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Islamic Medical Jurisprudence

Saudi Society for Studies in Medical Jurisprudence 1

Kingdom of Saudi Arabia
Ministry of Higher Education
Imam Muhammad Ibn Saud Islamic University



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Islamic Medical Jurisprudence

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Islamic Medical Jurisprudence

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Prepared by

Saudi Society for Studies in Medical Jurisprudence

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Preface to the English Edition

Praise be to Allah, the Lord of the universe, and peace and blessings of Allah be upon our Prophet Muhammad, the most honorable of the prophets and messengers, as well as his family and companions.

Since the Muslim is obligated to worship his Lord, may He be glorified and exalted, in all his affairs, throughout his life until his death; it is necessary for him to know the rules of Allah, may He be glorified and exalted, in every major and minor affairs of his life.

And since medicine is related to protecting the human from health threats, prevention of diseases, treating illnesses, rehabilitating affected organs to restore its functions, it is important for the Muslim, whether as a patient or a healthcare provider, to know the rulings that are related to medical care directly or indirectly.

The goal of the Saudi Society for Studies in Medical Jurisprudential (SSSMJ) is primarily to encourage the conduct of studies and scientific research in medical jurisprudence and to spread awareness of medical jurisprudence. The pursuance of this goal led to the publication and subsequent translation of this book.

Thankful efforts were carried out to make this translation. Several steps were taken to reach a product that fulfils the objectives of the translation and serves its purpose. Since the literal translations of the content that was initially prepared by the society, do not read smoothly for a contemporary English reader, and might lead him/her to lose interest in reading the book, it was decided to opt for an idiomatic translation prepared by Dr. Suheil Laher and edited by Dr. Abdullah Aljoudi.

In line with the brevity in idiomatic translations, the lexical discussions of Arabic technical terms were omitted from this translation since it is irrelevant to the English readers. Some English definitions of important medical and non-medical terms were added whenever needed and some footnotes were added whenever deemed necessary.

We pray to Allah to make this translation beneficial for all concerned, and to accept it as a sincere work for the sake of Allah. We end by declaring all praise for Allah, the Lord of the Worlds.

President of Saudi Society for Studies in Medical Jurisprudence

Professor ‘Abdulsālām bin Ibrāhim Āl - Ḥusayin

Preface to the Arabic Edition

Praise be to Allah, the Lord of the universe, and peace and blessings of Allah be upon our Prophet Muḥammad the most honorable of the prophets and messengers, as well as his family and all his companions.

Allah, the Most Exalted, has sent His Messenger Muḥammad with the finest and most complete system of laws, around which Islamic legislation has been developed to encompass all human activity. One of the manifestations of this comprehensiveness is the capacity for the Sharia to organically grow so as to address contemporary issues across the span of human activity, including new developments in the medical field. In fact, medical jurisprudence, which deals with religious verdicts on new developments related to the medical field, is one of the most important branches of the *nawāzil* genre (which addresses jurisprudence of contemporary and unprecedented issues of public relevance).

Since its founding, the Saudi Society for Studies in Medical Jurisprudence has remained true to its vision of “being a pioneering scientific resource for studies, consultations, continuing education, and scientific research related to medical jurisprudence issues.” To help achieve the Society’s vision, we are publishing this handbook in order to meet the needs of students in health sciences colleges and to help bridge the gap between these two major disciplines: Islamic jurisprudence and medicine.

This project has gone through several stages:

1. A workshop that brought together specialists and practitioners in the field of teaching jurisprudence in medical schools within the Kingdom of Saudi Arabia was organized. The aim was to

consult with them and solicit their input in order to develop a syllabus for this handbook.

2. A committee was formed from among the board of directors of the Society, in order to develop a methodology for writing the course book, and for determining its final content.
3. A partnership was launched with an academic center specialized in curricula and the preparation of academic textbooks in accordance with a collective action plan within a specific time frame to prepare, write, design, and plan the layout of the textbook.
4. The contents of the textbook were reviewed and adjudicated by specialists in the fields of jurisprudence and medicine.

This project has drawn on relevant scientific research papers, as well as decisions and fatwas of bodies of ulema, jurisprudential academies, proceedings of scientific conferences, and specialized Islamic jurisprudential encyclopedias. His Eminence *Dr. Saleh bin Mohammed Al-Fawzan*, member of the Board of Directors of the Society, supervised the publication of this textbook and reviewed it. The Saudi Society for Studies in Medical Jurisprudence is proud to present this handbook, and requests from the specialists, experts, professors, and students who peruse it, to kindly send any remarks or suggestions to the Society's address, with a view to improve and further develop it.

We pray to Allah to make this project beneficial for all concerned, and to accept it as a sincere work for the sake of Allah. We end by declaring all praise for Allah, the Lord of the Worlds.

Past President of Saudi Society for Studies in Medical Jurisprudence
Professor Khālid bin 'Abdul-Ghaffār Āl-'Abdul-Rahmān

Chapter 1: Introduction to Medical Jurisprudence

1.1 Definitions

1. *Fiqh* is an Arabic word that lexically means “understanding.” [The related verb occurs with this meaning in the Qur’ān.] Allah recounts that the people of [the Prophet] Shu‘ayb said, “**O Shu‘ayb! We do not understand much of what you say.**” (Q11:91). Allah also said: “**and there is not a thing but glorifies His Praise. But you understand not their glorification**” (Q17:44).
As a technical term, *fiqh* is used to refer to knowledge of the practical Islamic rulings that are derived from their detailed evidence.
2. The Arabic word usually used for the science of medicine is *ṭibb*, a word that has various meanings in Arabic including:
 - a) Treatment of soul and body. One says, *ṭabbahu ṭibban*, which means, “He treated him.”
 - b) Skillfulness and competency in doing things. Thus, someone who is knowledgeable about something and skillful at doing it is called *ṭabīb*. Its plural form can be either *aṭibbā’* (the plural of plentitude) or *aṭibbah* (the plural of paucity).
 - c) Witchcraft or magic. When it is said about someone that he is *maṭbūb*, it means that he is bewitched. This expression is used to express a sense of optimism, for the Arabs sometimes use expressions that have positive connotations to refer to negative things, by way of optimism (“He will be healed!”).
 - d) Affair, habit or custom. When someone says: *mā dhāk bi-ṭibbī*, he means: “That is not my affair, habit or custom.”However, the meaning that is relevant to this book is the first one: treatment of soul and body.

3. Avicenna defined medicine as, “a science by which the condition of the human body is recognized as being healthy or sick, with the objective of preserving health when well, and restoring health when sick.” It can also be defined as the science, or art, concerned with maintaining health and preventing, relieving, and treating diseases.
4. **Medical jurisprudence** can be defined as: jurisprudential (*fiqh*) rulings and Sharia principles related to the health professions.

1.2 Muslims’ Interest in Medicine

Under Islamic civilization through the ages, the science of medicine has received extensive attention from Muslims and considerable encouragement from Muslim caliphs and kings. This is illustrated by the following:

1. The openness that Muslims demonstrated towards the medical achievements of former civilizations, illustrated by the translation into Arabic of a large collection of Greek medical literature, covering various sub-disciplines.
2. In addition to Arabizing the medical heritage of earlier civilizations, the Muslims’ great interest and care for the learning and teaching of medicine is shown by their having continued to develop the schools of thought and concepts of the field. They also gave encouragement to those who devoted themselves to this field. This is demonstrated by the following:
 - Concern for setting up places for teaching the medical sciences, presided over by outstanding physicians. A variety of locations were used for this purpose, including mosques, homes of scientists, and other public venues.
 - The emergence of schools that were exclusively established to teach medicine. These schools were supervised by specialized teachers, taught by leading medical scientists. A rigorous educational system was implemented therein, which had a

clear impact on the advancement and progress of medical studies.

3. Muslims have contributed considerable research, advancement, and experience to the medical field. Muslim physicians devoted considerable attention to explanations [of medical phenomena] drawn from empirical observation, to the extent that they reached considerable sophistication in this. They laid down principles and theoretical methods that led to further progress in the field. They also published many books in various medical genres.

1.3 Prominent Achievements of Muslim Physicians

1. Muslims were the pioneers in establishing principles for medical practice, and the establishment of examinations for medical students. Abū al-Qāsim al-Zahrāwī (known in the West as Abulcasis) [d. after 400/1013] has been called the greatest surgeon of the Middle Ages, and the father of modern surgery.
2. Abū Bakr al-Rāzī (known in the West as Rhazes) [d. 311/923] was the first to invent surgical sutures in hospitals.
3. Ibn al-Nafīs [d. 687/1288] was the first to describe the pulmonary circulation of blood.
4. Muslims established hospitals and took care of them. They even provided patients with new clothes along with a sum of money for their families throughout their stay.
5. Muslim physicians wrote numerous medical books that continued to be taught in European universities until the end of the nineteenth century. These books include: *Al-Qanūn fi al-Tibb* by Avicenna (Ibn Sina) [d. 427/1037], and *al-Hāwī* by Rhazes (al-Rāzī).
6. Muslim physicians, most prominently Abū al-Qāsim al-Zahrāwī (Abulcasis) in Muslim Spain, invented surgical instruments.

7. Muslims were pioneers in establishing the principles of surgical medicine. At one point, medical schools in Muslim Spain were the only schools in Europe that produced graduates in surgery who were qualified to perform suturing.

1.4 Ruling on Studying Medicine

People throughout the ages have been in need of physicians to treat their ill, although this need varies according to various circumstances and conditions. If the society's critical need for physicians is not met, the lives of people will be threatened by diseases, as well as by injuries from war and from accidents, that will often lead to death. Therefore, medicine is considered a communal responsibility (*farḍ kifāya*). If crafts and professions that are indispensable to human life, such as farming, are categorized as communal obligations, then [things like] medicine and mathematics are more worthy of this classification.

Definition of *Farḍ Kifāya*

Farḍ kifāya (a communal obligation) is an obligatory act for the Muslim community collectively. If it is sufficiently carried out by some members of the Muslim community, then the remaining Muslims are freed from the responsibility before Allah. However, if nobody performs the act on behalf of the community, then every individual Muslim becomes guilty of sin.

An alternative definition is that it is an act that must be carried out without specification as to who exactly performs it. It is an obligation for all Muslims collectively; this obligation is discharged if some Muslims carry it out, but all Muslims become sinful if it is not performed by anyone.

Jurists and prominent scholars of Islam not only stated in their books that the ruling of learning medicine is *farḍ kifāya*, but they also encouraged and urged people to learn it. Imām al-Shāfi'ī said: "I do not know a science that is more noble, after knowledge of ḥalāl and ḥarām,

than medicine.” al-Shāfi‘ī himself had interest in medicine and was knowledgeable in the field, to the extent that he was described as follows: “Along with his eminence in knowledge of Sharia and mastery of Arabic, he was conversant with medicine.”¹

Evidence for considering learning medicine as *farḍ kifāya* includes the following:

1. The Muslims need medicine. Among the five necessities that all the revealed systems of law have as higher objectives are the preservation of life and mind. Both of these necessitate learning medicine in all its specializations. The Islamic jurisprudential principle states that, “That without which an obligation (*wājib*) cannot be completed is itself an obligation.” Hence, that without which a pressing societal need cannot be fulfilled itself becomes a *farḍ kifāya*.
2. The Prophet’s command to some Bedouins to seek treatment. It was narrated by Usāma ibn Sharīk that he said: “I was with the Prophet, when some Bedouins came and said, ‘O Messenger of Allah, should we make use of medical treatment?’ He replied, ‘Make use of medical treatment, for Allah has not made a disease without making a remedy for it, with the exception of one.’ They asked, ‘What is that one?’ He replied, ‘Old age.’”² The Bedouins are a minority of the earth’s population, and they are less susceptible to diseases than urbanites, so if the Bedouins have been ordered to seek medical treatment, then this is even more important for the urban population, who are the backbone of civilization and have been subjected to more diseases.

