts, is a Divine trust, is of course opposed to the teachings of Islam. The plastic surgical operations for effecting all such unauthorized changes and modification to the human body is opposed to the Islamic ideology and inconsistent with the normative principles of the Shariah, hence impermissible.

From this primary rule the exception is the only case that a part or organ happens to be inconsistent with the normal form of creation, or the person is hampered by such creational abnormalities from doing the functional operation. For example, a person's teeth are unusually larger lying out of the mouth and posing a problem in closing mouth and in chewing the food; or it lends an unignorable deformity to the appearance. All such cases of creational abnormality will make it a definite case of illness, and it will be absolutely lawful to remove such abnormalities by undergoing plastic surgical operations.

What about the wear and tear resulting from the advancing age?

In the course of his life the man passes through different stages. He is born with a weaker and smaller physique. Then, as a result of a constant care and sustained patronage, the parts of his body start augmenting, and gain strength and agility. As he reaches the age of youth, all parts become complete and powerful from all aspects. Then, with the passage of time and the age advancing, his strength starts waning. His physical parts, which once were agile and active, turn gradually slack. In his old age he eventually reaches the same state of weakness, decrepitude and powerlessness which he had experienced in the earlier phase of his life. This is the law of nature ordained by the Creator, and, with no exception, all human being are subject to this law. The Holy Qur'an makes mention of these stage of lifetime again and again in its verses. To cite here just one reference:

هُوَ الَّذِي خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ مِنْ نُطْفَةٍ ثُمَّ مِنْ عَلَقَةٍ ثُمَّ يُخْرِجُكُمْ طِفْلاً ثُمَّ لِتَبْلُغُوا أَشُدَّكُمْ ثُمَّ لِتَكُونُوا شُيُوخًا وَمِنْكُمْ مَنْ يَتَوَفَّى مِنْ قَبْلٍ وَلِتَبْلُغُوا أَجَلاً مُّسَمًّى وَلَعَلَّكُمْ تَعْقِلُونَ
٦٧

“He it is Who created you from dust, then from a small life germ, then from a clot, then He brings you forth as a child, then that you may attain your maturity, then that you may be old-- and of you there are some who are caused to die before-- and that you may reach an appointed term, and that you may understand.”

With the advancing age the changes in the parts of the body are quite natural. Blocking these changes or trying to change them according to one's wishes form a case of revolt against the law of nature. Such acts have been decried by the Qur'an as the acts of changing and altering the creation of Allah *ta'ala*, which of course are carried out under Satanic impulse. Based on this point, it would undoubtedly be impermissible for the aged woman to undergo a plastic surgical operation in a bid to remove the slackness of her breasts, or clean the wear and tear appearing on her face and hands, which of course are the signs of ageing. She may adopt the course of plastic surgery if she suffered such abnormalities as a result of illness, etc. in her youth, and the use of medicine is considered improper, useless or harmful.

Transplantation of the organs of body

Transplantation of the organs is a special technique of the plastic surgery. This refers to the activity of taking the piece of skin, flesh, bone, etc. to another place of the body. The replacement may have the following types:

- (1) Autograft, that is, using the pieces of the same person's body parts.
- (2) Homograft, that is, taking the part of a human being's body and grafting it to another's body.
- (3) Xenograft, that is, taking animal body's part and grafting it to a human body.
- (4) Using inorganic substance.

This area of the discussion is associated with Transplantation of Organs. This features in the list of the issues new to the modern age. The men of Islamic learning have dealt it exhaustively and the topic

has been a point of debate in a number of seminars held at national and international levels. In connection with the transplantation of organs, the Islami Fiqh Academy of India, its seminar of the year 1989, adopted the following resolutions:

1. It is permissible to have the plastic surgery to remove physical deformity. Defect/deformity means a deformity in the body that makes the physique different from common and normal shape of creation, whether it is a defect by birth or it manifests afterwards.
2. To remove physical deformity, if the physician so advises, taking the route of plastic surgery is permissible.
3. It is not permissible to have the plastic surgery to get rid of the wrinkles or changes that are the result of wear and tear in the physical appearance due to advancing age.
4. If nose and other parts of the body are not attractive and unproportionate but not beyond the common and popular creation, it will not be permissible to opt for plastic surgery just for the sake of an attractive appearance.

It will not be permissible, to resort to plastic surgery to conceal ones identity, save that a victim is desperately in need to save him/herself from repression and avert an undue persecution.

Having plastic surgical operation to improve one's appearance

Man instinctively wishes to look beautiful and, while looking at him, the other people make a good estimate of his outward personality. For this purpose he adopts different measures. The Islamic Shariah not only is considerate to this innate wish but also it approves of this wish and advises him to adorn himself. In His Book, Allah *ta'ala* says:

يٰۤاَيُّهَاۤ اٰدَمُ خُذُوْا زِيْنَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوْا وَاشْرَبُوْا وَلَا تُسْرِفُوْا اِنَّهٗ لَا يُحِبُّ الْمُسْرِفِيْنَ
۳۱

“O the children of Adam! attend to your embellishments at every time of prayer, and eat and drink and be not extravagant; surely He does not love the extravagant.”

Warning his companions against the painful fate of conceit, egotism and undue pride, the Holy Messenger of Allah once addressed them: "Never shall enter paradise the person cherishing the conceit in his heart even in the amount of an atom." Heard this; a Companion from the audience begged to say: "Man naturally likes that his clothing is good, his shoes are good. Shall it be counted as mark of conceit as well?" upon this the Prophet (SAWS) declared:

"إن الله جميل يُحب الجمال ، الكبر بظر الحق و غمط الناس ."

"Allah *ta'ala* is beautiful and loves the beauty. As of conceit, it is the rejection of truth and looking down on the people."¹

However, the measures to be adopted for the improvement of one's appearance are restricted by the Shariah. While the Shariah permits a Muslim to adopt external measures for the enhancement of his appearance, it does not permit to make any change or bring modification to any part of the body. In the pagan Arab society there existed a number of ways meant for enhancing the appearance. The Prophet; however, disliked them and declared them prohibited. In this regard two reports deserve consideration in particular:

عن عبد الله بن مسعود رضي الله عنه : لعن رسول الله صلى الله عليه وسلم الواشمات و

المستوشمات والمتفليجات للحسن , المغيرات لخلق الله .

Haz. Abdullah bin Masud (may Allah be pleased with him) reported: "Allah's Messenger (SAWS) declared curse upon those women who mark their bodies with tattoos or get it marked so by others, who pluck out their foreheads and make distances between their teeth for the sake of beauty. Such are the women who alter Allah's creation."²

Explaining the report above cited the *Muhaddithin* explain that all such acts were carried out by the women in the Arabia before the dawn of Islam. Such acts were practised in order to enhance the outward beauty and seek physical similarity with the women of the youth age.

Explaining the word *mutafallijat*, Imam Baghwi (d. 516, AH) writes:

¹ Muslim, al-Iman, Tahrimil Kibr wa Bayanuhu 91.

² Abu Dawood, Sunnan, Libaas.

“The reference is to those ageing women who would sharpen their teeth by rubbing them so that they may look like the women of the youth age.”¹

Imam Navawi (d. 676 AH) writes:

“*Falaja* means distancing between the frontal and the *rubaa'iyyaat* teeth. *Mutafallijaat* refers to those women of advanced age who make distance between their teeth by rubbing and reducing them so that they look young, and their teeth beautiful. This distance is naturally found in the teeth of the girls and young women. At an advanced stage of age this distance disappears. With the view to regain this distance such women reduce their teeth by rubbing them with an instrument, thereby enhancing their beauty and making themselves look younger.”²

A very important notable point in the words of the *hadith* quoted above is that its phrase, ‘for the sake of beauty’ makes it clear that doing all such acts attracts curse from Allah when they are done merely for the sake of beauty. If the reason is other than the one mentioned in the *hadith*, the prohibition shall turn irrelevant. Abd Allah bin Abbas too has given the same explanation to the *hadith*. To cite his words:

لعنت الواصلة والمستوصلة النامصة المتمنصة والواشمة والمستوشمة من غير داء .

“Those women who combine other women’s hair with theirs, pluck out their forehead and those who get their bodies tattooed (with marks) deserve curse from Allah *ta’ala* only in the condition that such acts are done with no legitimate reason or disease.”³

¹ Sharh al-Sunnah of Imam Baghwi.

² Nasai, Sunnan, Zeenah, Chap. Al-Mutanammisaat, Hadith 5099, Ibn Majah, Sunnan, Nikaah, Chap. Al-Wasila wal-washima hadith 1989. Allama Albani has authenticated this report. In the Sunnan of Nasai there exist some more reports in which the reporting authority, Abd Allah bin Masud, in which he expressly declares to have directly heard the hadith from the Holy Prophet (SAWS) (cf. 5107, 5108, 5109) Allama Albani has declared these reports to be technically sound. According to a report of the Sahih Bukhari (5939) reported by Haz. Alqama, it is Haz. Abdullah bin Masud, who has cursed on such women. But, according to various other reports Haz. Abdullah bin Masud relates the act of cursing to Allah *ta’ala*. (cf. Bukhari hadith 4886, 5931, 5943, 5948, Muslim, 2125, Abu Dawood Sunan: 4169, Tirmizi: 2782, Daarmi: 2647, Ahmad 1/434, 443, 454.

³ Abu Dawood Sunan, Tarajjul, Chap. Silatus shi’r 4170.

To the same opinion do subscribe the *muhaddithin*. If such acts are done as a treatment of any health problem, permissibility would of course be the original rule governing them.¹

Reason of Prohibition

The Ulama have discussed the point why these acts have been disapproved by the lawgiver and held prohibited. Imam Qurtubi (d. 671) writes:

“In order to determine the reason why such acts are declared prohibited there exist various statements. Some are of the view that the prohibition is due to such acts involve a strong element of deception; some say that the reason of prohibition lies in that all such acts alter the creation of Allah *ta’ala*. This later one has been reported from Haz. Abdullah bin Masud and seems sounder. It includes the first one as well.”²

Imam Navawi stated:

“The *ahadith* cited above declare such acts as prohibited. For it involves changing Allah’s creation and deceiving others.”³

According to the *ahadith*, *al-mutanammisaat*, too, have been included in the cursed women. Plucking the eyebrows is prohibited if it is done merely as a fashion to enhance one’s appearance. In the event of having some unwanted hair on her face, the woman, however, is permitted to remove them even if the motivation being the improving of her appearance and outward beauty. A report reads:

“A woman asked Haz. Ayesha (may Allah be pleased with her) about the hair that had grown on her face. If it was permissible for her to remove such hair for the sake of her husband’s pleasure? The *Ummul Muminin* replied: “Do remove such unpleasing thing from your body.”⁴

The *Fuqaha* have also expressed the view of absolute permissibility vis-à-vis the removal of the unwelcome hair growing on

¹ Sharh Muslim of Navwi, 14/107, Fathul Bari 10/372, 373, Aini: Umdatul Qari.

² Qurtubi, al-Jami Li-Ahkamil Qur’an 5/593.

³ Sharh Muslim of Navawi 14/107.

⁴ Abdur Razzaq, Musannaf, Edited by Habibur Rahman Azami, al-Maktab al-Islami, Beirut 1983/3/146.

the face of women. To cite the words of Ibn Abideen Hanafi (d. 1252 AH):

Prohibition of removing the hair has been ascribed to the reason that a woman does so in order to improve her appearance for the sake of others than her husband. In case a woman has some hair on her face which is to the aversion of her husband, the removal of such unwanted hair is absolutely right. For the women are asked to enhance their beauty to please their husbands. This is particular to women to the exclusion of men. If beard or mustaches grow on a woman's face, it would be plausible in her case to remove them.¹

The same is the view of the Malikites, Shafites and the Hambalites. According to the Shafites if a husband asked her wife to remove unwelcome hair from her body, upon her it would be binding to abide by his wish.²

The detail furnished above makes it abundantly clear that undergoing a plastic surgical operation merely with the objective to look younger, or enhance the outward beauty, is impermissible. Actually, there is a moderate standard of beauty. A woman is at liberty to pursue that moderate standard if she feels herself below this, and the ugliness of her outward appearance is painfully visible. However, pursuing the plastic surgery with a view to attain the higher standard of beauty is indeed a thing which can never be approved of by the *shariat* of Islam.

Seeking plastic surgical operation in order to conceal one's identity

There are reasons forcing the man to conceal his identity like evading repression from a ruthless tyrant, despot regime or a powerful person. In case of his arrest if he is feared to be subjected to atrocities and an inhuman treatment could one be allowed to conceal his identity by undergoing a plastic surgical operation?

What we gather from the Islamic teachings is that telling lies, deception and fraudulent practices and other acts of the type are absolutely inconsistent with its nature, and the Muslim have

¹ Ibn Abideen, Raddul-Muhtaar alaa al-Durrul-Mukhtaar, Daar Sa'adah, Egypt 5/328.

² Al-Fawakih al-Dawwami: 2/401, Hashiya al-Qilyubi 3/252, al-Mausuah al-Fiqhiyyah (Kuwait) 21/273, 274, Ibn Qudamah, al-Mughni, Maktaba al-Riyaaz al-Haditha 1/91.

repeatedly been urged to stay away from such devilish deeds. Disguising oneself and concealing the facts in a fraudulent and deceitful manner are to Islam's total disliking. A woman appeared before the Holy Prophet (SAWS) and said: "My husband has another wife. Shall it be wrong for me to express before her that my husband has granted me such and such while he has given me nothing?" The Prophet's remark was:

"المتشبع بما لم يعط كلابس ثوبي زور ."

"One who has not been gifted a thing but one still pretends to be in possession of that thing is like the one wearing the clothing of fraud and deceit."¹

As of evading repression, Islam teaches the Muslim to remain steadfast on the way of Truth and brave patiently the hardships and difficulties of the way in the hope of immense reward from Allah in the Hereafter. If he finds himself unable to face those hardships and troubles, he is permitted to utter the words of untruth to escape unscathed.²

لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقْلَةً وَيُحَذِّرُكُمُ اللَّهُ نَفْسَهُ وَإِلَى اللَّهِ الْمَصِيرُ ٢٨

Let not the believers take the unbelievers for friends rather than believers; and whoever does this, he shall have nothing of (the guardianship of) Allah, but you should guard yourselves against them, guarding carefully; and Allah makes you cautious of (retribution from) Himself; and to Allah is the eventual coming.

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أَكْرَهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِّنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ ١٠٦

"He who disbelieves in Allah after his having believed, not he who is compelled while his heart is at rest on account of faith, but he who opens (his) breast to disbelief-- on these is the wrath of Allah, and they shall have a grievous chastisement."³

To evade the repression and tyranny one may adopt other ways like fleeing from the scene and hiding oneself elsewhere in the country or outside. From the examples of Haz. Abu Basir and Haz. Abu Jandal we learn the same lesson. In order to evade the persecution of the

¹ Bukhari, Sahih al-Nikaah, hadith 5219, Muslim Sahih, al-Libaas, Bab al-Nahy anil Tazwir fil libaas Hadith 2130.

² Ale-Imran 28.

³ al-Nahl: 106.

Makkan unbelieving community both the Companions had sought refuge in a place beyond the reach of the Makkans.¹

Concealing one's identity by way of plastic surgery combines a number of reasons of prohibition such as deception, practice of fraudulent acts and changing Allah's creation. Hence it is impermissible.

Conclusion

The gist of what we have discussed in the foregoing pages is that the plastic surgery, with all of its types and modes, is permissible only with the condition that it is endured as a way of treatment. It would turn unlawful if it is endured for reasons of adornment and improving the beauty, to look younger and concealing one's identity.

Pointwise summary of the discussions on the plastic surgery:

Mufti Mahboob Ali Wajihi, Rampur, UP

- The human body is the most perfect model of Allah *ta'ala's* omnipotence and power. This testifies to the fact that Allah *ta'ala* alone is the Creator of the entire universe and He alone is the true god. Since the human physical structure is the depository of numerous Divine trusts and expedient secrets, it will be absolutely improper, inexpedient and irrational to subject it to uncalled for alterations, changes and modifications. Changes might be permissible only in the event that there exists some abnormal excess, as, for example a person has been born with an extra organ. Such an organ might be detached provided that such an operation involves no risk of life.
- In order to dispense with later acquired deformities and structural defects as pointed in the question one is permitted to undergo a surgical operation. If one is permitted to get one's congenital deformities removed by having a surgical operation, the seeking removal of the later acquired defects by way of the surgical operation is even more obviously permissible.

¹ Ibn Hisham, Siratun Nabi.

- Under the situation mentioned in the question the men are not permitted to have a surgical operation. Women, however, might permissibly have such surgical operations provided that such operations are intended to enhance her appearance solely for the sake of her husband's pleasure. In order to win the heart of her husband the Shariah grants permission to woman to enhance her beauty by the using all normal ways. For the same purpose she may pluck the hair from her face. Even she may adjust her eyebrows.
- Nothing seems wrong in adopting this route provided that this way involves no risk of life.
- Undergoing the plastic surgical operation is undoubtedly permissible. This activity contains no wrong whatsoever.
- For normal omissions and commissions such initiatives seem improper and inexpedient. For such things the surgical operations are uncalled for.
- For the man it appears improper to have a surgical operation with an intent to enhance his appearance or look younger. Women, however, might do so, if she intends to enhance her beauty merely for the sake of her husband. A *mujahid* may also have a plastic surgery and apply black henna on his hair, thereby to look younger. A *mujahid* is permitted to hide his identity by adopting any way for the purpose. As for others, they in no case are permitted to do so.
- If a criminal hides his identity in order to evade the due punishment he will be earning a double sin. That is, deceiving the authorities, besides his crime. The wronged person, however, may undergo a plastic surgical operation to disfigure himself thereby to avert further repression he fears on the part of the oppressor. The Prophet of Allah is reported to have said:

إنما الأعمال بالنيات .

"All acts are to be judged according to their motivating intents."

Beautifying and Enhancing one's Appearance in the light of the Principles of Shariah

ML. Khalid Saifullah Rahmani

Gen. Sec. Islamic Fiqh Academy, India, and Rector
al-Ma'ahad al-Aali al-Islami, Hyderabad, India

Preparatory words

Allah *Subhanahu wa ta'ala* has kindly blessed the man with the best physical structure. In His Final Book Allah *ta'ala* has spoken of this phenomenal truth in the following words:

لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي أَحْسَن تَقْوِيمٍ ۝

The fact that man enjoys an absolute distinction and superiority over all other species in the entire creation in respect of the features of his outward manifestation and physical beauty is of course a thing beyond any dispute. Moreover, Allah *ta'ala* gifted him an acute sense of aesthetics to enhance his beauty by the use of artificial means. We see that all species of the worlds of animals, vegetation and minerals are content with their natural beauty. It is the ambitious disposition of the man which rendered him discontented with the natural gift of beauty. To adorn himself from bottom to top and enhance his natural appearance he has devised numerous articles and substances. Now we have a separate science totally devoted to improve and enhance the beauty and a separate, rich market of the things and substances required for the purpose is at every one's disposal.

Moderation marks all the teachings of Islam. On one hand, it does not stifle the instinctive demands of the human nature. Within the natural boundaries, it permits him to satisfy his wishes and instinctual passions. But, on the other, it dislikes and detests extremism and excessiveness. Excessiveness is invariably bound to lead one trample upon the moral limits and fall into prodigality. As an unavoidable result of prodigality, the entire system of earning and spending turns into a mess; the things by no way essential for the human life begin to take place of the essentialities. This moderation and temperance which keeps a man away from touching the extremes forms the very nature and temperament of the Islamic Shariah. With

regard to the beautification and enhancing one's outward beauty, too, Islam asked a Muslim to tread the path of moderation.

While discussing the lawful and unlawful ways of beautification and ornamentation three basic points have to be kept in mind.

- (a) What are the trends of beautification and modes and ways of enhancing the beauty and appearance in an age?
- (b) What are the primary principles of the Shariah that govern the ways and modes of enhancing the outward beauty? What type of guidance we get from the Qur'an and how the Fuqaha have explained the relevant Qur'anic verses and the *ahadith* of the Holy Prophet (SAWS)?
- (c) What are the injunctions of the Shariah governing the various ways of ornamentation and beautification?

In the following lines we are going to discuss fairly all the three points separately.

Diverse ways of enhancing the outward beauty

The means used to enhance the outward beauty may roughly be put in two categories. External that is, those means which are not directly related to the human body. The internal means. That is, those means which are directly associated with the human physical structure.

As far as the external means are concerned, they are the following:

- (a) Wearables
- (b) Ornaments

The means of beautification directly related to the human body also fall into two categories:

- (a) Temporary
- (b) Permanent

The temporary means

So far as the temporary means are concerned, the following ones are in currency in the present age:

- 1) Combining one's hair with human hair, animal hair or artificial hair.

- 2) Dying the hair with black or with any other colour.
- 3) Applying facial cream, powder or other similar substances.
- 4) Staining eyes with antimony.
- 5) Engraving artificial moles on the cheeks.
- 6) Applying various types of lipsticks to the lips.
- 7) Applying red lead to teeth.
- 8) Cleaning the forehead, face, hands and chinks off the hair.
- 9) Applying nail polish to the nails of hands and feet.
- 10) Applying henna to both hands and feet.
- 11) Cutting or curling the hair to impart them a particular fashion.
- 12) Sharpening the eyebrow by way cutting or plucking the hair.

Permanent ways

As regards the permanent ways of beautification, various ways are in vogue. Out of them some are peculiar to women; others are common to both men and women. Some of them might be attained by the use of some prescribed medicines or dietary substances. For the sake of some others, however, the plastic surgical operation is needed. The following ways are now in common use:

- 1) Growing hair on the bald head by way of the plastic surgical operation.
- 2) Setting right the squinty eyes by ways of operation.
- 3) The nostrils are wide and the plastic surgery is resorted to make them smart and edged. Or temperating and adjusting a higher nose.
- 4) Setting right the cuts of the lips, apart from that the cuts are congenital or accidental.
- 5) Making the bulky lips thin and smart by resorting to plastic surgery.
- 6) Raising the sunken cheeks and rounding a flat face by way of plastic surgical operation.
- 7) Improving the beauty of chins.
- 8) Reducing the bulky breasts and augmenting the small ones.
- 9) Removing the extra fat from the stomach so that the body becomes smart.

- 10) Removing the extra fat from the hips in order to improve the physical appearance.
- 11) Removing the wear and tear and the wrinkles resulting from advancing age and tightening the body through a surgical operation.
- 12) Removing spots of the body suffered as a result of cuts, injuries, burns, etc.
- 13) Tattooing the hands or the back with different types of marks.
- 14) Undergoing a surgical operation in order to set right the shape of the ears.

Normative Principles of the Shariah Regarding the Beautification and Ornamentation

Following is a description of the general principles derived from the Book of Allah *ta'ala*, the *hadiths* of His Messenger and those deduced from the juristic principles and the leading inferences.

- 1) Treating the illnesses is primarily a lawful activity. In cases it may sometimes become recommendable, and also a duty. The Prophet (SAWS) has strongly advised to treat the illnesses. He (SAWS) is reported to have said:

تداووا ، فإن الله لم يضع داءً إلاّ وضع له دواء ، غير داء واحد : الهرم .

The Prophet (SAWS) has also suggested a number of ways of treatment such as branding, scarification, which indubitably are types of treatment, and taking a bath, etc. As the inner parts of the body are provided a medical treatment, so being the case of the outer parts of the body. Treatment is sought for the removal of the diseases and physical disorder. Diseases may be physical like fever, pain, inflammation, etc. and it may be psychological like the feeling of disgrace, sense of inferiority, etc. Psychological problems are by no way less painful than the physical ones. In most cases the psychological problems exhaust the patient's courage to coexist with other members of the human society. Such feelings of inferiority and disability often affect the mental equilibrium and place the patient under stresses and, eventually, he succumbs to cardiac diseases.

By the study in the *hadiths* we learn that the Shariah regards the psychological problems as valid as the physical ones. Studying the

hadith literature we come across an incident of the three Israelis: blind, bald and leper people, to who an angel was sent to test them. Through a curative wipe of the angel all the three persons got rid of the problems. It needs not to be argued that the bald and leper have no physical problem. The nature of their problem is of course psychological- feeling of inferiority *vis-à-vis* others. In the like manner, blindness is also a problem largely psychological. The nature of problem a blind is faced with is not so as to keep him under constant pain and agony. Such things are suggestive of the fact that the Shariah is as much considerate towards the psychological problems as to the physical diseases and illnesses. One supportive example in this regard the Holy Prophet's attitude towards Haz. Arfaja, a Companion, and permitting him to have a silver nose first time and then to have a golden nose establishes well the example of permissibility.

Even more importantly, from the report we learn that if a physical defect cannot be removed from a lawful substance, a forbidden substance may be used. As an established rule of the Shariah men are not allowed to wear the gold either, and, excepting the ring, the use of silver, too, is forbidden for men. Still, in order to remove a serious facial deformity the Messenger of Allah granted him the permission to have an artificial nose made of silver or gold. In short, the physical defect deforming the appearance and making the person feel inferior in the society is of course a type of disease deserving all types of treatment and redressal.

1. Changing the origin of creation of Allah *ta'ala* has been denounced as an act which is committed directly under the Devil's temptation. Hence a sin involving grave consequences. In its lasting words, the Holy Qur'an mentions that Satanic warning as follows:

وَلَا ضَلَالَةَ لَهُمْ وَلَا مَنِيْنَهُمْ وَلَا مَرْنَهُمْ فَلْيُبَيِّنَنَّ ءَاذَانَ الْاَنْعَامِ وَلَا مَرْنَهُمْ فَلْيَغَيِّرَنَّ خَلْقَ اللّٰهِ
وَمَنْ يَتَّخِذِ الشَّيْطٰنَ وَلِيًّا مِّنْ دُوْنِ اللّٰهِ فَقَدْ خَسِرَ خُسْرًا مُّبِيْنًا ۝ ۱۱۹

"And most certainly I will lead them astray and excite in them vain desires, and bid them so that they shall slit the ears of the cattle, and most certainly I will bid them so that they shall alter Allah's creation; and whoever takes the Shaitan for a guardian rather than Allah he indeed shall suffer a manifest loss."

As to determining the meaning and purport of the expression *khalq-Allah* featuring in the verse above quoted, various explanations

have been furnished by the Qur'anic exegetes. To Abdullah Ibn Abbaas, Ibrahim Nakhai, Mujahid, Hasan al-Basri, Qatada, and others the expression alludes to Allah's religion in the complete meaning and sense of the term.¹

The same interpretation is preferable to Imam Ja'afar Tabri, Hafiz Ibn Kathir, Said bin Jubair, Said bin Musayyab, Zahhak and Fakhrud Din Razi. To strengthen and enforce this interpretation Imam Razi has used the Qur'anic verse:

فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ

"Then set your face upright for religion in the right state-- the nature made by Allah in which He has made men; there is no altering of Allah's creation."

And the *hadith*

كل مولود يولد على الفطرة ، فأبواه يهودانه و ينصرانه و يمجسانه (أبو داؤد ، رقم

الحديث : ٤٣١٤)

"Each and every child is born the original nature. Then, it is his parents who make him a Jew, a Christian or a Magus."²

To him the *fitrah* and *khalq* are synonymous. Qurtubi too is of the same opinion. Numerous other great scholars, like Ibn Zaid, also subscribe to the same view.³

According to this opinion, '*altering Allah's creation*' means bringing any unauthorized change into any sector of the religion of Islam. All sorts of disobedience to Allah *ta'ala* and His great Apostle do constitute the act of changing the religion of Allah. As regards the acts and manifestations of paganism and polytheism, they even more obviously are included in the activity of altering the religion of Allah. All polytheistic cults indeed constitute the ugliest sorts of altering the creation of Allah *ta'ala*.

Another interpretation given to the Qur'anic expression *taghyeer khalqillah* centers round the physical changes, that is, effecting changes and alterations into the physical structure of human beings and other animals. However, there is an important point never to be

¹ Abu Hayyan Undlusi, al-Bahrul-Muhit 3/353 under the same verse.

² (Fire-worshipper) (Abu Dawood, Hadith No. 4314.

³ Cf. Tafseer Tabri 2/560-61, Tafseer Ibn Kathir 1/678, Mafateehul-Ghaib 5/452, al-Jami li Ahkamil Qur'an 5/252, Maalimut-Tanzil of al-Baghwi 5/601.

ignored. That is, the comprehensive Qur'anic expression encompasses a wider range of meanings and applications

وَقَالَ لَأَتَّخِذَنَّ مِنْ عِبَادِكَ نَصِيبًا مَفْرُوضًا ۝ ١١٨ وَلَا أَضِلُّهُمْ وَلَا أُضِلُّهُمْ وَلَا أَمُرُّهُمْ فَلْيُيَبِّتْكَ عَادَانِ الْأَنْعَمِ وَلَا أَمُرُّهُمْ فَلْيُعَيِّرَنَّ خَلْقَ اللَّهِ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِّنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُّبِينًا ۝ ١١٩

“He said (to Allah): ‘I will take to myself an appointed portion of Your servants (119) and shall lead them astray, and shall engross them in vain desires, and I shall command them and they will cut off the ears of the cattle, and I shall command them and they will disfigure Allah’s creation. He who took Satan rather than Allah for his guardian has indeed suffered a manifest loss.”¹

This shows that Satan is determined to lay his claim to a portion of men’s time, to their effort and labour, to their energies and capacities, to their material belongings, and to their offspring, and would somehow tick them into devoting a sizeable portion of all these in his cause.

The reference here is to a superstitious Arabian custom. It was customary among the Arabs that after a camel had given birth to five or ten young, they slit her ears and let her go in the name of their deity; they considered it forbidden to put her to any work. Likewise, the male camel that had caused the birth of ten camels was consecrated to some deity. The slitting of ears symbolized this consecration.

To alter Allah’s creation in some respect does not mean changing its original form. If that was meant, human civilization would have to be considered Satanic in its entirety. For civilization consists essentially of man’s putting to use the resources endowed by Allah. Hence the alteration of Allah’s creation, which is characterized as Satanic consists in using a thing not for the purpose for which it was created by Allah. In other words, all acts performed in violation either of one’s true nature or of the intrinsic nature of other things are the result of the misleading promptings of Satan. These include for instance, sodomy, birth control, monasticism, celibacy, sterilization of either men or women, turning males into eunuchs, diverting females from the functions entrusted to them by nature and driving them to perform the functions for which men were created. These and

¹ Al-Qur’an, 4/119.

numerous similar measures are enacted by Satan's disciples in this world, which amounts on their part, to saying that the laws of the Creator were faulty and that they would like to 'reform' them.

If the *taghyeer khalqillah* is taken in an unrestricted way, it will definitely be wrong, even against the meaning and purport of the verse featuring the expression. Since the verse has variously been interpreted and explained by the Qur'anic exegetes, it seems worthwhile to clear some points here.

- (a) Effecting any change into human or animal body intended to achieve a legitimate and natural purpose constitutes no wrong in the eye of the Shariah. To strengthen this opinion a number of recognized precedences might be cited. The animal of offering may be branded by a typical mark.¹ Similarly, the animals of meat may be emasculated, as held by the majority of the Ummah. So, because the lawful animals are intended to serve as food for the human beings and the meat of the emasculated animals offer a relatively tasty food. Notably, Haz. Anas, a Companion of note, held that the emasculation of the animals was not lawful. His viewpoint, however, has not been accepted by the majority of the Ulama. *Khatna* (circumcision), too, offers an even more conspicuous example of that not all alterations effected in the human body are essentially regarded to be unlawful; indeed there are changes and alterations which are highly recommended and approved of by the Shariah.
- (b) While interpreting the Qur'anic expression we shall have to determine the range of applications of the word '*khalqillah*'; does it refer to the usual structural appearance of human beings and animals or to every one's individual physical structure? The answer needs not much labour or explanation. Taken at its face value, the expression does refer only to the normal and usual form of creation. Structural abnormalities are obviously not covered by the expression.

To quote an authentic explanation of the point here:

¹ Ref. Bukhari, Haj, *Ish'arul budan* Hadith No. 1699.

فإن الظاهر أن المراد بتغيير خلق الله سبحانه و تعالى حيواناً على صورته المعتادة لا يغير فيه ، لأن ما خلق على خلاف العادة مثلاً كاللحية للنساء أو العضو الزائد فليس تغييره تغيير خلق الله .

“What is evident being that the proscribed altering of the creation of Allah *ta'ala* means subjecting the normal and usual structure of human beings and other animals to alterations and changes not permitted by the Shariah. It never includes the changes effected to remove the creational abnormalities such as growing beard on the face of women or an extra organ. Removing such creational abnormalities falls not within the ambit of changing the creation of Allah.¹

(c) *Taghyeer-e-Jism* (effecting changes into the physical structure) is impermissible if it is intended only to enhance one's physical appearance and expose it to public. The expression *lil husn* featuring in the *hadith* is of course to restrict and qualify the meaning of the verb. With reference to Imam Nawavi, Mulla Ali Qari explains this *hadith* as follows:

فيه إشارة إلى أن الحرام هو المفعول لطلب الحسن ، أما لو احتاجت إليه لعلاج أو عيب في السن و نحوه فلا بأس به.

“This expression indicates that the impermissible change is the one effected for the sake of beauty enhancement. In case it is effected as a way of treatment or to remove a flaw in the teeth or the likes, doing so will constitute no wrong at all.”²

To the same view has subscribed Allama Badrud-Din Aini Hanafi.³

(d) It would of course be impermissible to make any changes merely under pretentious motives with no actual need. A conspicuous instance to this effect is the prohibition of *taflij*, *tafalluj*, *washr*, *washm*, *qashr*, *nams*, etc. To quote the *hadiths* containing these key words:

¹ Khalil Ahmad of Saharanpur, Bazlul-Majhud 5/72,73.

² Mirqatul-Mafateeh 8/295.

³ Umdatul Qari 15/114, *Waslus-Sha'ar*.

روى أحمد عن عائشة قالت : "كان النبي صلى الله عليه وسلم يلعن القاشرة و المقشورة، والواشمة والموشومة ، و الواصلة والموصولة .
وعن ابن مسعود قال : سمعت رسول الله صلى الله عليه وسلم ينهى عن النامصة والواشرة والواصلة والواشمة إلا من داء .

On the authority of Ayisha (may Allah be pleased with her) Imam Ahmad bin Hambal reports that the Holy Prophet cursed the *qashira* and the *maqshura*, *washima* and *maqshuma* and *wasila* and *mausula*. He also reported Abdullah bin Masud (may Allah be pleased with him) to have said: "I heard the Apostle of Allah forbidding the practice of *nams*, *washr*, *wasl* and *washm*, except that it is done due to an illness.

Meaning and explanation of the key words occurring in the *Hadiths*

Qaashira: the woman who treats her face or the faces of other women by applying the ointment made of a plant with a view to clean her complexion. *Maqshura* is the woman who is subjected to this type of treatment. *Waashima*: the subjective form of *Washm*. This is practiced by pricking the needle or the likes into the skin on the back of the palm, wrist, face, lip, etc, so that the blood flows out. Then the pricked place is filled up with collyrium or the likes, and then the pricked place turns green. From *washm* are derived the *waashima*, the woman practicing the *washm*, and *maushooma*, the woman subject to the activity of *washm*.

Wasl, literally to join or add. In the *hadith* the terms *waasila* and *mausula* indicate those women who are given to join other peoples' hair to theirs in order to enhance their appearance on an unreal base and thereby to impress others with their fake longer hair.

Nams. This Arabic term implies plucking out the hair off the face. This is an activity disapproved of by the Holy Prophet (SAWS). The woman, however, is permitted to pluck the hair off her face if the hair on her face has grown beyond normal, such as bear or mustache. In such cases she is recommendably asked to remove such unwanted hair. The relative terms featuring in a number of *hadiths* are *naamisa* and *mutanammisa*, implying those women who practice the *nams*.

Tafleej, making distance between the frontal teeth artificially by the use of rasp or the likes.

Washr, implies the incision of the teeth so that they are edgy. This activity is generally practised by the aged women to look as young. All such acts have been denounced by the Holy Prophet (SAWS) to be the instances of altering the creation of Allah, an act sponsored by Satan the Damned.

To conclude, the *washm*, *nams* and *tafleej* do include the prohibitions of the Shariah. This prohibition is predicated upon the report agreed upon by the Bukhari, Muslim and Imam Ahmad reported by Haz. Abdullah bin Masud (RAZ) in the following words:

عن عبد الله بن مسعود قال : لعن الله الواشمات والمستوشمات والمتنمصات والمتفلجات للحسن ، المغيرات لخلق الله تعالى .

Haz. Abdullah bin Masud (RAZ) reported the Prophet (SAWS) to have said: Allah declared His curse on those women who are given to practice *washm*, *nams* and *tafleej* for the sake of beauty. Such are the guilty of altering the creation of Allah.

Effecting permanent changes in the body

For bringing permanent changes into the human body, whether for the sake of beauty or intended for medical purposes, the method normally applied is the plastic surgery. The plastic surgery *per se* is a permissible act. For medical purposes it is undoubtedly acceptable to the Shariah if the expected benefit outweighs the feared harm. But it shall turn absolutely impermissible if it is intended to alter the mode of Allah's creation.

External means of the beauty enhancement

All external means of the beauty enhancement might roughly be put in to two broad categories: the wearables and the ornaments. So far as the wearables are concerned, the Shariah has not specified any special design, mode or colour for either sex, except some primary instructions.

- (a) The primary purpose associated with the use of wearables is to cover the human body in a natural and decent manner. The wearables not satisfying this primary purpose is permissible for neither sex. The clothing must cover the coverable parts of the human body, without being too fine and too light to meet this purpose.

- (b) The wearables made of silk are declared forbidden for men. Silky clothing is specially permissible for women to the complete exclusion of men. Anas bin Malik (may Allah be pleased with him) reported the Holy Prophet (SAWS) to have said:

من لبس الحرير في الدنيا لم يلبسه في الآخرة .

He who wore the silk in this world shall not wear it in the *Akhira*.¹

This is about the clothing exclusively made of silk. As of the garment made of the cotton and silk, it has been a point of difference between the Fuqaha. If the cotton is more than the silk, to some jurists, including the Hanafis, the use of such a clothing is permissible.

As far as the pattern of clothing is concerned, Islamic Shariah has not prescribed any particular one for either sex. The only condition being that the clothing must cover the part of the body so ordained by the law of the Shariah and, each sex must have a clear distinction in terms of pattern and design.

As regards the desirable aspects in man's wearing, for men it is strongly recommended that they wear white garments. Coloured garments, particularly the dark saffron, has been regarded a bit reprehensible.

Ornaments also constitute an essential part of the external beautification. For this purpose, gold, silver and diamonds of various types have been used ever since the earlier phase of human cultural history. The jewelry is for women to the exclusion of men.

Dying the hair is also an important way of adorning the self. Different colours and dyestuff have been applied for the purpose. Since dyeing the hair may be a way to deceive others and exposing the self unrealistically, the use of black dyeing stuff or the people in the advanced age group has been discouraged by the Shariah. There exists a number of reports from the Prophet (SAWS) which seek to discourage the use of black dyeing stuff to colour the hair of head or beard. The reports which suggest the undesirability of the black dyeing stuff are to be applied in the case of the people passing through the advanced stage of their life. Their use of black dyeing

¹ Muslim, *Tahrim labsil harir*, Hadith No. 2463, Mustadrik Hakim 4/41, Hadith No. 216 Illaus Sunan 17/331, *Hurmat al-Harir*.

stuff will amount to deceiving others about their age and natural decaying features. Based on the reports with apparent difference the opinions of the Ulama and scholars are also different. To some the use of black dyeing stuff is prohibited no matter to which age group the user belongs. To others the use of black dyeing stuff constitutes no wrong in the eye of the Shariah. The moderate view, however, being that the use of black dyeing stuff is to be discouraged when it is used with a view to deceive others. It may be acceptable to the Shariah if the *mujahidin* use this in order to overawe the disbelievers' army. The husbands and wives may also apply the black dyeing stuff to please their spouses.

In sum, the theme underlying the reports suggesting prohibition is to minimize the possibilities of deceiving others.

A noteworthy point of Juristic importance

الضرورات تبيح المحظورات .

Such physical modifications in the human body as fall not within the ambit of necessity in normal conditions, only under pressing condition they might assume the status of necessity. For instance, there is a girl with the nose widespread, rendering her face and appearance unusually uglier, and, therefore, she is not receiving suitable propositions for match. No denying of that her clumsy appearance is not a physical pain for her. Still, the mental agony she has to undergo when her match is rejected solely due to her ugly appearance is by no way less painful than any type of the physical suffering. This indeed is a point which deserves to be taken into serious consideration by the jurist fraternity and those associated with the *iftaa* institutions. As far as I think, under such pressing conditions undergoing a cosmetic operation should be permissible. Such are the specific conditions which merit to be governed by the juristic doctrine, that is,

الضرورات تُبيح المحظورات .

Book Three

Medical Ethics in the Islamic Teachings

The details of the proposition of 'Medical Ethics through the prime of the Islamic Teachings' have been arranged in three distinct units, each having its separate set of questions.

The Questionnaire

Unit First: Liability

The questionnaire, prepared by the Academy and sent to a fairly large number of the men of Islamic learning and juristic acumen, was a multipronged item revolving round three important themes forming the subject matter of the Medical Ethics in the structure of the Islamic teachings. The theme first includes four queries in respect of the liability of the physician and surgeon and opens with an introductory note.

The Questionnaire: Theme Second: Aids

The second theme is meant to discuss the Aids, a terrible disease of the modern age brought about by an unbridled sexual urge and the fast growing sexist cult of the modern technologically developed age. Covering various aspects of the Aids and the patient suffering from this unfortunate disease, the curse of the ultra modernism, the theme has been split into eleven queries.

The Questionnaire: Theme Third:

Limits of observing the principle of confidentiality, nature of relationship between the doctor and the patient

With an unprecedented increase in the diseases brought about by the calamities and accidents the need of doctors is on the constant increase. There is hardly a family or an individual who is not in contact with the medical professionals or medical institutions for consultation and treatment. Throughout the world the governments are doing their best to establish and promote the medical institutions, equipping them with latest and state-of-the art equipments and the required machines and apparatus and hiring the best services of the best medical experts. In view of the growing prospects of incomparably high earning and money-making, a large number of the incompetent people has also rushed into this field, and it is unfortunate that, in spite of the legal provisions meant to stem the tide and curb the pseudo-doctors and medical practitioners, their number is steadily augmenting. For the practice of the medical profession the

government has introduced a number of legal measures which include special education, specialization in different areas of medical science plus an experience to be obtained either from the governmental medical institutions and research centres or from those running under a writ of the government itself.

Surgical operations are also a mode of effective treatment of various diseases and physical problems. In order to carry out an operation and subject the patient to surgery the doctor is legally required to obtain permission from the patient, if he is legally fit to give it, or from his guardians. Besides this, a very important aspect is of the limits of the physician's or surgeon's liability to punishment and indemnity against the death or a considerable injury the patient might suffer in the event of his/her surgical operation or due to lapses, mistakenly or otherwise, on the part of the doctor and physician vis-à-vis the patient under his care. In order to seek a proper guidance in this respect the following questions are served to the men of Islamic scholarship, hoping the questions shall be addressed in the light of the sources of the Islamic teachings.

- 1) A person not legally allowed to work as a medical professional due to the lack of the prescribed qualification and the required experience recognized by the government treated a patient on his demand on the basis of his self acquired medical knowledge and experience and his treatment inflicted an inordinate harm to the patient, or caused his death. Shall such a self-proclaimed physician be legally held liable for indemnity against the loss and for facing punitive actions on the part of the authorities? And, what is the position of the Shariah on such a person's engaging himself in the medical profession?
- 2) A person who is legally permitted to practice the medical profession treated a patient, but intentionally did not observe the required medical precautions, e.g.; did not direct him to undergo the required tests and important diagnostic examinations, or his behavior towards the patient remained careless. If his treatment resulted in the patient's death or in the loss of any organ, such as an eye, shall this doctor be

held liable for an indemnity against the loss of the patient's life or limb?

- 3) In the opinion of the medical expert patient needs immediate operation and a legally competent and qualified doctor performed the operation which proved a failure and precipitated the patient's death or rendered the operated organ useless. If the operation was immediately needed and the doctor performed it on his own instance, without obtaining due permission from the patient or his guardians and relatives, shall the doctor be regarded legally bound to take on the liability to the loss suffered?
- 4) The patient is lying unconscious, not available to grant permission; his guardian(s) or his next of kin, too, is happen to be far away, not available to seek permission from, and no contact could be made with them. On the other hand, the medical experts are of the opinion that the patient's life or limb could only be saved by performing an immediate operation on him, and the doctor, acting on the spur of the moment, performed the operation which unfortunately proved a failure; the patient suffered death or the operated organ is lost or rendered useless. Shall the doctor's act under such compelling situation attract a penalty or liability for the loss suffered by the patient?

Unit Second: the AIDS

The Questionnaire

Introductory note

The aids has made the present world live in a state of constant fear. This unfortunate disease destroys the immune system of the human physical structure, leaving the human beings highly vulnerable to different painful and deadly diseases, and eventually succumb to death. A still dangerous aspect of this cursed disease is that it spreads sharply and in an uncontrolled way. If a person attracted this disease at a place, and the necessary precautions are disregarded, it will take no time to hit a larger number of people across the area. This dangerous disease is contagious and spreads to other people by sexual activities and touching of the blood of the diseased. This may also pass over from an affected mother to her child during the period of pregnancy and breastfeeding. Normal living with the people affected by the aids, however, plays little role in its spread.

This dreadful disease has given rise to a number of complexities and problems for the diseased, his/her relatives and the society. In order to face those complexities and problems in a realistic manner the stance of the Shariah, based on the principles of Islamic teachings, is being sought by forwarding a well-structured questionnaire to the noted men of Islamic learning.

- (1) A person is diagnosed with having the aids bacteria. If this person becomes known to the society as one suffering from the aids, in most cases, such a person is subjected to a type of social isolation in the society around him/her even at his/her household level. Is it binding upon such a person to make his/her disease known to the society and his/her homemates? Would it constitute a wrong on the part of the diseased to maintain secrecy about his/her disease?
- (2) Maintaining a complete secrecy, an aids patient has not disclosed his disease to his family members and the relatives and, quite naturally, the same thing is impressing upon his/her physician. What should legally be the attitude and reaction of the physician towards this demand? What

would be binding on the physician, maintaining secrecy or disclosure of the disease?

- (3) Side by side the aids, there are other frightful diseases like plague, etc. What are the legal responsibilities of the society and the family members towards the patients?
- (4) Fully aware of the dangerous nature of his disease, aids, a patient, with an intent to pass his disease to other persons, did an activity which transmitted the bacteria of the aids to them, e.g. he copulated with his wife and, as a result, the virus got transmitted to her; or he donated his blood to a needy patient and he, thus, attracted the aids. Shall this aids patient, who knowingly managed to pass his dangerous disease to other persons, be liable for a punitive action against him? And, what if he had no such an intent but knowingly committed such acts as caused others attract this unfortunate disease?
- (5) A woman the victim of the Aids conceived a child. Now there exists a strong likelihood that during the period of pregnancy, child birth or breast-feeding the disease may transmit to the baby as well. Entertaining such a strong fear, is it lawful for such an aids victim to have an abortion? And, if she refuses to opt for the abortion, shall her husband or the government's health department force her to have an abortion? This point assumes greater importance when it is seen in the perspective that an aids victim child, in all probability, is feared to be a curse for the society and mere a liability for the government.
- (6) A married Muslim husband attracted the aids after his marriage. Does this situation offer the wife a legally sufficient reason to demand for the dissolution of her marriage?
- (7) Is it legally right to debar the children victim of aids from getting admissions to the schools and other educational institutions fearing the spread of this disease? On the other hand, the established medical fact is that the aids, though contagious by nature, does not transmit to others by touching the patient or living with him/her. It may transmit

to others by touching the victim's blood or copulating with him/her. The aids, in normal conditions, is not feared to spread in the student community by merely having amongst them a few aids victims. The fear may, however, come true if ever clashes broke out among the school children and the blood of the aids victim student touched other children, or the sexually dissipated students may come into contact with the aids victim students and thus attract the disease.

- (8) What are the responsibilities of the parents, family members and the society towards the children, boys and girls, suffering from the aids?
- (9) The deadly diseases like aids, plague, cancer, etc. reached the stage of incurability according to the opinion of the medical experts. Shall the victims of such deadly diseases getting to the proportions of incurability and rendering the victims incapable of carrying out their normal functions of life on their own be treated like those ones on the deathbed?
- (10) In the event of the spread of a disease as contagious as plague, etc, the government authorities often impose restrictions on the free movements of the people in the disease-affected region. What is the stance of the Shariah on such restrictions?
- (11) Compelled by their needs, some people are away from their hometown. Their region is now in the grip of such a disease. On the other hand, those people feel strong need to return to their plagued home region where their families need them and their work, business and other economic activities, too, require their care and presence. And, due to reasons unavoidable altogether, they cannot prolong their stay at the place where they had already been staying before their own region fell prey to the plague. What are the directions of the Shariah for such people whose family members are living in an area under the grip of plague, and exposed to the disease? Similarly, there are people of other areas staying in an area where plague has broken out. They are no longer in need to stay here either because of that they

have completed their task, and now have become workless, or the persons and patients who have been rendered unable to receive a proper treatment and care in the affected region, or such persons as are needed elsewhere to render their services there. What are the directions of the Shariah for such people?

Unit Third:

Applications of the Principle of Confidentiality

The Questionnaire: Total number of queries 10

Introductory note Concept of Trust in Islamic teachings

On trust and fidelity much stress has been laid. It is worth mentioning here that in Islam the concept of Trust is much wider and inclusive. The Prophet (SAWS) is reported to have said:

المجالس بالأمانة .

“Assemblies are trust indeed.”

That is, sitting together and talking to each other in assemblages are to be kept in trust.

A physician also is a trusty of the secrets of the patients under his treatment. Taking from the Shariah, law and moral viewpoint, a doctor is committed to maintain complete secrecy and strictly observe the principle of confidentiality *vis-à-vis* the secrets of the patients under his treatment and medical care, and never to disclose their secrets to anyone else, especially those ones the disclosure of which might hurt them or infamize them in the society. But, there might develop the circumstances which render the principle of confidentiality as irrelevant. So when it turns harmful to the legitimate interests of other people, a blind insistence on an unrestricted application of the principle of confidentiality is bound to jeopardise the lives of numerous people. Under such situations (which the medical fraternity often has to face) a Muslim doctor feels immensely embarrassed. Should he maintain complete secrecy, he is feared to bring harm to other innocent people; and if he discloses the patient's secrets to others, he will be committing the wrong of breaching the trust in a confiding relationship established between the two by the patient by putting his/her unconditional trust in the doctor as such. Following are a few more common situations the doctors often encounter. In order to present the questions in an orderly form, a questionnaire has been structured. On the questions the position of the Shariah is being sought to enable the Muslim doctor fraternity determine their way out in the light of the Islamic teachings.

- (1) A youth is undergoing ophthalmic treatment under a Muslim eye specialist. The doctor treated his eye and the affected eye has lost the vision completely. But through the doctor's best efforts the vision less eye looks sound and unaffected. Completely unaware of this defect in the boy, a woman has proposed him for marriage. The doctor believes that the woman would never agree to contract her marriage with the boy if she comes to know that one of his eyes is visionless. The boy is managing to contract his marriage with her, keeping her completely in the darkness about his unignorable defect. Under such a situation is the doctor legally obliged to disclose the secret and his defect to the woman and her guardians? Or, should the doctor maintain complete confidentiality? If girl's family members somehow has come to know that the boy is undergoing ophthalmic treatment under the doctor so and so and they approached the doctor in order to know the correct situation about the eyes of the boy, what should be the attitude of the doctor towards their demand? Should he tell them the exact situation or observe the principle of complete confidentiality?
- (2) A man and woman are negotiating for marriage. They approached a doctor for a medical test. The test disclosed to the doctor an internal disease of either one of the two that if they married the couple is feared to breed the babies with congenital defects and deformed organs. Or through a thorough medical examination the doctor came to know that the man or woman is medically unfit to become father/mother due to a deficiency. Is it binding upon the doctor to inform the other party with the defect or disease of the first party, or he should maintain secrecy as a secret of the patient under his care or test?
- (3) A person is undergoing medical treatment under a doctor. The medical examination of the patient revealed that due to an internal deficiency the person has become impotent, or that his semen lacks reproductive cells. If married, he cannot impregnate his wife. The doctor also has the

knowledge that the person is negotiating with a woman for marriage and, keeping her completely in the dark about his serious deficiency, is going to conclude the marriage with her. In the like manner a woman is under treatment of a Muslim doctor for such an internal disease or congenital deficiency which has rendered her unfit for a fruitful marriage. Concealing her disease or the defect, the woman is negotiating for marriage with a man. If the man is informed of her defect, he shall never agree to marry her. The doctor is also aware of that she is negotiating for marriage with a man. What is the moral and legal obligation of the doctor facing such a situation? Should he disclose one party's defect to another one, or keep it a secret? And, likewise, what should be the response of the doctor if one party contacts him to have information about another party's undisclosed aspects of his/her internal health?

This question is more imaginary than being real. It is quite rare that the visually impaired people dare to occupy the driver's seat.-Ed.

- (4) A person's eyesight is badly impaired. He holds the driving license, and in the opinion of the doctor, the driving of such a person with seriously damaged eyesight is dangerous both for him and others. With complete disregard to the doctor's warning and dissuasion, he often drives vehicles. Is it now the responsibility of the doctor to inform the concerned government department to initiate action against such an unfit driver and cancel his license? Or the doctor should maintain secrecy and stay silent?

This question assumes greater significance when such a person is a driver employee and drives buses and other vehicles of the type. If the doctor maintains secrecy and does not inform the concerned department, the lives of many people will remain in constant jeopardy. By his informing the authorities the eyesight impairment of the person, there is a stronger likelihood of the termination of his employment, and, as a result, his dependants and family members may get into financial difficulties.

- (5) A person is an employee, engaging a position associated with the lives of numerous people, e.g., a pilot, a driver of the train, buses, etc. He is badly addicted to wine and drugs. Disregarding all persuasive efforts on the part of others, he continues consuming drugs and intoxicants and in the state of drunkenness discharges his functional duty. He is under the treatment of a doctor who knows of his bad habit. Is the doctor obliged to inform the concerned department, or stay silent, observing the principle of confidentiality?
- (6) An unmarried woman got pregnant and bore a baby. In order to evade the ignominy in the society she left secretly the living at a baby at a public place and informed the doctor of the entire situation. What would be the responsibility of the doctor under such a situation: abiding by the principle of confidentiality by telling none the event, or to protect the life and interests of the baby by informing the concerned department and the authorities?
- (7) A person is a drug addicted and rashly consumes wine and other intoxicants. Despite his wish to give up the use of all intoxicating substances, he seems unable to do so. In order to cure him of this cursed habit the person himself, or any individual of his family, contacted an expert psychologist. The doctor subjected the addict to a number of different ways, but all in vain, and he still consumes the intoxicants with no break. The doctor now has been left with no other way to cure him except that to prescribe for the patient the use the wine, etc. from time to time mixing to it, telling nothing to the patient, an amount of such a substance to make him vomit for some time and feel greatly uneasy each time, this way to psychologically convince the patient that the vomiting was an unavoidable result of the consumption of the intoxicants and their use in future is bound to bear the same dreadful result. This way of treatment, according to the doctor, has proved fruitful vis-à-vis a number of such patients that had been suffering from drug and intoxicants' addiction. After a Muslim doctor's failure to cure the addict by applying all the ways of psychological treatment at his

disposal, would it be permissible for him to apply the same way of treatment which doubtlessly involve the use of a thing absolutely forbidden in Islam?

- (8) Various criminals often are under treatment of expert psychologists. Naturally, the criminals are given to keep their criminal character secret from all other people around them in the society and let nobody know of them. For example, there is a spy who manages to gather people's secrets and then passes them on to some other people or parties and thus inflicts grave harm on the people. Feeling himself guilty of conscience, such a person often begins to feel deeply embarrassed. Constant psychological embarrassment may also cause other internal problems which force him to contact a doctor and in the course of his medical examination, he has to tell the doctor about his crimes and profession. Among such criminals there are many who believe their professional activities as absolutely wrong and feel discontented with carrying them on. But, unfortunately, when they see their economic interests associated with such criminal professions, they lose courage to give up this evil pattern of living.

The doctor has full knowledge about this person's criminal character by the patient's own profession. How should the doctor behave towards this criminal who is responsible to ruine many families and persons? Should he keep his secrets intact telling nothing about him and his crimes to anybody else, or inform the people and the concerned government department so that the people may be safe from his future criminal and spying activities?

- (9) A patient, say a psychic, perpetrated as graver a crime as homicide etc, and made a profession of his crime before his doctor. On the other hand, an innocent person has been accused of the crime and being tried for the same. There is a strong fear of that this innocent accused might be convicted for the crime and awarded punishment. Under the given situation, what should be the course of action to be adopted by the doctor: sticking to the principle of confidentiality, or

making a statement in the court of justice so as to save an innocent from undue imprisonment?

- (10) There is a patient suffering from a contagious disease like aids, plague, etc, and is receiving treatment under a doctor. The patient insistently requested the doctor never to tell about his disease to anybody else, even to the patient's family members, fearing that he otherwise might be reduced to a state of complete untouchability and social boycott. How should the doctor face this dilemma: to maintain confidentiality and thus protect the interests of the patient, or to inform his family and others about his disease in order to contain the spread of that contagious disease in the area?

Resolutions of the Academy towards the proposition of Medical Ethics¹

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 brought in conformity with the Islamic teachings. The Eight Seminar of the IFA discussed many related issues of medical ethics and resolved as follows.

1. Only a duly qualified person whose competency in the matter has been authenticated by a credible authority is competent to undertake the treatment of patients. Precisely speaking, the *Shariah* never permits a person to treat the patients without due competence and the required qualification.
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, both.
3. If the patient suffered harm to his/her health due to the negligence of or some lapse on the part of the person treating him/her, the treating person shall not escape the liability, even if the physician is duly qualified.
4. If, in spite of the full opportunity, the doctor performs an operation without the consent of the patient or his next of kin and the operation either causes death or some injury to the patient, liability will invariably fall on the doctor.
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 an organ of the patient, immediate operation is indispensable and he/she performed the operation without obtaining any one's consent, and it

¹ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct. 1995.

resulted in some injury to the patient, the doctor will not be held liable.

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 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 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 did not contact the doctor in this regard, it will not be incumbent on the doctor on his own accord, to inform the lady or her guardians of the person's disease or deficiency.
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 airoplane or a bus-driver is so addicted to drinking as may jeopardize the safety of passengers, it will be incumbent on the doctor intimate this truth to the concerned authorities.
8. If the doctor knows about an offence having been committed by his patient and someone else is being prosecuted for that offence, it will be incumbent on the doctor to make the fact known to the authorities in order to save the innocent persons. The principle of confidentiality will not be applicable in such a case.

Resolutions of the Academy on Matters related to AIDS¹

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

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 contracting AIDS subsequent to marriage, provided that the AIDS assumes serious proportion.
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 at 120 days from the day of conception, permission for abortion can be given.
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 the deathbed.
4. It is the moral responsibility of an AIDS patient to inform his kinsmen of it and also to take all necessary precautions to avoid its transference to others.
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, it will be incumbent on the doctor to convey the information to the relatives of the patient and the health authorities.
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

¹ 8th Fiqhi Seminar (Aligarh – U.P) 22-24 Oct 1995.

- precautions, good care should be taken of the patients and due cooperation be offered in their treatment.
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.
 8. Restriction of movement in and out of plague-affected areas is desirable except in cases of extreme necessity.
 9. It is *haram* (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 bore on an individual or on the society as a whole.

Medical Ethics an overview of the papers Submitted to the Academy

(Following is an overview of the papers contributed to the seminar by the Ulama in response to the Questionnaire served to them by the Islamic Fiqh Academy of India in order to adopt a final resolution vis-à-vis the issues discussed in the seminar. The overview has been prepared by Mufti Md. Fahim Akhtar Nadwi, formerly in-charge of the Academic Sector of the Academy.)

Unit the first: Liability

Since the questions falling under the first theme revolve round the concept of liability of the physicians and doctors in the Islamic Jurisprudence, several scholars and discussants have touched upon the preconditions stipulated by the great Fuqaha as eligibility for exercising the medical profession. In respect of holding the doctor as liable for any loss suffered by the patient the conditions laid down by different Fuqaha are not unanimous. They are considerably different. Leaving other differences apart, Maulana Mufti Akhtar Imam Adil provides a common ground to discuss the preconditions a careful observation of which on the part of the doctor saves him against providing indemnity against any damage or loss suffered by the patient due to any mistake of the doctor. Such prerequisites are four, according to the description of Maulana Mufti Akhtar Imam Adil.

1-The practitioner must be a doctor recognized by the law of the land. This prerequisite is grounded in the *hadith*:

مَنْ تَطَبَّبَ وَلَمْ يُعْلَمْ مِنْهُ طَبٌّ فَهُوَ ضَامِنٌ .

The person, who worked as doctor and never before he was known as such shall bear the responsibility.¹

2- He treated the patient with a sincere intention and interest.

3- In carrying out the treatment due medical care has been taken into account.

4- The treatment has been offered with the consent of the patient or his/her guardians.

Maulana Khalid Saifu Allah Rahmani is of the opinion that keeping in view the fact that our contemporary age has witnessed

¹ Mishkaat.

great advances in all of its branches and the medical science has developed into a vast complex and multifarious discipline, the expert doctor shall be regarded only the person who has systematically studied the discipline in the medical institutions and gained the required experience under the competent doctors recognized by the government and its health department.

This theme consists of four questions:

1- Treating the patient without competence

The opinion shared by the majority of the scholars is that the person lacking the required competence is not permitted at all to exercise the medical profession. In the event of any loss caused to the patient, the treating person not just be held liable for the loss, he may face a punitive action from the concerned government authorities as well.

The other opinion is that if such a person possesses sufficient knowledge and experience in the medical discipline, though not legally permitted to exercise the medical profession, he may treat a patient as, taken from the Shariah viewpoint, such a person is permitted to do so. On the request of the patient he may embark upon treating him. Now the physician will assume the status of an employee and the contract of employment shall bring him under obligation to treat the patient. Now, in the event of any loss suffered by the patient, the treating person shall not legally be held responsible for the loss or face a punishment. This opinion is grounded in the following juristic statement:

أما الحاكم و الحجام و الختان و الفصّاد والبزّاغ فلا يتقيد فعلهم بشرط السلامة كالأجير

“As for the hakim, the cupper, the performer of the operation of circumcision, phlebotomy and *fassaad*, their operations they undertake as employee are not restricted by the condition of security and protection.”¹

As of the loss of the patient arising out from the negligence of the doctor, it is a unanimity opinion that the doctor shall be held responsible for such a loss and damage.

2- Performing an operation without consent

If the doctor performed a surgical operation without seeking permission from the patient or his/her guardians and the operation

¹ Durre-Mukhtaar 5/363.

proved fatal the majority opinion is that the doctor shall be held liable. To quote the words of an authority:

و يستفاد بمجموع الروايتين اشتراط عدم التجاوز والإذن لعدم وجوب الضمان حتى إذا
عدم أحدهما أو كلاهما يجب الضمان .

What is gathered from the combination of the two reports is that in order to evade the liability to the loss, what is prerequisite required are not crossing the permitted limits and seeking permission. Both the conditions are so important that if either one or both get missing, the liability shall turn incumbent.¹

In contrast, there are scholars who think otherwise. According to them, going by the principle الضرر يزال the doctor in this situation shall not be held liable. This view has been expressed by Mufti Habibul Allah Qasmi and Maulana Md. Harun.

4-Performing operation without permission under necessitating conditions

Vis-à-vis this question the majority opinion is that saving a human soul against destruction is an obligation on every human being from Allah *ta'ala* Himself, to all possible extents. Under such a set of circumstances the doctor shall be regarded as permitted legally, though not from the patient or his guardians; and if the operation proved fatal without his negligence, there will arise no question of liability.