¹ *Rawḍat al-Ṭālibīn*, 1:322.

² Ab_ Dāwūd, Ibn Mājah, Tirmidhī (who graded it *ḥasan ṣaḥīh*). Some versions say ‘Death’ in place of, ‘old age.’

3. The Prophet himself took medicine for treatment. He, along with other companions, were treated by physicians, and this is an indication that learning medicine is *farḍ kifāya*.
4. If weaving, plumbing, and the like are considered *farḍ kifāya*, then learning medicine is more deserving of having the same ruling.

1.5 Objectives of this Handbook

This book is intended for people in multiple sectors, including physicians, other health-care practitioners, scholars and researchers in Islamic law, as well as members of the general public. However, since we are especially concerned with teaching this content to students of human medicine or allied health professions, we will list the objectives that relate to such students.

1. To enable the physician to find solutions to contemporary medical issues (*nawāzil*), thereby facilitating their decisions. It is important for Muslim physicians to know the Islamic rulings [relating to their profession], since Allah requires that they abide by them. This will empower them to follow the true path of their faith in all acts of worship and other relations.
2. To highlight the ruling and importance of studying medical *fiqh*. The work of physicians involves many practices that are under the purview of Islamic law, whether due to explicit sacred texts, or based on deduction therefrom. Both doctors and medical students must be aware of the religious regulations related to their profession so as to avoid unintentional error and sin.
3. To highlight the perfection of the Sharia and its suitability for every era and place, as well as its applicability to many jurisprudential rulings of the *nawāzil* in various fields, including [specifically] medicine.

4. To apply the ḥadīth, of the Prophet, “When Allah wants good for someone, He bestows upon him the understanding of religion.”³ Since medical Islamic jurisprudence is a branch of Islamic jurisprudence, learning it falls under the general implication of the ḥadīth.
5. To facilitate choice of specialty for medical students. For example, if a student realizes that choosing a particular specialty would require him to do things that are Islamically prohibited, then he might avoid it in favor of another specialty.

³ Ibn Mājah, Tirmidhī (who graded it *ḥasan ṣaḥīḥ*).

Chapter 2: Higher Objectives of The Sharia

Islam aims to reform society, maintain its safety and sustain the purity of the hearts and souls of its individuals. To this end, there are five essential values, called the primary *maqāṣid* (higher objectives) of the Sharia, which are: preservation of religion, life, mind, lineage, and property.

Maqāṣid is the plural of *maqṣid*, which means “a destination,’ or “the place intended to be visited or reached.”¹ As a technical term in the context of Sharia, it refers to the deeper meanings and wisdom that can be observed in Islamic regulations, generally and specifically, for the realization of servitude to God and improving the condition of humans in this life and the hereafter.²

The five aforementioned *maqāṣid* (religion, life, mind, lineage, and property) are the Sharia’s most important objectives, and each of them is essential to God’s religion as revealed to all the Prophets, because people’s welfare in this world and the Hereafter are based on them.

2.1 Religion

Preservation of religion is the first objective of the Sharia. Without religion, the bonds of the society disintegrate. Accordingly, Islam adopted a strict approach to establish and preserve religion and prohibited all that is likely to taint its purity. Hence the Muslim ruler has an obligation to safeguard the well-established foundations of the religion that were unanimously agreed upon by the Righteous Predecessors (*salaf*).³

¹ *Al-Miṣbāḥ Al-Munīr and Al-Mu‘jam al-Wasīṭ*

² *Maqāṣid Al-Sharia*, al-Ṭāhir ibn ‘Āshūr, 51.

³ *Al-Aḥkām Al-Sulṭāniyyah*, Māwardī 40

There are many Islamic regulations that contribute to the safeguarding of religion, including: the prohibition of polytheism and associating others with Allah (*shirk*). This includes all type of *shirk*, whether in lordship, in worship, or in the Names and Attributes of Allah. This is implied by the verse [that begins], **“Worship Allah and associate nothing with Him”** (Q.4:36).

For the sake of preservation of religion, Islam has provisions for a severe punishment for leaving Islam, which execution of the apostate as indicated by the ḥadīth, “Whoever changes his religion, kill him.”⁴ Muslims also have the duty of enjoining the good and forbidding the evil, for it cannot be claimed that religion is preserved while evil and vice exist without people removing them, or at least objecting to them, despite having the capability to do so.⁵ Allah also commanded people to believe in revelation and to act in accordance with it, and also to invite to Islam, teach it and explain its rulings and virtues. Allah the Exalted said, **“Say, ‘This is my way; I invite to Allah with insight, I and those who follow me. And exalted is Allah; and I am not of those who associate others with Him.’”** (Q.12:108)

Connection to Medicine

Physical and mental health are essential for preservation of religion, as is clear by considering the following:

1. Safeguarding acts of worship: medical treatment directly contributes to the safeguarding of acts of worship by maintaining people’s health, which provides the worshiper with the physical and mental capability necessary to carry out his religious duties.
2. There are important acts of worship that depend upon having physical strength, namely: prayer, fasting and hajj. The

⁴ Bukhārī.

⁵ *Al-Aḥkām al-Sulṭāniyyah*. 5-7.

physically weak human body cannot perform these acts of worship in the proper manner.

3. Maintaining balanced [mental] health is essential to be able to understand the fundamental beliefs of Islam, and to ward off any erroneous understanding of Sharia regulations.
4. Prohibition of seeking treatment through magic, charlatanism, amulets, and charms that have no medical benefit, but rather, are acts of polytheism and attachment to other than Allah. Prohibition of such acts contributes to the preservation of religion.

2.2 Life

To uphold the preservation of life, Islam did not merely enact laws of *Qiṣāṣ* (talion, retribution, retaliation in kind), *ḥudūd* (prescribed punishments), expiations and redemptions, but also ordained measures to prevent the crime of murder. Once Islam prohibits something, it prohibits all means leading to it. Since preserving life is one of the higher objectives of Islamic law and a necessity, the Sharia has set in place every reasonable measure to protect human life from harm, by means of general and detailed provisions.

The following are measures that contribute to the preservation of life:

1. The prohibition of shedding the blood of a Muslim [or other innocent person], or violating the sanctity of any of his organs, is necessarily known to every Muslim. There are abundant sacred texts to this effect. It is forbidden to kill, or even to inflict the slightest of harm on a Muslim [or any other innocent person]. It is also forbidden for a Muslim to commit suicide, or to do anything

that harms his body such as castration⁶ or tattooing,⁷ unless it is done for a Islamically-justified cause (such as *qiṣāṣ* or *ḥudūd*, or the amputation of an afflicted organ or limb to prevent the spreading of disease into the whole body).

2. The Sharia has established consequences for trespasses against human life, not only that the perpetrator incurs sin, but also that he may be subject to *qiṣās*, redemption, payment of blood money (*diyya*), expiation (*kaffāra*). In order to prevent murder from becoming widespread, [the penalty of] *qiṣāṣ* [whereby the murderer could potentially be executed for his crime] was ordained. Allah says: **“And We ordained in [the Torah] for them: A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds legal retribution.”** (Q.5:45)

Allah has also explained the penalty for murdering a believer: **“But whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.”** (Q.4:93)

Since the crime of murder is so heinous, it is ranked second after the sin of *shirk* (associating others with Allah). Allah says: **“And those who do not invoke with Allah another deity or kill the soul which Allah has forbidden [to be killed], except by right, and do not commit unlawful sexual intercourse. And whoever should do that will meet a penalty.”** (Q.25:68) This verse indicates that the most grievous crime after *kufr* (disbelieving in Allah) is the killing of innocent people without a just cause, followed by unlawful sexual intercourse.⁸

⁶ *Khiṣā'*: Removal of the testicles. *Al-Ḥāwī al-Kabīr*, Māwardī, 9:340.

⁷ *Washm*: a design is made by inserting ink, dyes and pigments into the dermis layer of the skin to change the pigmentation. *Mughnī al-Muḥtāj*, 1:406.

⁸ *Tafsīr Al-Qurṭubī*, 13:76.

3. No part of the Muslim's body may be harmed even with the person's consent. Just as it is prohibited for a person to kill oneself or cut any part or organ from one's body [without legitimate cause], similarly it is forbidden for a person to permit others to do so. Allah has forbidden killing and inflicting injury in order to safeguard people's bodies and organs, for their own benefit. Even if the person renounces his right, such consent is not considered valid, and may not be acted upon.⁹
4. Sharia protects people before their birth. Islam has ordained payment of blood money (*diyya*) for causing death to a fetus, besides the sin involved if it was deliberate.¹⁰
5. Islam [usually] prohibits abortion and if a mother opts to abort her fetus, she must pay blood money to the fetus' heirs.¹¹
6. Muslims are instructed not to wish for death, [even] on account of a calamity that one is afflicted with. The Prophet said: "None of you should wish for death because of a calamity which has befallen him."¹²

Islam urges Muslims to save lives, and this is one of the greatest good deeds and acts of obedience to Allah. Allah says: **"Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely."** (Q.5.32).

Disease is one of the causes of death, and so when a Muslim tries his best to cure his brother, or donates blood that he is in dire need of, he is effectively saving him from death.

7. Islam prohibits mutilation – whether motivated by desire for gratification, or revenge, humiliation, torture, or violating

⁹ *Al-Furūq*, Qarāfī, 1:141.

¹⁰ *Al-Mughnī*, Ibn Qudāma, 8:409.

¹¹ *Ibid*. There are cases where abortion is allowed. See Chapter 10.

¹² Muslim, Bukhārī.

someone's dignity and honor – as sometimes occurs during wars. In addition, it prohibits the changing of the creation of Allah by castration, tattooing, or plucking out the eyebrows.¹³

8. Forbidden things become permissible if it is necessary to save a life. An example of this is allowing someone to eat prohibited foods, such as carrion, or someone else's food, provided that the person is sure he will die without it, and provided that he only eats the amount that saves him from death.¹⁴ Allah says: **“But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”** (Q.2:173)

Connection to Medicine

1. Medical treatment is Islamically legitimate, because it helps to preserve life, which is one of the higher objectives of Sharia. Indeed, it might even be obligatory in cases where foregoing it may result in death, loss of a limb or organ, disability, or contagious disease.¹⁵ Usāma ibn Sharīk narrated, “I was with the Prophet, when some Bedouins came and said, ‘O Messenger of Allah, should we make use of medical treatment?’ He replied, ‘Make use of medical treatment, for Allah has not made a disease without making a remedy for it, with the exception of one.’ They asked, ‘What is [that one]?’ He replied, ‘Old age.’”¹⁶

¹³ Removing the soft hair that covers the skin of the face, *Mu'jam Lughat Al Fuqahā'*, 148.

¹⁴ *Al-Bayān fī Madhhab al-Imām al-Shāfi'ī*, 4:551. *Al-Mubdi' Fi Sharḥ Al-Muqni'* 8:14

¹⁵ *Al-Fatāwā al-Hindiyya*, which was authored by committee of Scholars headed by Niẓām al-Dīn al-Balkhī, 5:355. *Majmū'*, 18:12. International Islamic Fiqh Academy Decision in its 7th Conference in Jeddah, KSA, 12-17 Dhū al-Qi'da 1412 AH / 9-14 May 1992 CE.

¹⁶ Abū Dāwūd, Ibn Mājah and Tirmidhī and he said it is *ḥasan ṣaḥīḥ*. Some versions say 'Death' in place of, 'old age.'