As opposed to this view, another view, shared by Maulana Zubair Ahmad Qasmi and Mufti Md. Zaid Mazahiri, is that though the doctor's this act is expected to fetch great reward from Allah as the motive behind this venture was no other than the feelings of compassion towards the patient, still, in the event of the failure, the doctor shall be held liable for the damage because, as a matter of principle, his performing the operation was just permissible which from the Islamic juristic viewpoint is restricted to safety security and success, and in the case of any loss the doer shall be held liable.

¹ Al-Bahrur Raiq 8/29.

Second theme the limits of Secrecy of an Aids Patient with Respect to His/Her Disease

(As already indicated in the questionnaire, the theme second comprises eleven questions in total. These eleven questions are meant to seek clarification on the limits of exercising the right of secrecy in respect of an Aids patient and other relevant aspects.)

1) Responsibility of an Aids patient towards others

Addressing this point, the *Ulama* and scholars stay divided in two groups. One group holds the view that since the policy of maintaining secrecy about his/her disease might be harmful to his/her family, relatives and the friends, it will be incumbent upon him/her to inform his family members and the circle of friends of his disease. Admittedly, by informing others his secrecy is violated, yet this harm is obviously restricted to his own self. A cloak of secrecy on his fatal disease may be harmful to many. So, going by the principle:

يتحمل الضرر الخاص لدفع الضرر العام .

“Personal loss shall be born in order to ward off the common loss.”

It will be binding on the aids patient to tell his family and the friends about his disease and the correct position of his health. In the event of his bleeding there exists a strong likelihood that his disease may pass on to others. This being the opinion shared by several scholars including Maulana Atique Ahmad Qasmi and Maulana Khalid Saif Allah Rahmani.

The scholars thinking otherwise say that transmission of this disease is restricted to the sexual relationship with the patient or that the blood of the patient is transmitted to others. The patient's living together with others is not the cause responsible for its transmission to others. On the other hand, if he is forced to break his secrecy, he will become untouchable, reduced to a social isolation. The patient shall be asked to observe and take necessary precautions but not to necessarily tell his family member and the circle of friends. To this opinion subscribe Maulana Md. Ubaid Allah al-Asadi and Maulana Md. Zaid Mazahiri.

2) Responsibility of the doctor

While different in respect of tone and wording, the scholars addressing this question are primarily of the view that the doctor shall legally be obliged to uncover the secrets of his patients only in the condition that the disease is feared to pass on to others, thus causing harm to them. Otherwise, he will not be obliged to do so. The patient, however, shall be required to take necessary precautions. They should guide him in this regard.

3) Responsibility of the society towards an aids patient

In response to this question there is a complete unanimity amongst all the scholars on the point the persons suffering from the aids merit full social and medical care and a fuller support in taking precautions. The patient must not be reduced to social isolation and mental torture. Such a person needs to be treated with leniency and the feelings of mercy and compassion.

4) Intentional transmission of the disease

If the patient commits an act intending thereby the transmission of his disease to others, the majority opinion is that by so doing he not just earned a grave sin, but also shall be held liable for indemnity against the loss and damage he/she inflicted.

According to some other scholars he did commit a crime. But the transmission cannot occur unless the other party too contributes to the process with his/her own activity, that is, having sex with the patient or receiving blood from him. There is a juristic principle which reads: If the slain or the destructed person too shared the activity which resulted in his death and destruction, there is no question of liability for the loss on the first doer. The patient, therefore, shall not be held responsible for indemnity against the loss of life or limb. This view is shared by Maulana Mufti Akhtar Imam Adil Qasmi and Maulana Zubair Ahmad Qasmi.

Maulana Ubaid Allah As'adi and Maulana Muhammad Zaid Mazahiri hold that if the patient did not intend the transgression and did so under the feelings of compassion, his justification shall be accepted.

5) Right to the dissolution of marriage

On this point we have a unanimity opinion. Going by the statements of the three grand Imams and Imam Muhammad bin al-Hasan al-Shibaani, all the participating scholars hold that the wife of an AIDS patient possesses right to make a demand for the dissolution of her marriage.

6) Abortion

Almost all the participants and scholars share the view that as long as the embryo is without life the woman may have an abortion. But never after it got alive. There is a complete unanimity amongst all the scholars of the Ummah that after the embryo got alive and life is infused into it, it will be absolutely forbidden to have an abortion.

In case the woman is not prepared to have an abortion, her husband or the government's health department may force her to do so. This opinion is shared by Maulana Khalid Saif Allah Rahmani and Maulana Muhammad Zaid Mazahiri.

To Maulana Atiq Ahmad Qasmi and Maulana Zubair Ahmad Qasmi, the woman could not be forced to have an abortion; it may be carried out only with her consent. According to Maulana Shams Pirzada that abortion shall be permissible only in the condition that the life of the woman is in danger.

7) AIDS-hit children and their admission to the schools

In response to this question of grave social import almost all the scholars are of the view that it will be totally wrong to deny the education to the AIDS victim children. Necessary precautions should be followed. Like all other children, the children suffering from AIDS, too, are equally rightful to have education. If affordable and practically feasible, separate educational institutions should be established for them.

8) Same as the detail furnished under 3.

9) Are the AIDS and similar other diseases to be treated as the mortal ones?

The mortal disease has variously been defined by the Fuqaha. The prolonged diseases which are increasing with every passing day

shall be treated as the mortal disease, according to a fair number of the scholars. But if for a period of one year the disease remained as it was, the disease is not to be considered as such.

According to Maulana Ubaid Allah As'adi the intensity of plague is to be treated as mortal. To Maulana Atiq Ahmad Qasmi, if the Aids, plague and cancer turn incurable, the patient shall be treated as to be enduring mortal disease.

10) Restricting the movements in the plague hit area

On this point all the participant scholars are unanimously agreed that implementing such restrictions in an area under the grip of plague is not just good but recommendable and in compliance with the directions of the Holy Prophet (SAWS).

11) Visiting the plague hit area under necessitating conditions

There is a perfect unanimity amongst all the participants and scholars on the point that the emergency situations and the necessitating conditions shall stand exempted from the writ restricting entry into or exit the plague-hit area, and for the purpose of treatment the doctors and medical experts, the plague victims and other patients shall be allowed to go in and out from the plague affected area.

Theme the Third

Principle of secrecy in the doctor-patient relationship: Restricting the applicability through the prism of Islamic teachings

Brief overview of the views expressed by the contributing discussants

1. Most discussants are of the opinion that the doctor should not disclose the secret at his own accord. Going by the direction of the Holy Prophet (SAW), the advisor in fact is depositary, he should tell whatever he correctly knows about him. To some scholars the doctor is required to enlighten the guardians of the woman whatever defects and diseases he knows of the person under his medical care and negotiating the marriage, whatever the situation. (Maulana Atiq Ahmad Qasmi, Maulana Khalid Saif Allah Rahmani)
2. Almost all the discussants subscribe to the view that the doctor should share the knowledge with the second party of all the defects and diseases detected by the medical investigation. This knowledge sharing assumes even greater importance in view of the fact that both the parties have approached the doctor with the sole purpose of having a thorough medical examination. Concealing the facts, therefore, will amount to misinformation, an act in stark contravention to the accepted medical ethics.
3. All the scholars are of the view that if asked, it would be incumbent upon the doctor to reveal all the facts the correct knowledge of which he has gathered through medical examinations and the tests about the patient. However, if he is not asked, it shall not be admissible for the doctor to disclose the negative aspects of his patient's secrets he is in knowledge of. So have opined Maulana Zubair Ahmad Qasmi and Maulana Md. Zaid Mazahiri. By contrast, to some other scholars such as Maulana Khalid Saif Allah Rahmani and Maulana Atiq Ahmad Qasmi, the doctor will

be at liberty to make or not to make the disclosure of the secrets even if he is not requested to do so.

4. There is a complete unanimity amongst all the discussants that the doctor is obliged to bring the matter to the notice of the concerned authorities.
5. There is a complete unanimity amongst all the discussants that the doctor is obliged to bring the matter to the notice of the concerned authorities.
6. Almost all the scholars are of the view that as far as possible keeping secrets is the best option. On the other hand, saving an endangered human life is far too important and the Islamic teachings speak so highly of it. So, if the life of the child could be saved without clearly naming the mother, anonymity has to be preserved. If the safety of the child requires the disclosure of her name and identity, the principle of secrecy shall turn inapplicable.
7. On the use of the *haram* substances for the purpose of treatment of diseases the difference of opinions is well-known. The later age and the contemporary scholars, however, have a unanimity view of permissibility.

So, going by the unanimity view of the later *fuqaha*, almost all the discussants tend to hold the view of permissibility.

To some scholars, the wine addiction may be cured by other ways and for this purpose the use of wine is not needed at all. So have opined Maulana Shams Pir Zada and Mufti Habibullah Qasmi.

8. All the scholars taking part in the Seminar are of the opinion that, with the view to eradicate a common evil, information about such persons posing a serious threat to the society should be shared with the authorities.
9. On this count, too, all the scholars have expressed a unanimity view that in order to ensure the acquittal of an innocent accused the doctor must unveil the truth. The principle of confidentiality is by no way applicable in such a context.

Medical Ethics and the Islamic View on Receiving and giving Medical Treatment

Paper contributed by
Mufti Jamil Ahmad Naziri
Founder-Rector Jamia Arabiya Ainul Islam,
Niwada, Mubarakpur, Distt. Azamgarh, U.P. India

Negligence on the part of the physician

The doctor/surgeon shall be held legally liable for the loss of life or limb, or for any other injury the patient had to sustain due to the negligence on the part of the doctor/surgeon. To quote Allama Kasani:

“The second type of lease, *ijarah*, turns the trust into a liability. The reasons leading to it include the destruction and damaging arising out from an intentional transgression of the proper limits.”¹

This ruling is equally applicable to both the particular employee and the common employee. Responding to a point raised by Imam Zufar, the same authority writes:

“Mistake as well as forgetfulness is not to be taken as valid reasons to evade the liability against loss in respect of the rights of the human beings. The employee causing damage or loss purely out of forgetfulness and mistake shall be taken to task and bear full responsibility and liability.”²

The scholars are aware of the fact that the doctors, too, are employees, and the nature of their employment is common. Joining these two legal facts we arrive at the conclusion that the doctors shall be held liable for the loss inflicted upon the patient even if the loss resulted from the mistake or forgetfulness of the doctor.

Which ways of treatment are to be regarded as valid for holding the doctor as liable for any loss or damage suffered by the patient?

Following are the common ways the doctors adopt in treating the patient:

- Oral prescription of the medicines.

¹ Badai-us-Sanai 4/211.

² Op. cit.

- Charging the consultation fee and prescribing the medicines in written form.
- Write prescription without a charge.
- Admit the patient to their hospital and then treat him. The prescribed medicine are administered to the patient either by doctor's own staff or the patient is informed by them how to use the prescribed medicine. Some medicines are purchased from within the hospital; others are purchased from the market and the patient himself or his attendants administer them to the patient.
- Writing out the prescription without admitting the patient to their hospital. Some of the prescribed medicines are provided by the doctor; others are purchased from the market.

From among the above mentioned ways of treatment what are the ones which may bring the doctor under the obligation to liability for the loss of the patient?

Abdul Aziz bin Umar bin Abdul Aziz is reported to have said:

"Only a medical prescription is not a valid reason to hold the physician as liable for the loss or damage sustained by the patient. The question of liability is generated by cutting the blood vessels, making incision or branding."¹

Explaining the point, Maulana Khalil Ahmad Saharanpuri writes:

"The law of liability against the loss shall not be applicable if the role of the doctor has been limited to giving a medical prescription to the patient whether oral or written, if the patient himself used the prescribed medicine, and suffered death or loss. The law of liability shall be applicable only in the cases when the doctor subjects the patient to surgical operations like slitting the blood vessels, making incision and branding as a way of treatment. If the doctor himself administered the medicine to the patient and it caused a loss of life or limb to him, the doctor shall be liable for indemnity, but not by mere a medical subscription, oral or written."²

What is precisely gathered from the above citation is that the law of liability shall be invoked against the doctor and physician only when the loss of life or limb took place as a result of the doctor's own

¹ Abu Dawud 2/630.

² Bazlul-Majhud 18/108.

act of operation or administering the medicine to him. In the words of Mulla Ali Qari, 'It is being the act of the physician which precipitated the destruction of the life of the patient'.¹

If the medicine is administered to the patient by the doctor in person, or by his own staff under his care and direction, or he performed a surgical operation on the patient which led him to death or inflicted a grave loss on him, the law of liability shall obviously be invoked against him. In the like manner, in case of the indoor patients the same law shall be operable. For, the administration of medicine, even the total activity of treatment, is carried out by the hospital's own staff under the direct guidance of the doctor. Mere a medical prescription, oral or written, with or without charging a fee, the doctor and the physician shall not be held responsible for any loss of life or limb. But, as far as I think, if the doctor is found guilty of violating the medical norms in respect of giving a medical prescription, he should face a punitive action, though without indemnity. 'Every wrongdoing, or any act of tormenting a Muslim with no legal ground, attracts punitive action.'²

When the law of liability is to be invoked?

Not necessarily every sort of damage or the loss of life is considered a valid reason for holding the doctor as liable. Only the following three sorts of destruction have legally been considered as valid reason for the purpose:

- Carelessness, negligence or transgression from the medical viewpoint.
- Surgery was performed without permission from the patient or his/her guardians.
- Exceeding the limits of permission obtained from the patient or his/her guardians. To quote an authority:

"I know no disagreement among the Islamic scholars in respect of the applicability of the law of liability against the doctor and physician if the patient suffered death or sustained a grave loss due to the transgression or negligence on the part of the doctor. To be precise, if it was an act of the doctor which

¹ Mirqat 4/86.

² Durre Mukhtar 3/199.

caused the death of the patient or any organ of his was lost, the doctor shall of course be held liable for indemnity, but shall not be subjected to the law of *qisaas*. For he did not start his treatment on his own accord. As regards the blood money, it shall have to be born by the *aaqila* of the doctor.”¹

On the other hand, if the patient or his guardians entered into a treatment contract on the condition that the patient not just must remain safe but regain his lost health; and the doctor performed the surgical operation on the patient which proved fatal, and the patient suffered death or lost any organ of his body, the doctor shall not be held liable for the payment of compensation even if the doctor expressed his consent towards the condition. Such conditions infact carry not legal weight. The doctor may as well evade the liability on condition that in treating the patient he observed medical principles and had necessary precautions in the course of the treatment administered to the patient; and in the event of surgery his operation remained strictly within the limits set by the patient himself or his guardians. In spite of all such precautions if the patient suffered death or lost any organ, the doctor shall not be held liable for the loss, even if the doctor administered the treatment to the patient accepting the patient’s or his guardian’s stipulation of safety and security of the life and limb of the patient. Such stipulations are obviously bound to badly hamper the practice of medical profession as, with such restrictions and stipulations, no person shall ever dare to conclude the contract of treating a patient or performing a surgery on a needy patient. The evasion of the doctors and the medical community from giving the treatment to the patients will engender too grave hardships for the people to bear.

While involving the law of liability against the medical community the aspect of the medicine’s expiry has also to be taken into account. If an expired medicine is used by the patient, not given by the doctor himself, though prescribed by him, and the patient suffered the loss of life or limb, the doctor shall not be held liable.

¹ Bazlul Majhood 18/107, for more detail, see Fatawa Hindiya, 4/499, al-Bahrur Raiq, 8/29.

The Concept of Contagion of the Diseases

What is the reality of the concept of contagion of the diseases? Could a disease transfer from the patient to a person of sound health? If the diseases may pass on to others, what reasons are responsible? Does living in the company of a diseased and maintaining normal social contacts necessarily lead to contract his fatal disease? Or it is mere a possibility which may or may not take place following the innate command of Allah *ta'ala* the Creator of both the disease and cure?

In our juristic and religious literature we come across the detailed and exhaustive discussions on all such points. In their discussions, the *Ulama* and scholars have discussed at length the respective *ahadith* of the Holy Prophet (SAWS). In order to level the ground for a systematic treatment of the theme in hand, few *hadiths*, with their explanation and interpretation provided by the *muhaddithin* are being cited here:

Haz. Abu Hurairah reported the Holy Prophet to have said:

“There exists nothing like contagion (of diseases), *safr* or *haamah*. Upon this a companion from the rural area said: ‘what would you like to say, O the Messenger of Allah, about the camel living in sandy area and is as agile and active as a deer. This healthy camel then comes into contact with an itchy camel and gets itch.’ ‘Wherefrom did the first one got an itch?’ the Prophet remarked.¹

We come across the *ahadith* with the same meaning and purport in the books of the *hadith* literature, which have been reported by various companions of the Holy Prophet (SAWS).

Contrariwise, there are more than one *ahadith* which obviously speak otherwise. Their wording admit of the contagion of diseases as a matter of reality.

To cite some of them here:

On the authority of Abu Hurairah, Abu Salam reported the Holy Prophet (SAWS) to have directed: ‘No diseased should be brought before the vigorous.’²

Abu Hurairah reported the Prophet (SAWS) to have said:

¹

² Bukhari, 2/859, Muslim, 2/230.

... و فرّ من المجذوم كما تفرّ من الأسد

... “And flee from the leper like your fleeing from the lion.”

Amr bin Shuraïd reported from his father that the delegation from the *Thaqib* (a well-known clan of Taif), among others, consisted a leper. To him the Prophet (SAWS) sent out a person with the message: ‘We have accepted your oath of allegiance. Now you may go back.’¹

Haz. Jabir reported that once the Messenger of Allah held up the hand of a leper and, making him to share the food with him, asked him: “Share food with me reposing trust in Allah *ta’ala*.”²

Such being the reports, out of which some expressly negate the concept of contagion of the diseases; others, however, admit of the contagion as a matter of practical reality, though to some extent. A *hadith* commands us to flee from the leper like the manner one flees from a lion and the leper was sent back from a distance, and according to another report the Prophet (SAWS) took the hand of a leper and, reposing his total trust in Allah *ta’ala*, made him share meal with him in single pot.

Now let’s have a look at the commentators of the *ahadith* how they reconcile and interpret such apparently contradicting reports in order to arrive at the objective of the *Shariah* and make it plain and clearly comprehensible. Imam Navavi says:

“The report ... لا عدوى seeks to negate the pagan concept and superstitious misbelieving people that the diseases and calamities possessed an ability to transfer from a person to others on their own without an intervention of the command of Allah. The report لا يعدد by contrast, seeks to communicate the *Ummah* the natural circumstantial facts which, again under the Divine Law of causation operating in the world, may cause a disease, etc, to transfer to others. To be more precise, the reports of negation seek to negate the contagion as a law of nature operating on its own. The reports reading otherwise admit of the contagion and transfer of diseases to others as a matter of fact taking place under the law of predestination or as a direct act of Allah *ta’ala*. We should manage to stay away from the things which might be harmful to us under the act, will and power

¹ Muslim 2/233.

² Mishkaat 2/233

of Allah operating in the entire creation. A much the same interpretation of such ahadith has been furnished many other men of Islamic scholarship. To name a few of them here:

- Hafiz Ibn Hajar Asqalani (Fathul Bari, 1/160)
- Mulla Ali Qari, Allama and Taurpushti (Mirqatul Mafaatih: Chap. *Fall wal taira*)
- Shaikh Abdul Haq Muhaddith Dehlawi (Ashiatul Lama'at 3/622)
- Allama Anwar Shaah Kashmiri (Faizul Bair 4/268)
- Maulana Ashraf Ali Thanawi (Imdad-al-Fatawa 4/287-288)

To sum up, some diseases may be contagious strictly as a cause and reason, and never as the natural result innately associated with them. Both the experience and observation support this view.

Ahadith and the Directives of the Prophet (SAWS) regarding plague

عن النبي صلى الله عليه و سلم أنه قال : إذا سمعتم بالطاعون بأرض فلا تدخلوها، وإذا وقع بأرض و أنتم بها فلا تخرجوا منها .

The Prophet (SAWS) is reported to have said: "When you hear of the plague having broken out in a land, you must not enter it. And if the plague broke out in a land you are living in, you must not go out of it."¹

Another report, reported by Abd Allah bin Amir, explains this point.

"Haz. Umar (may Allah be pleased with him) left Madina Munawwarah for Syria. At Saragh, a place occurring in the course of the way to Syria, he was informed of that the plague had broken out in Syria. Then, Abdur Rahman bin Auf (may Allah be pleased with him) informed him of the report from the Holy Prophet (SAWS) which reads:

If you hear of the plague to have broken out in an area of land, enter it not; if the plague broken out in a place where you are living, flee not from it, fearing the death."²

¹ Bukhari 2/853 chap. Ma Yuzkar Fit Tauoon.

² Op. cit.

قال رسول الله صلى الله عليه وسلم : الطاعون شهادة لكل مسلم .

The Prophet (SAWS) is reported to have said: 'plague is martyrdom for every Muslim.'¹

On the authority of Yahha bin Yamur, Haz Ayisha Siddiqa is reported to have asked the Prophet (SAWS) about plague. Responding to her question, the Prophet (SAWS) said: 'The plague has been a curse which Allah *ta'ala* sends on His servants whom He wills. But for the Believers Allah *ta'ala* has turned it a mercy. The person who stayed in the place where the plague broke out and did not flee from there having an unshakable faith in the truth that no harm is to touch him except the one preordained by Allah *ta'ala* shall get the reward equal to that of a martyr.'²

On the authority of Usama bin Zaid Amir bin Sa'ad reported the Prophet (SAWS) to have said: "The plague is (a form of) torment inflicted on the people preceding you, (or he said) on the children of Israel. So, never flee from the land under the grip of plague. And, likewise, enter not a place where it has broken out."

Haz. Jabir reported the Apostle (SAWS) to have said: 'The one who fled from the plague is like the one who fled from the field of *jihad*. And, for the one who forbore the hardships of the plague is entitled to the reward of the martyr.'³

Views of the Interpreters on these *Ahadith*

Hafiz Ibn Hajar writes:

"According to this *hadith* a person is permitted to stay away from entering a place which he was going to visit but cancelled his visit when he knew of the plague to have broken out there. This is not to be regarded as an act of taking something as an evil omen; rather, it is avoiding from jumping into destruction. This may be seen from the angle of the juristic principle blocking the lawful means leading to unlawful. If someone entered such area and attracted the plague, he must not believe that had he not gone to that land, he would not have been hit by the plague, assigning the pagan superstition of contagion as a reason for his sufferings."

¹ Op. cit.

² Loc. Cit.

³ Muslim, chap. Al-Taun 2/228.

Maulana Md. Anwar Shah Kashmiri writes:

“Most *ahadith* speak of unqualified and unrestricted prohibition of leaving the land of plague where one has already been living and staying. Notably, the report of Abdu Allah bin Abbas expressly mentions a useful restriction ‘... go out not from the plague-hit land in flight.’ Of course, this restriction exists in some other *ahadith* reported through different channels of transmission. Since the people generally are oblivious from this restriction, they naturally face difficulties in interpreting such *ahadith*.”¹

To the same view do contribute Mulla Ali Qari al-Harwi (cf. Mirqatul Mafatih 3/360), and Maulana Ashraf Ali Thanawi (cf. Imdadul Fatawa 4/294).

Explaining the point in even lucid words, Allama Shami writes:

“If a person leaves the land where the plague has broken out, or enters a land which is presently under the grip of plague, believing in the fact that everything is predestined and nothing good or bad could occur to him except that Allah so willed, such a person in fact earned no sin and committed no wrong. But, if he left believing that by so doing he could ward off the calamity and his stay in the plague-hit land was bound to expose him to the calamity, both his entering and leaving shall constitute a sin and spoil his faith in the predestination. In order to save his faith, the better way, therefore, would be neither to enter the plague-affected land, and nor to come out from such an area if one has already been living there. The prohibition of leaving and entering is actually intended to save the faith against getting spoiled by superstitious misconceptions.”²

Other Epidemic diseases

What we have furnished about the plague and the contagion of the diseases in the light of the *ahadith* and their interpretations is equally applicable to all the diseases held by the medical experts as contagious, or those diseases which are generally conceived as epidemics, no matter which term is used to refer to them in different periods of the history. The much trumpeted modern disease, the Aids, too, does include the epidemics.

¹ Faizul-Bari, 4/369.

² Durre Mukhtar 5/234.

This calamitous disease includes the cursed 'gifts' of the Western civilization to humanity. The Aids is completely a disease of Western origin and is thriving in the countries where the Western culture is dominant. Frankly speaking, it is these countries which have long been projecting the Aids as an ogre. The problem is otherwise not so grave, at least for India and Pakistan, as it is being projected by the Western media.

After furnishing a note on the contagion of diseases, the view of the Islamic *Shariah* on such superstitions and the directions of the *Shariah* in respect of entering and leaving the plague-hit area of land, now we are proceeding to furnish answers to the questionnaire of the Academy, in a sequential order.

2. Since the contagion of the disease is not naturally essential according to the *Shariah* as well as to the medical science, so the Aids victim is at liberty to conceal his disease from his family members, the relatives and friends if he feels obliged and fears that he might suffer a complete social isolation.
3. The doctor must adhere to the principle of confidentiality. In the event of disclosure of the patient's secret there is a strong likelihood that the doctor may face an ill behavior on the part of the patient and others.
4. Towards an Aids victim the responsibility of his family members, relatives and the society is that he should not be left alone, unattended, deprived of necessary medical care and reduced to social isolation. Attending the sick and nursing and visiting him/her, funeral bath and other prescribed funeral rites are such common rights which all Muslims share on an equal footing, and in no case, or the set of circumstances they could be suspended. Visiting the sick and showing care to him is an important virtue, and there are several *ahadith* which seek to impress upon it. It will be extremely improper to deprive such helpless patients of the common human rights enunciated by Islam. As regards the prohibition of entering or leaving the place affected by the plague, it is applicable only to those living in or outside of the plague affected area. Those living inside the affected area are at full liberty to visit each other without restriction

and may attend and serve the patients and the plague-victims. Contagion is a thing not certain, completely falling to the domain of the unseen the knowledge of which rests only with Allah *ta'ala* to the total exclusion of the entire creation. If a disease got transferred from a person to a member of his family or to any one else coming in touch with the diseased, it is not to be taken as a general rule. Sometimes it happens, other times does not.”¹

5. Aware of the nature of his disease, if an Aids victim tried to transfer his disease to any other person by way of donating his blood to them, or adopting any other way for the purpose, intentionally or otherwise, and, as a result, the second person attracted the disease, the former shall deserve no punishment. So because of that the contagion is not a categorical matter; it does not exceed to be a possibility that the second person's disease was the result of the former's secret doing. Equally possible being the point that the second person might already have the germs of the same disease causing him to attract it, in the like manner of the former one. This aspect is related to the worldly punishment. With Allah *ta'ala*, however, such person might have earned the sin of harming other person without reason and justification.
6. If the Aids, in the view of the public, common observation and experience, assumes the degree of abominability as greater as of lunacy, leprosy, leucoderma, etc., and living with the person suffering from the Aids turns extremely harmful for his wife, she has the right to demand for the dissolution of her marriage. This same is the view of Imam Muhammad (may Allah be merciful unto him).

If the wife feels that living together with the person suffering from such abominable diseases like Aids, leprosy, et, and she finds it difficult to receive her right from her husband due to his disease and the state of mind, she has the right to get

¹ Al-Meyar al-Murib wal-Jami al-Maghrib an Fatawa ahli Africa wal-Undlus wal-Maghrib 11/358.

her marriage dissolved. For this hardship is much like the one a wife may have to face if her husband is *majboob* or *innin*.¹

7. A woman suffering from the Aids if became pregnant is not permitted to have an abortion with a mere apprehension of transfer of the disease to the body, and nobody has a right to force her to do so. Transferring of the disease is no more than an uncertain thing. Therefore does not merit to offer a base for an abortion.
8. Since an uncertain fear of the transference of Aids holds no good in the eye of the Islamic *Shariah*, the children victims of the Aids cannot be denied admission to the schools and academic institutions. However, if the Aids has become apparent and clear, and is feared to bring disorder to the student community, the management of the institution may beautifully turn down such requests.
9. The deadly diseases, such as Aids, plague, cancer, etc, when medically enter the stage of incurability, being on a constant increase, and the patient is reduced to such a state of weakness as not to allow him to offer his prayers in the sitting posture, such a patient, as far as I think, shall be subject to the rulings pertaining to the mortal disease.
“Every disease which is more likely to lead the patient to death shall include the mortal diseases.”²
“As to the mortal disease, it may refer to every disease and health problem which debilitates and weakens the human being and allows one to offer his prayers in sitting posture.”³
10. In the event of the spread of plague and other epidemics imposition of restrictions by the government authorities to restrict the free movement of the people in the disease-hit area of course is in tune with the directives of the *Shariah*. The necessitating conditions shall obviously stay exempted from the application of those restrictions.⁴

¹ Kifaya ala Fathil Qadir 4/134, for more detail, refer Hidayah 2/422, al-Bahrur Raiq 4/126, Tahtawi 2/213, al-Faskh wal-Tafriq p. 79-85 by Maulana Abdus Samad Rahmani.

² Kifayah ala Fathil Qadir 4/8.

³ Durr-e-Mukhtar 2/565.

⁴ Muslim Chap. Taun 2/228.

11. The people of a land hit by the plague or other epidemics if were out of the area for any purpose of theirs may return to the area if they no longer need to stay outside, or their families happen to be in the disease-hit area and stand in need of them, or due to other reasons demanding their return are at full liberty to return back to the plague-hit area. In the like manner, there might be others who had been staying in the area which later came under the plague for any purpose of theirs and then got stranded there may leave the area and go back to their homes after completing their assignments. Likewise, if a patient is not satisfied with the treatment he is receiving, or is lacking proper care there might be shifted elsewhere. There are the necessitating conditions which naturally stand exempted from the prohibition. Mulla Ali Qari has explained the point lucidly in the following words:

“The prohibition of entering or leaving a land hit by plague or other epidemics is applicable only to the normal setting of things. In case of emergence of the circumstances requiring he entrance or leaving this land, the entrance or leaving shall cause no sin or wrong.”¹

The view of the *Shariah* on divulging the secrets and backbiting

Disclosing the secrets of other people to some others, also termed as *ghibah*, and backbiting may be permissible in some circumstances, and impermissible in some others. Explaining the verse of *ghibah*, Allama Sayyid Mahmood Alusi writes:

“Backbiting may sometimes turn into a duty. This is when the accomplishment of a *Sharai* purpose becomes dependent on it. This might be summed up in six points:

- a. To voice a complaint against the oppressor so as to repel the oppression and injustice. Such a complaint is subject to that it is made with the person or authority powerful enough to repel or reduce the oppression.

¹ Mirqat-al-Mafatih 1/132.

- b. For the removal of a prohibition and wrong. This is to seek help from a person powerful enough to remove the prohibition.
- c. To know the position of the *Shariah* about a situation. With the view to put the exact situation before the *mufti*, the *mustafti* is permitted to recount the necessary details of his sufferings and the bad experiences he had to undergo at others' hand. Even in such case the recommended way is to keep himself restricted to the minimum and brief statements.
- d. To ward an evil off the Muslims, such as expressing criticism against witnesses, reporters, writers and such incompetent people as have entered the fields of teaching and issuing *fatwas*. According to the consensual opinion of the *Ummah* backbiting such people constitutes no wrong, sometimes it may turn obligatory. This includes the expression of an exact position about the person one is asked to make if the asking person wants to conclude any type of deal with him, or wishes to make him or himself become his companion. In all such cases one is required to restrict oneself to the minimum, without transgressing the proper limits. In the like manner, if one comes to know of a person in authority committing wrong and given to transgression and carelessness in matters of religious import, the exact case about him has to be recounted to an authority superior to him, powerful enough to depose him and replace him by another just and God-fearing person. This has to be done intending good for him and to take him to the right path.
- e. The people openly involved in acts of disobedience, like tax collectors, open drinkers. Only such acts could be attributed to them, and not other sins they are doing secretly, except other reasons call for so doing.
- f. For the purpose of introduction. Some persons may get fame by derogatory adjectival words like *a'awar*, (blemished), *a'amash* (blear-eyed). Such people may be introduced through such terms, though it is possible

otherwise. Still the better course is to avoid the use of such words as far as possible. Notably, such words are to be used only for the purpose of introduction and never intending the derision. The permissibility of backbiting is strictly limited to the six points just mentioned. On the strict prohibition of backbiting beyond the exceptions the *ahadith* are very clear and speak highly of its being a graver sin.¹

The same view has been expressed by Imam Navavi (cf. Sharh Muslim 2/322), Imam Ghazali (cf. Ihya-ul-Uloom 3/148) and Haz. Shah Wali Allah (cf. Hujjatillahil Balighah 2/220).