2. Similarly, it is legitimate to take preventive measures against diseases before they occur, in order to fortify the community against the spread of genetic and infectious diseases. The Prophet said, "A sick person must not be presented to (i.e. come in contact) a healthy one."¹⁷
3. It is legitimate to conduct premarital health screening, because of the benefit involved. Such screening is crucial for identifying potential health risks such as anemia and congenital deformities, hereditary diseases, and infectious diseases. This prevents hardship that may otherwise result to families who are seeking to marry off their children.

2.3 Intellect

In Islam, possession of mental capacity is the legal prerequisite for someone to be accountable. It is by this mental capacity that Allah has honored humans and favored them over other living creatures. Hence, the Sharia is intent upon forbidding anything that causes harm to the mind or intellect.

The following are measures that contribute to the preservation of intellect:

1. Allah has prohibited consuming all intoxicants, regardless of quantity. The jurists have stipulated flogging as a punishment for public intoxication. Allah says: **"O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone altars [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful."** (Q.5:90)

When the mind comes under the influence of alcohol, the intoxicated person starts to act like a fool or madman. He loses his inhibitions, and this, in turn, leads him to commit acts that diminish his honor and

¹⁷ Muslim.

religiosity. When the Prophet was asked by Ṭāriq ibn Suwayd about preparing wine as a medicine, he replied, “Wine is not a cure, but a disease.”¹⁸ This ḥadīth indicates that it is prohibited to use wine as a medicine, because it is itself a disease.¹⁹ Scholars also stated that using Islamically prohibited substances in medical treatment is repugnant, based on both reason and revelation. The relevant verses of the Qur’ān and many ḥadīths establish the revelatory justification for prohibition. As for reason, we realize that Allah prohibited alcohol for its harmfulness. He did not make any wholesome thing unlawful to the Muslims, unlike the case of the Children of Israel about whom we read, **“For wrongdoing on the part of the Jews, We made unlawful for them [certain] good foods which had been lawful to them, and for their averting from the way of Allah many [people].”**²⁰ (Q.4:160)

2. The Sharia has prohibited intoxicants and everything that produces languidness, due to the harmfulness and evil of these substances. Umm Salama said: “The Messenger of Allah prohibited every intoxicant and every substance which produces languidness.”²¹ The Prophet also said: “Every intoxicant is *khamr*, and every *khamr* is prohibited.”²²

From this, we can infer that a small amount of cannabis has the same ruling as a small amount of any intoxicant, as both materials cause an altered mental state.²³ All narcotic drugs have a comparable effect, and therefore we infer that the divine threat concerning alcohol applies also to narcotics, based on the fact that both categories of substance have a similar effect on the mind and that the Prophet, prohibited every

¹⁸ Muslim.

¹⁹ *Tuḥfat al-Aḥwadhī bī-sharḥ Jāmi‘ al-Tirmidhī*, 6:168; Ibn al-Qayyim, *al-Ṭibb al-Nabawī*, 116. *Sunan Abī Dāwūd*. ‘*Awn Al-Ma‘būd Sharḥ Sunan Abī Dāwūd* with the marginalia by Ibn al-Qayyim, 10:29.

²⁰ Ibn al-Qayyim, *al-Ṭibb al-Nabawī*, 116.

²¹ Abū Dāwūd.

²² Bukhārī, Muslim.

²³ Ibn Taymiyya, *Majmū‘ al-Fatāwā*, 34:204

intoxicant and every substance producing languidness. Recent medical research has proven the dangers of addiction to drugs and intoxicants on different organs of the human body. Drinking alcohol may lead to death through alcohol poisoning. Because addiction may lead to death or mental derangement, physicians recommend patients to avoid consuming alcoholic beverages, so as not to expose their lives to danger. Nowadays, the side effects of drug addiction have been recognized well with conclusive evidence, and this is taught to medical students all over the world.²⁴

3. Islam prohibits physical assault on the brain, such as by beating. If someone strikes another person [on the head] leading to loss of his intellect, then the perpetrator is required to pay the full amount of compensation (*diyya*), i.e. the same as if he had killed him.
4. Using anesthetics is prohibited (unless necessary), as it results in suspension of the ability to reason (which is the most precious blessing of Allah), by analogy from the prohibition of alcohol and of substances producing languidness. This is in addition to other potential harms of anesthetics. Having a sound mind is a prerequisite for a Muslim to fulfill his [religious] duties, so the mind must be protected.
5. Medicine treats physical diseases which, in turn, relieves stress on the mind. Medicine also attempts to treat psychological ailments in order to help maintain proper mental function. Physicians also care for drug addicts and alcoholics, to reduce the deterioration of mental health in people.

²⁴ *Fī Riḥab al-Ṭibb Al-Nabawī*, 25:271.

2.4 Dignity, Lineage, and Progeny

2.4.1 Dignity

Allah has prohibited aggression on another's dignity, just as He has prohibited aggression against others' lives and property. The Prophet delivered a sermon in his last days, during the farewell pilgrimage, where Muslims met in their greatest gathering, and in which he said: **"Your blood, property and honor are sacred to one another, like the sanctity of this day in this month in this town. Let those present to inform those who are absent."**²⁵

The following are measures that contribute to the preservation of dignity:

1. Prohibition of immoral deeds, such as *zinā* (unlawful sexual intercourse) and sodomy, as they lead to the spread of immorality and degeneration in society.
2. Prohibition of unsubstantiated accusations of *zinā*, and legislation of a *ḥadd* penalty for the accuser. Allah says: **"And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient."** (Q.24:4)
3. Prohibition of male physicians treating females, and vice-versa, without necessity.
4. Prohibition of seclusion (*khalwa*) with the opposite gender - for example for a male physician to be alone with a female physician, or female nurse, or female patient – unless it is necessary.

2.4.2 Progeny and Lineage

Allah created man to populate the earth, and to utilize the resources and treasures of the land, water and sky. This entails the presence of man on earth until the Day of Judgment. Thus, [procreation is] a

²⁵ Muslim, Bukhārī.

necessity, [and the correct way of achieving this is through the institution of marriage, whereby] lineage is [properly] preserved. The following are measures that contribute to the preservation of progeny:

1. Prohibition of killing of one's children: Allah says: **“And do not kill your children for fear of poverty. We provide for them and for you. Indeed, their killing is ever a great sin.”** (Q.17:31)
2. Prohibition of abortion unless it is justified by a necessity, for example, if trustworthy physicians pronounce that continuation of the pregnancy puts the mother's life at risk.²⁶
3. Prohibition of sterilization (permanent methods of birth control) for men and women, unless there is a Sharia-justified necessity. In Islam, one of the purposes of marriage is to procreate in order to reproduce and preserve the human species. Abandoning this aim is in conflict the sacred texts and directives that encourage procreation and safeguarding progeny (one of the higher objectives of the Sharia).²⁷
4. Medicine contributes to the preservation of lineage also through providing optimal care for children, to enable them to become healthy members of society who can continue the cycle of procreation. Physicians also treat male and female infertility, and provide care for pregnant women and unborn children.

2.5 Property

Islam has legislated means for the acquisition of wealth, as well as for its continued preservation.

The following are measures that contribute to the *acquisition* of wealth:

²⁶ *Majalat al-Buḥūth al-Islāmiyya*, (63) Rabī' I – Jumada II, 1422 H, 273.

²⁷ International Islamic Fiqh Academy, 5th Session (Kuwait), 1 - 6 Jumada II 1409 AH / 10 - 15 December. 1988 CE.

1. Urging Muslims to strive to earn their living. Allah says: **“It is He who made the earth tame for you - so walk among its slopes and eat of His provision.”** (Q.67:15)
2. Permissibility of all business transactions that do not involve injustice or trespass upon other people’s rights. To this end, Islam has affirmed the legitimacy of contracts that were known before Islam, after removing unjust components from them where necessary. These basic contracts include trade, *ijāra* (renting, leasing and hiring), putting up collateral, and partnership. Also, it allows scope for new contracts arising from societal experience provided that they are free from injustice towards any of the parties and do not entail unjust consumption of people’s wealth.

The following are measures that contribute to the *preservation* of wealth:

1. Regulating financial dealings based on the principle of public welfare. Thus, it is prohibited to earn wealth through illegal means that cause harm to others. An example is *ribā* (interest and usury), due to its disruptive effects on the balance of the economy. Allah, the Exalted says: **“But Allah has permitted trade and has forbidden interest.”** (Q.2:275)
2. Prohibition of transgression against others’ property, whether by theft, pillaging or deception. Such acts are liable to punishment. Allah the Almighty, says: **“[As for] the thief, the male and the female, cut their hands ...”** (Q.5:38)
3. Prohibition of spending wealth in illegitimate activities, and encouragement to spend wealth in good causes. This is based on one of the most important principles of the Islamic economic system: Wealth belongs to Allah and man is a trustee over this wealth. Allah says: **“Believe in Allah and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward.”** (Q.57:7)

The owner of wealth must use it within the limits set by Sharia. The owner should not be tempted by wealth lest he transgress, for this leads to destruction and corruption. It is not permissible for him to be extravagant in expenditure. Allah the Exalted, says; “.... **and do not spend wastefully. Indeed, the wasteful are brothers of the devils.**” (Q.17:26-27)

4. Financial transactions are to be based on justice and mutual consent. Contracts are not valid unless they are fair, and by mutual consent. Allah says: “**O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.**” (Q.4:29) Islam also prohibits gambling, because it is a type of injustice.

Connection to Medicine

1. To have specialized physicians in society is a *fard kifāya*. The society as a whole must support those who arise to fulfill this need, and the government should provide funds for them if needed, for otherwise, the whole community becomes sinful. If the physician's intention is to please Allah, he/she will attain Allah's great reward for performing a religious duty. Physicians are guarding a critical frontier, for a society in which illness is rife will not be economically productive. We see that societies with poor public health suffer from low productivity, in contrast to societies with good public health.
2. Doctors should take the financial conditions of patients into consideration and avoid overburdening them with costly treatment at private clinics. They should spare patients any extra burden, by not prescribing unnecessary medications, blood tests, X-rays and the like, based on the general principle of safeguarding patients' finances.
3. Doctors, especially those working in the private sector, should exercise care to earn their money honestly, and avoid making any compromises with pharmaceutical companies at the expense

of patients. They should not, for example, accept gifts from such companies if this would influence their decisions as to which medication to prescribe.

Chapter 3: The Fiqh Maxims

3.0 Preliminaries

Qawā'id is the plural of *qā'ida*, which, lexically, means the foundation of something, whether physical (such as the foundations of a house, as Allah says, “**And [mention] when Abraham was raising the foundations of the House and [with him] Ishmael...**” (Q.2:127), or abstract (as in ‘the foundations of religion’, i.e. the fundamentals).¹ As a technical term in fiqh, *qā'ida* is a maxim, a general principle that applies to and subsumes many specifics. Islamic jurists define *qā'ida* as a universal or general verdict that applies to all or most of the cases implied by the generality of the words. Examples are, “*Matters shall be judged by their objectives,*” and “*Certainty is not displaced by doubt.*”²

Benefits

These maxims play an important role in *fiqh*, and help in memorizing and understanding detailed issues. Their benefits can be summarized as follows:

1. The maxims help one to remember the rulings of specific issues, because it is easier to memorize a general maxim and then deduce the specifics from it.
2. Studying specific issues and rulings, without realizing the connections between them (which are provided by the maxim) might lead to misunderstanding or lack of clarity.

¹ *Mukhtār al-Şihāh*, 47.