After this important note, let's attempt the relevant questions.

1, 2, 3- Difference shall have to be maintained between one's congenital and natural defects and the moral faults. Losing the eyesight, detection of an internal disease which might result in bearing the children with defective organs, or being one's sperm bereft of reproductive germs and similar other internal problems. Such defects are congenital and natural. Being drunkard, thief, indulging in illicit sex, transgressing the limits of the Shariah are moral faults. Under the six points furnished above include those faults which mostly fall to the category of the moral or practical sphere. The permissibility of backbiting the persons with such moral defects committing is conditional, as has already been explained.

As far as I think, the congenital and natural defects should not be disclosed unless one is asked. And if asked both the types of the defects and moral evils might be disclosed provided no harm is intended and the feelings of sincerity and well-wishing prevail. Among the very important and primary objectives of the Shariah is toward the evil off the Muslims. In order to achieve this important objective one party's moral faults and congenital defects might be divulged to another party if the latter one wants to enter into business and other important social relations with the former party. No doubt the divulgence is bound to hurt either one party of the two, yet it deserves no merit. Imam Ghazali writes:

"In case a person wants to marry a woman or wants to entrust one's valuables to somebody and before concluding the contract solicits and advice about the character and the moral conditions of

¹ Ruhul Ma'ani 26/161.

that person, one must honestly tell him what one actually knows of him, limiting oneself to the minimum required with no intention of backbiting. The statement about his moral faults and congenital defects should be vague unless otherwise is needed.”

Adhering to the principle of confidentiality may amount to disinformation.¹

3-Weak eyesight is a thing quite open and cannot be concealed as secret for long, and so being its menacing consequences. So, in order to eliminate the feared detriment, the doctor may inform the concerned government authorities of the driver’s weak eyesight. He may recommend the cancellation of his driving license, in complete disregard to his family’s financial strains and the termination of his employment. This is in full accordance with the following juristic principle:

اختيار أخف الضررين .

Choosing the lighter evil when one is caught between the two ones.²

But it is very unlikely to happen. With the eyesight becoming so weak, he will stop driving on his own, without external pressure, or might be dissuaded by the members of his family and friends as in such a condition the driving shall become as much dangerous for his own self as for others.

5-In such a case the principle of confidentiality will be completely irrelevant, and it would be binding upon the doctor to communicate the actual position to the government authorities concerned. To quote Allama Alusi:

“To achieve a proper objective of the Shariah backbiting may turn a duty. Warding the evil off the Muslims is of course such an objective.”³

6-The principle of confidentiality will not be applicable to such a situation. The doctor must bring the matter to the notice of the authorities. As regards the woman, there might be two situations:

- (a) If she has left the child at a place where he is likely to be picked up by some person happening to pass by the foundling and the child is likely to be saved, it will not be

¹ Ihya Ulloomi Din 3/149.

² Sharh al-Mujallah p. 32.

³ Ruhul Ma’ani 26/161.

necessary to divulge her name. This view is supported by the following quotation:

As far as bearing witness in cases of the 'ordained punishments' (the *hudood*) is concerned, the witnesses are at liberty either to choose the course of bearing witness before the trial court or to maintain confidentiality and secrecy. In the first option the Divine Law of punishment shall be established. Going by the second option, maintaining secrecy, he will be protecting a Muslim against ignominy and open disgrace. Both the options are the virtues of great value. The latter one, however, is better still.¹

- (b) In case she abandoned the child at a place of danger where the possibility of his destruction is very likely, there is no option to maintain confidentiality. Not just her name should be disclosed, but also the matter be brought to the cognizance of the authorities and the concerned department, according to the principle:

الضرر الأشد يُزال بالضرر الأخف .

"The greater harm shall be repealed by the lighter harm."²

7-A Muslim doctor is never permitted to apply this method for the patient under his care. No denying of the juristic view that under necessitating conditions treatment may be given to a patient with the substances held forbidden by the Shariah. But this permission is of course restricted to the cases of diseases with no alternate medicines. Wine addiction is not a disease; it is a curse and bad habit for which to invoke the law of *tadawi bil haraam* is quite irrelevant.³

8 and 9 *vis-à-vis* such persons there is no room to wrap up their crimes under the cover of confidentiality. The cases should be brought to the notice of the concerned authorities.

10-Since the contagion of the disease is not inevitable, the confidentiality shall be impressed upon. The detailed discussion has already been furnished under the 'contagious diseases.'

¹ Hidayah 3/138.

² Sharh al-Mujallah 32.

³ Raddul Muhtar 1/154, 4/239, al-Fatawa al-Hindiya 5/355.

Rulings of the Shariah Governing the Law of Compensation to the Diseased in the Event of his Receiving Injury or Death at the Hand of the Doctor

By the Late Maulana Shams Pirzada (Mumbai)

Unit First

1-The laws enacted in order to regulate the medical services to the patients are of course based on the general concept of the public interest. In absence of such regulating laws the incompetent and unqualified medical practitioners may endanger the lives of the patients. In order to ward off such evils those laws should strictly be abided. Granting licence to qualified and competent persons has been an established usage and the Islamic Shariah fully supports this practice and permits no other way for the purpose.

If a person is not permitted by law to practice the medical profession and merely on the ground of his knowledge and experience treated a patient on his request and the treatment proved injurious to him and he lost his life or limb, the treating person shall be held liable for the payment of compensation.

2-A person is legally competent to practice medical profession. In treating the patient he negligently disregarded the principles of his profession which resulted in the death of the patient or the loss of any organ of his body, the doctor shall be held liable for compensation. Hafiz Ibn Qayyim al-Jauzi writes:

“Mistake of the doctor: the third condition is that the doctor is properly qualified and legally permitted to practice the medical profession, but he mistakenly caused a fatal injury to the patient e.g. while performing the operation of circumcision, for example, the hand of the doctor reached the scrotum, he will be liable to pay the compensation. For it is a grave crime.”¹

In his book, Fiqhus Sunnah, Sayyid Sabiq writes:

“In case a qualified doctor made a mistake in the course of administering the medical treatment to the patient, the doctor shall be

¹ Tibbe Nabavi p. 271.

liable to the compensation according to the general juristic opinion. Imam Malik, however, does not subscribe to this view. According to him nothing shall be due on him.”¹

Abdul Qadir Audah Shahid says:

“The doctor shall not be liable for any mistake he made in the course of treatment, except that the mistake is of graver nature; that is so recognized by the principles of the medical science and the medical experts.”²

3-In case the patient stood in need to an immediate surgical operation in the assessment of the doctor and he performed the operation without seeking permission from the patient or his guardians and the operation proved fatal or aggravated the condition of the patient even further, the doctor cannot evade the liability of the compensation. To quote the Shahid Abdul Qadir Awadah again:

“The doctor shall stand absolved of any liability for compensation or legal accountability if he is undertaking the treatment; or performed a surgical operation with the permission of the patient, his guardians or legatee. In case the patient has no guardian or legatee, the permission has to be sought from an appropriate official authority of the government, for the government is the guardian of those without a guardian.”³

4-In case a surgical operation was immediately needed according to the medial assessment of the condition of the patient, and the patient is not able to grant permission, and his guardians were too far away to contact, and the doctor performed the operation which unfortunately proved fatal, with the result that the patient suffered death or lost an organ, the doctor shall not be held responsible or liable. For it is a compulsive condition in which the doctor was bound to do the same so as to save a dying patient. But this failure must not be the result of carelessness on the part of the doctor.

The Second Unit

Before answering the questions pertaining to the second unit, that is, the Aids, it seems appropriate to keep in view the medical

¹ Fiqhus Sunnah 2/581.

² Al-Tashri-al-Jinai fil-Islam 1/522.

³ Op. cit. 1/522.

researches on the Aids. For this purpose Mr. Sayyid Qaisar Mahmood's Islam: Ultimate Answer to the Challenge of Aids, published from America, is very useful. According to this book a particular virus is responsible for the birth of the Aids.

"The virus which causes Aids is called Human Immunodeficiency Virus."

In fact, the virus may remain in the body of a human being over a span of one decade, without any external manifestations indicating its ugly presence."¹

How does it affect the human body?

There are some white blood cells which are infected by the virus of Aids. When these extremely important white cells are infected by the virus of Aids, the usual activity of the immune system is burst apart."²

Ways of the spread and its contagion to others

Following are the ways of the spread of Aids and its contagion to others:

- Illicit sexual Relations

Homosexuality and establishing sexual relationship with the prostitutes. A large number of men who often visit the prostitutes may transfer the virus through semen.

- Blood Transfer

If the blood is donated by a person carrying the HIV, the virus gets transferred to the person injected.

- Hereditary Effects

If the woman carrying the human immunodeficiency infection becomes pregnant, there is hardly any way to stop her from transmitting the virus to her unborn young.³

The procedure of the diagnosis of Aids is, thus, fairly complicated, and if it has been diagnosed that a person is suffering

¹ P. 14.

² Op. cit. p. 13.

³ P. 19.

from Aids, full treatment is difficult, as no cures have been found as yet.¹

The Aids is on a constant rise, the World Health Organization says that HIV has already infected a minimum of 1.5 million women in the world.²

The latest situation is that in India alone nearly two million people are affected from HIV.

Having furnished this important note, following are the answers to question:

1. There is a person diagnosed with having the Aids virus and conceals his disease from his relatives and the family members. For, medically speaking, the Aids is not from among the diseases which spread by way of infection. The wife, however, has to be informed in clear terms as copulation includes the reasons responsible for the transfer of the disease to the opposite partner. Sharing this information with the wife shall turn important only when the medical test has revealed that the HIV has developed into Aids. Mere existence of the HIV in one's blood offers no sufficient reason to treat one as an Aids patient.
2. Violation of the secrecy of an Aids victim could never be part of the doctor's moral or legal responsibility.
3. Since the Aids is contagious only in specific conditions, therefore, coexisting with an Aids patient involves no apparent risk for his family members. As regards the contagious diseases like plague, etc, according to the Islamic concept it is of course absolutely wrong to think that such diseases are contagious by their innate nature, operating on their own, according to the law of causation and invariably transferring to others. Medically speaking, in most cases, it is not the disease itself which transfers to others, rather, it is the circumstances and living conditions which are chiefly responsible for the infection and transference. According to Islamic belief no disease could touch any other person unless Allah *ta'ala* so willed. Again, Islam is never opposed

¹ P. 20.

² P. 24.

to take precautions, yet the precautions must not be taken in order to evade one's moral and legal responsibilities. So doing shall of course be in stark contravention to the principle of trust in Allah *ta'ala*. So it will be absolutely inadmissible for the family members, relatives and the society to evade their moral and legal responsibilities they owe towards the people suffering from the disease like plague.

4. About an HIV positive person if a medical test revealed that the virus has developed into the Aids, and the patient is also aware of this fact and still he copulates with his wife, or donates his blood to a healthy person without an external persuasion, such a person shall be earning a sin due to causing harm to others; and in the event of a factual harm inflicted by his act on any person, he shall have to make reparation against the damage he has caused.
5. Aids indubitably is a deadly disease. The actual position of the disease is to be determined only through a thorough medical test. Mere presence of the virus of Aids in the blood of a person is not necessarily to be construed as the actual disease has attacked the person diagnosed with having HIV in his blood. If a person has actually fallen victim to Aids, his wife has absolutely a legal right to demand for the dissolution of her marriage.
6. Abortion is not mandatory
In case an Aids patient woman becomes pregnant, the abortion is not mandatory. So because of the medical fact that the transfer of the HIV to the baby is not to mean that the child would necessarily attract the Aids. Even if there exists such a likelihood, there might hardly be a justification to kill a baby before he/she comes to actual life. The only justification for so doing is that the life of the mother is in danger.
7. Since the Aids doesn't transfer to others by way of mere touching, as has already been repeatedly put, debarring the Aids victim children from the schools and the learning institutions would be improper and wrong

8,9. As regards the treatment of the children suffering from the Aids, it is their parents and other guardians who, morally and legally, are responsible for doing their best in this direction. But, unfortunately, the treatment of this disease is too costly to be born by the people with average financial means. This responsibility, therefore, has to be shared by the society and the government as well.

10. Imposing restrictions on the public movements in an area hit by the plague or similar other contagious diseases is indeed a right step in the right direction. We have a *hadith* which reads:

عن النبي صلى الله عليه و سلم أنه قال : إذا سمعتم بالطاعون بأرض فلا تدخلوها، وإذا وقع بأرض و أنتم بها فلا تخرجوا منها .

The Prophet (SAWS) is reported to have said: "When you hear of the plague having broken out in a land, you must not enter it. And if the plague broke out in a land you are living in, you must not go out of it."¹

Within reasonable limits the restrictions imposed by the government are of course precautions which must be taken.

12. In exceptional conditions entering or coming out of the plague-hit area constitutes no wrong at all. Should the prohibition be applied without exceptions, the coming of the doctors and medical teams from outside and the movements of the police and administrative personnel for the management of the affairs shall also stand prohibited. The important primary principle of the Islamic Shariah is to remove the hardship rather than bringing about the hardship by creating such circumstances.

¹ Bukhari 2/853 chap. Ma Yuzkar Fit Tauoon.

The Third Unit

Principle of Confidentiality, medical ethics and the Shariah guidelines

1. It is not part of the doctor's responsibility to divulge to the people in contact with the patient the faults, defects and physical infirmities of the patient. Apart from the fact that this point is more hypothetical than practical, the law too does not permit the doctor to do so. Further, it may bring about mischief and envenom the relationship between the doctor and patient. The doctor is morally bound to tell the real position of the patient only when the circumstances so necessitate.
2. In case the marriage negotiations are on between a woman and man, and for the same purpose they visit the doctor to undergo a medical test to ascertain their internal health it shall be the moral responsibility of the doctor to tell them the right position about their internal health revealed by the medical examination.
3. If one party asks the doctor about another party's health as assessed through the medical test conducted on them by him, the doctor is bound to inform him with the exact position.
4. In case the eyesight of a person holding the driving licence is badly affected, it is the obligation of the concerned government department to test the eyesight of the driver. A doctor shall not share the responsibility of the government departments. How could a driver dare to drive the vehicles while his eyesight is too weak? Still, if so, the passengers shall never let him drive and, thus, imperil their lives. It is the responsibility of the passengers to lodge a complaint against such an obviously incompetent driver.
5. As far as the pilot and his assistant staff is concerned, they each day of their duty as pilot are subjected to a test to ensure that they have not consumed the liquor or any intoxicant. Therefore, the question therefore is absolutely

irrelevant. As of the train or the bus drivers, the doctor is hardly able to tell whether they drink during or off their duty hours.

6. Saving the life of the newborn child is as much the responsibility of the doctor as the one who knows that the woman has cast the child aside owing to that the pregnancy was out of wedlock. Under such a situation the doctor must not adhere to the principle of confidentiality *vis-à-vis* such a woman. He, rather, should take all necessary steps to save the life of an innocent child.
7. With the purpose to rid the wine-addicted of his bad habit the doctors administer a special pill to the person which makes him vomit and feel extremely nauseous. Then the addicted person is made to believe that the nauseous feelings and vomiting are the results of his wine drinking, thereby making the drinking hateful to him. This being the usual practice and not mixing the pill into the wine. My this statement is based on the information I sought from a competent medical doctor. Therefore, the question is completely irrelevant.
8. Without going into particulars and details what may be said as a matter of principle being that it is a collective duty of the society to do whatever is possible to ward the evil and mischief of the unbridled mischievous human elements off the peaceful human society. Like all other people, the doctor too shares this responsibility on an equal footing.
9. If the doctor has a categorical knowledge about the murderer who is under his medical treatment, while someone else is being prosecuted and tried for this crime, it will be incumbent upon the doctor to make the statement of fact in the court to disclose the secret of the criminal under his treatment, thereby to save the innocent person wrongly accused of the crime of murder.
10. In case a person is suffering from a contagious disease and the family members of the patient, or other people inquire the doctor about the nature of the disease and its effects on the patient, or the doctor himself feels that the government

authorities should be informed of the disease, the doctor shall be required to share his knowledge with them and the government authorities so that the necessary precautions might be taken against that contagious disease, completely disregarding the patient's insistence on confidentiality. Excepting such cases of grave nature, it is not the responsibility of the treating medical practitioner to make public all the contagious diseases of the patients under his medical care and treatment. Not all the opinions of the medical community regarding the contagion of the diseases deserve serious consideration. More often than not the fears of the medical community tend to prove unreal. Taking precautions never should mean to create an atmosphere of fear and terror about the contagious diseases, or taking the doctor's superstitions as real, in complete disregard to reposing one's trust in Allah *ta'ala*.

Governing the Modern Medical Issues by the Teachings of Islam

By

Maulana Khalid Saifullah Rahmani

Founder-Rector al-Ma'ahad al-Aali al-Islami, Hyderabad, India

Prelude

According to the Islamic concept of life, it is a trust of the Creator with the human being. All his dispositions he undertakes in his body are subject to the limits ordained by the Shariah, the law of the Creator. He is not permitted to harm his body or make changes in it. Protecting his physical structure and self against dangers and maintaining his health within the bounds of possibility constitutes the greater part of his responsibility towards his being under the very concept of trust. Since the medical science and medical profession serves as tool towards the protection of the human health and fighting the diseases and disorders targeting the human body from time to time, it has been accorded much respect and dignity. Imam Shafie (may Allah deal him with special mercy) is reported to have said:

العلم علمان : علم الفقه للأديان و علم الطب للأبدان .

“The knowledge in fact are two; the knowledge of Fiqh, a deeper understanding of the religion and the rules of Islamic Shariah meant for regulating the human life in lines with the commands of Allah *ta'ala*, and the knowledge of the human bodies and their systems of operations.”¹

A similar statement has been attributed to Haz. Ali bin Abu Talib as well.²

The medical community is associated with the profession intended to carry out the duty of protecting the human health, a thing incomparably important, the accountability of this respectable community is too nice. Besides being expert in his profession, possessing the required knowledge and experience in his area of the medical studies, the doctor must combine in his person the feelings of

¹ Miftahus Sa'ada 1/267.

² Op. cit.

sympathy, solicitude, forbearance, consideration for the collective interests of the society, true passion for the service of humanity, mindfulness, and the professional ethics like maintaining confidentiality towards the affairs of the patient under his medical care and an utmost respect towards the Shariah and remaining steadfast in honouring the limits of the law of Allah. Such things constitute the primary asset of those treading this subtle path, and are the gist of the ethics and the moral code of conduct prescribed by the Islamic Shariah for the medical community.

Unit First

2. Treating the patient without the required competence

In the Islamic scheme of things the question of competence is the primary prerequisite for doing a thing and performing an act. Attempting any act without due competence and the required proficiency is unacceptable to the Islamic Shariah, although it may accidentally result in good. Haz. Barida reported the Prophet (SAWS) to have said:

“The judges are of three types: one of them is to be rewarded with Paradise, and the rest two are to be condemned to Hell. The one who is aware of what is right and true and settles the case accordingly is to be rewarded with Paradise. The second being the one who possesses the knowledge of truth, still contravened the facts in delivering the judgement. This person is destined to be condemned to the Fire of Hell. The same shall be the fate of the person who grabbed the chair of the judge while he was devoid of the knowledge of the right and truth.”¹

There is the consensus view of the jurists that seeking or accepting the position of judge without due knowledge of the Shariah is absolutely forbidden.²

As the rights of the people are related to the position of the judgeship, so are deeply associated the lives and the health of the people with the medical fraternity. Among the five primary objectives of the Islamic Shariah the protection of the human life is next to the protection of faith and religion, and a much greater importance has

¹ Abu Dawood, Kitab al-Qaza 2/503.

² Al-Durrul-Mukhtar on the Margin of al-Raddul Muhtar.

been given to it. One could easily recognize the fact that the spirit permeating through most of the concessions granted by the shariah are intended to ward the destruction and hardship off human beings they may face in following the commands of the Shariah. Keeping in view this important fact, the required professional competence for undertaking the medical treatment is obviously the most urgent prerequisite. According to the clear and unambiguous statements of the Fuqaha the knowledgeable and inexperienced people pretending to be doctors must not be let free to cure the people suffering from diseases.¹

According to Imam Abu Hanifa the three persons to be placed under interdiction include the knowledgeable, inexperienced pretender to be a doctor. Placing such persons under interdiction of course directly emerges from the principle of *amr bil maruf wa nahy anil munkar*.²

What is to be noted as a matter of juristic principle is that if the individual freedom and interests clash with the collective interests, it is the latter which shall be given priority. Individual harm is far too less as compared to the collective danger. A much the same view has been expressed by Ibn Hammam in his commentary on the al-Hidayah.³

Qualified and Unqualified Doctor

Here we cannot afford to evade the question: what is the proper qualification for entering into the medical profession so as to draw a line of distinction between the qualified doctor and the one lacking that qualification. The unqualified doctor has variously been defined by the Fuqaha according to the usage of the medicines and the range of the treatments available in their ages when the medical sciences were not so developed and multifarious as it stands today. To all the definitions of the unqualified doctor the common point being the lack of the knowledge indispensably required to make distinction among different types of medicines to be administered to cure the different types of diseases. During those ages there hardly existed separate

¹ Al-Bahrur Raiq 8/79.

² Badai al-Sanai 7/169.

³ Fathul Qadir 9/261.

medical institutions to impart knowledge and experience in medicines and surgery in an ordered and systematic manner. Furthermore, there existed no mechanism to control the quality of the medical education or a system of certification and accreditation. The common practice was that the interested persons would study one or two books on the properties of the medicinal herbs and symptoms of the common diseases and would cure the people. We have a report from the Holy Prophet (SAWS) in this regard.

من تطب ولم يعلم منه قبل ذلك الطب فهو ضامن .

The person who projected himself as a medical professional whereas he was not known as a doctor shall be held liable.¹

Explaining this hadith Allama Manavi writes:

“The verb employed in this hadith contains an aspect of making pretence of doing something, as if he not competent enough to administer the medical treatment. If the treatment of such an unqualified, self-proclaimed doctor precipitated the death of the patient, the doctor shall be held liable for the payment of compensation.²

In the Juristic literature we come across the precedences that the mistake of the qualified doctor has been treated with forgiveness, and the same mistake of an unqualified doctor has been held as bringing full liability upon him.³

In his monumental book Zad-al-Ma’ad, Hafiz Ibnul-Qayyim has elaborately discussed the cases in which the doctor has to accept the liability for the loss of life or limb resulting from the treatment administered to the patient along with the conditions not bringing him under the burden of liability. On this count there might be a difference of opinions amongst the Fuqaha. A consensus of opinion of the Fuqaha, however, exists on the point that the person subjecting the patients to his treatment and administering medicines to them, despite the lack of due qualification and experience in the area of medical services, shall be held liable for the payment of compensation in the event of any loss and damage to the patient. To quote his actual words:

¹ Abu Dawood 2/630.

² Faizul Qadir 6/106.

³ Fatawa Bazzazia ala-Hamish al-Hindiyah 5/89.

" فإذا تعاطى علم الطب و عمله ولم يتقدم له به معرفة فقد هجم بجهله على إتلاف الأنفس و

أقدم بالتهور على ما لم يعلمه قد غرر بالعليل فيلزمه الضمان لذلك ، و هذا إجماع من أهل العلم ."

"If a person started imparting the medical education and entered practically the medical profession while he has not learnt it in the past, such a person is indeed destroying the lives of the people due to his ignorance. Lacking the sense of responsibility he has embarked upon doing a thing which he does not know. Such a person is indeed playing dice with the patient, and, in the event of loss of life or damage to the person, the 'pseudo physician' shall be held liable for compensation. This is a consensus view."¹

The consent of the patient, too, can provide no relief to such a 'doctor' as the consent for treatment, in most cases, is based on that the 'doctor' projects himself as an expert, experienced and qualified in the area of medicines. The loss resulting from inexperience and the lack of the proper knowledge shall have to be indemnified by the self-proclaimed doctor.

This being about the past when the medical sciences were not so mature as they are today, as now it has made much advances, developing into a number of important branches.

Primarily, the medical science discusses three aspects of the human health:

First, symptoms of the diseases and the system of their diagnoses.

Second, the medicines and their positive and negative effects.

Third, ability of the human body to respond to the medicines and the medical treatment.

These three aspects led to numerous experiments and gave birth to various ways of treatment, medical experiences and the effective techniques of meeting the emergency situations. This way the medical science has now become synonymous to a number of sciences. According to medical experiments carried out on medicines have uncovered that a slight mistake in diagnosing the disease sometimes may lead to death, and the patient, who was looking for the restoration of his health, suffers instant and unexpected death.

To be more precise, every sector of science has to pass through a period of experiments. Then, the successful experiments are

¹ Zaadul-Ma'ad 4/139.

compiled and assume the form of books, taking the status of an established distinct branch of knowledge. Now there is no question to accept and accredit the person for practising the medical profession on the basis of one's own experiences without acquiring the prescribed medial education and the required experience in a systematic way. As far as I think, in the present age the term of qualified doctor shall be applicable only to the persons who are so accredited and approved by the medical institutions and the state health departments.

In case the patient suffered loss

The pseudo-doctors should legally be placed under interdiction against exercising the medical profession. If they don't refrain, and their treatment proved harmful to the patient, the unauthorized medical practitioner shall be held liable for the payment of due compensation. In this context the Holy Prophet's following directive merits careful consideration:

أيما طبيب تطب على قوم لا يُعرف له تطب قبل ذلك فأعنت فهو ضامن .

"A person not known as doctor gave treatment to a people and created problem for the patient, he shall be held liable for the lost."¹

لأجل معرفته ، ضمّن الطبيب ما جنت يده ، وكذلك إن وصف له دواء يستعمله والعليل

يظن أنه وصفه لمعرفته و حذقه فتلف ضمنه ، و الحديث ظاهر فيه و صحيح .

"If the patient regarded that person as competent to receive treatment from him, and this practitioner made a mistake in the course of treating the patient which resulted in a damage to him, the practitioner shall be held liable for the compensation. The same rule shall be applicable if the practitioner wrote a medicinal prescription and the patient, regarding the doctor as competent and qualified, used the prescription and suffered death. The *hadith* is clear and correct to this effect."²

After making it clear that the damage and loss resulting from the treatment administered by an incompetent medical practitioner to a patient does create the case of liability for compensation the point to be solved is that whether the compensation shall be borne by this self-proclaimed physician alone or its *aqila* (clan) too shall have to share it.

¹ Abu Dawood, Sunan 2/630.

² Zaidul-Ma'ad 4/140.

Hafiz Ibn Rushd has mentioned the statements supporting both the differing views.¹

As far as the Hanafites are concerned, the person guilty of indirect homicide, that is, contributing indirectly to the killing of a human being the bloodwite shall have to be paid by his kinspeople. To quote an authority:

أما القتل بسبب كحافر البئر و واضع الحجر في غير ملكه و موجبه ، إذا تلف فيه آدمي
الدية على العاقلة .

The example of indirect homicide being digging the well or placing a stone in the land in possession of other person. In case the well or the stone caused the death of a human, the bloodwite shall be payable by the kinsmen of the former.²

The injury resulting from the treatment of an inexperienced and unqualified medical practitioner falls to the same category and the bloodwite or the due compensation shall have to be paid according to the principle of the *aaqila*. It has to be noted here that such a killing neither necessitates making of atonement nor debar the curer from inheriting the estate of the deceased, if he happened to be an heir of the dying person.³

The matter of the bloodwite is entirely related to the patient's right. Taking in view the larger public interest, and to save the masses against the mischiefs of such self-proclaimed, inexperienced curers, the government authorities shall be required to take punitive and deterrent steps against them. To quote the words of Ibn Rushd again:

و إن لم يكن من أهل المعرفة فعليه السجن والدية .

"If the curer is unqualified and inexperienced, he shall be punished and imprisoned and will have to pay the bloodwite."⁴

Injury resulting from the neglect and carelessness of the curer

We have a consensus view on the point that if the doctor is qualified, experienced and legally competent to treat the patients and without committing a mistake in applying the concerned principles of

¹ Cf Bidayatul Mujtahid 2/232.

² Hidayah with Fathul Qadir 10/299.

³ Loc. cit.

⁴ Bidayatul Mujtahid 2/233.

the science of medicines the patient suffered death or sustained a serious injury, the doctor shall not be held liable for compensation. On this count there exists no difference of opinion in all the four notable schools of Islamic Fiqh. The Hanafi viewpoint has already been put in the foregoing lines. Representing the Malikite view, Allama Dardair writes:

و إذا عالج طبيب عارف و مات المريض عن علاجه المطلوب لاشيء عليه .

If the qualified doctor gave treatment to the patient, and in spite of his proper care and treatment the patient suffered death, the doctor shall owe nothing to pay as compensation. Ibn Qudama Hanbali represents the Hambali views in the following words:

و لا ضمان على حجام ولا ختان و لا متطبب إذا عُرف منهم حذق الصفة ولم تجن

أيديهم .

The liability (of making atonement for any injury caused to the patient) shall not be imposed on the cupper, the performer of the operation of circumcision or the curer provided that they are known to be so and skillful and adroit at their professions, and committed no wrong out of their intention.¹

On this point Hafiz Ibn Qayyim has cited the unanimity of the jurists, as already mentioned. To cite his words:

طبيب حاذق أعطى الصفة حقها ولم تجن يده ، فتولد من فعله المأذون فيه من جهة

الشارع ، و من جهة من يطبه تلف العضو أو النفس أو ذهاب صفة ، فهذا لا ضمان عليه اتفاقاً.

The doctor was well-experienced and make his best efforts to do justice to his profession and committed no wrong. But in the course of giving treatment to the patient permitted by the rules of the *shariah* and the principles of the medical profession a part of the body turned dysfunctional the doctor shall not be held liable for any compensation according to the agreement of the Fuqaha.²

In other words, if the physician made a mistake despite applying full experience and professional cautions in the course of treatment or chose a particular opinion in a matter which was open to more than one opinions and resulted in the death or injury of the patient, no question of liability to compensation shall arise. A qualified doctor shall be held liable to bear the bloodwite and due

¹ Al-Mughni 5/312.

² Zaadul-Ma'ad 4/139.

compensation when he is found guilty of committing gross professional negligence and of neglecting necessary precautions resulting in the death or injury to the patient.

و كذا الختان و قلع الضرس و الطب فلا ضمان إلا بالتفريط .

"No question of liability to compensate the damage and injury caused to the person while performing the operation of circumcision, or rooting out the tooth or administering the medicine to a patient, excepting that the injury was the result of the professional negligence."¹

"حجم أو ختن أو بزغ و تلف لم يضمن إلا إذا تجاوز المعتاد ."

The operation of cupping, circumcision or farriery if resulted in the death of the person or animal under treatment, it shall not render the doctor liable to the compensation.²

As a matter of principle, as has expressly said Ibn Qudama Hanbali, there are two conditions; if they are found in any medical case, the doctor shall stand absolved of the liability of compensation. If either condition is found missing, the mistake shall render the doctor liable to compensation.

First, the doctor is technically qualified, possessing due experience and skill;

Second, he committed no professional negligence in the course of administering treatment to the patient or in prescribing medicines. To put it in even more precise terms, neither gross negligence in giving the medical treatment is acceptable, nor the treatment without due qualification, experience and skill, is to be treated with forgiveness. Absence of both the conditions, or any one of them, shall render the curer liable to atone for his mistake.³

The same view has been expressed in detail by Shaikh Abdur Rahman al-Jazairi, a well-known Faqih of the nineteenth century. He, too, holds the doctor as liable to the compensation according to the detail furnished above.⁴

But since this offence has taken place as a mistake and an erroneous assessment of the things, the compensation to be paid if is

¹ Al-Sharh al-Saghir 4/47.