² *Sharḥ al-Qawā'id al-Fiqhiyyah*, Sheikh Aḥmad ibn Muḥammad al-Zarqā', 33.

3. The maxims help to develop aptitude for jurisprudence, and cultivate the ability to group similar issues together and see the bigger picture of fiqh.
4. Understanding the maxims aids in the study of comparative fiqh. There is a consensus on most of these maxims; there is only limited disagreement about some details. Hence, it is beneficial to study and reflect upon these limited areas of disagreement.
5. The maxims show the comprehensiveness of fiqh, and how it balances between rights and responsibilities. They also make it easier for non-specialists to appreciate the beauty of this religion. Furthermore, they also help to refute the claim of those who attack Islamic law and accuse it of having partial solutions but not universal rules.

3.1 Harm Must be Removed³

If harm will occur, it must be removed, along with its harmful effects such as injury to people, or loss or destruction of property. Even though this is a declarative statement (in the Arabic), it is intended to be prescriptive, and so it is a religious obligation to eliminate harm and alleviate any damage that it has caused.⁴

Medical Applications

1. It is permissible to seek medical treatment using permissible medications that Allah has created for mankind. Healing oneself eliminates the harm caused by the disease, alleviates its

³ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85. Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 83.

⁴ Zarqā', *Sharḥ al-Qawā'id al-Fiqhiyyah*, 179. Nadawī, *Jamharat al-Qawā'id al-Fiqhiyya*, 1:156.

- pain and the complications caused by it, and removes the incapacity to perform religious duties, by Allah's permission.⁵
2. It is permissible to replace a limb or appendage that was severed due to an accident. A person faces significant harm due to loss of a hand, foot or fingers. He is therefore allowed to dispel this harm by having the severed part restored by means of surgery.
 3. It is permissible to undergo sexual correction surgery. Such surgery is for the treatment of hermaphrodites by reconstructing the genitals corresponding to his/her closest gender and removing the superfluous genitals. All contemporary scholars agree on the permissibility of performing such surgeries if necessity calls for it. Such an intervention brings about great benefit and repels detriment.⁶
 4. Blood transfusions are permissible when needed, because this is a means of removing harm.⁷
 5. It is permissible to transplant parts of a person's body, such as skin, bone and cartilage, to elsewhere on his body. Before proceeding with such procedures, it is necessary to ensure that the benefits derived from such an operation outweigh the harmful effects. Transplant surgery must aim to restore an organ, to heal it, to restore its functions, or to repair its anomalies.⁸
 6. It is permissible to transplant an organ from a dead person to a living one, provided that this organ can save the patient's life or restore a vital function in his body. This operation must be

⁵ Marghīnānī, *Hidāyah*, 10:66. Ibn Muflīḥ, *Furū'*, 2:165. Nawawī, *Majmū'*, 5:106. Ibn Juzayy, *al-Qawānīn al-Fiqhiyyah*, 438.

⁶ Council of Senior Scholars, 39th session, Ṭā'if from 24 Ṣafar - 18 Rabī' I 1413 AH. Muḥammad Khālīd Mansūr, *al-Aḥkām al-Ṭibbiyya al-Muta'lliqa bi al-Nisā'*, 207. Al-Fawzan, *al-Jirāḥa al-Tajmīliyya*, 549.

⁷ *Al-Ifādah al-Shar'iyya fi Ba'd al-Masā'il al-Ṭibbiyya*, 148.

⁸ *Al-Mawsū'ah al-Fiqhiyya al-Tibbiyya*, 2:330.

carried out after informed consent of the donor prior his death, or the consent of his heirs after his death, or the consent of the ruler if the deceased is unidentified or lacks an heir. Also, this type of intervention is authorized only when there is a good chance of success.⁹

7. It is permitted to attach artificial prostheses to compensate the loss of a limb, provided that such a procedure does result in harmful effects. Loss of a limb causes significant harm, and the prosthetic is a means for alleviating that harm.¹⁰

3.2 Harm is Repelled as Much as Possible¹¹

This maxim indicates that harm must be repelled before it occurs by utilizing all feasible means and resources within one's capability. Ideally, the harm should be prevented from occurring entirely, but if this is not possible, the occurrence of harm should be minimized as much as possible, in order to minimize its negative consequences. This is akin to the proverb, "Prevention is better than cure."¹²

Medical Applications

1. Legitimacy of preventive medicine in general, for this is intended to avert the harms arising from diseases before their occurrence.¹³
2. Legitimacy of early immunization against predictable diseases before they strike. This includes vaccinations against malaria, smallpox, measles, meningitis and other infectious diseases.

⁹ *Ibid.*, 2:331.

¹⁰ *Ibid.*, 2:330.

¹¹ 'Abd al-Raḥmān ibn Ṣāliḥ al-'Abdullaṭīf, *al-Qawā'id wa al-Ḍawābiṭ al-Fiqhiyya al-Mutaḍammīna li al-Taysīr*, 279.

¹² Zarqā, *Sharḥ al-Qawā'id al-Fiqhiyya*, 207; Al-'Ajlān, *al-Qawā'id al-Kubrā*, 90.

¹³ *Al-Mawsū'a al-Fiqhiyya Al-Tibbiyya*, 2:321

Vaccination helps repel harm from healthy people, by the permission of Allah.¹⁴

3. Legitimacy of imposing quarantine on a patient with a contagious disease, such as plague or smallpox. Quarantine consists of isolating the patient who has a confirmed case of a contagious disease from healthy individuals during the incubation period of the disease and observing him closely for the rest of this period. It is a means for combatting infectious diseases [by controlling their spread].

The Prophet said: “This plague was a punishment that was inflicted on those who were before you, or upon the Children of Israel. So, when it has broken out in a land, do not depart in flight from it, and when it has spread in a land, then do not enter it.”¹⁵

This ḥadīth indicates that the quarantine is legitimate because the infected people may cause harm to healthy individuals and the maxim states that harm is repelled as much as possible.¹⁶

4. Legitimacy of *tayammum* (dry ablution) for a sick person, even if water is available, if the use of water is likely to exacerbate his illness or delay his recovery.¹⁷
5. Barring an ignorant physician [or one who has demonstrated lack of proficiency in the field] from practicing.¹⁸
6. Medical waste must be disposed and buried in a safe place away from populated areas to protect people from its harm.
7. Legitimacy of anesthesia during a surgery, as this reduces the sensation of pain, which is often severe in such situations.

¹⁴ Al-Su‘aydān, *al-Qawā‘id al-Shar‘iyya fi al-Masā’il al-Ṭibbiyya*, 16.

¹⁵ Bukhārī, Muslim.

¹⁶ Al-Fawzān, *al-Jirāḥa al-Tajmīliyya*, 114.

¹⁷ Al-Qawā‘id al-Shar‘iyya fi al-Masā’il al-Ṭibbiyya, 18; *Al-Fatawā Al-Shar‘iyya ‘alā al-Mushkil fi Al-Masā’il al-Ṭibbiyya*, 31

¹⁸ *Al-Mawsū‘a al-Fiqhiyya Al-Ṭibbiyya*, 2:321.

8. In case of difficult childbirth, it is allowed to perform a cesarean section to save the newborn and the mother.¹⁹

3.3 Harm may not be Eliminated by an Equivalent Harm²⁰

This maxim indicates that the removal or prevention of a harm should not result in a similar or worse harm. Harm should be removed without bringing any harm in its place, or if that is not possible, then the net effect should be a reduction of harm. This maxim can be considered a caveat to the first maxim, "Harm must be eliminated," since it specifies the cases in which harm must or must not be removed.²¹

Medical Applications

1. It is not permissible for a physician to prescribe for a patient a medication that is likely to cause symptoms comparable to those of his initial disease, or that will worsen his condition.²²
2. It is not allowed to withdraw devices or equipment from a patient who has ongoing need of them, in order to use them for another patient.²³
3. It is not allowed for a person to donate an organ of his body for the benefit of another patient if this is [severely] harmful to him.²⁴
4. It is prohibited to perform surgeries which have a high chance of failure, and may result in death, or result in damage to one or more of the patient's limbs, or loss of any of the five senses.²⁵

¹⁹ *Ibid.*, 2:323.

²⁰ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 87.

²¹ Subkī, *al-Ashbāh wa al-Nazā'ir*, 1:53. Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 87.

²² *Al-Ifādah Al-Shar'iyya fi Ba'd al-Masā'il Al-Ṭibbiyya*, 244.

²³ *Ibid.* 246.

²⁴ *Ibid.* 244.

²⁵ *Ibid.* 27.

5. It is not allowed for a person to donate blood to help other patients if doing so would be clearly harmful to the donor.

3.4 A Greater Harm should be Eliminated by means of a Lesser Harm²⁶

If one is facing two harms, one should act so as to bring about the less serious harm, in order to avoid the greater harm, provided that both harms cannot be eliminated completely.²⁷

Several other maxims have similar meaning. These maxims are as follows:

- One chooses the lesser of two evils, and the less injurious of two harms.²⁸
- When there is a conflict between two detriments, the greater harm must be avoided, even if it means accepting the lesser harm.²⁹

Many scholars maintain that these maxims have the same meaning, since they all indicate the preference for choosing the lesser harm in order to avert the greater harm.

Medical Applications

1. It is permissible to perform a surgery to treat a condition that cannot be treated by non-invasive means. This is because, for the patient, the damage caused by the surgery is less serious than the complication of his illness if it continues.³⁰
2. If becoming pregnant will result in clear-cut, major harm to a woman, she is allowed to take a contraceptive drug even if

²⁶ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 88

²⁷ *Ibid.*

²⁸ Al-Barakati, *Qawā'id al-Fiqh*, 28

²⁹ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 89. Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 87.

³⁰ *Al-Mawsū'a al-Fiqhiyya al-Ṭibbiyya*, 2:327.

such a drug has side effects. This is because the harm caused by pregnancy would be more serious than that resulting from taking the drugs.³¹

3. It is permissible to make an incision through the mother's abdomen (Caesarean section) if it is the only way to save the fetus' life. This is because the harm caused by this surgery is less serious than the death of the fetus. Similarly, if the harm of a natural delivery is more serious than the cesarean [to the mother, for example] then the same ruling applies.³² A skillful physician seeks the simplest and least complicated solutions for the patient. He only chooses difficult solutions when necessary.³³
4. It is allowed to perform skin grafting for the treatment of burns and complications arising from burns. This is achieved by removing a skin patch from the patient himself, or from the skin of another person, or by means of an artificial skin graft. This is permissible because leaving such open burn wounds is disfiguring and causes great harm to the patient, whereas it is a lighter harm to anesthetize a healthy person and remove some of his skin.³⁴

3.5 Warding off Detriment Takes Precedence over Bringing about Benefit³⁵

When there is a choice between either avoiding a detriment, or procuring a benefit, then warding off the detriment takes priority over procuring the benefit, provided that the detriment is greater than the benefit or is equivalent to it. Thus, if someone plans to perform an

³¹ *Qā'idat Lā Ḍarar wa lā Ḍirār wa Taṭbīqātuhā al-Ṭibbiyya*, 30.

³² *Ibid.*, 26.

³³ Ibn Al-Qayyim, *al-Ṭibb Al-Nabawī*, 108.

³⁴ *Ibid.* 335.

³⁵ Subkī, *al-Ashbāh wa al-Nazā'ir*, p.123.

action from which he can derive a benefit for himself, but at the same time, this action causes for himself or for others a harm that is equivalent to or greater than the benefit to himself, then he must abstain from the act. Islamic law is more concerned with avoidance of prohibitions than with performance of commands.³⁶ The Prophet said: “If I prohibit you from something, then keep away from it. And if I command you to something, then do as much of it as you are able.”³⁷ We see from this ḥadīth that the Prophet gave an absolute command to stay away from the prohibited acts, but he conditioned the performance of positive commands on ability.³⁸

Nevertheless, when the benefit that can be derived is very great and the detriment is not serious, one should procure the benefit, rather than try to avoid the detriment, and the lesser detriment should be overlooked.³⁹ Muslim jurists are unanimous in saying that the minor detriment is tolerable (and the hope is that Allah will forgive it) when a greater advantage can be realized.⁴⁰

This maxim is one of the most widely-applied fiqh maxims in general, and specifically in medical issues. It is frequently quoted in Islamic medical ethics research articles.

Medical Applications

1. It is prohibited for a woman to be alone with a male physician. Although it is beneficial for a sick woman to see the doctor, being in seclusion with him is a serious detriment, being a prohibited act.⁴¹ The Prophet said: “A man must not be alone

³⁶ Suyūṭī, *al-Ashbāh wa al-Nazāi’r*, 87. Ibn Nujaym, *al-Ashbāh wa al-Nazāi’r*, 90. *Durar al-Ḥukkām*, 1:37.

³⁷ Bukhārī, Muslim.

³⁸ Faṭḥ al-Bārī, 13:262.

³⁹ Subkī, *al-Ashbāh wa al-Nazāi’r*, p.105.

⁴⁰ *Al-Dhakhīra*, 13:322.

⁴¹ *Sharḥ al-Nawawī ‘alā Saḥīh. Muslim*, 9:109.

with a woman without a *mahram* (unmarriageable relative of hers) present.”⁴²

2. It is not permissible to use Islamically prohibited substances (or practices) as medication, because their disadvantages outweigh their benefits.⁴³
3. It is legitimate to prevent an incompetent physician from practicing, because even if he is earning money from his practice, nevertheless this is outweighed by the harm caused to his patients.
4. It is permissible to utilize artificial insemination, when necessary, provided that the semen, ovum, and uterus all come from a legally married couple and the procedure is carried out while they are still married, and provided also that there was no possibility of error in the source of the semen and the ova. The benefit of conception is considered to outweigh the detriment of exposing the *‘awra*.⁴⁴
5. It is prohibited to carry out surgeries that are unlikely to succeed. Avoiding the harm of a failed surgery is more important than betting on an unlikely chance of success.⁴⁵
6. It is prohibited to remove testicles from one person and transplant them to another, because the cons of this (e.g. confusion of lineage) outweigh the benefits.⁴⁶

3.6 Necessity Renders Prohibited Things Permissible⁴⁷

In the event of a danger which threatens religion, life, mind, lineage or property, it becomes permissible for the person to do what is normally

⁴² Bukhārī, Muslim.

⁴³ *Al-Mawsū‘a al-Fiqhiyya al-Ṭibbiyya*, 2:355.

⁴⁴ See Glossary.

⁴⁵ *Ibid.*, 2:350.

⁴⁶ *Ibid.*, 2:354.

⁴⁷ Suyūṭī, *al-Ashbāh wa al-Nazā’ir*, 84. Subkī, *al-Ashbāh wa al-Nazā’ir*, 1:45.

religiously forbidden. The Arabic word *darūra* (necessity) is etymologically derived from *darar* (detriment/harm), and refers to a state of danger or hardship that threatens the person so much that he fears damage or perishing of his life, mind, honor, or property. In this case, it is permissible for him to do what is religiously prohibited, such as committing an unlawful act, or forsaking a religious duty, or delaying it beyond its valid time, if this will repel the evil which he is almost certain will otherwise occur.

Stipulations for this maxim

1. There must be a real danger of one's life or property perishing or being damaged. The person must be close to certain, based on his experience, that this will occur, or there must be a real and present danger that is threatening one of the five necessities: religion, life, mind, lineage, and property.
2. The necessity must be compelling, such that one fears damage to his life, or forfeiture of the essentials of the five necessities: religion, life, mind, lineage, and property.
3. The afflicted person does not have any Islamically lawful means which would enable him to repel the threat.
4. The afflicted person must restrict his recourse to this prohibited act to the minimum that is required in order to repel the harm. Thus, the maxim stating that, "Necessity renders prohibited things permissible" is restricted by the secondary maxim, "Necessity is given consideration, but in due proportion."
5. The prohibited act in question cannot encroach upon other people's rights because, "Harm may not be eliminated by an equivalent harm," and because, "Harm must be eliminated without causing harm," and, "Necessity does not waive the rights of others." Any harm done to others must be compensated.
6. In the case where the prohibited act involves consuming a (normally prohibited) substance as medicine, the cure must be

prescribed by a competent and religiously honest doctor. Also, there must be no *ḥalāl* alternative.

7. The afflicted person must not violate the fundamental principles and precepts of the Sharia, such as core beliefs, justice, and fulfillment of trusts. Thus, if an act violates the fundamentals, the state of necessity is not given consideration, because a person compelled by necessity may only violate peripheral rulings of the Sharia, but not its fundamentals.

Medical Applications

1. It is permissible, according to many scholars, to use medicine containing a small quantity of alcohol that will not cause intoxication, in cases of severe need when there is no alternative, and this has been prescribed by an upright, trustworthy, and competent Muslim physician.⁴⁸
2. In the absence of a donor, it is permissible to purchase blood. In this case, the afflicted person is not blameworthy, and only the seller is sinful.⁴⁹

⁴⁸ Muḥammad al-Ashqar, *Abhāth Ijtihādiyya fī al-Fiqh Al-Tibbī*, p.123. Muḥammad ibn ‘Abd al-‘Azīz, *Athar Qā’idatay Al-Mashaqqa Tajlib al-Taysīr wa Lā Ḍarar wa lā Ḍirār fī al-Masā’il al-Ṭibbiyya Al-Mustajidda*, 20.

⁴⁹ A resolution of the Islamic Fiqh Council of the Muslim World League addressed the subject of receiving financial compensation in exchange for donating blood; in other words, the act of selling [human] blood. The Council considers that this is not allowed, because [blood] is among the things explicitly prohibited in the Qur’ān along with carrion and swine flesh. It is therefore not allowed to sell it, nor to receive financial compensation in exchange for [donating] blood. An exception is made for situations of necessity for medical reasons, when no donor can be found who is not demanding compensation. Necessity renders prohibited things permissible, to the extent [needed to remove the necessity]. In such a case, it is allowed for the buyer to give compensation, and the sin is borne by the person taking [the payment]. [Nevertheless,

3. It is permissible for the doctor to uncover the nakedness (*'awra*) of the patient if necessary [for treatment], even though this is normally prohibited.⁵⁰
4. It is permissible to use anesthesia before undergoing surgery that is not possible without anesthesia.

3.7 Necessity Is Given Consideration, but in Due Proportion⁵¹

This maxim is a caveat to the previous maxim. Thus, even when necessity renders the prohibited act lawful, this is subject to limits. The authorization is strictly limited to what repels the necessity. For example, if [doing] one-tenth (of the prohibited matter) is sufficient to repel the harm, no additional violation of the prohibition is allowed. Furthermore, when the state of necessity no longer exists, the permission to commit the prohibited act is removed.

Medical Applications

Some of the scenarios mentioned in the discussion of the previous maxim can be revisited here, in order to clarify the applicable restrictions:

1. A physician is not allowed to expose or look at more of the *'awra* than is necessary for the procedure.⁵²

there is no objection to offering money in the form of a gift or reward, in order to encourage [people] to perform this charitable and humanitarian act, because this is by way of donation and not [stipulated to be] in exchange for [something] See: The [proceedings of the] 11th session of the Islamic Fiqh Council of the Muslim World League held in Makkah from 13 - 20 Rajab 1409 AH.

⁵⁰ Ibn Qudāma, *al-Mughnī*, 7:101

⁵¹ Suyūṭī, *al-Ashbāh wa al-Nazāi'r*, p.84. Ibn Nujaym, *al-Ashbāh wa al-Nazāi'r*, 86

⁵² Ibn Nujaym, *al-Ashbāh wa al-Nazāi'r*, 86

2. During a Caesarian section on a pregnant woman, the size of the incision should be limited to the minimum necessary.
3. The use of anesthesia should be limited to the amount necessary.

Other issues that also fall under this maxim are:

4. A splint⁵³ must only cover as much of the healthy part as strictly necessary.⁵⁴
5. When amputation is medically indicated, then only that amount of the limb should be removed as is necessary to repel the detriment.⁵⁵

⁵³ A splint is, “a strip of rigid material used for supporting and immobilizing a broken bone when it has been set.” Oxford Languages, Google Dictionary. See also: Al-Fayyūmī, *al-Miṣbāh Al-Munīr*, 1:89. Sa‘dī, Abu Habīb, *al-Qāmūs al-Fiqhī*, 57.

⁵⁴ Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, 86.

⁵⁵ *Athar Qā’idatay Al-Mashaqqa Tajlib al-Taysīr wa Lā Ḍarar wa lā Ḍirār fī al-Masā’il al-Ṭibbiyya Al-Mustajidda*, 8.

Chapter 4: Seeking Medical Treatment

4.1 Rulings

In principle, the ruling for seeking treatment is that it is permissible, based on what has been stated in the Holy Qur'ān as well as both the verbal and demonstrated Sunnah. It also contributes to the preservation of life, which is one of the higher objectives of the Sharia.

The Islamic rulings regarding seeking treatment differ depending on the case and person:

- **It is obligatory (*wājib*)** to seek treatment if not doing so puts the patient's life at risk, will lead to the loss of a body part, causes him to be incapacitated, or if the disease is likely to spread to others as the case of infectious diseases.
- **It is desirable (*mandūb*)** to seek treatment if not doing so will lead to weakness, but does not entail the above consequences.
- **It is permissible** if neither of the above scenarios applies.
- **It is undesirable (*makrūh*)** if treatment is likely to lead to an increase in the affliction, or in consequences that are worse than those of the current ailment.¹

Evidence

The following evidence indicates that treatment in general is permissible:

1. The Prophet said, "There is no illness that Allah has created, except that He also has created healing for it."²

This ḥadīth directs Muslims to seeking medical treatment and encourages it.

¹ Resolution of the International Islamic Fiqh Academy meeting in its 7th conference in Jeddah in the Kingdom of Saudi Arabia from 12 - 17 Dhū al-Qi' da 1412 AH / 9 May 1992.

² Bukhārī.

2. The Messenger of Allah had cupping (*hijāma*) performed on himself. It was performed by Abū Ṭayba, and the Prophet gave him two *ṣā'* of food and interceded for him with his masters, who consequently reduced the burden of his work [for them]. Then the Prophet said, "The best means of treatment that you can use for yourselves is cupping."³

This ḥadīth indicates that the Prophet used to seek treatment for himself (and this is his demonstrated guidance), and he also advised his family members and followers to seek treatment.

The general principles and objectives of the Sharia indicate the same.

The sacred texts indicate that it is obligatory to affirm and pursue benefits, as well as to avoid detriments and minimize them.

Furthermore, preservation of life is one of the higher objectives of the Sharia. The fiqh maxims tell us that the default ruling concerning beneficial things is that of permissibility, and that concerning harmful things is prohibition,⁴ and that, "Harm should be eliminated."⁵

Therefore, any harm that befalls a human being - including a disease - should be eliminated [if possible], by any lawful means.

Priority for Medication when the Supply is Limited

If numerous patients are each in need of treatment that is available in a quantity insufficient for all of them, for example, an organ transplant (or blood transfusion)) that two patients need, but there is only one organ available (or enough blood is available for only one of them), or similarly if they are all in need of intensive care, but the ICU cannot accommodate them all, then the specialist doctor, by virtue of his experience, and in accordance with the general rules of the medical profession, should assign priority according to the following criteria:

³ Bukhārī, Muslim

⁴ *Al-Muwāfaqāt*, 2:66. *Al-Maḥṣūl*, 6:131.