² Fatawa Bazzazia 5/89, al-Bahrur Raiq 8/29.

³ Al-Mughni, 5/312.

⁴ Al-Fiqh ala-al-Mazahibi Araba'a 3/147.

less than one third of the total bloodwite, it shall have to be paid by the physician himself, as has specified Ibn Qayyim. In case it is one third or even more, it shall have to be borne by his kinsmen or associates.¹

Performing operation after due consent

In order to perform a surgical operation on the patient, clear consent has to be secured from the patient himself, if he is in such a position; or from the next of his kin.

In case the doctor carried out a surgical operation on the patient without securing permission from the patient or the next of his kin in spite of the fact that doing so was quite possible, fully within the doctor's reach, or the doctor adopted a way of treatment which might possibly lead the patient to death or inflicted an injury on him which destroyed any organ of his body, the doctor cannot escape the liability for compensation. Much as the guardianship is primarily related to marriage and making dispositions in financial sphere, the juristic expressions suggest that the principle of guardianship holds as much good in the sphere of the medical treatment and making dispositions in one's body as in the domain of matrimonial and financial dispositions. For example, a person asked the another to cut off his hand and the latter did so, it will create no case of liability for compensation. The real point in it being that the open offence of this type too brings not the doer under the burden of a full liability because of the fact that he too shared the crime on an equal footing by permitting the latter to do so. Fatawa Sirajiyah reads:

الحجام أو الفصاد أو البزاع أو الختان إذا حجم أو فصد أو بزغ أو ختن بإذن صاحبه
فسرى إلى النفس و مات لم يضمن .

The cupper, phlebotomist, farrier or the circumciser if, by mistake, caused an injury to the patient in the course of performing the respective operations after securing the consent from the respective persons, and the injury got spread and the patient suffered death, the doctor shall not be held liable to any sort compensation.²

Ibn Qudama Hanbali writes:

¹ Zaadul Ma'ad, 4/140, also refer Bidayatul-Mujtahid 2/233.

² Al-Fatawa al-Sirajiyah 142, also, cf, fatawa Alamgiriya 6/34.

و إن ختن صبياً بغير إذن وليه فسرت جنايته ، ضمن ، لأنه قطع غير ماذون فيه ، و إن فعل ذلك الحاكم أو من له ولايته عليه أو فعله من أذن له لم يضمن ، لأنه ماذون فيه شرعاً .

In case a circumciser performed the circumcision operation on a child without securing permission from his guardian and the injury got spread beyond proper limit, the circumciser shall have to accept the full liability for compensation. It is due to the fact that he performed the operation without obtaining consent. On the other hand, if the same operation was carried out by an official authority, or any person with a legitimate claim of guardianship on the child, or the circumciser did so with the consent, there shall be no question of liability. So because he was legally permitted to carry out the basic operation.¹

Nevertheless, not securing the consent from the available guardians to perform such a risky surgical operation is indeed an act of neglecting the precautions and a dreadful mistake on the part of the curer and physician.

Ibn Nujaim Hanafi has made this point crystal clear that the injury or death of the patient will entail the liability of compensation, in the event of carrying out of a risky operation if two conditions are found: professional negligence and not securing the consent.

To cite his words:

و يُستفاد بمجموع الروايتين اشتراط عدم التجاوز و الإذن لعدم وجوب الضمان حتى إذا عُدَّ أحدهما أو كلاهما يجب الضمان .

From the combination of both the reports it is gathered that for evading the liability two conditions must be met: consent from the patient or his guardians; and not transgressing the proper limits. If either one condition, or both, are missing, the doctor shall have to assume the liability.²

About attempting a surgical operation without seeking due permission Imam Shafie holds the doctor liable for any injury the patient sustained with no fault of the doctor on the ground that he performed the operation without obtaining consent from the patient, or his guardians.³

¹ Al-Mughni 5/313.

² Al-Bahrur Raiq 8/29.

³ Al-Umm 6/176.

Emergency operation without permission

In case the patient has reached the position which calls for an immediate surgery and the patient is not in a position to express his consent, nor his guardians are available to grant permission; and any delay, medically speaking is feared to lead the patient to death, the doctor, under such circumstances, shall be regarded rightful to perform the required operation. For the Law of Islam makes it incumbent on every Muslim to do what is at his disposal to save an endangered human life. Under such a situation the Shariah permits him to take every step to save the dying patient. Not securing consent from the respective human beings will do no harm to him, nor lessen the force of the obligation he owes towards the patient under his care. How important being the obligation of saving the life of a human being may well be assessed from the following citation:

إن اضطر إلى طعام و شراب لغيره فطلبه منه ، فمعه إياخ مع غناؤه عنه في تلك الحال ،
فمات بذلك ضمنه المطلوب منه .

“If a person fell in extreme need to the food or drink belonging to another person and solicited him for the same. But the latter refused to comply with the former’s request despite the latter’s needlessness to that food and water, and this resulted in the death of the former, the latter one shall be here responsible for his death.”

That is, a person saw a human being in a serious danger to his life and he, in spite of being able did nothing to save him and the endangered human being suffered death, according to some fuqaha, the person who disregarded the person in danger shall be held liable to compensation.¹

Keeping in view the emergency situation, if the surgical operation was carried out on the patient to save his life, it shall not only be hailed as an act legally lawful, but shall be taken as an act of virtue of great merit. And if the operation proved unsuccessful and the patient suffered death with no professional fault or negligence on the part of the doctor and surgeon, the law shall not hold him liable to any sort of compensation, whatsoever.

¹ Op. cit.

The Second Unit

The fact about the Contagion of the Diseases

It is obvious that the questions about the Aids and plague do stem from that the medial science which regards these diseases as contagious. It, therefore, seems in order to precede the answers to the questionnaire by a discussion of the concept of the contagion of the diseases in the light of the Islamic teachings. As far as the Qur'an is concerned, it does not touch upon the point of the contagion of diseases positively or negatively in clear terms. The plague, however, has been described as *rijz*, the Divine punishment, which hit a section of the Children of Israel. This may be taken as a significant indicant suggesting the plague to be a contagious disease.

As regards the *ahadith*, some *ahadith* tend to negate the contagion of diseases and dismiss such concepts as baseless and superstitions, some others, however, speak of that there are some diseases which are contagious. The negating *ahadith* generally begin with *la adwa* meaning 'there exists no contagion.'¹

According to a report the Holy Prophet (SAWS) shared meal with a leper and said: "Reposing trust in Allah, and having faith in Him."²

ثَقَّةً بِاللَّهِ وَتَوَكَّلًا عَلَيْهِ .

The *ahadith* from which we gather that the diseases might be contagious, or are suggestive of this, include the following:

لَا توردو المرضى على المصح .

Abu Hurairah (may Allah be pleased with him) reported the Prophet to have said: "Bring not the sick persons upon the healthy ones."³

The same reporter, that is, Abu Hurairah, reported the Prophet (SAWS) to have said:

فَرِّ مِنَ الْمَجْذُومِ كَالْفَرَارِ مِنَ الْأَسَدِ .

"Flee from the leper as you flee from the lion."⁴

¹ Cf. Bukhari, reported by Abu Hurairah and Abdullah bin Umar 2/859, chap. *La adwa*, Muslim, Report by Abu Huraiah 2/230 chap. *La adwa*.

² Fathul Bari 10/159.

³ Bukhari 2/859, Chap. *La adwa* ... Muslim 2/230.

⁴ Bukhari 2/850 chap. Al-Juzaam.

Through the medium of Haz. Abdullah bin Abbaas Tabrani reported the Holy Prophet to have said:

لا تُدِيمُوا النَّظَرَ إِلَى الْمَجْذُومِينَ .

“Cast not a longer look at the people suffering from leprosy.”¹

عن النبي صلى الله عليه و سلم أنه قال : إذا سمعتم بالطاعون بأرض فلا تدخلوها، وإذا

وقع بأرض و أنتم بها فلا تخرجوا منها .

The Prophet (SAWS) is reported to have said: “When you hear of the plague having broken out in a land, you must not enter it. And, if the plague broke out in a land you are already living in, you must not go out of it.”²

Between such *ahadith* the apparent contradiction has been referred to the difference of the situations. In order to reconcile one type of the *ahadith* with those speaking of the opposite meaning Hafiz Ibn Hajar (May Allah deal him with mercy) has mentioned a number of the viewpoints of the *Ulama*. More correct among them, however, being that the *ahadith* tending to negate the concept of contagion are basically intended to eradicate the pre-Islamic pagan superstitious thoughts about the contagion of the diseases. According to pagan superstitions, held mostly by the people in the pre-Islamic world, the diseases possess inherent quality to pass from the diseased person to the healthy one on their own without interference from Allah, the Creator. The *ahadith* tending to admit the existence of the contagion, on the other hand, speak of the existence of contagion as a matter of reality, as part of the natural law of causation operating in the world according to the greater scheme of the Creator Himself but this law is not free to hit anyone else on its own, it is strictly governed by Allah Himself. The statement of Ibn Hajr suggests that the majority of the men of Islamic learning subscribe to same the opinion.³

Imam Navavi has discussed the point more elaborately and related that the most of Islamic *Ulama* hold the same view.

فهذا الذي ذكرناه من تصحيح الحديثين و الجمع بينهما هو الصواب الذي عليه جمهور

العلماء ، و يتعين المصير إليه .

¹ Majma-u-Zawaid 5/101. The report is technically almost sound.

² Bukhari 2/853 chap. Ma Yuzkar Fit Tauoon.

³ Fathul Bari 10/161, al-Juzaam.

What we have mentioned to uphold both the apparently contradicting sets of *hadiths* and the way we have to reconcile them with each other is of course right, and to the same does subscribe the majority of the *Ulama* and the same is determined to be sound and right.¹

In respect of several diseases the contagion and their transfer ability to others has now become an established fact, based on experiments medically conducted and scientifically authenticated. The statement of Allah *ta'ala* and His Prophet (SAWS) could never be opposed to an established reality. The combination of these two facts leads us to believe that some diseases are inherently proven to transfer to others by way of the germs. However, this operates merely as a cause. It will transfer to others only if Allah so willed. In other words, one's coming under the attack of a disease neither depends on one's companionship of the diseased or coming in touch with him. In the like manner, living with a sick suffering from a contagious disease does necessitate the transfer of the disease to the healthy person. It is entirely under the direct command and Will of Allah *ta'ala*.

After this important note on the concept of the contagion of diseases, the answers to the questions raised in this respect are as follows:

Responsibility of an Aids Patient

Since concealing his disease of Aids from his family members and the circle of his/her close friends and relatives may cause injury to them, it shall be incumbent upon him to tell them about his disease. Although this may be greatly damaging to his own person, and may create complex problems for him in the society, yet his damage, in most cases, is limited to his own self. According to the principle of the Shariah the minor evil is to be borne in order to avert a greater evil. Apart from establishing sexual relationship, the commonest cause of the transfer of this cursed disease to others, the things like sustaining cuts or cracks in the body, bleeding at the nose, or bleeding by way of hemorrhoids' pyorrhea, etc, also include the cause leading to the transference of disease to others. Since such things commonly happen and are feared to inflict harm upon his family, the relatives and the

¹ Nawawi: commentary on Muslim Sharif 2/230.

friends, the patient of Aids is, therefore, required to inform them all of his disease, so as to let them take necessary precautions.

Responsibility of the Doctor

It will form part of the doctor's obligation to inform all those who are in touch with the patient suffering from Aids and are more likely to attract the disease of the Aids patient under his medical care. No doubt the doctor's so doing shall constitute a type of backbiting. Equally true being the fact that there are reasons and cases which make the backbiting admissible. Such reasons include protecting a Muslim against an evil.¹

According to Imam Nawavi these reasons are six, and to Allama Shami such reasons are eleven, which may render the backbiting as admissible.²

The spirit running through all the reasons is nothing except to ward off the detriment, both the sacred and secular, to receive one's legitimate right and expounding the right counsel in times of need. In order to realize such real objectives the moral, natural, physical and congenital flaws of the person(s) in discussion may be uncovered.

Responsibility of the Society

The responsibility of the society towards an Aids patient, indeed towards all the persons suffering from contagious diseases like plague, etc, is that the patient must not be left alone, medically uncared. Acting upon reasonable precautions, the society should remain in constant touch with him. The expediency and great wisdom underlying the *ahadith* forbidding the flight from the region under the attack of plague being that there will hardly be a person to look after the plague-victims, to attend them and administer medical treatment to them. Stressing the point, Imam Ghazali (may Allah deal him with mercy) writes:

"If the unaffected people be allowed to take flight from the plague-hit area, there will remain only the plague-victims rendered by the disease unable to move. This will be discouraging to them. The victims will turn without attendants and there will hardly be one to

¹ Ihya-ul-Uloom 3/152.

² Cf. Sharh Muslim 2/322, Raddul-Muhtaar 5/262-63.

administer the medicines to them or arrange the food for them. The victims rendered by the diseases absolutely unable to meet their requirements on their own, the situation shall amount to exposing them to a certain death.¹

Keeping in view this fact, the Aids patient should be provided full medical and social care. Restrictions should not be imposed on their attending the Juma'a and the congregational prayers and other social gatherings of the type. In case there exists a large number of the lepers, or those suffering from other contagious diseases, should a separate *masjid* be built for them in order to restrict their movement for worship to this separate *masjid*? This is a point of disagreement amongst the Fuqaha. The majority view, however, is not to debar them from the common *masjids*.²

Nevertheless, despite the moral, Sharai and human directions given by the Islamic teachings, if the nauseating feelings are commonly found in a given human society and a normal living for such patients is rendered difficult there, it, as far as I think, will be prudent to build a separate hostel for such people. This is also a juristic viewpoint.

يُتَّخَذُ لَهُمْ مَكَانٌ مُتَفَرِّدٌ عَنِ الْأَصْحَاءِ .

For such people shall be built a house separate from the healthy people.³

Al-Mausu'ah al-Fiqhiyah reads:

ذهب المالكية و الشافعية و الحنابلة إلى منع المجذوم يتأذى به من مخالطة الأصحاء و

الاجتماع بالناس.

The Malikites, the Shafites and the Hanbalites tend to prohibit the lepers from mixing and living with the healthy people if a general feeling of aversion towards the lepers is found in the healthy people.⁴

About the Hanafites the compilers of the al-Mausu'ah have written that they have no express statement on the point in hand. But this may be seen in the light of the Hanafi juristic principle of tolerating the lighter or individual evil to avoid the greater and

¹ Ihyaa Uloomiddin, with commentary al-Ithaaf 12/278-79.

² Fathul Bari 10/103.

³ Loc. Cit.

⁴ Al-Mausua al-Fiqhiyah 8/78.

collective one. The Hanafi view point, therefore, should be regarded as identical with those of other juristic schools.

Intentional transferring of one's disease to others

If an Aids patient intentionally transferred his/her disease to any other person and this precipitated his death, he shall be put to death in retaliation according to the viewpoint of the Malikites, Shafites and the Hanbalites. For the intentional transference of a contagious deadly disease to a healthy and unaffected person share the juristic ruling governing the crime of poisoning. Such a killing does invoke the law of retaliation. Ibn Qudama Hanbali writes:

... أن يسقيه سماً أو يطعمه شيئاً قاتلاً فيموت فهو قتل عمد موجب للقتل إذا كان مثله

يقتل غالباً .

....that a person administered poison or a deadly substance to a person of sound health, which caused his death, according to the common experience, this killing shall be treated as intentional homicide leading the killer to face retaliation.¹

To the same view do subscribe the Malikites and the Shafites though there exist minor differences in details.²

As regards the Hanafi position on this point, the principle with the Hanafite being that the person becoming the cause in the death of an innocent human being shall be held liable to the bloodwite payable by his *aaqila*.³

Even if the injury suffered by the victim is less than the death, it is the doer himself who shall have to bear the compensation, subject to that the injury resulted from a travesty on his part.⁴

To put the Hanafite standpoint more precisely, if an Aids patient committed the wrong of transferring his unfortunate disease to any other person which prompted his death, the bloodwite shall have to be paid to the victim. If the victim escaped death and sustained a serious damage to his health, a proportionate compensation shall have

¹ Al-Mughni 8/212.

² Al-Fiqh ala-al-Mazahibil Arba'ah 5/244-45.

³ Fathul Qadir 10/214.

⁴ Op. cit, 10/330.

to be paid to the victim, plus facing due punitive action on the part of the government. To quote a juristic authority:

إذا سقى إنساناً شرباً مسموماً فمات فعليه التعزير .

If somebody administered a poisoned drink to a person which caused his death, the former shall be subjected to a punitive action.¹

The patient of Aids shall not escape the liability of compensation even if he played no active role in transferring his disease to any other person and happened so without his intention, yet he knew the potential destructive effects of his disease on others. For he has been a cause leading the victim to suffer the injury, no matter what motives and reasons operated behind. Making reparations shall be incumbent upon him. In the juristic literature there exists a fair number of such precedences.

Keeping in view the facts put above, the Aids patient who donated his blood to a needy person despite knowing the medical fact that his blood was destined to transmit the germs of the disease to the person receiving the blood shall undoubtedly be earning a grave sin of causing injury to others as well, beside bearing full liability of making reparations against the injury sustained by another party.

Aids as a valid reason to demand the dissolution of Marriage

According to the Malikites, Shafites and the Hanbalites the marriage, too, is from those contracts which might be dissolved due to a valid defect. If the defect emerged in the husband after the marriage was concluded, or he was already suffering from, yet the woman was kept in the dark, the woman would be regarded entitled to demand the dissolution of her marriage according to the three grand Imams. As regards the defects entitling the woman for demanding to untie the knot of her marriage, they, though different in details, primarily fall in two categories; first, those defects which render the partners sexually unacceptable and unusable for each other. Second, those defects as render the partners detestable to each other, or either one party to his/her counterpart, and are potentially contagious such as leucoderma, lunacy, etc.²

¹ Al-Fatawa al-Sirajiyah p. 143.

² Al-Sharh al-Saghir 2/469-70, Subul al-Salam 1/134, al-Fiqh al-Mazahib al-Arba'ah 4/280.

As of Imam Abu Hanifa, to him a wife has no right to make a demand for the dissolution of her marriage except that the man is impotent or his private part is missing.¹

Out of the Hanafites Imam Muhammad bin Hasan al-Shibani, however, thinks otherwise. To him the lunacy and leucoderma include those defects if anyone is found in her husband the woman shall be rightful to demand the dissolution of her marriage.²

The latter Hanafites too adopted this view and they issue the edict accordingly.³

It is generally thought that according to Imam Muhammad the woman's right to seek the dissolution of her marriage is restricted to lunacy, leucoderma and leprosy. There are expressions which suggest that this restriction is not correct.

Kasani writes:

... خلوّه من كل عيب يمكنها المقام معه إلا بضرر كالجنون ، و الجذام والبرص شرط للزوم النكاح حتى يفسخ به النكاح .

For the properness of the marriage what is essentially required, among other things, is the freedom of man from every defect with which a woman cannot live with him except hurting herself. Such defects include the lunacy, leprosy, leucoderma etc. If such defects are found in a man, the marriage might be dissolved.⁴

Allama Zeelai writes:

وقال محمد : تُرد المرأة إذا كان بالرجل عيب فاحش بحيث لا تطيقُ المقام معه ، لأنها تعذر عليها الوصول إلى حقها لمعنى فيه ، فكان كالجب و العنة .

...And Imam Muhammad said: In case the man has some gross deficiency with which the woman cannot afford to stay with him, she may reject the marriage. It is in view of the fact that she cannot receive her right from the man so grossly deficient and wanting. Such deficiencies shall be regarded like the impotency and the lack of the private sexual part.⁵

It means that according to Imam Muhammad bin Hasan al-Shibani, the woman is entitled to seek the untying of the knot of her

¹ Hidayah 2/401.

² Al-Bahrur Raiq 4/126.

³ Fatawa Hindiyah 6/134.

⁴ Badai-us-Sanai 2/327.

⁵ Tabtyeenul Haqaiq 3/25.

marriage with such a man as is suffering from the deficiencies and diseases which are contagious and provoke hate and repugnance. The same view does conform to the nature, temperament and the spirit of the Shariah, and is consistent with its principles and the primary objectives the Shariah seeks to achieve.¹

Going by the facts as furnished in the foregoing lines the preferred view of the four Islamic schools of jurisprudence is that the Aids is out of the diseases which if found in man, the woman shall be entitled to seek the dissolution of her marriage. Aids, as a matter of fact, is far more detestful as compared to leucoderma and leprosy, and more contagious. Furthermore, since the sexual relationship is an important cause of the transfer of this disease to the partner, so, an Aids patient husband shall be regarded very much like the impotent one. For, fearing the transfer of this cursed disease, she cannot satisfy her sexual desire under such a man suffering from Aids.

Abortion due to Aids

The duration of pregnancy may roughly be divided into two periods: first, 120 days, since the conception, that is, before the infusion of spirit, second, after the infusion of the spirit till the delivery time. In the second period, that is, after the infusion of spirit into the structure, the abortion is absolutely forbidden even though the baby is feared to attract the Aids. During the first period, however, the abortion may be had for some genuine reasons like the fear of attracting Aids, or any other reason such as the woman has a baby who is being fed on her milk and her husband cannot afford to arrange another woman to feed his suckling baby. Under such circumstances the abortion may be had before the completion of one hundred and twenty days on the conception.²

As regards the abortion after passing one hundred twenty days, it has always been a consensus opinion amongst the jurists of all the schools of Islamic Fiqh that it is absolutely forbidden, and doing so shall constitute the graver sin of intentional homicide. To quote the words of Shaikhul Islam Ibn Taimiyah:

إسقاط الحمل حرام بإجماع المسلمين .

Abortion (after the passage of 120 days on the conception) is absolutely forbidden according the consensus of Muslims.³

¹ For more detail, refer Jadid Fiqhi Masael 2/158-70.

² Raddul Muhtar 2/380.

³ Fatawa Shaikhul Islam Shaikh Ibn Taimiyah 4/317.

Shaikh Ahmad Ulaiyyash al-Maliki says:

التسبب في إسقاطه بعد نفخ الروح فيه محرم إجماعاً ، وهو من قتل النفس .

When the spirit is infused into the embryo, adopting the ways leading to an abortion is an act held forbidden according to the consensus of the *ummah*. Doing so will indeed be an act of intentional homicide.¹

The birth of a child with hereditary diseases as dangerous and threatening as Aids offers an excuse graver still. An abortion may be had before passing one hundred twenty days on the conception, and the woman her husband and the health department all shall be considered equally permitted to take the necessary steps in this regard.

Aids victim Children and the Question of their Education

In case a society has a fair number of the children victim of Aids, it will be in the fitness of things to arrange separate schools and educational institutions for such children, and this problem has to be addressed by the government and welfare societies. About the lepers the compilers of the *al-Mausuah-al-Fiqhiyyah* (published by the Kingdom of Kuwait) cite the opinion of the Fuqaha in the following words:

و إذا كثر عدد الجذامى ، فقال الأكثرون يومرون أن ينفردوا عن مواضع الناس ولا يمنعون عن التصرف في حوائجهم .

In case the number of the lepers got augmented, the majority of the jurists say that they shall be commanded to live away from the people. But they shall not be prevented from meeting their needs on the common points.²

Quite obviously, such people may be kept away from the general public when there exists separate arrangements for them. In a society where the number of the lepers or the Aids patients is extremely limited, the patient children shall be granted admission to the general schools and educational institutions. Yet, it would be prudent to enlighten other students of the disease, its nature and the

¹ Fathul Ali al-Malik 1/399.

² Al-Mausuatul Fiqhiyyah 15/130.

necessary precautions. Far-fetched fears and unreal apprehensions cannot offer a legitimate ground to deny education to such children.

Responsibility of the parents and society towards the Persons and Children Suffering from Aids and other Contagious Diseases

Towards the Aids patients, indeed the patients suffering from all the contagious diseases the responsibility of their parents and the society is to show utmost kindness to them and always maintain a loving and affectionate attitude towards such disheartened patients. They should be treated in a way that inspire and encourage them to live a normal life, without undue concerns and anxieties.

Are the Aids and other diseases of the type to be treated as the mortal diseases?

The mortal disease has variously been defined, so much so that the differences could hardly be ignored.¹

To Allama Haskafi, the patient shall be treated as on the deathbed if he is heading towards a certain imminent death and the illness has rendered him quite unable to meet his personal requirements on his own.²

To Abul Laith Samarqandi the mortal disease is not necessarily to render the patient confined to bed. What has been held as essential for a disease to be termed and treated as mortal is that it generally ends in the termination of the life. Shami, too, subscribes to the same view, and according to him Sadrus-Shahid, too, held the same view. And the same conforms to the expressions of Imam Muhammad. In order to support his view the Shami has cited some more items as well.³

Nevertheless, the diseases which naturally lasts long shall be regarded as mortal ones when there is a marked increase in them.

¹ Cf. Fathul Qadir 4/151.

² Al-Durrul Mukhtar with Raddul Muhtar 2/520.

³ Op. cit.

If there is no increase, and the disease has ceased to take graver proportion, and one complete year passed over the same state, the disease shall not be treated as such. To cite the words of an authority:

المُقْعَدُ و المفلوج والمسلول إذا تطاول ولم يقعد في الفراش كالصحيح ، ثم رمز شح حد التطاول سنة ، وفي القنية : المفلوج والمسلول والمقعد مادام يزداد كالمريض .

As regards the disabled, the paralyzed and incapacitated, if is not bedridden, shall share the rulings applicable to the healthy. According to the observation of Shamsul Aimmah Hulwani, the period of prolongation of the mortal disease is one year. According to Qinya, an authoritative work on the Hanafi interpretation of the Islamic Fiqh, the paralysis and tuberculosis, if are on the increase shall be regarded to be the mortal disease.¹

In the light of the explanations put above, the juristic rule to be applied to the diseases like Aids, plague, cancer and the likes, will be: if the disease has medically been proved incurable and the condition of the diseased is deteriorating, it is of course the mortal illness. But, if the problem is not on the increase, and one complete year has lapsed on the same condition, the illness is not yet to be treated as the mortal one; that is, it will not affect the estate, acknowledgement, will, divorce, etc.

Restricting the movements of the people in a region affected by plague

Imposing restrictions on the movements of the people in an area affected by the plague is quite right, and conforms to the directive of the Holy Prophet (SAWS) reported by Haz. Sa'ad and Haz. Abdur Rahman bin Auf (may Allah be pleased with them both) in the following words:

عن النبي صلى الله عليه و سلم أنه قال : إذا سمعتم بالطاعون بأرض فلا تدخلوها، وإذا وقع بأرض و أنتم بها فلا تخرجوا منها .

The Prophet (SAWS) is reported to have said: "When you hear of the plague having broken out in a land, you must not enter it. And, if the plague broke out in a land you are already living in, you must not go out of it."²

¹ Al-Durrul Mukhtar 2/521, also, see Hindiya 1/463.

² Bukhari 2/853 chap. Ma Yuzkar Fit Tauoon.

Since it is a medically established reality that some diseases are communicable, taking precautions in order to protect the public health will turn somewhat obligatory. Discussing the transferability of the diseases like plague, leprosy, etc. and the need to take necessary precautions to prevent their unrestricted spread in their books, Imam Ghazali and Hafiz Ibn Qayyim, whose deep understanding of the religion of Islam and the secrets underlying the Islamic teachings is widely acknowledged, what have said is very important and enlightening. The gist of whatever Imam Ghazali has written is that the prohibition to leave the plague-hit area is intended to contain the spread of the plague. The people living inside the plague-hit city and seem apparently unaffected may have attracted the virus of the epidemic. In the initial stage the symptoms may not appear so early, yet, with their being out of the affected area, the disease may transmit to others.¹

The secrets stated by Ibn al-Qayyim are too many. One being that the intermixing with the plague-hit people and living with them, in most cases, promotes such transferable diseases. Therefore, the people who happen to be outside the region of the epidemic, healthy and unaffected should stay away from the area of the epidemic for such people it would of course be absolutely imprudent to imperil their lives by entering an area affected by an epidemic.²

It is noteworthy to learn here the nature of this prohibition. Among the experts in the *hadith* it is a point of considerable disagreement whether the prohibition sounded by the *hadith* is obligatory or recommendatory. According to Hafiz Ibn Hajar and Imam Baghwi it is purely recommendatory and not mandatory.³

The same view is in tune with the juristic principle which reads that if no legal and *sharai* evil underlies the prohibition sounded by the *Shariah*, rather is guided by some medical or natural expediency of the practical value, the prohibition is termed as the directive prohibition. It never means to outlaw the concerned thing. But, in the context of the things as mentioned above, the government has the right to impose some restrictions on entering and moving out of the

¹ Ihya-ul-Uloom with Ithaf 12.

² Al-Tibb-al-Nabavi p. 34, Ibn Qayyim.

³ Fathul Bari 10/187.

people in the larger public interests, in the manner much the same as the Fuqaha permit the government authorities to stem the price-hiking tendencies.¹

Entering or moving from the plague-hit area to fulfill some need

As far as the people who have attracted the plague in a plague-hit city are concerned, they in no case are permitted to move out from there. The unaffected people of that city, however, may move out from there to serve a purpose on provision that it is not intended to take flight. In the like manner, the people who are out of this city and have some purpose to serve inside the affected area are also permitted to enter it. To quote the words of Imam Nawavi:

و في هذه الأحاديث منع القدوم على بلد الطاعون و منع الخروج منه فراراً من ذلك ، أما الخروج لعارض فلا بأس به ، و هذا الذي ذكرناه هو مذهبنا و مذهب الجمهور ، قال القاضي : هو قول الأكثرين .

These *ahadith* sound the prohibition from entering the plague-hit city, and departing from there with an intention of taking flight from it. As regards the departing from it in order to serve a purpose, it will entail no wrong. The same as we have mentioned is our view and to the same does subscribe the majority, as Qazi has observed.²

In the same context he writes further as:

واتفقوا على جواز الخروج لشغل و غرض غير الفرار .

It is consensually agreed that in order to accomplish a task or to serve a purpose one may move out from the plague-hit city, but never to take flight.³

Allama Murtaza Zubaidi too has cited the same view.⁴

As regards coming back to the plague-hit land for accomplishing a purpose, the lawfulness of it is all the more obvious. For his return poses no danger to the public health. By returning to an epidemic-affected area such a person indeed will be doing an act of great altruism for the good of his family members and the general

¹ Durr-e-Mukhtar on the margins of al-Raddul-Muhtaar 5/283.

² Sharh Muslim of al-Navavi 2/228.

³ Loc. Cit.

⁴ Ithaaf Saadatul Mutaqin Sharh Ihyaau-Uloomid-Din 12/281.

Muslims. This is particularly applicable to the medical team and relief workers who enter the affected land for the medical help and care for the plague victims. They will be earning great reward from Allah *ta'ala*. According to Imam Ghazali visiting the plague-hit land for the care and treatment of the victims confined to the very area will be a commendable and appreciable act. To quote his words:

لا يُنهي عن الدخول ، لأنه تعرض لضرر موهوم على رجاء دفع ضرر عن كيفية المسلمين .

Entrance into the plague-hit area shall not be denied to the people wishing to enter it with the intent to save the lives of the afflicted people there. They have showed their preparedness to render medical and moral support to those suffering the hardships there and for this they have exposed themselves to a potential danger in the hope of saving the troubled people.¹

¹ Op. cit. p. 12/280.