⁵ Ibn Nujaym, *al-Ashbāh wa al-Naẓā'ir*, 85.

1. If the doctor is almost sure that one of the patients will benefit more from the treatment (such as the device, the blood, or the organ) than the others, then this patient is given the priority. This is based on the principle of prioritizing benefits. In other words, if two benefits cannot both be achieved, then one must opt for the greater one, and to abandon the lesser one.⁶
2. If the patients are expected to benefit equally, then priority is given to the one who has come first. The evidence for this is the ḥadīth of the Prophet in which he said "If someone precedes other Muslims to something, then it is his."⁷
3. If the patients are equal in everything, then one resorts to drawing lots. The majority of jurists have, in general, affirmed the drawing of lots as a basis for Sharia rulings, as a means to avoid bias and set people's minds to rest. Furthermore, selecting by drawing lots is permissible, on the basis of the verse in which Allah says: "**And you were not with them when they cast their pens as to which of them should be responsible for Mary.**" (Q.3 44); and He also says in another verse, "**And he (i.e. Jonah) drew lots and was among the losers.**" (Q.37:141)

4.2 Surgery

The Sharia permits learning, teaching and practicing medicine because of the enormous benefits that this science contains, and surgery is a branch of it. Learning surgery and other branches of medicine are obligations on the Islamic world community. It is incumbent on a subset of the community to learn this beneficial science, so as to fulfill the medical needs of the community. This duty cannot be achieved

⁶ Zarkashī, *al-Manthūr*, 1:349, *Qawa'id Al-Aḥkām fī Maṣāliḥ al-Anām*, 1:51.

⁷ Abū Dāwūd. Graded as *ṣaḥīḥ* by Ḍiyā' in *Al-Mukhtāra*, 1434.

without knowledge of anatomy such as is achieved by dissection, and therefore this is also an obligation.⁸

4.2.1 Types

1. Curative Surgery

This is one of the most important types of legitimate surgeries, and there are three possible scenarios:

- a) When the surgery is a necessity, in order to save the patient's life, or to save a limb or organ of his body. Surgery for appendicitis is an example that falls under this category. In such cases, the surgeon is obligated to perform the surgery, even if it leads to cutting part of the body tissue, or damage to an organ, because preserving the person's life is more important than saving some of his individual body parts. The aim of such surgery is to save the life of the patient, which is one of the noblest higher objectives of the Sharia.⁹
- b) When the surgery is needed, but not a necessity, meaning that if surgery is not performed, the patient is not certain to die, but he/she experiences severe pain, or there is an appreciable chance of harm ensuing if the operation is not performed. An example is ophthalmological surgery for advanced cases of trachoma. This type of surgery is permissible, for it is in agreement with the Sharia principles and foundations. Alleviating human suffering and removing harm is affirmed by the Sharia, as Allah says: "**Allah intends for you ease and does not intend for you hardship.**" (Q.2:185). Jurists state that "Hardship brings ease,"¹⁰ and that, "A need can be equivalent to a necessity."¹¹

⁸ *Aḥkām al-Jirāḥa al-Ṭibbiya wa al-Āthār al-Mutarattiba 'Alayhā*, p.173.

⁹ Ghazālī, *Mustaṣfā*, 174.

¹⁰ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 75.

¹¹ Suyūṭi, *al-Ashbāh wa al-Nazā'ir*, 62.

- c) When there is no severe need for medical surgery, for example to treat conditions that do not involve a high degree of hardship, but nevertheless the ailment entail harm for the patient, such as surgery to clean minor wounds. This type of surgery is permissible because even though such ailments do not reach the level of hardship mentioned in the two previous cases, nevertheless the sick person still experiences suffering, and although this is not a severe need, it is still a need, and falls under the maxim, "Harm should be removed."¹²

2. Diagnostic Surgery

This is surgery carried out to get more information about the disease, where such information cannot be obtained by any other means.¹³

Examples of these surgeries include diagnosing tumors in the abdomen. This type of surgery is permissible, based on the general permissibility of seeking medical care, realizing that treatment is not possible without diagnosis. Thus, diagnostic surgery is permissible, because if Sharia grants permission to do something, then this is understood to imply permission for its prerequisites.¹⁴

Surgeries of this type could be obligatory (*wājib*), or desirable (*mandūb*) or undesirable (*makrūh*), depending on the condition of the patient. It should be stressed that diagnostic surgery should only be performed as the last resort, after the physician has exhausted all other means (less harmful than surgery) to obtain the required medical information.¹⁵

3. Cesarean Sections

This type of surgery is carried out to deliver a baby through an incision in the mother's abdomen. The baby might be full-term or not. There are two possible scenarios:

¹² Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 104.

¹³ *Al-Mawsū'a al-Ṭibbiyya al-Ḥadītha*, authored by a group of physicians, 5:983.

¹⁴ Zarkashī, *al-Manthūr fi al-Qawa'id Al-Fiqhiyya*, 1:108.

¹⁵ *Ibid.*

a) Necessity

This is when there is fear for the life of the mother, her baby, or both of them. An example is removing a live fetus from the dead mother's abdomen, (or vice-versa). This type of surgery is permissible since it leads to the saving of sacred lives, an action that is one of greatest means of drawing closet to Allah, the Exalted. It falls under the general implication of the words of Allah in the Holy Qur'ān: "**And whoever saves one [life] - it is as if he had saved mankind entirely.**" (Q.5:32) Just as it is permissible to remove a disease [or diseased organ] from a sick person's body, it is likewise permissible to remove a fetus if its continued presence would endangers the mother's life, based on the same principle of removal of harm. Similarly, it is permissible to perform a Cesarean section on a deceased woman in order to save the life of her fetus, for just as cutting open her womb is permissible for the sake of treatment, it is also permissible for the sake of saving a sacred life. Leaving the fetus inside the womb [in this case] is sheer harm, and the maxim, "Harm should be eliminated," is applicable.¹⁶ Whoever deliberately leaves a fetus in the mother's womb until it dies, he is guilty of murder.¹⁷

b) Need

This is where the physician concludes that a C-section is called for because normal vaginal delivery might lead to complications or harm less severe than death (of the mother, baby, or both). The decision concerning the need for this type of surgery is left to professional evaluation by the physician. He/she should take into account factors such as the woman's physical ability to withstand the hardship resulting from normal vaginal delivery and its consequences. If a normal delivery will result in the woman suffering unusual hardship, or if it is probable that the baby will suffer harm, then resorting to C-section is permissible, provided that there is no other solution.

¹⁶ Subkī, *al-Ashbāh wa al-Nazāi'r*, 1:41, Suyūṭī, *al-Ashbāh wa al-Nazāi'r*, 7.

¹⁷ Ibn Ḥazm, *al-Muḥallā*, 3:395.

4. Circumcision

Male circumcision is the surgical removal of the foreskin covering the tip of the penis for men. Female circumcision involves the removal of the slightest piece of skin from the hood of the clitoris.¹⁸ It is one of the oldest types of surgery, and was known in the era of the Prophet and even before, being a relic of the rites of Abraham.

The primary evidence for the permissibility of circumcision is the authentic ḥadīth narrated by Abu Hurayra, that the Prophet said: 'There are five acts in keeping with [noble] nature: circumcision, removing pubic hair, trimming the moustache, clipping the nails, and plucking out underarm hair.'¹⁹

One who performs these acts remains true to the pure nature (*fiṭra*) upon which Allah has created all people. The ḥadīth indicates that Allah has approved these practices for them, in order that they possess the most perfect physical attributes and most noble form.²⁰

5. Dissection

A dissection involves a specialized physician cutting parts of a dead body for study and examination for a legitimate purpose.²¹ Islamic scholars have agreed that dissection is permissible for investigating a criminal case in order to ascertain the cause of death or the crime committed, as well as to investigate such diseases as require dissection in order to explore the appropriate treatment for them.

Likewise, it is also permissible to dissect dead bodies for the purpose of medical education. A fatwā has been issued in this regard from various fatwā bodies, including:

1. The Council of Senior Scholars in the Kingdom of Saudi Arabia
2. Islamic Fiqh Council in Makkah

¹⁸ *Rawḍat al-Ṭālibīn*, 10:180. *Faḥ al-Bārī*, 10:340.

¹⁹ Bukhārī, Muslim

²⁰ *Nayl al-Awṭār*, 1:141. *Faḥ al-Bārī*, 1:339.

²¹ *Mawsu'at al-Fiqh al-Ṭibbī*, 845.

They based this conclusion on analogy (*qiyās*) and reasoning supported by principles of the Sharia.

Evidence from *Qiyās*: It is permissible to conduct dissection for the purpose of education, just as it is permissible to cut open the abdomen of a deceased pregnant woman to extract her fetus when the fetus is most likely to survive. The *qiyās* is based on the common denominator of permissibility of dissecting a dead body to achieve the benefit for the living.²²

Evidence from Sharia principles: The jurisprudential maxim states that, “That without which an obligation cannot be fulfilled it itself an obligation.”²³ Specialization in medical science with its various branches, including medical surgery, is a collective duty (*fard kifāya*) with which the entire community is tasked. Consequently, a group of people must meet the community’s need for these beneficial sciences, and since this cannot be achieved without carrying out such dissection whereby surgeons can obtain practical experience of theoretical anatomy, hence such dissection is considered legitimate and obligatory.²⁴

6. Other types of surgery such as cosmetic surgery, and gender correction surgery, will be discussed in detail later in this book.

4.2.2 Conditions for Permissibility

1. Islamically permissible

The most important stipulation for permissibility of surgery is that the operation must be permitted by the Sharia. It is not permissible for the patient to request an act of surgery, nor for the doctor to respond to it, before verifying that the surgery is permissible according to the Sharia.

²² Muḥammad ibn Muḥammad al-Mukhtār al-Shanqīṭī, *Aḥkām al-Jirāḥa al-Ṭibbiyya wa al-Āthār al-Mutarattiba* ‘Alayhā, 171.

²³ Subkī, *al-Ashbāh wa al-Naḏā’ir*, 2:88.

²⁴ *Al-Jirāḥa al-Ṭibbiyya*, 173.

2. Legitimate need

This means that the surgery must either be necessary for the patient (i.e. not performing it is expected to lead to death or damage of an organ or limb), or at least a genuine need (such as if the patient would suffer pain). This condition is based on the principle that surgery is prohibited without an excuse valid under Sharia. If a patient reaches the level of need or necessity for doing a surgery, then the Sharia permits this in order to remove the harm and hardship.²⁵ The fiqh maxims tell us that, "Harm must be eliminated,"²⁶ and, "Hardship brings ease."²⁷

3. Consent

It is not permissible for a surgeon to perform surgery for a patient unless the patient gives the surgeon consent. If the patient is not competent to give permission, then the permission of the patient's guardian (such as his father, for example) is required. Without informed consent, the surgeon bears responsibility for what he does, and is legally liable. Ideally, the consent should be in writing, to ward off suspicion. An exception to this general rule can be made in serious cases, in which the patient's life is threatened or when one of his organs is likely to be damaged; consent is not required in such cases.²⁸

4. Qualification of the operating team

This qualification has two components:

- i) That the surgeon must have the requisite scientific knowledge about the required surgical task. It is Islamically prohibited for a person uneducated in surgery to perform such an operation, for that would put the patient's life at risk. If such a person does carry out the surgery, it is considered a crime, and he/she is liable for any damage caused.²⁹

²⁵ Hajjāwī, *al-Iqnā'*, 2:302.