Unit Third

Admissibility of Backbiting and Divulging the secrets for the causes held dear by the *Shariah*

Undoubtedly, as backbiting, finding faults with Muslims and unveiling their hidden moral, social and creational defects has been regarded a terrible sin, which constitutes a grave disobedience towards Allah *ta'ala*, so appreciable and rewarding being keeping secrets and covering the faults and defects of Muslims. It has to be noted in this context that the commands of the type are subservient to the objectives and ends underlying those commands. Originally, the backbiting is an act of disobedience, yet, in order to achieve a legitimate purpose and expediency it may occasionally turn permissible, rather incumbent. In the literature on the *Hadith* we invariably have the chapters denouncing the backbiting and clumsy. But, simultaneously, we find that the *Muhaddithin* have elaborately pointed out the circumstances in which this act of sheer disobedience turns lawful. For instance, in the Bukhari Sharif we encounter a section with the heading:

“What is lawful of backbiting the people of mischief and of suspicious character”

Then, Imam Bukhari brings the *hadith* to vindicate the heading of the section which reads that a person approached the Prophet (SAWS) and asked permission to meet him. The Prophet (SAWS) granted him audience, and since the person was of bad character, the Prophet (SAWS) informed Haz. Ayisha, the Mother of the Believers, that the man was of evil character.¹

Haz. Hinda *bint* Utba complained to the Prophet (SAWS) about her husband, Abu Sufyan, that he was not generous enough to provide her sufficient maintenance. That was indeed a negative observation on the part of a wife towards her husband. The Prophet (SAWS), however, heard the complaint and made no objection.²

Hazrat Fatima *bint* Qais sought the Holy Prophet's opinion regarding two persons who had sent their marriage proposals to her.

¹ Bukhari 2/891.

² Bukhari 2/808.

The Prophet (SAWS) informed her about their faults and advised her to reject their proposals.¹

From the companions of the Prophet (SAWS) too is proved that in view of some legitimate expediency, or for admonitory and constructive purposes, they had to make mention of some defects and moral shortcomings of some people. The main purposes rendering the sin of backbiting and disclosing a person's faults to others, according to juristic details, have been summed up by Hafiz Ibn Hajar Asqalani in the following words:

“The *Ulama* have unanimously observed that backbiting and mentioning a person's moral faults before others will constitute no sin if the backbiter has a legitimate and valid purpose to achieve and is left with no other option or means than backbiting. For instance, seeking redressal to the wrong done to anyone, repealing the wrong and injustice, seeking support from the people and the authorities to eradicate social evils, seeking the *fatwa* from a *mufti vis-à-vis* a situation one is faced with, bringing a dispute before the court of justice, warning others against the mischief of the mischievous elements, investigation and evaluation of the character of the reporters forming the chain of the transmission of *hadith*, giving advice to a man in matters of marriage and business and so on. If a student of the Islamics is seen visiting a *bidati* or a person of bad character, and is feared to get affected from him, he too may be warned and informed of the evil. In addition, the people involved in committing overtly the acts of grave disobedience to Allah and His Prophet (SAWS) may also be mentioned in bad terms and their sins may be mentioned in their absence.²

After this important note of fundamental value, the answers to the queries are as follows:

When the doctor is permitted to divulge the defects and shortcomings of his patient?

The physician and the doctor may divulge the hidden defects of the patient under his medical care to guardians of the proposed girl even without receiving a request on their behalf in this respect. By so

¹ Muslim 1/483.

² Fathul Baari.

doing the doctor will be giving his contribution to the future prosperity and well-being of the marriage which is going to take place. For if both the partners are well aware of each other's characters, pleasant and displeasing aspects, the marital relationship is expected to last long and the partners will be more secure. According to some *Fuqaha*, in the context of the marriage proposals the hidden defects of the people may be unveiled at one's own accord without being asked.¹

In case the guardians of the woman contacted the physician to have correct knowledge about the proposing man, it shall be incumbent on the physician to inform them of the correct position. By concealing the facts he knows about the man he will be earning the grave sin of taking up fraudulent attitude towards them. For it is an important duty of all Muslims towards each other to be solicitous and sincere in all walks of life. To quote the words of Imam Navavi:

و يجب على المشاور أن لا يُخفى حاله ، بل يذكر المساوي التي فيه بنية النصيحة .

It is incumbent on the advisor never to conceal the facts about him. He should make known the bad features of his character with the intention of being solicitous and sincere.²

- Since in the situation mentioned in the question the divulging of the secrets to the concerned party is intended to save a Muslim family from evil, it will of course be regarded as admissible.
- This situation is very much like the one mentioned under the preceding point. If the doctor is requested, it now shall be his duty to make the things clear to them. Without a request, the doctor is not morally obliged to take initiative in this regard on his own accord.
- From among the consensually recognized important principles of Islamic Fiqh, which gets support from a number of the Quranic verses and *ahadith* as follows, being the following:

يتحمل الضرر الخاص لدفع الضرر العام .

¹ Al-Durrul Mukhtaar 5/362.

² Riyazus-Salihin 581, *Maa yubahu minal Ghibah*.

In order to repeal the common detriment the particular detriment shall be borne.¹

Bringing correct information to the authorities about the deficiencies of the driver or pilot is of course injurious to them; but, going by the principle just mentioned, this particular negative aspect of the situation shall be disregarded so that a greater evil could be repealed. Under such a situation it will constitute part of the doctor's professional obligation to enlighten the authorities about the visual deficiency the pilot or driver is suffering from.

Informing about the child born out of wedlock

Vis-à-vis the crimes and offences attracting the prescribed punishment the principle of Islamic Fiqh is that as far as possible the one knowing the commission of such an offence should avoid its disclosure to anyone else or bringing it to the cognizance of the authorities. Avoiding disclosure is always better. To quote the words of a juristic authority:

والشهادة في الحدود و يُخير فيها الشاهد بين الستر و الإظهار ، لأنه بين حسبتين : إقامة الحد ، و التوقي عن الهتك ، و الستر أفضل .

As of bearing witness before the Islamic court of justice regarding the administration of the prescribed punishments, the witness will be between two virtues: to draw a veil over (whatever he happened to witness) or reveal it to the authorities (so that the prescribed punishment might be administered to the criminal. Actually he is now between two virtues: facilitating the administration of the prescribed punishment and eschewing the divulgence of a covert commission of a cognizable offence. The eschewal, however, is still plausible.²

Notably, the juristic opinion is predicated upon a *hadith* reported on the authority of Haz. Abu Hurairah. The report reads as:

من ستر مسلماً ستره الله في الدنيا و الآخرة .

He who drew a veil over (a fault of) a Muslim, Allah *ta'ala* will veil him in this world and in the Hereafter.³

¹ Al-Ashbaah wal-Nazair, Ibn Nujaim 87.

² Hidayah with Fathul Qadir 7/367.

³ Nasbur Rayah 79, with reference to Bukhari and Muslim.

On the other hand, the safety and protection of the human life is so important a duty that needs no further stress. The *Shariah* speaks so highly of it that for saving the life of an endangered human being a Muslim is asked even to break his prayer. According to the express opinion of the *Fuqaha* if a person does not want to spend on the fondling, he should bring the matter to the notice of the concerned authorities.¹

ينبغي للملتقط إذا كان لا يريد الإنفاق من مال نفسه أن يرفع الأمر إلى الإمام .

Keeping in view both these important aspects of the issue, what appears plausibly better being that if the life of the fondling could be saved without naming and identifying anonymous mother, so far so good. The finder may inform the authorities, or the organizations which voluntarily accept such unclaimed children and foundling babies. But if the child is feared to receive no proper care and his life is exposed to serious danger without disclosing the name of his mother (which obviously involves the exposure of the heinous crime of adultery that resulted in the birth of the child), she may be unveiled. For the safety of the human life is important still.

Treatment of the wine-addiction through the wine itself

This question is basically related to the '**Treating a disease by a thing held prohibited by the *Shariah***'. Amongst the earlier *Fuqaha* it was a point of disagreement. The later as well as the contemporary *Fuqaha*, however, are generally agreed upon that treating the diseases by prohibited substances is lawful. To cite the words of a great juristic authority:

و في النهاية : يجوز التداءوي بالمحرّم ، كالخمر والبول إذا أخبره طبيب مسلم أن فيه شفاء

ولم يجد غيره من المباح ما يقوم مقامه ، و الحرمة ترتفع للضرورة ، فلم يكن متداوياً بالحرام .

Use of the prohibited things, like wine and urine, etc. for the purpose of medication is permissible if a Muslim physician has informed him that it would cure the disease, and no lawful thing was available for the purpose. It is because of that the necessity renders the prohibition as lawful. So, driven by necessitating circumstances, it will be regarded as using no prohibited thing.²

¹ Khaniya 2/392, Hindia 1/109.

² Tabyeenul Haqaiq 6/33.

The Prophet himself prescribed the urine of the camels as a medicine for the people of Urainah.¹

He also permitted Abu Hujaifa to have a nose of gold. All such things offer a clear proof on the admissibility of using prohibited things for the purpose of medication. Therefore, the wine addiction may be cured by wine.²

Informing the authorities about the patient involved in deadly crimes

If the patient involved in some deadly crime, and about him the doctor and physician is in possession of a categorical knowledge in this respect, and the patient is not prepared to refrain from his evil and inhuman conduct, the doctor should help the authorities in the eradication of such evil elements of the human society by sharing the information about such people with the official authorities. This is in consonance with the universally acclaimed juristic principle that repealing a disadvantage has preference over gaining an advantage. Under the situation mentioned in the question there is a contradiction between individual and collective benefits. The latter one is doubtlessly preferable.

Disclosing the truth for the acquittal of an innocent

As a matter of principle predicated on the Qur'anic words, bearing witness before the court, or wherever the circumstances call for, constitutes an obligation. To quote the relevant Qur'anic words:

وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ٢٨٣

“And do not conceal testimony, and whoever conceals it, his heart is surely sinful; and Allah knows what you do.”

Bearing witness before the court of justice may have two aspects, and both are equally important. One, when the witness is asked by the plaintiff to bear witness before the court of justice so that he may reclaim his due.

ولا يسعهم كتمانها إذا طالبهم المدعي .

¹ Tirmidhi 1/21 Chap. *Ma jaa fi bauli ma yukalu lahmuhu*.

² Abu Dawood 2/581.

With the demand from the complainant, concealing the witness shall become inadmissible.¹

The second aspect is that one should bear testimony before the court, even though the party, plaintiff or defendant, has no knowledge about that person to be in possession of the correct knowledge regarding the case, but he himself knows that if he stands silent, or conceals the truth, the court is bound to pass wrong decision and the rightful party may lose his right, or an innocent may be punished. Under such a set of circumstances the witness will have no option other than bearing testimony so as things may set right.

... و يعلم الشاهد أنه إن لم يشهد يُضيع حقه فإنه يجب عليه الشهادة.

If the witness knows that on his not coming forward to bear testimony the rightful party is feared to lose his due, bearing witness shall become incumbent upon him.²

Under the situation as in the question, it is the doctor on whose testimony the innocent accused could secure his acquittal. Upholding to the principle of confidentiality will now turn improper; he must bear witness before the court in order to help it arrive at the right conclusion.

Going by the wording of the question, the physician shall be required to enlighten the people of the patient's family with the correct situation of his disease and its actual implications.

¹ Hidayah with Fathul-Qadir 7/365.

² Babarti, Inaayah with Fathul Qadir 7/366, also Kitab-al-Shahaadaat 7/365.

Medical Issues and the Islamic Viewpoint Ideological Foundations

لكل داء دواء إلا الموت .

Against each disease Allah *ta'ala* has created the cure except death.

لا طاعة لمخلوق في معصية الخالق .

This is a principle of general application, and as such governs all walks of a Muslim's life. In the present context, it means that in treating the diseases no such way is to be adopted as involves an aspect of disobedience towards Allah *ta'ala*. In other words, every disease could be treated remaining strictly within the boundaries set by the *Shariah* of Islam.

لن تموت نفس حتى تستكمل رزقها .

No soul is to die unless it consumes its sustenance.

لا يكلف الله نفسا إلا وسعها .

No soul is charged with (a responsibility) beyond his capacity.

This Qur'anic sentence offers primary base for the legal capacity of human beings in respect of the limits of their *taklif*. This principle too is of general application and covers all aspects and walks of human life. In providing treatment to a patient all possible resources and means are to be tried and used but not beyond the capacity of the guardians and kinspeople of the patient.

وَلِكُلِّ أُمَّةٍ أَجَلٌ فَإِذَا جَاءَ أَجْلُهُمْ لَا يَسْتَأْخِرُونَ سَاعَةً وَلَا يَسْتَقْدِمُونَ ٣٤

“And for every nation there is a doom, so when their doom approaches, they shall not remain behind the least while, nor shall they go before.”

This clear expression of the Qur'an speaks of the truth that the time of death of each and every human being is strictly predetermined. The death will precede nor postpone even for the smallest unit of the second. This being a phenomenal and universal fact, common to all, with no exclusion or exception whatsoever. The law of death is equally applicable to all human beings demolishing all barriers of caste, creed, colour geographical boundaries, and social and economic considerations.

Book Four
Islamic view on DNA Test & Genetic Science

Preliminary Discourse

وَمِنْ ءَايَاتِهِ أَنْ خَلَقَكُمْ مِنْ تُرَابٍ ثُمَّ إِذَا أَنْتُمْ بَشَرٌ تَنْتَشِرُونَ ۚ ۲۰ وَمِنْ ءَايَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ۚ ۲۱ وَمِنْ ءَايَاتِهِ خَلْقُ السَّمَوَاتِ وَالْأَرْضِ وَالاخْتِلَافُ اللَّسِنَتِمْ وَالْوَنِكَمِ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّلْعَلَمِينَ ۚ ۲۲

“And of His Signs is that He created you from dust and behold, you became human beings, and are multiplying around (the earth). And of His Signs is that He has created mates for you from your own kind that you may find peace in them and He has set between you love and mercy. Surely there are Signs in this for those who reflect. And of His Signs is the creation of the heavens and the earth and the diversity of your tongues and colours. Indeed there are Signs in this for the wise.”

These verses enumerate several Signs of God. These Signs, in the context of the foregoing, provide, on the one hand, evidence to establish that the Next Life is possible as well as imminent. On the other hand, these very Signs also corroborate that this Universe is neither devoid of God nor is there a plurality of gods. Instead, there is only One God Who is the sole Creator, Sovereign, Lord and Master of the Universe. As a corollary of this, He alone should be the object of man’s worship and service.

Man is constituted of some lifeless elements such as traces of carbon, calcium and sodium. Yet that which has been produced from these elements is the wonderful being called man who is possessed of astonishing feeling, emotin, intellection and imagination. Now, none of these traits can be traced to the elements of which he is composed. It is obvious that the creation of man was not coincidental for he was endowed with reproductive power thanks to which billions upon billions of human beings have come into existence. These human beings essentially possess the same structure and endowments and myriad hereditary and individual characteristics. Does it stand to reason that this wonderful feat of creation was accomplished without the creative will of an All-Wise Creator? Or, alternatively, can anyone in his right mind believe that the great scheme of man’s creation could have been devised and executed and the innumerable forces of heaven and earth yoked to serve man’s purpose by the will and power of a multiplicity of gods? Likewise, can anyone believe, unless his

rationality has been impaired, that God, Who brought man into existence from nothing, will not have the power to recreate him after he dies?

In His immaculate wisdom, God divided mankind into two sexes. Members of both these sexes are identical in their humanity. The basic formula of their physical constitution is the same. And yet the two differ widely in certain aspects of their physical configuration, their mental and psychological characteristics, their emotional and psychic urges. At the same time, they complement each other, each serving as the other's couple. There is an astounding degree of complementarity between the two sexes in so far as the physical make-up, emotional characteristics, and the urges of each complete those of the other.

From the very beginning, God in His infinite wisdom has been creating the two in such proportion that each balances out the other. It has never happened-in no age and at no place- that only male or female children have been born. Also, everyone would agree that this phenomenon has nothing to do with any panning or effort on man's part. Nor does man have any role in the fact that males and females are endowed with features that make them complementary to each other. Nor does man have the power to regulate the proportion of male and female births ensuing thereby a degree of balance between the two. Nor would it make sense to regard the birth of billions upon billions of men and women over the ages in the manner mentioned above either as a mere coincidence or as the result of a common scheme devised and executed by a multiplicity of gods. What the phenomenon really indicates is that all this is thanks to the will of an All-Wise Creator, and of only One Creator. It is He Who in His immense wisdom and power initially created an exceedingly appropriate design of the male and the female and then ensured that innumerable males and innumerable females are brought into existence according to the same design with their respective characteristics, and roughly in a given proportion.

The arrangement we see around us is that men and women, thanks to their natural instincts, are attracted to one another and when a relationship is established between a male and a female that provides peace and contentment to both of them. This judicious

arrangement is designed by God as a means of ensuring procreation of the human species on the one hand, and to bring human civilization and culture into existence on the other. Had the two sexes been created with their respective varying characteristics the human race would possibly still have multiplied, as we find in the case of sheep and goats. Nevertheless, this multiplication of mankind would not have been productive of culture and civilization. For it is noteworthy that, as contradistinguished from all animal species, man alone possesses culture and civilization.

What account for this is that the Creator in His wisdom has infused into men and women a strong desire, a thirst, and an urge which draws each to the other. Such is their nature that they remain ill at ease unless a male and a female are unified in an intimate and abiding relationship. It is this thirst for gratification that prompts them to establish, by their mutual effort, a home, a family, and a tribe, which also gives rise to the emergence of society, culture and civilization. These achievements doubtlessly owe themselves to the mental faculties of the human species. Yet the driving force for these achievements was provided by the yearning of each sex for the other, a yearning that is ingrained in their nature which compels them to come together and establish a home. Is it credible that this consummate wisdom was merely an accidental product of the blind forces of nature? Or alternatively, is it credible that a multiplicity of gods sought to achieve this beneficial objective by bringing into being innumerable men and women all endowed with this mutual yearning? The fact is that this phenomenon has only one explanation, that it represents the wisdom of the One All-Wise God. This is far too evident to be denied by any except those who suffer from intellectual myopia.

The word *mawaddah* (love) used in the verse denotes sexual love, which is the primary factor that makes a male and a female gravitate towards one another and keeps them bonded together. As for the word *rahmah* (mercy), it refers to that spiritual relationship which gradually develops among them in the course of their matrimonial life. This is a relationship of cordial mutuality thanks to which the spouses become each other's true well-wishers and sincere co-sharers of each other's joy and sorrow. In fact there comes a time

when the passionate ardour of sexual love is relegated to the background and these life-partners become, in their old age, all the more loving, caring and compassionate towards each other.

Love and mercy are thus the two positive forces which the Creator has ingrained in men and women in order to trigger that inherent discontent in them which prompts them to go for its resolution. As a result, they are drawn to each other. In time, these two forces lead to the establishment of a permanent companionship between a couple. Although each of the two might have been brought up in a totally different milieu, they become immensely close to each other and spend their lives in intimacy, rowing together their common boat on the turbulent waters of life. This love and mercy, which have been experienced by millions of human beings in their lives, are not material objects that can be subjected to weight and measure. Nor can their sources be traced to any of the chemical constituents of which the human body is composed, nor can any laboratory determine how love and compassion come into existence and grow. The only explanation for their existence and growth is that they were judiciously instilled in human nature by the All-Wise Creator for some specific purpose.

The heavens and the earth were created *ex nihilo* and were made to function according to an inexorable scheme in which innumerable forces are operating in a state of utter mutual harmony and equilibrium. This definitely indicates that the whole Universe was created and is controlled by a Creator Who is absolutely One.

There is much in the Universe that calls for reflection. In the first place, one ought to reflect on what the source of primary energy was that assumed the form of matter, and how matter split into a multiplicity of elements. Moreover, these elements were made parts of a system that is characterized by amazing balance and equilibrium, giving rise to an awe-inspiring cosmic order that has been in operation for billions of years.

If one considers all this without intellectual bias, one is bound to conclude that this wondrous order could never be the product of mere chance or accident. At the same time, we also see that the entire Universe, from the earth to the most distant planets, is made up of the same elements and is governed by the same laws of nature. It is obvious that anyone who is not utterly tainted by obstinacy is bound

to recognize that all this could not have been possible had there been a multiplicity of gods. What has made all this possible is that there is only One God, Who is the Creator and Lord of the entire Universe.

Although all human beings have been endowed with the same organs of speech, there being no difference in the structure of their tongues or brains, they speak different languages in different parts of the world. Not only this but even speakers of the same language have different dialects which vary from town to town and region to region. Furthermore, each person has a distinct accent and pronunciation and a mannerism of speech that is markedly different from others. In like manner, even though all human beings were created from an identical semen and according to an identical formula of creation, they all differ widely in their complexion. Even offspring of the same parents carry different hues, let alone the fact that different communities are characterized by a variety of complexions.

The Qur'an mentions variations in language and complexion only for illustrative purposes. Going further along the same line, one observes a mind-boggling variation of different kinds throughout the world. These variations are simply too numerous to be fully spelled out here. Notwithstanding the essential sameness in human beings, animals and plants within their respective species, they differ vastly. Not even one member of a species is quite like any other of the same species, so much so that even two leaves of the same tree are not quite identical.

It is thus fairly clear that the different objects of this world have not been produced by automatic machines geared to mass manufacturing of identical products. On the contrary, the world clearly indicates the role of the All-Powerful Maker and Designer Who pays attention to each and every product, investing each with a unique design and distinctive features, proportions, and traits. As a result, every creation of God is unique in its own right. God's inexhaustible inventiveness accounts for the production of ever new models. It is out of sync with His creative power to repeat any product of His own creation. Anyone who carefully observes the phenomenon of creation can never succumb to the delusion that the Creation, having brought the present cosmic order into being, has withdrawn Himself from His overlordship and into His sleeping chamber. On the

contrary, he is bound to conclude that the Creator is evr engaged in His creative task, paying special attention to each and every piece of His creation.

Allah *ta'ala* is the Creator, the Master, the Sustainer and Cherisher of the entire universe. Not just the smooth and perfectly managed and systematic running of this colossal universe offers an indisputable proof on His perfect Lordship, it is indeed every part and particle of the human structure, right from the top head to the lowest and smallest part of the toe; the smallest components of his blood, hair, bone — in short, the entire body of each and every human being does signify the signs of Allah's Lordship. Perhaps for the same reason it has aptly been said that the person who recognized his own self will recognize his Lord too.

With the passage o time, the signs of Allah are getting uncovered, and so evident countless proofs are coming to the knowledge and experience of the contemporary man that there leaves no room for the sound reason except to unconditionally prostrate before the Creator. None could tell how greater and astonishing signs are to come to human knowledge and dazzle his eyes in the days to come.

From among such revelations a very important one being that which forms the subject matter of the Genetic Science. That is, as each and every human being is different from all others at macro level, outward identifications and specifications, in other words, every human being is distinct from all other fellows in respect of his complexion, physical structure, voice and other aspects and identified as such so every human being happens definitely distinct from all others at micro level. In fact the human physical structure is composed of such cells which too are distinct from those of all other people. Those cells not just possess their special identities but also are hereditary. Genes form the subject matter of Genetic Science. This aspect of natural science is being seen as a prospective means to offer cures for a number of diseases thus far regarded as incurable. This of late has gained special attention and specialized studies are being conducted at prestigious universities and institutions.

The development of this section of natural sciences is deeply associated with a number of social issues of great implications and

importance. A number of questions asking the position of the Shariah on various aspects of genetic test, DNA test and stem cells was prepared and sent to select men of Islamic learning in India. In order to help the Ulama understand the nature of the subject, a number of papers, prepared by the subject experts, mostly university professors, was also supplied, so that they may write their papers and answers with complete understanding of the subject.

Questions on DNA Test

D1- In case there are more than one claimants to the fatherhood of a child, the science fraternity assumes that the veracity of such claims might be determined by subjecting them all to a DNA test. In order to conclusively decide the dispute and determine the fatherhood of the child will it be permissible to subject all claimants to a DNA test, and to what extent such a test shall be taken into account with the view to the disposal of the claims?

D2- It has now become quite common to conduct a DNA test in order to determine the identity of the murderer. The test is normally based on some clue such as the piece of hair, blood, etc found at the place of murder which is subjected to a DNA test and the results of the test are matched with the accused. But this technique is not yet so ripe as to serve to be a doubt-free tool leading to the actual murderer on the basis of the forensic sample taken from the place of event. Shall it be right to convict the accused of murder based on a DNA test?

D3- (a) In the cases of rape, the DNA test is helpful to identify the rapist. The sample of the semen dropped by the rapist is taken from the womb of the raped woman, and is subjected to the test, and through this test the rapist is easily identified. Shall the Shariah consider the result of this test as a credible proof to convict the rapist of the crime of fornication?

D3- (b) There might be the cases of gang-rape. In such cases the DNA test is considered undependable and unreliable. For the mixed signals in the test results may mistakenly point to a third person. To what extent the Shariah shall take into consideration the results of this test in so far as the conviction of the accused of the gang-rape is concerned?

D4- If a crime was committed by more than one persons, some accused were subjected to the DNA test, others, however, are not prepared to undergo the test. Shall the Qazi and judge force them into undergoing the test?

Genetic Test

G. Q.1- Shall it be permissible to subject a man and woman to the genetic test before their marriage in order to know beforehand that no party is suffering from any hereditary disease or is devoid of generative potency?

G. Q.2- In case it is scientifically proved that the child still in making in the womb is developing mental and physical deficiencies, would it be permissible to abort such a pregnancy and do away with the child to be born with abnormal mental and physical disabilities? The question assumes greater importance from the point that by the genetic test the disabilities of the developing embryo may be discovered before the completion of the period of three months on the conception, while the ultrasound can tell nothing during the first three months of pregnancy.

G. Q.3- According to the scientific opinion the genetic test may predict about a person what type of generational abnormalities are possible in his immediate future generation. Does the Shariah permit such a person to undergo such a test and stop the procreative activity on the base of the test report?

G. Q.4- Before or after the completion of four months on the pregnancy does the Shariah allow to subject the pregnant to the genetic test in order to know the creational abnormalities of the embryo?

G. Q.-5 The scientists believe that the genetic test may help us know how far the person subjected to the test is in possession of mental faculties, and if is found mentally imbalanced, how far his imbalance is, shall this report offer a sound basis for the dissolution of his marriage?

Stem Cells

S.Q.1- About the embryonic stem cell the scientific community believes that it possesses full potentials to develop into a complete

human being. In its limited area the stem cell consumes the oxygen too. Taking into account all these aspects of the embryonic stem cell the question is: shall the embryonic stem cell be regarded as a living being and accorded respect as such?

S.Q.2- According to the scientific researches the stem cell may be used as a resource for developing a complete human organ. Shall it be permissible to pick up the stem cell for the same purpose from the still-in-womb developing embryo or from the aborted embryo? It is to be learnt that the organs thus prepared may be used in future to replace a lost or damaged organ. This way this whole enterprise is intended to be a way of treatment.

S.Q.3- By placing the human stem cell in the body of a living animal any required human organ may be prepared. Would it be permissible to transplant an organ thus prepared in the human body; and would it matter to making difference between the lawful and unlawful animals used for the purpose?

S.Q.4- Umbilical cord is also an important source of obtaining the stem cells. Picked up from the umbilical cord, if the cells are saved in anticipation, they may prove of use in future for medical and clinical purposes. The procedure involved may be expressed as: when, generally speaking, after the birth of the child the umbilical cord is cut off, the blood it contained is supplied back to the body of the new born and the cord is tied. In the event of obtaining the stem cells from umbilical cord the blood existing in it is taken out. This process of obtaining the stem cells is completely safe and poses little danger to the life of the child except that new born is deprived of that blood which holds great good for him, given that the new born stands in want of the blood. Is this activity acceptable to the Shariah?

S.Q.5- The stem cells may be obtained from the body of the adults, yet the process of its development is comparatively more complicated and difficult. The question in this context is that in the case of the conception through the test tube and its fertilization according to the modern way would it be permissible to obtain with due permission of the parents, the stem cell from the developing structure for the purpose of preparing the human organ? It is worthwhile to note that the test tube baby technique normally uses the

seeds of the husband and wife, but at times it may use the seed of an alien person as well.

Resolutions the Academy adopted in connection with the DNA Test and Genetic Test¹

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

1. It is not permissible to create doubt about the lineage of a person through DNA test, which could otherwise be established according to the principles of Shariah.
2. If there are a few claimants of a child and no one of them possesses any irrefutable proof in this regard acceptable to the Shariah, in such a situation the validity of a claim could be established through the DNA test.
3. Validity of a DNA test shall not be acceptable as against the Islamically valid ways for proving crimes attracting capital punishment.
4. Validity of a DNA test will be acceptable for proving such crimes not attract as do the capital punishment according to the Shariah.

Genetic Test

The advancement of science and technology in the present era has offered several benefits to mankind. However, from human perspective, there are some negative aspects of such developments as well. Genetic science and DNA test, for instance, 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.

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 and the society, then in such a situation it will be permissible to abort the child before 120 days from the conception.

¹ 15th Fiqhi Seminar (Mysore – Karnataka) 11-13 March 2006.

2. If it is established by the genetic test that the next generation of a person would suffer from hereditary disability of severe nature, the reproductive activism should better be stopped.
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 marriage, such a test would not be regarded as sufficient a ground for the dissolution of marriage.
4. It is permissible to make use of genetic tests for the purpose of treatment, diagnosis of disease and for carrying out researches in the field of genetic engineering.

A short overview of the papers received in response to the Questionnaire on the DNA, Genetic test and Stem Cells

(In response to the Questionnaire on the three areas of genetic science served to the select men of Islamic learning in the country, attached with some important explanatory material, the Academy received 19 papers from the scholars. All the papers discuss all the three themes in the light of the Shariah and Fiqh. In the following lines a comprehensive overview has been attempted according to the order of the questionnaire.)

The first Theme – DNA Test

D. Q. 1- In case there are more than one claimants to the fatherhood of a child the science fraternity assumes that the veracity of such claims might be determined by subjecting them all to the DNA test. In order to conclusively decide the dispute and determine the fatherhood of the child will it be permissible to subject all claimants to a DNA test, and to what extent such a test might be taken into account in view of disposing the claims?

Barring Mufti Mahboob Ali Wajih and Maulana Burhanud Din Sambhali, all other Ulama, in their papers, have expressed affirmative opinion towards a DNA test under such a situation. (For more detail and their respective arguments the full version the papers of Ml. Fakhir Miyan Frangi Mahalli, of Ml. Abul Aas Wahidi, Qazi Abdul Jalil Qasmi, Ml. Sultan Ahmad Islahi, etc. might be seen.)

According to most of the participant, and the authors of the papers, if there exist no original means of proving the legitimacy of lineage like a valid marriage, testimony and, according to some juristic opinions, physiognomy and the system of drawing lots for the purpose, the DNA test is regarded more valid and stronger than physiognomical evidence. Maulana Akhtar Imam Adil, Mufti Jamil Ahmad Naziri, Qazi Abdul Jalil Qasmi, Mufti Sana ul-Huda Qasmi and Dr Zafarul Islam Qasmi consider the DNA test to be a conclusive indication; to Maulana Shaukat Sana Qasmi this test is regarded on a par with testimony. According to Maulana Sultan Ahmad Islahi this test is very much like a judicial verdict pronounced by a judge in the light of proper evidences and sound testimonies. Dr Zafarul Islam is

of the opinion that in order to protect the society from lawlessness and social disorder such tests should be given due credence.

Mufti Mahboob Ali Wajihi has tried to see this test through the Hanafi and Shafie juristic principles. Citing the different opinions of Hanafites and Shafites in this context, he arrives at the conclusion that according to the Shafie principles such tests are permissible and impermissible to those of Hanafites. Maulana Burhanud Din Sambhali accords no importance to the DNA test and dismisses it as an absurd activity. Maulana Akhtar Imam Adil, Maulana Rahmatul Allah Nadvi and Mufti Sana-ul-Huda Qasmi hold that establishing of parentage is a matter of extraordinary import, with high social and legal implications. Therefore, maximum precautionary measures have to be exercised to eliminate the possibility of errors and mistakes in the process of test. In order to make the result of the test more secure and reliable, all the three scholars mentioned above stipulate that the DNA test must be carried out by Muslim experts possessing moral integrity and good conduct. In other words, the test must be conducted by more than one Muslim experts of trustworthy moral and social behavior. Maulana Akhtar Imam Adil Qasmi, however, is of the view that in the context of non-Muslim countries the conditions of Islam and justness, *adalat*, might be ignored. It is for the reason that in countries governed by the non-Muslims observance of these two conditions is not so easy. More so, they are not agreed upon amongst the Muslim *fuqaha*. (For more detail, al-Mausua-al-Fiqhiya al-Kuwaitiya, and Tabsiratul-Hukkam 2/108 may be referred.) Furthermore, this test is a scientific activity with little role for human interference. Grounding their opinion in the above mentioned reasons, these scholars have concluded that the test report shall be credible only if prepared by an expert.

Maulana Sultan Ahmad Islahi and Mufti Sana-ul-Huda Qasmi have mentioned, among other things, the rights and obligations of parents-children relationship emerging from this test result.

Dr Zafarul Islam, Maulana Akhtar Imam Adil and Maulana Rahmatul Allah Nadwi, among other things, have mentioned the conditions in which this test turns relatively more dependable. For example, the children born inside the premises of the hospitals, the

wartimes or the emergency situations when the chances of muddling up the small children turn higher.

D. Q. 2- It has now become quite common to conduct a DNA test in order to determine the identity of the murderer. The test is normally based on some clues such as the piece of hair, blood, etc., found at the place of murder which is subjected to the DNA test and the results of the test are matched with the accused. But this technique is not yet so ripe as to serve to be a doubt free tool leading to the actual murderer on the basis of the forensic sample taken from the place of event. Shall it be right to convict the accused of the crime of murder based on the DNA test?

Responding to this question almost all the discussants and authors of the papers submitted to the seminar are of the opinion that as regards the identification of the murderer, this test is of little use, and basing on such a test the accused could not be convicted of the murder. In support of this sound opinion the majority of the scholars has cited the varying versions of those prophetic reports which seek to establish the fundamental principle of the Islamic penal code that the benefit of doubt is the right of the accused, and no punishment could be awarded to an accused if the nature of evidence is doubtful, not free from all shades of doubt. To this effect many a *hadith* is found scattered about in the *Hadith* literature. (See, for example, Sunnan Abu Dawood, Sunnan Nasai, al-Mughni, 10/194, al-Mausua-al-Fiqhiyah al-Kuwaitiyah 24, 25, Ibn-Hazm al-Muhalla 11/153, with reference to Illa-us-Sunan, etc.)

Maulana Abu Sufyan Miftahi, however, has opined that if the items picked up from the scene of the event form the case of probability against the accused, the test shall have to be taken into account for. This obviously helps in minimizing the number of intentional homicide in future. Thus, it shall serve an important purpose of the Shariah. To Maulana Sultan Ahmad Islahi, Akhtar Imam Adil and Muhiyyu Din Ghazi such a report might be used to provide additional support to other means of identifying the culprits.

Maulana Rahmat Allah Nadwi, Ml. Akhtar Imam Adil, Mufti Abdur Rahim Qasmi and Ml. Naim Akhtar Qasmi are of the view that on the basis of this test no ordained punishment (*Hudud* and *qisas*) could be administered to an accused. Other punitive measures may, however, be initiated against the probable culprits.

D. Q. 3- (a) In the cases of rape, the DNA test is helpful to identify the rapist. The sample of the semen dropped by the rapist is taken from the womb of the raped woman, and is subjected to the test, and through this test the rapist is easily identified. Shall the Shariah consider the result of this test as credible proof to convict the rapist of the crime of fornication?

To most of the participating scholars this test holds no good as far as the establishing of the case of illicit sex against somebody is concerned. For, the way to establish the case of this crime against somebody is expressly restricted by the Qur'an and Sunnah to the four eyewitnesses, or one's own free confession. Therefore, no other way beside the two above-mentioned could be adopted for the purpose.

To Ml. Sultan Ahmad Islahi, however, this test could be used to identify the fornicator and the Shariah, too, will take it into consideration in full. According to Maulana Abu Sufyan Miftahi if such a test creates a probable proof against the accused of adultery, the test shall be taken into account. For stern punishment, though not the prescribed one, will serve as deterrent. To Ml. Akhtar Imam, Dr Zafarul Islam, Ml. Tanzim Alam Qasmi and Mufti Sana-ul-Huda Qasmi this test alone could not be taken as decisive a proof against the accused. It may be used only as a supportive one.

D. Q. 3- (b) There might be cases of gang-rape. In such cases the DNA test is considered undependable and unreliable. For the mixed signals in the test results may mistakenly point to a third person. To what extent the Shariah shall take into consideration the results of this test in so far as the conviction of the accused of rape is concerned?

To the most of the discussants and scholars the DNA test is of little benefit to convict the accused of having illicit sex. The reason holding such a test as invalid for the purpose is very much the same as given in the 3(a) above. The results of such a test might, however, be used to support the probe activity. And if the result shows mixed signals, other means of investigation and fact finding have to be applied to arrive at conclusive results. So has opined Maulana Sultan Ahmad Islahi, a prominent Muslim scholar in India. To the same opinion subscribes Maulana Muhiyyud Din Ghazi. To him, this test could of course be a helpful means in the process of criminal investigation.

D. Q. 4- If a crime was committed by more than one persons, some accused were subjected to the DNA test, others, however, are not prepared to

undergo the test. Shall the Qazi and judge force them into undergoing the same test?

Responding to this question the scholars have gone into different ways. Some are of the opinion that the Qazi is committed by law to establish justice and dispense it on firm foundations. He therefore has a legal right to ask other accused and force them into undergoing the same test as have gone others willingly. This opinion has been adopted by Maulana Sultan Ahmad Islahi, Dr. Zafarul Islam, Ml. Burhanud Din Sambhali, Ml. Akhtar Imam Adil, Ml. Muhiyyud Din Ghazi, Ml. Asrarul Hque Sabili and others. Opposed to this, some other scholars are of the view that the Qazi is bound by the Shariah to pronounce his decision only when the available evidence is to the satisfaction of the legal provisions set by the Shariah law of evidence, something categorical in nature. The DNA test, on the other hand, is no more than a probable evidence. Therefore the Qazi has no legal right to force the unwilling accused to undergo the test against their will. This view has been shared by Mufti Jamil Ahmad Naziri, Mufti Mahboob Ali Wajihi, Mufti Abdur Rahim Qasmi, Ml. Fakhir Miyan Firangi Mahalli, and Ml. Abdul Wadud.

Discussing the point in somewhat detail, two scholars, Dr. Zafarul Islam and Ml. Asrarul Haq Sabili, have also discussed the position of the Qazi and his enormous authority in deciding the disputes and in the administration of justice.

Ml. Abul Aas Wahidi is of the view that although under unavoidable conditions the judge has the legal right to force the accused undergo a DNA test, yet this has to be preceded by a rigorous examination of all the doubts that may possibly arise in the process of the criminal investigation. This is important so as to let the accused benefit from the doubts.

Theme Second: The Genetic Test

G. Q.1- Shall it be permissible to subject a man and woman to the genetic test before their marriage in order to know beforehand that no party is suffering from any hereditary disease or is devoid of generative potency?

Vis-à-vis this question the views of the scholars are different. While some permit the man and woman to opt for undergoing such a test out of their will, with the sole aim to strengthen their future

marital relationship, to some other scholars such a test will amount to opening the door of quite unimaginable evils, ultimately bound to destroy and demolish the marital tie. Hence it is impermissible. The former view is shared by the following learned scholars. Ml. Md. Burhanu-Din Sambhali, Qazi Abdul Jalil Qasmi, Dr Zafarul Islam, Mufti Sana-ul-Huda Qasmi, Ml. Akhtar Imam Adil Qasmi, Mufti Mahboob Ali Wajihi, Ml. Fakhir Miyan Frangi Mahalli, Ml. Asrarul Haq Sabili, Ml. Abul Aas Wahidi, Mufti Abdul Rahim Qasmi, Ml. Tanzim Alam Qasmi, Ml. Abu Sufyan Miftahi, and Ml. Naim Akhtar Qasmi.

To the latter opinion do subscribe the following: Mufti Jamil Ahmad Naziri, Ml. Rahmatullah Nadwi, Ml. Shaukat Sana Qasmi and Ml. Muhiyyud-Din Qasmi.

These two totally opposing views apart, Ml. Sultan Ahmad Islahi and Ml. Abdul Wadud are of the opinion that such a test could be acceptable to the principles of the Shariah only in a society where such things are normally common and regarded positive for the marital life. Such a test, as is admitted by Ml. Abdul Wadud, may ultimately prove useful for the spouses only in such a society.

Supporting their view of permissibility, Ml. Asrarul Haq Sabili and Ml. Naim Akhtar Qasmi state that among the purposes the institution of marriage is intended having the children comes first. Therefore such a test is of course very important. Ml. Asrarul Haq Sabili has based his stand on the *hadith* which reads as:

تزوجوا الودود الولود ، فإني مكاثر بكم الأمم (أبو داؤد)

In support of his view, Ml. Naim Akhtar Qasmi, on the other hand, has used the provisions of the law of separation on the ground of the serious infectious diseases.

Among those holding such tests as impermissible Mufti Jamil Ahmad Naziri and Ml. Shaukat Sana Qasmi have expressed their deep concern that once such tests are permitted in order to know what type of genetic abnormalities and reproductive problems every man and woman proposing for marriage might have been suffering it is feared to bring about an environment where the fate of many men and women shall be the deprivation from a normal married life without committing any sin to this effect. As regards the actual position of such problems and genetic abnormalities, which some scholars tend to make a justifiable ground for the permissibility of imposing such tests on each man and woman before entering a marriage contract, Ml.

Sana-ul-Huda Qasmi and Ml. Shaukat Sana Qasmi dismiss such grounds as mere absurdities. Such abnormalities, if one is detected, are no more than such medical problems which might be treated well. The Holy Prophet (SAWS) is reported to have said:

إن الله لم ينزل داءً إلا و قد أنزل له دواءً (بخاري)

The efficiency of proper medicines in removing and curing the illnesses and human physical disorders is an established rule of nature, and, as expressed by Mufti Sana-ul-Huda Qasmi in his paper, is a thing proved well by the recurring human experiences. From among the permitters of the test Maulana Mufti Akhtar Imam Adil supports his view by the permission of the Shariah to look at the woman one wants to marry.

However, dismissing this view as unrealistic and false analogy, Mufti Sana-ul-Huda Qasmi says that the permission of the Shariah regarding the proposed woman is strictly restricted just to looking at her. The genetic test, contrariwise comes far beyond this limit. It reveals, among other things, the latent sexual potentials as well as infirmities. Obviously, such things stay out of the purview set by the Shariah for the acquisition of knowledge about the proposing men and women. The permissibility of looking at the proposing woman is entirely different a thing and by no way forms a base for the permissibility of the genetic test before marriage.

G. Q.2- In case it is scientifically proved that the child still in making in the womb is developing mental and physical deficiencies, would it be permissible to abort such a pregnancy and do away with the child to be born with abnormal mental and physical disabilities? The question is important from the point that through the genetic test the disabilities of the developing embryo may be discovered before the completion of the period of three months on the conception, while the ultrasound technique can tell nothing during the first three months of pregnancy.

Following are the scholars who hold that under such a situation the abortion might be had before the completion of three months:

Ml. Sultan Ahmad Islahi, Ml. Fakhir Miyan Frangi Mahalli and Mufti Sana-ul-Hud Qasmi.

Following are the Ulama who hold a modified opinion. According to their view, the course of abortion may be adopted before the completion of the period of four months over the pregnancy:

ML. Md. Burhanud Din Sambhali, ML. Akhtar Imam Adil, ML. Naim Akhtar Qasmi, ML. Asrarul Haq Sabili, ML. Tanzim Alam Qasmi, ML. Shaukat Sana Qasmi, Mufti Abdur Rahim Qasmi and ML. Abdul Wadud. ML. Mufti Mahboob Ali Wajihi, too, seems to be tending to the same view.

In stark contrast to the views furnished above, the following scholars declare that the abortion under such a condition would be impermissible:

Qazi Abdul Jalil Qasmi, ML. Abul Aas Wahidi, ML. Abu Sufyan Miftahi, Mufti Jamil Ahmad Naziri, and ML. Rahmatu Allah Nadvi.

Favouring the permission, ML. Akhtar Imam Adil argues that the excuses permitting the abortion include the fear of bearing bad offspring. ML. Naim Akhtar Qasmi's argument goes as: the Shariah may permit having an abortion if the interest of the infant so required, embryo still without life may be an even fit case for having an abortion. To the view of Mufti Abdur Rahim Qasmi, the abortion could not be performed unless the couple so demand.

In sharp contrast to the view of permissibility, from those holding the view of impermissibility, ML. Abul Aas Wahidi favour the invocation of the law of intentional homicide against those resorting to have an abortion in such a condition. Basing his argument on the verse *وإذا الموءدة سئلت*, he disproves Qazi Abdul Jalil's permissive attitude towards the test saying: should the permission of having an abortion be granted merely under the excuse that the developing embryo might be of faulty mental faculty, it may result in the stop of the birth of women, for they have been described as of deficient understanding and wanting in intelligence in the *Hadith*.

G. Q.3- According to the scientific opinion the genetic test may predict about a person what type of generational abnormalities are possible in his immediate future generation. Does the Shariah permit such a person to undergo such a test and stop the procreative activity?

Vis-à-vis this question the scholars have gone into proscribers and permitters of the reproductive activities. The proscribing scholars include ML. Fakhir Miyan Frangi Mahalli, ML. Abul Aas Wahidi, Dr.

Zafarul Islam, Mufti Jamil Ahmad Naziri, Qazi Abdul Jalil Qasmi, ML. Abu Sufyan Miftahi, ML. Rahmatullah Nadwi, etc.

According to ML. Abul Aas Wahidi, Dr. Zafarul Islam, ML. Abu Sufyan Miftahi and ML. Rahmatullah Nadwi the practice of abortion is entirely inconsistent with the very purpose underlying the institution of marriage, that is, the perpetuation of the human race on the earth. To support this normative principle they use the *hadith*:

تزوجوا الودود الولود ، فإني مكاثر بكم الأمم (أبو داؤد ، نسائي)

On the other extreme are the permitters, that is, ML. Sultan Ahmad Islahi, ML. Tanzim Alam Qasmi, Mufti Abdur Rahim Qasmi and ML. Akhtar Imam Adil. They permit the stoppage of the reproductive activism if the test report so suggests. ML. Tanzim Alam Qasmi supports his view by some juristic instances which permit to resort to *azl* if the social rot is feared to take over the younger generation.

G. Q.4- Before or after the completion of four months on the pregnancy does the Shariah allow to subject the pregnant to a genetic test in order to know the creational abnormalities of the embryo?

Vis-à-vis the condition mentioned in the question most of the scholars permit to have such a test because this is simply meant for treatment. This clearly means, as have expressly said many of the Ulama and scholars, that the test of the type would not be allowed for any other purpose except by way of treatment. For detail the study of the original copies of the papers of the following scholars is recommended: ML. Akhtar Imam Adil, ML. Sultan Ahmad Islahi, ML. Burhanudd Din Sambhali, ML. Rahmatullah Nadwi, Mufti Mahboob Ali Wajih, Mufti Abdur Rahim Qasmi, Qazi Abdul Jalil Qasmi, Mufti Sana-ul-Huda Qasmi, etc.

Mufti Jamil Ahmad Naziri and ML. Abul Aas Wahidi, on the other hand, are of the view that such a type of test is absolutely uncalled for, and, under the broad principles of the Shariah, such activities are to be discouraged. Beside other things, such type of tests are bound to adversely affect the Belief in Allah, the Creator, and the *Taqdir*, one out of the very fundamental articles of the Islami Faith.

G. Q.-5 The scientists believe that the genetic test may help us know how far the person subjected to the test is in possession of mental faculties, and if is mentally imbalanced, how far his imbalance

is. Shall this report offer a sound basis for the dissolution of his marriage?

All the scholars are unanimously agreed upon the point that based merely on the report of this test the marriage shall not be dissolved unless the presence of lunacy is established on reliable grounds. In case the lunacy gets properly established, the Qazi may proceed to dissolve the marriage taking into account other related provisions. For further detail the original full copies of the papers of Ml. Sultan Ahmad Islahi, Ml. Fakhir Miyan Frangi Mahalli, Mufti Mahboob Ali Wajihi, Ml. Abul Aas Wahidi, Ml. Naim Akhtar Qasmi, Qazi Abdul Jalil Qasmi, Mufti Sana-ul-Huda Qasmi, Ml. Burhanu Din Sambhali, Mufti Abdur Rahim Qasmi, Ml. Mufti Akhtar Imam Adil Qasmi, etc.

Theme the third: Stem Cells

S.Q.1- About the embryonic stem cell the scientific community believes that it possesses full potentials to develop into a complete human being. In its limited area the stem cell consumes the oxygen too. Taking into account all these aspects of the embryonic stem cell, the emerging question is: Shall the embryonic stem cell be regarded as a living being and accorded respect as such?

In response to this question the majority opinion is that the embryonic stem cell at this early stage is neither to be considered as a living being nor to be accorded reverence and respect as such. (See the papers of Ml. Burhanu Din Sambhali, Ml. Sultan Ahmad Islahi, Mufti Mahboob Ali Wajihi, Mufti Sana-ul-Huda Qasmi, Ml. Abul Aas Wahidi, Ml. Akhtar Imam Adil Qasmi, Ml. Asrarul Haq Sabili, Ml. Rahmatullah Nadwi, Ml. Abu Sufyan Miftahi, Mufti Jamil Ahmad Naziri, etc.

The minority of the scholars, however, holds otherwise. That is, the embryonic stem cell, even at this premature stage, shall be accorded the status of a living being and accorded respect as such. This opinion is shared by Ml. Fakhir Miyan Frangi Mahalli, Mufti Abdur Rahim Qasmi, Dr Zafarul Islam, and Ml. Abdul Wadud.

The scholars holding the former view base their opinion on three points:

- The commands of the Shariah primarily address the apparent and visible situations, and very rarely the potential ones. Quite obviously, the stem cell currently is devoid of life. That is why the fuqaha generally hold that before the completion of 120 days the abortion may be had. So have argued Mufti Sana-ul-Huda Qasmi, and Ml. Shaukat Sana Qasmi.
- The sort of life possessed by the stem cell indeed is a thing which is found in almost all things. The life which the commands of the Shariah are to regulate and to which are addressed the judicial verdicts is something different from the life felt in the embryonic stem cells. So has opined Mufti Akhtar Imam Adil Qasmi.
- At the early embryonic state the stem cell is not accorded the status of the living being commanding respect and reverence neither in most of the juristic details nor in public usage and custome. To be more precise, the Shariah accords the status of a living being only to those things whose life is visible and recognized by people without the assistance of the tools and apparatuses. This forms the core of the argument of Ml. Abul Aas Wahidi and Mufti Jamil Ahmad Naziri.

Those holding the other opinion, that is, Ml. Abdul Wadud, Mufti Abdur Rahim Qasmi and Dr Zafarul Islam, base their standpoint on some juristic expressions found in the fiqhi literature. Since these expressions are generally irrelevant, we feel unnecessary to discuss them.

S.Q.2- According to the scientific researches the stem cell may be used as a resource for developing a complete human organ. Shall it be permissible to pick up the stem cell for the same purpose from the still-in-womb developing embryo or from the aborted embryo? It is to be learnt that the organs thus prepared may be used in future to replace a lost or damaged organ. This way this whole enterprise is intended to be way of treatment.

Vis-à-vis this question the scholars, mainly, have differed into two groups, each one holding the view opposed to other's.

To Ml. Akhtar Imam Adil and Ml. Abu Sufyan Miftahi the stem cells might be picked up for the purpose of treatment, no matter it is taken out of the embryo in making or of the aborted one.

Mr. Abul Aas Wahidi, Mr. Burhanu Din Sambhali and Mr. Fakhir Miyan Franghi Mahalli have arrived at the conclusion that the use of the embryonic stem cell from either stock in order to use it for the preparation of human organs run contrary to the norms of the Shariah. Pursuing his argument, Mr. Abul Aas Wahidi says taking the stem cell from the embryo still in making in the womb may be harmful to the child still in making in the womb. And, taking it from the aborted embryo is feared to desecrate the human embryo. As a matter of juristic principle, every part and particle of the human structure is respectable. Its segregation from the body for the purpose of placing it elsewhere is obviously impermissible.

To Dr Zafarul Islam the Qur'anic words لا تبديل لخلق الله are meant to press home the norm that no type of tempering with the embryo still in making is permissible. According to Mr. Asrarul Haq Sabili, acquisition of stem cell from human embryo, in a way, amounts to killing a would-be human life, hence impermissible from both the Shariah and moral standpoints. In its word the Qur'an has explicitly warned against the graver sin of intentional homicide:

ولا تقتلوا أولادكم من إملاق .

Mr. Sultan Ahmad Islahi, Mufti Akhtar Imam Adil, Mufti Mahboob Ali Wajihi and Mr. Shaukat Sana Qasmi subscribe to a rather modified view. According to them the stem cells from the embryo still in making in the womb might be taken on condition that this activity is free from the fear of jeopardizing the life, development and natural progress of the embryo.

Among the scholars we find a third trend as well. That is, with the sole purpose of medical treatment research and preparing organs for future needs, the stem cells may be picked up from the aborted embryo. But the practice must not open the door of the trade in the organs. This view is shared by Dr Zafarul Islam, Mufti Mahboob Ali Wajihi, Mufti Abdur Rahim Qasmi, Mr. Sultan Ahmad Islahi, Mufti Mahboob Ali Wajihi, Mufti Sanaul Huda Qasmi, Mr. Sayyid Asrarul Haq Sabili, and Mr. Shaukat Sana Qasmi.

S.Q.3- By placing the human stem cell in the body of a living animal any required human organ may be prepared. Would it be permissible to transplant an organ thus prepared in the human body; and would it matter to

making difference between the lawful and unlawful animals used for the purpose?

To the following participating scholars a stem cell picked up from a human being may be planted in an animal body in order to prepare the required human organ; and the organ so prepared might be grafted onto the human body.

Mufti Mahboob Ali Wajihi, Ml. Burhanu-Din Sambhali, Mufti Sanaul Huda Qasmi, Ml. Mufti Akhtar Imam Adil Qasmi, Ml. Asrarul Haq Sabili, Ml. Sultan Ahmad Islahi, Mufti Jamil Ahmad Naziri, Ml. Rahmatullah Nadwi and Ml. Abu Sufyan Miftahi.

Ml. Fakhir Miyan Frangi Mahalli, Ml. Shaukat Sana Qasmi, and Dr Zafarul Islam Islahi, however, restrict the permissibility only to the condition when no alternate solution is available.

To Maulana Abul Aas Wahidi this entire exercise is impermissible. His opinion is predicated on the concept that such an exercise could hardly be carried out without damaging the human specifications.

- The organ may be developed in the animal. The animal, however, must be lawful to eat. This opinion is shared by the following scholars:

Ml. Burhanu Din Sambhali, Mufti Mahboob Ali Wajihi, Ml. Sultan Ahmad Islahi, Ml. Fakhir Miyan Frangi Mahalli, Ml. Mufti Akhtar Imam Adil Qasmi, Dr Zafarul Islam Qasmi, Ml. Rahmatullah Nadwi, Mufti Jamil Ahmad Naziri, Ml. Shaukat Sana Qasmi.

Ml. Abu Sufyan Miftahi and Ml. Asrarul Haq Sabili, however, are of the view that for the unavoidable medical purposes the Shariat grants larger latitude as far the use of unlawful things is concerned. Therefore, no need to maintain a difference between the lawful and unlawful animals exploited for the purpose. The same opinion is subscribed by Mufti Sanaul Huda Qasmi and Ml. Abdul Wadud. They are of the opinion that for medical purposes the required human organs might be prepared inside the body of the animals, no matter the animal is lawful to eat or not. The Ulama holding this view predicate their argument on the report which expressly states that the Holy Prophet (SAWS) permitted his Companion Arfaja to replace his damaged nose with the one made of gold. It needs not mention that the use of gold is strictly prohibited by the Shariah.

S.Q.4- Umbilical cord is also an important source of obtaining the stem cells. Picking up from the umbilical cord if the cells are saved in anticipation, they may prove of use in future for medical and clinical purposes. The procedure involved may be expressed as: when, generally speaking, after the birth of the child the umbilical cord is cut off, the blood it contained is supplied back to the body of the new born and the cord is tied. In the event of obtaining the stem cells from umbilical cord the blood existing in it is taken out. The entire process of obtaining the stem cells is completely safe and poses little danger to the life of the child except that new born is deprived of that blood which holds great good for him given that the new born stands in want of the blood. Is this activity acceptable to the Shariah?

The following are those scholars who see nothing wrong with securing the stem cells from the umbilical cord, subject to the condition that the process involves no risk to the life of the baby. Ml. Abul Aas Wahidi, Mufti Mahboob Ali Wajihi, Ml. Asrarul Haq Sabili, Ml. Mufti Akhtar Imam Adil, Dr Zafarul Islam, Mufti Abdul Rahim Qasmi, Ml. Rahmatullah Nadwi, Ml. Shaukat Sana Qasmi, Ml. Abdul Wadud.

Opposed to this opinion being the one which regards this medical exercise mere an effort with little avail at the risk of the life of the newborn. Hence impermissible in the light of the principles of the Shariah. To this opinion do subscribe Ml. Muhammad Burhanud-Din Sambhali, Ml. Sultan Ahmad Islahi, Ml. Fakhir Miyan Frangi Mahalli, Mufti Sanaul Huda Qasmi, Mufti Jamil Ahmad Naziri, Ml. Abu Sufyan Miftahi.

S.Q.5- The stem cells may be obtained from the body of the adults, yet the process of its development is comparatively more complicated and difficult. The question in this context is that in the case of the conception through the test tube and its fertilization according to the modern way would it be permissible to obtain, with due permission of the parents, the stem cell from the developing structure for the purpose of preparing the human organ? It is worthwhile to note that the test tube baby technique normally uses the seeds of the husband and wife, but at times it may use the seed of an alien as well.

Vis-à-vis this important question the scholars have gone variously. The following scholars are of the opinion that the conception of the child by the test tube technique and developing the child by adopting the modern medical technology and securing the

stem cells from it in order to prepare the spare human organs would be permissible provided that the semen is taken from a legally married couple.

MI. Mufti Akhtar Imam Adil, MI. Fakhir Miyan Frangi Mahalli, Dr Zafarul Islam, Mufti Mahboob Ali Wajihi, MI. Burhanud-Din Sambhali, Mufti Abdur Rahim Qasmi, Mufti Sanaul Huda Qasmi, MI. Rahmatullah Nadwi, MI. Asrarul Haq Sabili.

To MI. Sultan Ahmad Islahi it does not matter at all whether the seminal seed is derived from a legally married couple or is the mixture of two alien and unmarried male and female. Regardless of this; the stem cells may be picked up from the blastocyte so that a human organ may be developed through test tube technique for medical and clinical purposes.

To MI. Abul Aas Wahidi, MI. Abu Sufyan Miftahi and Mufti Jamil Ahmad Naziri picking up the stem cells from a blastocyte embryo generated through the modern test tube technique with an intention to develop some human organ and preserve it for the use in future is absolutely unlawful, no matter the test tube pregnancy has taken place from the seminal seed of a properly married couple or was the mixture of an unmarried man and woman.

Position of the Shariah on the DNA and the Genetic Tests

A note of caution against over enthusiasm being evinced by some novices.

ML. Badrul Hasan Qasmi
Vice President Islamic Fiqh Academy of India

In holding the DNA test results as an argument to be recognized by the Shariah at a par the type of over enthusiasm being shown by some novices of the area of medical sciences as well as of Muslim scholars projecting themselves as concerned to solve the newly emerging issues and problems with juristic implications seems exceeding the proper limits. Before taking up the final position *vis-à-vis* such tests and the medical researches our excited ulama must not ignore the following facts:

- As for a longer time the finger prints have recognized as a reliable means for personal identification *vis-à-vis* the normal matters of life, and which is entirely based on the creational identity placed in the finger tops of each and every individual by the Creator Himself, so much so that everyone is rightful to claim his identity amidst the huge multitude of the human beings, so being the establishment of every human identity by examining any part of his/her body. Like the finger prints, this unique feature, too, speaks of the secret working of the Creator. Through their constant pursuit and continuing painstaking the medical scientists arrived at the conclusion that the units of each human physical structure contain some immutable intrinsic realities, and right from cellular stage each and every human being turns uniquely separate so much so that each human being could easily be identified by the smallest particle of one's body. This wonderful progress of man in the area of genetic studies speaks of the fact that man has discovered some links of the Divine creational scheme and

this is indeed a great scientific discovery and revolutionary stride. But, in the Divine process of creation there lie uncountable secrets which still lie beyond the human knowledge and the man has to pursue his voyage towards learning so as to add more depth and dimensions to his knowledge in the wonders of the creational plan of Allah, the Supreme Being. Commenting on the human knowledge the Qur'a says:

وَمَا أُوتِيتُمْ مِّنَ الْعِلْمِ إِلَّا قَلِيلًا ٨٥

“ And you are not given aught of knowledge but a little.”

And, deriding man's pretensions to knowledge as boastful, the Qur'an says:

مَا أَشْهَدْتُهُم خَلْقَ السَّمَوَاتِ وَالْأَرْضِ وَلَا خَلْقَ أَنْفُسِهِمْ وَمَا كُنْتُ مُتَّخِذَ الْمُضِلِّينَ عَضُدًا ٥١

“I did not make them witnesses of the creation of the heavens and the earth, nor of the creation of their own souls; nor could I take those who lead (others) astray for aiders.”

Given the fact that man possesses very little of knowledge as compared to that of Allah, the Creator, the boastful claims like: ‘The genetic test is the conclusive argument from Allah on the earth’ as has vociferously been claimed by some immature and uncautious ‘jurists’ like Dr Sa’adud-Din Hilali. In the like manner, the passionate appeal that ‘each child coming to the world must undergo a DNA test, or each and every man and woman intending to conclude the marriage should compulsorily undergo the genetic test and the results of which must be recorded on the marriage register’ are uncalled for, imprudent and unscholarly. Such attitude has been adopted in utter disregard to unimaginably grave consequences.

The Muslim countries like Egypt, Kuwait, United Arab Emirates, Jordan, etc. are not yet prepared to take the DNA test report as valid to establish the parentage of the child in the existence of a valid marriage relationship.

For the Sake of an unsubstantial benefit, it would indeed be in total contravention to the true spirit of the Islamic teachings to subject the thousands of the chaste Muslim women to the DNA laboratory tests and thereby to expose the secrets of their lives to the mercy of the non-Muslim untrustworthy doctors.

Mandating every individual, men and women, to undergo the DNA and genetic test shall indubitably expose them to public disgrace by unveiling their hidden secrets. This step is naturally bound to sow the seeds of mutual suspicion and distrust in the family life of the people, giving rise to tensions on such larger a scale that shall predictably be beyond control. How sane is the counsel of Imam Muzani in regard to such absurdities:

“Be wary of talking about a matter in which you are not to gain a reward even though you hit the nail on the head. But you will be earning a sin in case you went wrong. And, this is by developing suspicion about your brother.”¹

The fact that in America and the Western world the report and results of the DNA and genetic tests are regarded as categorical by their judicial systems; or the confessions of adultery before the courts by the persons like Bill Clinton, former president of the USA, leading to his judicial conviction, hold no good in the Islamic perspective of things. In the West, where such scientific tests have become quite common, no clear concepts of lawful and unlawful exist at all. Nor the institution of marriage is regarded important beyond normal. The standards of the Western judiciaries, therefore, are nowhere seen from the Islamic viewpoint where the standards of wrong and right are substantially different from those in the West.

In the Shariah the *Lian* (oath of condemnation) is the only device to negate and disown the fathership of the child. In this context the expressions of the Qur'an and *hadith* are quite vivid, categorical, and definitive in meaning and purport. This is from the Creator, Who is in complete knowledge of all things, hence full of wisdom and in full interest of all. To quote the words of Imam Hafiz Ibnul Qayyim:

فهذا أعدل حكم و أحسن حكم لهم في الدنيا بأن لا يجتمعوا أبداً ، ولو اجتمعت عقول

العالمين لم يهتدوا إليه . (إعلام الموقعين ٢/١١٤)

(This command is the most balanced, just and beautiful for those people who adopted the course of the oath of mutual condemnation that they shall never reunite in this world. To such a balanced course of action the human beings were never

¹ Al-Tabaqatul Kubra 7/157.

able to have way even if the intellectual power of the entire world put together.¹⁾

In the like manner, discussing a very fundamental principle, Imam Ibn Taimiyyah (may Allah deal him with mercy) says:

وليس كل سبب نال به الإنسان حاجته ، يكون مشروعاً أو مباحاً ، إنما يكون مشروعاً إذا غلبت مصلحته على مفسدته ، مما أذن فيه الشرع ، وإن الله لا يحرم شيئاً إلا ومفسدته محضة أو غالبية .