²⁶ Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 59;

²⁷ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 75.

²⁸ Muḡhnī_ *wa al-Sharḥ Al-Kabīr*, 6:121.

²⁹ *Ibid.*, 5:398.

- ii) The surgeon has to be practically competent to perform the surgery in the required manner. Having mere theoretical knowledge of a science is not sufficient to consider a person qualified to put into

5. Likelihood of Success

The surgeon must be confident that the surgery will be successful. This means that the chance of success is greater than the chance of failure or death of the patient. So, if the surgeon thinks it is most likely that the patient will die because of it, it is not permissible for him to perform it, because in this case the harm resulting from surgery is greater than the harm of the disease itself, and the fiqh maxim tells us that the lesser of two evils is to be selected.³⁰

6. Beneficial Outcome

There should be a benefit in performing the surgery. This benefit can be of various levels: Necessary (e.g. surgery to save a patient's life), or a strong need (e.g. to restore the normal function for an organ), or a weaker need, provided that the accrued benefit from the surgery is one recognized by the Sharia.

7. Reduction of Harm

The surgery should not cause a greater harm than that of the disease. It is not permissible to carry out a surgery that leads to clear harm, based on the fiqh maxim, "There should be neither harming nor reciprocating harm."³¹ Likewise, the surgeon is forbidden to perform the surgery if it causes a greater harm than that of the disease. The Sharia does not allow a person to eliminate harm by an equivalent or more severe harm, based on the maxim, "Harm may not be eliminated by an equivalent harm."³² What is taken into consideration here, regarding

³⁰ Al-'Izz ibn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, 1:60.

³¹ Suyūṭī, *al-Ashbāḥ wa al-Naẓā'ir*, 83.

³² Subkī, *al-Ashbāḥ wa al-Naẓā'ir*, 1:41.

the prediction of possible harm, is the [professional] opinion of the surgeon and the consultant physicians.³³

4.2.3 Ethics

Physicians and their assistants have an Islamic obligation to observe certain ethics when performing medical surgery. These ethics include:

1. **Truthfulness**

Allah says: **“O you who have believed, fear Allah and be with those who are true.”** (Q.9:119). The statements of the physician and his assistants must be in agreement with the truth, and it is prohibited for them to inform the patient of anything that is in conflict with reality. They are held responsible for all their statements. If any harm ensues from a lie that a medical professional utters, then he will be liable for damages.

2. **Respecting appointments**

The Sunna has established that breaking a promise is one of the signs of a hypocrite. So, a doctor and his assistants should not schedule an appointment for the patient unless they expect to be able to honor it.

3. **Fulfillment of contracts**

Allah says: **“O you who have believed, fulfill [all] contracts.”** (Q.5:1) A doctor and his assistants must abide by all contracts concluded with the patient. They become sinful and are held responsible for the results if they refrain from fulfilling the contracts without a legitimate excuse.

4. **Sincere Counsel**

This is one of the rights of a Muslim upon his brother in Islam. Therefore, doctors and their assistants must observe sincerity to the patients by advising them to take the best and least harmful choices, whether it is with regard to medical examination or surgery. They should act in the interests of the patient, even at

³³ *Mawsū‘at al-Fiqh al-Tibbī*, 838.

the expense of a worldly benefit for themselves, remembering that, “What is done for the sake of Allah is better and more lasting.”

The following are some examples of sincerity:

- If the doctor knows that, in order to examine the patient, he would need instruments that he does not have, but which are available elsewhere and by which the benefit will be achieved, he must advise the patient to go to the place where they are available.
- If the doctor knows of a medication alternative that would cure the patient and that it is less harmful than surgery, he must inform the patient of it.

5. **Sincerity and Excellence**

A doctor should perform his work sincerely, fulfill the rights of people, and exert every effort to conduct his work with excellence and professionalism.

6. **Consultation**

The surgeon should consult other physicians about cases he is unsure about, and should discuss these cases with them in order to reach a confident opinion regarding how beneficial performing the surgery would be. Allah commanded His Prophet to consult his companions, thus establishing the principle of consultation for all Muslims. Allah says: “**And whose affair is [determined by] consultation among themselves.**” (Q42:38)

7. **Observing the Sharia limits of ‘Awra³⁴ and Khalwa³⁵**

³⁴ See Glossary.

³⁵ See Glossary.

The patient's clothes must cover his/her *'awra* and not reveal any part, except when dictated by medical necessity.³⁶

8. **Confidentiality**

The surgeon must abide by standards of professional confidentiality as affirmed by Islam. Worldly desires should not affect his integrity and honesty. The physician must not compromise his principles and integrity, even for something that might seem to be innocuous like issuing an untrue medical report.

9. **Commitment to policies and regulations**

The surgeon must abide by the laws, statutes and regulations that are issued by the relevant authorities for the regulation and control of public and private health transactions. This falls under the general principle that it is obligatory to obey the ruler as long as this does not contradict any of the sacred texts.

4.3 Anesthesia

The default Sharia ruling is that anesthesia is prohibited, because it causes the person to lose the consciousness that is considered one of the greatest blessings of Allah and is the locus of human accountability. The mind must be protected from anything that damages it or interferes with its normal function. Moreover, there are other negative effects of anesthetics, that are similar to those of alcohol, and the Prophet also forbade everything which produces languidness. However, treatment with anesthetics becomes permissible in the case of necessity. The use of anesthetics in surgery will inevitably fall under one of three scenarios.

³⁶ *Mawsū'at al-Fiqh al-Ṭibbī*, 236; Fahd ibn 'Abdullah al-Ḥazmī, *Taqrīb Fiqh Al-Ṭabīb*, 98; Fahd ibn 'Abdullah al-Ḥazmī, *al-Jirāḥa al-Ṭibbiyya wa al-Āthār al-Mutarattiba 'Alayhā*, 47.

- a) **Necessity.** If performing surgery without anesthesia would result in death during the surgery or shortly thereafter, then the use of anesthetic is deemed Islamically necessary. Open heart surgery and other such critical surgeries fall in this category.
- b) **Genuine Need.** If performing the medical surgery without anesthesia would not result in death, but would lead to the patient suffering severe hardship (such as extreme pain), then the use of anesthetic is also deemed Islamically permissible. An example is amputation surgery.
- c) **Other.** In some cases, performing surgery without anesthesia would not result in death, nor in severe hardship, but it would result in bearable pain. This includes some scenarios of tooth extraction. The use of anesthetic in such cases is a judgment call by the physician. He/she should take into account factors such as the nature of ailment, the type of surgery needed, and condition of the patient. If, after due consideration, the surgeon sees a need for anesthesia, then there is leeway to permit it, based on two maxims: "Necessity renders prohibited things permissible," and, "A general or particular need can sometimes be treated as a necessity." For the cases in which there is a smaller need, there might be allowance for a small amount of anesthetic.

Based on the above, it can be concluded that surgical anesthesia is exempt from the general prohibition of narcotic substances, based on the need for anesthesia during surgical procedures. Most contemporary jurists deemed it permissible to use anesthesia in surgery. The Permanent Committee for Scholarly, Research and Iftā' in the Kingdom of Saudi Arabia issued a fatwa to this effect when it received a question about the ruling of using anesthesia during surgeries. The questioner explained that anesthesia is of two types:

- a) **General anesthesia:** In this type, the patient becomes completely unconscious, and it is used in major surgeries that would not be possible without this [tyts.

- b) Local anesthesia:** It is used to numb only the area of the body that requires surgery. This is often used for surgery to the lower part of the body, from the waist down. The patient remains conscious but doesn't feel pain in the part of the body treated with the anesthetic.

The Committee replied that it is permissible to use both of these [types], because of the preponderant benefits, provided that there is no danger to the patient.³⁷ The evidence for this includes:

1. The principle of giving priority to preponderant benefits over unlikely harms. al-'Izz ibn 'Abd al-Salām said, "If the benefit is greater than harm, then one must seek to achieve the benefit while monitoring the harm."³⁸ This is applicable to the case at hand, because the benefits of anesthesia generally outweigh its harm.
2. The maxim stating that, "Necessity renders prohibited things permissible." Medical treatment in such cases can be considered a necessity, and thus provides an exemption from the usual prohibition on narcotics.

Harms resulting from anesthesia

The anesthesiologist must identify the dose of anesthetic that is appropriate for the patient's need. It is not permissible to increase the dose above what is necessary. If the surgery can be performed by putting the patient under local anesthesia, it is not permissible to resort to general anesthesia without necessity, such as if a particular patient is not responding to local anesthesia. In the absence of such necessity, the harmful drugs of general anesthesia must not be used arbitrarily. Patients' reactions should be taken into consideration. Similarly, it is not permissible for the anesthesiologist to choose a method of

³⁷ Fatwas of the Permanent Committee for Scholarly Research and Iftā' in the Kingdom of Saudi Arabia, Question 2 of Fatwa #3685.

³⁸ Al-'Izz ibn 'Abd al-Salām, *Qawā'id Al-Aḥkām fī Maṣāliḥ Al-Anām*, 1:98.

anesthesia that is more harmful if a less harmful method is available. This is in order not to expose the patient to the negative consequences of the more harmful method.

4.4 Infectious Diseases and Epidemics

The general ruling is that it is not permissible to treat the patient except with his/her consent or the consent of the guardian when appropriate (as mentioned earlier). An exception is made for the serious emergencies where it is not possible to seek the patient's or the guardian's consent, and in the case of infectious diseases. Treatment must be administered in such cases even without the patient's consent. Treatment is obligatory in cases of infectious diseases, and the ruler has the right to oblige the treatment even if the infected patient refuses. The evidence of this obligation is as follows:

- Refraining from seeking treatment from treatable diseases can be described as contributing to one's own death, which is forbidden in Sharia. Allah says: **"Do not throw [yourselves] with your [own] hands into destruction."** (Q.2:195)
- The harm will not be restricted to the patient but may extend to family members and other surrounding people, and may even affect the whole society. Bringing harm to Muslims is explicitly prohibited, as the Prophet said, "There should be neither harming nor reciprocating harm."³⁹
- Taking care of and nursing the patient imposes a burden on his family or other caregivers.

Next, we discuss two measures that aim to prevent the spread of infectious diseases.

³⁹ Ahmed and Ibn Mājah, on the authority of Ibn Abbas. It is also reported by al-Ḥākim through the ḥadīth of Abu Sa'īd al-Khudrī, and he graded it *ṣaḥīḥ* according to the criteria of Muslim.

4.4.1 Relevant Ḥadīths

The prophetic ḥadīths about epidemics and infectious diseases [might appear to be contradictory, so we will explain] how to reconcile the apparent contradictions.

Some ḥadīths appear to deny the transmission of infection, e.g. “There is no contagion, nor is there any evil omen, nor is there any *hāma* (death-bird), nor is there *safar*.”⁴⁰ Other ḥadīths affirm contagion, and warn against approaching the patient. In the ḥadīth narrated by Muslim and Ahmad, the Prophet said, “The ill should not be brought before the healthy”⁴¹ and, “Flee from the leper as you would flee from a lion.”⁴²

To clarify the issue, we should note that some diseases are scientifically proven to be contagious, and the Sharia can never contradict what has been proven beyond doubt by science. Therefore, there is no actual contradiction between these ḥadīths. The majority of Muslim scholars reconcile these ḥadīths as follows: The ḥadīth of “There is no contagion” is intended to refute the pre-Islamic belief that contagion is an autonomous force, independent of Allah, the Exalted. As for the ḥadīths “The ill should not be brought before the healthy,” and “Flee from the leper as you would flee from a lion,” they are instructing people to avoid what is most likely to cause harm (although that harm only occurs with the permission of Allah and His divine decree and foreknowledge. So, in the first ḥadīth, the Prophet denied autonomous infection, and not the occurrence of harm by the permission and with the foreknowledge of Allah, the Exalted. The second and third ḥadīths are instructing Muslims to take precautions against something that causes harm (with the foreknowledge of Allah, the Exalted).⁴³

⁴⁰ Bukhārī, Muslim.