Not each and every means by which the man meets his purpose is necessarily lawful or permissible. Lawful means being the one the good and virtue of which outweighs its harm, as permitted by the Shariah. Allah *ta'ala* forbade nothing except the one which is either completely harmful, or its harm outweighs its good.²

In case a person disowns his child and negates his parentage despite having a valid marital relationship with his wife, the Shariah will compel him to take the oath of mutual condemnation with his wife. Choosing this tough way is naturally quite rare simply because of the disgrace before the public it invariably involves. People choose the course of mutual condemnation only in very rare circumstances; that is, when the nature of doubt is extraordinary. But one would hardly feel reluctant in opting for the DNA or genetic test. A two-year judicial report makes it abundantly clear that the judiciary received a large number of requests seeking permission for the genetic test.

The genetic examination is invariably vulnerable to more doubts and suspicions than one, and the genetic examination, or the DNA test may encounter the fallacies beyond imagination. A very conspicuous example of the type may be offered from a recent experience of a Gulf country, as is evident from the record of the investigating agencies there. Being seriously suspicious about the faithfulness of his wife, a person demanded the genetic examination of the spot of sperm found on his bedsheet. The person was quite sure of that the seminal spot was of the person who was in illicit sex relationship with his wife.

Responding to his persistent demand when the spermatoc spot appearing on his bed was subjected to the genetic examination the result was quite contrary to the suspicions of the husband. The report revealed that spot was of his own sperm, and that spot could not provide a valid reason to support his suspicion against his wife of being in illicit sex relationship with a man besides her husband. But,

¹ Illamul-Muwaqqien 2/114.

² Al-Qawaid-ul-Fiqhiyyah al-Kubra al-Khams P. 420.

interestingly, the authorities of the laboratory subjected the child to the genetic test without a demand from the man. The result of the report not just supported the base of his doubt against his wife, it revealed that the child came into being from the seed of a person other than the husband. However, the research institution decided not to reveal the report of the test to which the child was subjected. This obviously was to save the family from wreckage and destruction and to save the woman from public disgrace. The institution placed before him the only report which spoke of the fact that spermatic spot on his bedding was from the sperm of his own. As expected, the report washed the suspicion off his mind about the character of his wife and with his wife and child he returned home happily, while the child factually was not the seed of the man.

There exist examples of that in cases of *lian* (mutual condemnation) the judge, following the dictate of his own discretion, demanded the genetic examination, as has happened in Riyadh, the Kingdom of Saudi Arabia. A person disowned the parentage of his girl child. On the demand of the judge both the spouses were subjected to the genetic examination. To utter surprise of the suspecting husband, the test report was totally opposed to the doubts and suspicions of him against his wife and the child's parentage got established with her father.

Considering all such facts, the majority of the *fuqaha* has adopted a cautious attitude to accept the genetic test report as an evidence to be recognized by the Shariah as such. To quote a few of them here:

وتقدم على البصمة الوراثية الطرق المقررة في شريعتنا لإثبات النسب كالبينة ، والاستلحاق والفراش ، أي العلاقة الزوجية ، لأن هذه الطرق أقوى في تقدير الشرع ، فلا يُلجأ إلى غيرها من الطرق كالبصمة الوراثية والقيافة إلا عند التنازع في الإثبات و عدم الدليل الأقوى .

For establishing the parentage of the child preference shall be given to the ways determined by the Shariah for the purpose, such as the evidence, annexation, and the valid marital relationship against the **genetic impression**. So because of the fact that all such ways are held stronger in the assessment of the Shariah. In presence of these ways recourse shall not be made to other ways like the genetic impression or physiognomy, except

in cases of colliding claims *vis-à-vis* the parentage of the child and in absence of an evidence stronger than all other ones.¹
فالقاعدة الأساسية هي أن لا يعلو على الفراش من الأدلة سوى اللعان الذي حصر الله فيه جواز نفي النسب الثابت به .

The fundamental principle being that nothing shall be considered against the valid marital relationship except the *lian*, which Allah *ta'ala* has expressly declared the only way to disown the parentage of the child established with the person.²
وعلى ذلك فإن أدلة ثبوت النسب من الفراش والسنة والشهادة والإقرار إذا وجدت كلها أو بعضها , فإنها تقدم على البصمة الوراثية والقيافة .

The evidence establishing the parentage of the child out of the valid wedlock, witness and acknowledgement, if they all or some of them, are found, they shall receive preference over the genetic impression and physiognomy.³

The use of the genetic engineering for the medical purposes is not so simple and easy that a generally applicable edict be issued in total disregard to the ensuing undesired results.

All in all, the DNA test result is no more than a strong indication. This indication as such may be used in the investigation of the crimes or to support the acquittal of an accused unless the crimes are other than those for which a specified penalty has been spelled out by the shariah itself. To quote here an excerpt from the resolution of the World Fiqh Academy in this regard:

لا مانع شرعاً من الاعتماد على البصمة الوراثية في التحقيق الجنائي و اختيارها وسيلة إثبات في الجرائم التي ليس فيها حد شرعي ولا قصاص ، وذلك لخبر ”إدروا الحدود بالشبهات“

From the Shariah viewpoint there exist no straits on using the genetic imprint in the process of criminal investigation, and in the like manner, using it as an evidence in convicting the accused of the crime, unless the crimes are those for which the Shariah has prescribed a

¹ Dr Wahaba Zuhaili: *al-Basmatul Wirathiya wa Majalatul Istifadati minha* p. 13-14.

² Dr Ali Muhiu Din Qura Daghi: *al-Basmatul-Wirathiya min manzuril Fiqhil-Islami* p. 18.

³ Quote from Dr Nasr Farid Wasil, Ex-Mufti of Egypt.

punishment, or for the execution of the law of equation. This principle is based on the *hadith*

”إدروا الحدود بالشبهات“ .

Avert the *hudud* if there is a room for doubt (in the procedure of conviction).¹

With fewer exceptions, the near-total majority of the contemporary jurists and the Muslim scholars does subscribe to the same resolution as quoted above. To cite the words:

لا يجوز الاعتماد على البصمة الوراثية في نفي النسب ، ولا يجوز تقديمها على اللعان .

As far as the disowning of the parentage is concerned, no importance shall be given to the genetic imprint. Nor shall be given preference to it against the procedure of *lian*.²

It would be a sheer naivety to believe that the results of the DNA test are always perfectly correct and unquestionable. The medical fraternity itself has observed as follows:

معظم العقلاء من العلماء يعتقدون أنه مادام هناك تدخل من البشر فاحتمال الخطأ وارد ،

إما من خلال تلوث العينة المستخدمة ، أو وجود عيب في التكنيك أو الإحصاء ، أو غير ذلك .

“Most of the wise scholars believe that as long as the human interference persists in the tests, mistakes will remain possible, either due to the pollution of the sample used for research, or a flaw in the technique, calculation, etc.”³

Similarly, the possibility of changing the seminal sample could not be excluded at all. Examples of such changes, mistakenly or otherwise, may be cited quite in the manner as the mistakes often occur in the examination of blood and the like.

The Western world and America have long been playing with the human seminal fluid through the tool of the genetic engineering. After successful experiments on a number of animals now the genetic engineers seem obsessed with the craze to bring about the desired changes in the human race by altering their inherent traits and sex-related mechanics, thereby to breed a good race, and, likewise, they fancy to develop spare human organs like hands, feet, ear, nose, heart, kidney, etc. so that the people might purchase such organs for medical

¹ Resolution of the Fiqh Academy passed in 1422.

² Op. cit.

³ Al-Illajul-Jinee.

purposes like they purchase the spare parts for their vehicles. In their wild flight of fancies they are trying even to change the outward and inward sexual organs. Indeed there are scores of such issues which the modern medical science and the genetic engineering are now enthusiastically pursuing. Unbridled by any religious or moral code of life, the interesting pursuits of the genetic engineering, after subjecting the mice and apes to successful experiments, it is now man who has turned out the object of the experiments of genetic engineering. This situation has literally affirmed the wise word of Haz. Umar bin Abdul Aziz كلما زاد الفجور كثرت المسائل (as the disobedience will increase, so shall do the problems).

It is unfortunate enough that in the present Muslim world there found such scholars and self proclaimed jurists who find no wrong with the practice of surrogate motherhood, as is common in the Western world. Such jurists have expressed their viewpoint with no reluctance whatsoever in the following words:

“No argument could be offered to prove the prohibition of mixing the alien waters.”¹

Strangely enough, the attitude of the Christian religious circles towards such undesired genetic researches has so far been almost negative. To quote here the words of the top most official of the Catholic Church:

“Excepting the purposes of treatment of the embryo, the Catholic Church shall never accept the researches on embryos, nor on the stem cell and embryonic technology.”

“In the same way, the Catholic Church is never prepared to accept the laboratory fertilization. So because of the fact that it is opposed to the natural way laid down by Allah for the birth and production of human beings.”

See how distracted have become our ways of researching and how indifferent we are becoming towards our religious roots properly established by Islamic teachings!

¹ Bahsun Haula al-Takathuril-Bashari p. 14.

Issues Resultant from Genetic Science - An Evaluation from the Islamic Viewpoint

By Maulana Khalid Saifullah Rahmani

A very obvious phenomenon of Allah's Lordship is that on one hand He has created the human beings with things and features common to all, He has endowed all human individuals with features that are distinctly particular to each on the other. While the common traits bring harmony between the individuals and level ground for a constructive cooperation, the distinctive features grant peculiar identity. And, it needs not mention that both the common and individual traits are essentially required for an all round personality of a human being.

As far as the human identity is concerned, there are some aspects which define and determine the individual identity of every human being. Such aspects include the facial features, complexion, ways of walking, voices of laughing and weeping, temperamental states and the taste preferences. This phenomenon of course speaks of Allah's creational sublimity that the children originating from the same couple of man and woman happen so greatly different both in outward and inward features and qualities. Inexplicably wonderful this phenomenal reality as it is, it invites man to reassert his faith in Allah's Lordship and His Omnipotence.

In stark contrast, the things which a human hand produces by means of a machine are quite identical in terms of their working capabilities and outwards forms. But Allah *subhanahu wa ta'ala* brings numerous different and varying things into being from a single source of material.

Each and every human being possesses intrinsically some distinctive and exclusive aspects. Precisely speaking, the human physical structure is composed of countless cells absolutely distinct and of individual identity, that is, the special traits. This act has lately come to human knowledge only after the discoveries into the human genetics, a subject of dedicated studies at the centres of medical science and is believed to offer successful cure to a number of diseases regarded so far as incurable. The genetic studies and researches have

engendered a number of social and religious issues as well. From among them the DNA test is believed to be comparatively more complicated. As far as the DNA is concerned, it may be obtained from the human blood, flesh, bone, nail, hair etc. This gives rise to a question of high import, both from religious and social implications. That is, the role and validity of the DNA test result in establishing the parentage of the child from his/her parents and establishing the identity of the murderer and fornicator on the ground of the report of this test?

Establishing the parentage of the Child on the DNA Test results: the viewpoint of the Shariah

As far as the establishing of the parentage of the child in concerned, a detailed guidance to this effect has been provided by the Shariah in a systematic way. This is because of the fact that the proposition of lineage is of high import. In view of this fact the Qur'an mentions the proposition of lineage and parentage as a favour unto mankind. To quote here the relevant Qur'anic verses:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ ٧٢

And Allah has made wives for you from among yourselves, and has given you sons and grandchildren from your wives, and has given you of the good things; is it then in the falsehood that they believe, while it is in the favor of Allah that they disbelieve?

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا ٥٤

And it is He Who has created man from the water, then He has made for him blood relationship and marriage relationship, and your Lord is Powerful.

The fundamental principle regarding the parentage which the Shariah has laid down is that a valid or at least the semi-valid sexual relationship of a man and woman resulting in pregnancy shall be regarded a sufficient reason for establishing of the parental relationship between the man and the child coming into being as a result of this pregnancy. In case of any dispute in this regard, there are two more means agreed upon amongst the *fuqaha* for establishing the

parentage, that is, acknowledgement and witness and testimonial evidence.¹

There are some other means for the purpose, like physiognomy and drawing lots. But the opinions of the *fuqaha* on this count stay disunited. Unlike the Hanafis, the Malikis, the Shafies and the Hambalis share the opinion that the paternity may be established on the basis of physiognomy, subject to the condition of non-existence of an acknowledgement or testimony.²

As pointed above, physiognomist observation is not just enough a reason to establish the paternity.³

What has just been put above makes it plain that the child coming into being as a result of the sexual relationship established under a valid or irregular marital bond, even if the period of pregnancy got stretched over a maximum period, the paternity of the child shall be established with the very man himself. That is, the husband of the woman who has given birth to the child. However, in case the child's paternity is lost, like the case of fondling against which there exists a multiplicity of claims of paternity and maternity, or in case of emergency in hospitals or in the condition of the warfare the new-born children got mixed, with no identity of their maternity and paternity— under all such conditions the concerned men and women may be subjected to a DNA test the report of which might be used to dispose of the dispute between the rival claims by determining the paternity and maternity of the mixed children. To the majority of the *fuqaha*, the paternity may be established on the basis of the physiognomistic clues. The DNA test results are even stronger for the purpose. For physiognomy is no more than a probable means, while the DNA is purely a scientific procedure grounded in scientific researches and observations.

¹ Badaius Sanai 6/666.

² Bidyatul-Mujtahid 2/228, Mawahibul Khalil 5/348, Mughni al-Muhtaj 4/489, al-Mughni of Ibn Qudama 7/482.

³ Al-Mabsut 17/10.

A brief note on the suggestivity and importance of the categorical indications

A closer look into the details of the Hanafi viewpoint will make us believe that the findings of the DNA test should be sufficient to satisfy the criterion set by the Hanafis for establishing parentage of the children of the lost and unknown parentage. Categorical indication is one out of the means regarded by the Hanafis as acceptable to make and support a claim. The validity of this means is grounded in the Qur'an, the Sunnah and the *aathaar*. The blood stained untorn shirt of Haz. Yusuf produced before Haz. Yaqub (upon him be peace) contained an indication which made the latter disbelieve the whole story fabricated by the step-brothers of Yusuf that he was eaten up by the wolf. The untorn shirt provided a believable indication that for a wolf it was absolutely unimaginable to eat a person wearing the shirt and still the shirt remain untorn.¹

In the like manner, the means by which the position of the slanderous statement of the wife of Aziz against Yusuf was determined by an infant was no other than an indication. To quote the relevant Quranic words:

قَالَ هِيَ رُوَدَّتْنِي عَنْ نَفْسِي وَشَهِدَ شَاهِدٌ مِّنْ أَهْلِهَا إِن كَانَ قَمِيصُهُ قُدَّ مِنْ قُبُلٍ فَصَدَقَتْ وَهُوَ مِنَ الْكَاذِبِينَ ۖ وَإِن كَانَ قَمِيصُهُ قُدَّ مِنْ دُبُرٍ فَكَذَبَتْ وَهُوَ مِنَ الصَّادِقِينَ ۚ ٢٧

“And a witness of her own family bore witness: If his shirt is rent from front, she speaks the truth and he is one of the liars:

And if his shirt is rent from behind, she tells a lie and he is one of the truthful.”

The Prophet Sulaiman made use of the indicative evidence to decide the dispute between two women who had approached him with rival claims.²

For the acceptance of a marriage proposal from a man the silence of an unmarried woman is treated as permission on her part. This offers a yet another example for the validity of the indicative evidence. Haz. Umar, Haz. Usman & Haz. Abdullah bin Masood (may Allah be pleased with them) are reported to have subjected the people to the prescribed punishment of drinking on the ground of the vomiting and smell of the intoxicating bewarage. The same is the

¹ Al-Qurtubi al-Jami li Ahkamil Qur'an 9/173.

² Al-Ambia verse 79.

opinion of Imam Malik. A woman without a valid marriage, likewise, got pregnant and Haz. Umar subjected her to the punishment of adultery. To the same view do subscribe the Malikites and Hambalites.¹

What has just been cited offer the conspicuous examples to reassert the fact that indicative evidence holds good to help a judge to arrive at conclusive results in matters of judicial import where a clear evidence does not exist. The importance of the indicative evidence has been discussed by more great Islamic scholars than one, Ibn Farhun Maliki and Ibn Qayyim Hambali in their books: *Tabsiratul Hukkam* and *al-Turaqul Hikamiyyah* respectively, to name just two here. Precisely speaking, it may of course be a point of difference what type of indications are to be regarded as categorical and, similarly, what are the indications which are to be treated as weak and indecisive *vis-à-vis* a particular situation to arrive at satisfying results, the importance of the indicative evidence as such, however, is not a thing to be disregarded while deciding a dispute lacking clear evidence like confession or obvious evidence. Therefore, it seems plausibly good that the DNA test result merits serious consideration in determining the paternity of the child with a dubious or unknown parentage.

Much the same being the case of the child whose father disclaims the paternity. In such a situation when a legal father disavows the paternity of his child an oath of mutual condemnation is administered, which in one hand stands for the prescribed punishment for the woman and signifies the punishment for slandering the chaste woman *vis-à-vis* the husband. So, in the event of the husband's disclaimer of his child if the woman denies the charge of her husband and makes a demand for a DNA test to determine the veracity of his charge, her demand should be accepted and the *lian* should be avoided. This is a better choice so as to avert the slander of adultery against a chaste Muslim woman. The doubts eliminate and avert the administration of *hudud* against the accused, and the good which the DNA test report holds is sufficient enough at least to create doubts.

¹ Ibn Farhum: *Tabsiratul Hukkam* 3/97.

Identifying the Murderer & Adulterer

Whatever the importance and the situational relevance of the DNA test result, it could never be a base for administering the punishments like *qisaas* or individual or collective rape cases against the accused people. It is of course in accordance with the fundamental consensual juristic principle, which reads:

الحدود تندراً بالشبهات .

“Ward off the *hudood* if there exist situational doubts.”¹

The case of adultery is graver still. The charge of adultery against a person could not stand unless there are four eye-witness testimonies. This heavier provision makes it clear that unless the prescribed criterion of witnesses is properly fulfilled, the prescribed punishment shall never be administered to the guilty. The Uvaimer Ijlani event offers a very conspicuous instance in this connection. Giving full importance to the testimony of the accuser, the observation of the Holy Prophet was: “If the child is born after the appearance of the person so and so, the accuser shall be regarded true in his accusation of adultery against his wife.” To the surprise of everyone else, the child she gave birth bore a total appearance of the person named in the charge. The observation the Holy Prophet (SAWS) made in this regard carries great legal value. “Were I to administer the *rajm* punishment to the guilty without completing the legal process of testimony, I would have done so in the case of this woman.” And thus the Prophet (SAWS) left her unpunished.²

Based on these express and vivid provisions of the Shariah, which are absolutely agreed upon amongst the jurists and the Ulama of all ages and juristic affiliations it is safe to maintain that merely on the ground of the DNA test result the *rajm* or the *qisaas* punishments could not be administered to the accused. The DNA test result, however, shall render the character of the accused as questionable and dubious, and the legal authorities may take a deterrent punitive action against the accused as they deem fit in view of other circumstantial evidence. Punitive actions might be taken against the accused even though the evidence is not upto the standard set by the Shariah.

¹ Talkhisul Habir 4/56.

² Bukhari with commentary Fathul-Bari 9/452.

The legal authorities may force the accused into undergoing the DNA test

Since the DNA test might prove to be a good means to investigate a crime and chase the criminal; in some situations the criminal may be made into making a confession of the crime by exerting psychological effects on him, the judicial authorities have the right to force the accused to undergo a DNA test. For in order to meet the interests of justice, it constitutes the primary duty of the judicial authorities to do their best to go into the depth of the reasons that led the criminal to committing the crime.

Undergoing the genetic test prior to tying the knot of Marriage

Genetic test is a complicated scientific activity covering the entire gamut of the human living structure in terms of its health-related issues. It is of course able to tell not just the existing health problems but also the ones which might develop in the near or distant future. Given this extraordinary importance of the genetic analysis of the human structure, a number of the issues of legal importance from the angle of Islamic Fiqh bears pertinence to it.

One of such points is about the position of the Islamic Shariah on undergoing this test before contracting the marriage. This is in order to ascertain that neither party is prone to any transferable and infectious disease, or is lacking procreative competency. The noteworthy point in this regard, however, being that the marriage is a religious, moral, natural and social need; and, on the other hand, people mostly are with possibilities to develop more than one type of diseases, and unless it gets abnormally worse, all normal businesses of life go unhindered. Undergoing a genetic test without a legitimate justification is of course bound to disclose a number of possible diseases that might develop in the near or distant future. This obviously will render it extremely difficult for anyone to enter a wedlock. This will be unimaginably harmful for the human society from moral and social aspects. Hence, the Shariah discourages such uncalled for researches.

In view of the points made above, I think that the demand of such tests should better be discouraged and disapproved. Apparently,

there might be some other points to suggest the permissibility of undergoing such tests before entering a marriage contract. For instance, giving preference in marriage to such women as are fertile, or Shariah's permission to cast a look at the appearance of the proposed woman. In this context we have a reliable report from the Holy Prophet (SAWS), which reads:

تزوجوا الودود الولود فإني مكاثر بكم الأمم .

Marry those women as are loving and fertile. For your outnumbering of other *ummati*s shall of course be a matter of pride for me (on the Day of Judgement).

However, such points, or using such reports to prove the permissibility of undergoing such tests prior to marriage is absolutely out of context. For the range of the inmost infirmities and the latent deficiencies covered by the genetic tests is far too wider. By looking at the face and appearance of the proposed woman may make one to assess the acceptability of the woman. This permission is obviously meant to satisfy a natural and instinctual desire of both the parties. Obviously, every man and woman wishes to have a beautiful or, at least, an acceptable life partner, yet a less beautiful partner is never as much an aversion to other persons as is the one suffering from diseases and infirmities. Whether the proposed woman is fertile or not may better be known by gathering information about other women of her maternal and paternal families if she is still unmarried. And if she is divorced or widow, her past life may be taken as a determinant. Whatever the case, less fertility is not regarded as sickness. If a genetic test is permitted, the result may lay bare the latent infirmities and future diseases. For the range of the findings of such scientific tests is far too inclusive. One the spouses entered the marital life without bothering themselves to undergo a genetic test and thereafter the husband or wife attracted a disease, both the parties may resort to forbearance and turn a good helper for each other. Contrariwise, advance knowledge about another party's latent weaknesses is naturally bound to develop a deep sense of aversion to his/her partner, and such an undesired situation is feared to badly undermine the very institution of marriage, resulting in the deprivation of countless men and women of marriage.

Abortion based on the report of the Genetic Test

The genetic test enables the doctors to know the pregnancy and the condition of the developing embryo even before passing a period of three months on it. Through this test it may be known, as has already been pointed out, what kind of physical and intellectual defects the embryo is developing, or might attract in future. This aspect of the genetic test gives rise to a question of legal significance: if, according to the test report, the developing embryo is defective in terms of its physical features or intellectual capabilities, would the abortion be permissible in order to dispense with a child who, in all probabilities, would be a burden on the parents and the society?

This test is obviously meant for detecting the latent diseases and thereby to ward off the embryo and its parents the future harms, there is no reason to regard this test as impermissible. According to an almost unanimous juristic opinion abortion may be had before the infusion of spirit into the physical structure of the embryo. To quote an authority here:

يكره أن تُسقى لإسقاط حملها ، و جاز لعذر حيث لا يتصور .

“For a pregnant woman it is reprehensible to have some type of drink in order to have an abortion. Such a substance may be consumed only if there is an actual reason, but strictly before the embryo assumed the human form.”¹

The better course of action, therefore, is to undergo such a scientific test under medical consultation. Then, going by the test report, the abortion might be had strictly within the period of four months.

Avoiding pregnancy on the suggestion of the test report

By the genetic test we may know in advance what type of genetic deficiencies (physical and intellectual both) are feared to appear in one's future generation. This knowledge gives rise to an important question: would such a person be permissible to avoid impregnation by using contraceptives or other modern means intended for this very purpose? This question is of extraordinary import. As far as I think, such a measure might be taken only if there

¹ Durre-Mukhtar with al-Raddul Muhtar 5/205.

exists a strong likelihood of such deficiencies as lunacy, physical disability, blindness, dumbness, etc; weaker likelihood, on the other hand, would never make a fit case for such initiatives as are absolutely prohibited in the Islamic scheme of things. The commands of the Shariah are addressed to the Muslims on the ground of the strong probability of their respective capabilities. From this general rule an exception could only stand on the ground of an actual excuse. If the test report suggests the strong likelihood of appearing such terrible deficiencies in somebody's next generation, on the advice of reliable physicians and medical experts, the couple might be prevented from having pregnancy.

Undergoing genetic test in order to detect the genetic diseases in the embryo

It would definitely be reprehensible to have a genetic test after passing the period of four months on the pregnancy in order to know if the embryo is developing any genetic diseases. For now it is too late to have an abortion. Now this test could be had on the suggestion of the medical experts only if there are possibilities of curing the embryo within the womb or immediately after the birth.

Detecting the lunacy by having a genetic test and the dissolution of Marriage

Since by genetic test a person's mental imbalance might be known and determined in terms of its working condition the genetic test report may offer a legitimate ground for the dissolution of marriage if the woman comes forward with such a claim about her husband. If the trusted medical expert is satisfied with the report of the test to be in line with the claim of the woman, and man's mental imbalance has become intolerable, the marriage may be dissolved. For the lunacy indeed includes the reasons which do offer a legitimate ground for the marriage dissolution. Whether a person is lunatic or not could be known only by the signs symptomatic of lunacy and imbalanced state of mind, as is unanimously maintained by the jurist fraternity, and undeniably the genetic test report is of course a strong proof to this effect.

Embryonic Stem Cells

The development of the genetic science has given rise to a couple of questions of juristic significance. So far as the embryonic stem cell is concerned, it is in fact the semen, which, after a number of days passing on the conception assumes the shape technically called blastocyst. The cells forming the blastocyst are called the stem cells. About the stem cell the scientist fraternity believes that it is capable of developing into a complete human being, and in its narrow circle consumes the oxygen too.

Is stem cell to be treated as living being?

The question is: Is the embryonic stem cell to be treated as a living human entity in terms of according human dignity and respect to it? The answer is that it could not be treated as a living human being. For at this stage it is no more than a clot which though can develop into a complete human being, yet, at present it is absolutely devoid of a conspicuous reparatory system. That is why an abortion might permissibly be had before the completion of sixteen weeks over the conception according to the credible juristic view. To quote the Shami here:

يُباح لها أن تعالج في استئزال الدم مادام الحمل مضغة أو علقة ولم يخلق لها عضو ،
وقدّروا تلك المدة بمائة وعشرين يوما ، و إنما أباحوا ذلك لأنه ليس بآدمي .

For a woman with pregnancy it is permissible to have an abortion as long as the pregnancy is in its primary and early stages and no organ is still apparent. This period is assessed by the jurist fraternity as one hundred and twenty days. Quit obviously, this permissibility is predicated on the assumption that the embryo has not yet developed into a human being.¹

Ways of getting Stem Cells

According to scientific researches following are the ways which could be adopted to get the stem cells:

- From an embryo not old more than one or two weeks.
- From an aborted embryo.
- From the umbilical cord of the newborn child.

¹ Raddul Muhtar 1/272.

- From the residua of the test tube baby.
- From the bone marrow.
- From the hair molecule.
- From the fat cells lying under the skin.

Stem cells could be used for more purposes than one, such as for making an organ to be replaced in human body at time of need in future. So far as the use of the stem cells for the medical purposes is concerned, the juristic opinions are different on this count some. While to some scholars such a practice is absolutely impermissible, to others such a practice for medical purposes could be tolerable provided that:

- Taking stem cell from the embryo is not feared to endanger its life.
- The need is immediate, and real and not a presupposed one for the remote future. But as far as I think, to me indulging in practices of the type appears impermissible.

Getting stem cell from umbilical cord of the newborn

Picking up the stem cells from child's umbilical cord with the aim to prepare and develop the parts of the body anticipating that the child might need it in future of course does not correspond to the simple nature of the Islamic Shariah. Hence taking such uncalled for troubles for hypothetical future needs should better be disapproved of, rather clearly be declared impermissible. Doing so could be permissible only if the medical examination of the child's physical structure foretells that in future the child's organs may get damaged. If so, the organs may be prepared and preserved for a real future need. It is medically established that taking stem cell from the umbilical cord poses no threat to his life and there seems no wrong if the child's own parts are used in his/her own body.

Using human stem cell to developing a human organ in animal's body

It is medically practicable to prepare spare human organs by implanting human stem cell in an animal's body. For the medical purposes, like grafting and organ transplantation, this activity seems plausibly good, hence permissible. So in view of the fact that it is an endeavor to use a human being's stem cell for his own benefit. More a

point suggesting the permissibility is the phenomenal biological fact that the human body accepts well only its own parts, and often ejects what is grafted to it from other's body, human or animal. As regards the use of an animal for the purpose, it is noteworthy that the animals have been created mainly for the benefit of the human beings, and the medical purposes of course are even more important than the ordinary ones.

For planting the human cells for medical purposes in the animals the doctors and genetic engineers shall be required to make difference between the lawful and unlawful animals. This use has to be restricted to such animals as are lawful to eat. This important condition could be ignored only if this medical purpose is not to be achieved by the lawful animals. For it is only the necessities which render the use of prohibitive as permissible.

Securing stem cell from semen for the Test Tube Baby

The genetic science has raised hope for the couples who remain issueless despite undergoing all possible types of medical treatment. The test tube technique for having children is an important one among the various achievements of the genetic science. This genetic achievement has simultaneously posed a juristic question before those communities who are determined to walk along the lines set by the natural and moral teachings of Islam. Should an issueless couple take the route of the test tube technique to have a child? The process involves securing the stem cell, developing it through the use of modern genetic technique for the test tube pregnancy. To this end the stem cell might be secured from an adult. But its development is technically rather difficult. What is the position of the Shari'ah on the concept of the test tube baby if the pregnancy takes place through the stem cells got from a legally married couple?

Responding to this question what could be sound view, keeping in view the nature, general temperament and the common teachings of the Islamic Shariah, is that the couple not able to beget child going by the natural course may adopt the test tube way for the purpose. The point which must invariably be kept in mind being that the stem cells be derived from the seeds of the man and woman properly married. It is in view of the fact that the preservation of

lineage is one from among the supermost objectives of the Shariah, the obvious reason for the prohibition of illicit sexual relationships.

Transplantation of Organs¹

The problems and issues related to transplantation of human organs were discussed in the First Fiqh Seminar held on 1-3, April 1989. There was almost a consensus on some issues. In order to arrive at a final decision left undecided in the Seminar due to a difference of opinions amongst the discussants, a sub-committee was formed to prepare a questionnaire in the light of issues that emerged in the Seminar and to send it to *Ulema* (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 its functioning it becomes necessary to replace that organ, the following material could lawfully be used for this purpose:
 - a) Organic or inorganic objects such as metal, plastic, etc.
 - b) Organs of *halal* animals, which have been slaughtered according to the respective Islamic directions.
 - c) For the purpose of replacement the organs of such animals whose meat is *haram*, or such animals whose meat is *halal* 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 patient is in danger or an organ is feared of being completely damaged.
 - d) If there is no strong danger to the 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 the necessity so demands.
- 3.3 It is not permissible to sell one's organs. It is *haram*.

¹ First Fiqhi Seminar (New Delhi) 1-3 April 1989.

- 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, it is invalid according to Shariah, and such a wish is not to be honored.

(This being the first part of the volume exclusively prepared to reproduce the Academy's viewpoint on the emergent medical issues and problems. This contains only five issues. And it will be followed by the second and last part which will discuss in some detail the rest of such medical issues.)