⁴¹ Muslim.

⁴² Ahmed.

⁴³ *Sharḥ al-Nawawī ‘alā Ṣaḥīḥ Muslim*, 14:213; *Fath al-Bārī* 6:61.

4.4.2 Immunization (Vaccination)

It is permissible to undergo vaccination if one fears that one will be infected due to a prevailing epidemic or other circumstances that would lead to infection. There is no objection to taking medicine to ward off an expected harm, as we learn from the ḥadīth of the Prophet, “He who eats seven ‘ajwa dates every morning will not be affected by poison or magic on that day.”⁴⁴ This ḥadīth clearly indicates the legitimacy of taking precautions to avoid (with the permission of Allah) possible diseases in advance

‘Ā’isha reported that: ‘Whenever the Messenger of Allah went to bed, he would blow into his [cupped] palms while reciting Sūrat al-Ikhlās and the *mu’awwidhatayn* (i.e. Sūrat al-Falaq and Sūrat al-Nās), and then he would wiped [the palms] over his face and over parts of his body that he could reach with his hands. When he became ill, he ordered me to do this for him.”⁴⁵ This ḥadīth is evidence for the permissibility of practicing of *ruqya*⁴⁶ for the healthy when one fears poisonous creatures or any other thing that requires *ruqya*.⁴⁷ Similarly, vaccination is a defense measure against an expected disease.

Some vaccinations cause harm, such as fever or other temporary symptoms. Such harm is tolerable and overlooked in comparison to the greater harm that will be eliminated. The fiqh maxim says, “A lesser harm should be opted for in order to eliminate a greater harm, if one of the two is inevitable.”⁴⁸ However, if it is medically proven that certain vaccinations cause harm to the human body, or if their harmful effects outweigh their benefits, then it is not permissible to use them, because

⁴⁴ Muslim.

⁴⁵ Bukhāri.

⁴⁶ See Glossary.

⁴⁷ *Ikmāl al-Mu‘lim bi-Fawā’id Muslim*, 7:100.

⁴⁸ Suyūṭi, *al-Ashbāh wa al-Nazā’ir*, p.7.

the Prophet said: “There should be neither harming nor reciprocating harm.”⁴⁹

4.4.3 Quarantine

Quarantine is one of the most important means of controlling the spread of epidemics and infectious diseases. It is intended to prevent the movement of people from and into places where a contagious disease is epidemic. Bukhārī and Muslim narrated that, the Prophet said: “If you hear of [the outbreak of plague] in a land, do not enter it; and if it occurs in a place while you are in it, do not leave that place.”⁵⁰

The ruler has the right to enforce isolation of patients in specially designated hospitals, so as not to cause harm to others. Scientists have proven that preventing people from leaving the land of an epidemic is effective in restricting the spread of infectious disease, by the will of Allah.

When plague appeared in the Levant (Greater Syria) during the time of Caliph ‘Umar ibn al-Khaṭṭāb, ‘Umar ordered Muslims not to flee or enter a plague-affected land, in compliance with the ḥadīth of the Prophet in this regard. Therefore, Caliph ‘Umar applied quarantine procedures more than 1400 years ago.

4.5 Seeking Treatment from the Opposite Gender

4.5.1 Men Treating Women

The general rule is that it is not permissible for a man to treat a woman, except in case of necessity, in which case a male physician may treat a female patient, or undertake any medical procedure for her. In that case, he is also permitted to see and touch only as much of her body as the medical necessity requires.

⁴⁹ See earlier footnote.

⁵⁰ Bukhārī, Muslim.

Evidence for the permissibility of treating women by men when necessary includes:

- The general Sharia texts that confirm the alleviation of hardships and suffering, e.g. Allah says: “[Allah] has not placed upon you in the religion any difficulty.” (Q22:78)
- The jurisprudential maxim, “Necessity renders prohibited things permissible.”⁵¹
- Scholarly consensus (*ijmāʿ*), for there is no disagreement among Muslim scholars over the permissibility of treating women by men or seeing or touching any part of the body, even the *ʿawra*, when dictated by need or necessity, provided that all the requisite conditions are satisfied. [We now turn to discuss these conditions.]

Conditions for this Permissibility

A man can treat a woman if these conditions are satisfied:

1. There is no woman available who can treat the female patient, or if a woman is available but she does not have the ability and knowledge to undertake this specific treatment.
2. The female patient’s life is at risk, or she would suffer adversity, or unbearable pain, or there is some other need for prompt treatment.
3. The male doctor must not be non-Muslim if there is a Muslim doctor who can undertake the treatment. An exception is when the non-Muslim doctor is more competent and more knowledgeable about the disease than the Muslim doctor.
4. The doctor should feel confident that he will not yield to attraction for the woman. If he fears that he will, then it is not permissible for him [specifically] to treat her [unless it is a critical situation].
5. There should be a third party (such as the patient’s husband or *maḥram* relative) present with the patient and the physician, so

⁵¹ Suyūṭi, *al-Ashbāh wa al-Nazāʿir*, p.84.

as to avoid *khalwa*, for the Prophet has said, “Whenever a man is alone with a woman, the third of them is the devil.”⁵²

6. The doctor is not allowed to uncover more of her body than what is strictly necessary; the rest of her must remain covered. Thereafter, he may look at and touch the exposed portion as necessary, and restrain his gaze from the rest of her body. This is because the Sharia forbids uncovering a woman’s body except when necessary, and “Necessity is given consideration, but in due proportion.”

4.5.2 Women Treating Men

It is not permissible for a woman to treat a man except in the case of necessity, in which case she is permitted to see and touch what the medical necessity entails. The evidence for this includes the following:

1. The Sunna of the Prophet

- Al-Rubayyi‘ bint Mu‘awwidh said, ‘We used to accompany the Prophet [in the battlefield], providing water to the wounded, treating them. and bringing the slain to Madinah (from the battlefield).⁵³
- Anas ibn Malik said, “The Messenger of Allah allowed Umm Sulaym and some other women of the Anṣār to accompany him when he went to war, so they would give water (to the soldiers) and would treat the wounded.”⁵⁴

These two ḥadīths indicate that women were responsible for treating the wounded Muslim soldiers. They also provide evidence that it is permissible for a woman to treat a non-*maḥram* man in case of necessity.⁵⁵

⁵² Tirmidhī, who graded it as *ḥasan ṣaḥīḥ gharīb*.

⁵³ Bukhāri.

⁵⁴ Muslim.

⁵⁵ *Faṭḥ al-Bārī*, 6:80.

2. *Ijmā'* (Scholarly consensus):

There is no disagreement among Muslim scholars over the permissibility of men being treated by women in cases of necessity, nor for such a woman to see or touch the customary parts of the man's body provided that all the conditions stipulated by scholars for treating the other gender are fulfilled. These conditions were mentioned above. The eighth session of international Islamic Fiqh Academy held in Bandar Seri Begawan, Brunei Darussalam from 1 to 7 Muharram 1414 AH (corresponding to 21 to 27 June 1993), after reviewing the research papers submitted to the Academy regarding the treatment of women by men, and after hearing the ensuing deliberations, issued the following pronouncement:

1. The default ruling is that if there is a female Muslim specialist doctor, then she must treat the female patient. If not, then she should be treated by a trustworthy non-Muslim female doctor. If not, then a Muslim male doctor is given preference over a non-Muslim male. The [male] doctor [especially] should only look at those parts of the woman's body that are necessary to see for the purpose of diagnosis and treatment. He should also lower his gaze as much as possible. The treatment of the woman must be performed in the presence of a *mahram*, the husband or any other trustworthy woman to avoid *khalwa* (unlawful seclusion).
2. The Fiqh Academy advises that the health authorities should dedicate great effort to encourage women to join all tracks of the medical profession, especially obstetrics and gynecology, due to the scarcity of women engaging in these medical specialties, so we can avoid having to resort to using this exception.⁵⁶

⁵⁶ The 8th session of the international Islamic Fiqh Academy meeting held at Bandar Seri Begawan, Brunei Darussalam, from 1 - 7 Muharram 1414 AH / 21 - 27 June 1993 CE.

4.6 Personal Privacy

4.6.1 Seeing and Touching the 'Awra

'Awra refers to those parts of the body that should be covered during *ṣalāh* (prayers) and that should not be exposed to those people who are not entitled to see them. The delineations of 'awra are different for men and women. For men, it extends from the navel down to the knee. For women, 'awra includes the entire body [in the presence of non-mahram men, or from the navel to the knee in the presence of trustworthy women]. The Sharia stresses that the 'awra should be covered and respected.

Accordingly, if a doctor needs to examine any part of the body not included in the 'awra, such as the head or eyes, then this is permissible for a doctor of the same gender. If, however, an area within the 'awra needs to be examined, then this would not be allowed under normal circumstances. Abu Sa'id Al-Khudrī narrated that the Messenger of Allah says: "A man is not to look at the 'awra of a man, and a woman is not to look at the 'awra of a woman."⁵⁷

However, if the doctor needs to see or touch the 'awra for the purpose of medical treatment, then this is permissible on the basis of necessity or severe need. This is the opinion of the majority of Muslim scholars, and their evidence includes the following:

- The sacred texts of general implication that indicate the desirability of alleviating hardship. Allah says: "**He has not placed upon you in the religion any difficulty....**" (Q.22:78)
- Fiqh maxims such as, "Necessity renders prohibited things permissible."⁵⁸
- Since medical treatment is permissible according to Sharia, it implies that it is also allowed for doctors to see and touch the 'awra for this purpose, for they are a means to something

⁵⁷ Muslim.

⁵⁸ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85.

permissible. Means take the same rulings of goals. Sarakhsī said: “If there is a legitimate excuse, then there is no objection to look at the ‘*awra* based on necessity.”⁵⁹

This permissibility is subject to the following parameters:

1. The doctor must not look at or touch more than that extent of the ‘*awra* that is necessary for the diagnosis, for the jurisprudential maxim states, “Necessity is given consideration, but in due proportion.” Thus, even though it is permissible to uncover, see or touch part of the ‘*awra* for the purpose of medical treatment when needed, this permissibility is restricted to the part if the ‘*awra* that is necessary. Al-‘Izz ibn ‘Abd al-Salām said, “Once the doctor has diagnosed the affected part, he is not permitted to look [at the ‘*awra*] any longer, because there is no longer a need. When something is allowed based on a necessity or need, the permission is restricted in due proportion, such that when the need it over, the permission expires.”⁶⁰
2. If description of the disease status is sufficient [for diagnosis], then it is not permissible to uncover the ‘*awra*. If not, then if looking at the affected part is sufficient, then it is not permissible to touch. If not, then if it is sufficient to touch the affected part with an intervening barrier [such as gloves], then it is not permissible to touch it with the bare hand.

4.6.2 Seclusion with a Member of the Opposite Gender

It is forbidden for the male doctor to meet in privacy with either a female patient or a female nurse, because the resultant harm of this is greater than the benefit. This *khalwa* is prohibited by Sharia as the Messenger of Allah says: “A man must never be in privacy with a woman unless there is a mahram with her.”⁶¹ He also said, “Never is a

⁵⁹ *Mabsūt*, 10:156

⁶⁰ *Qawā‘id al-Aḥkām*, 2:165.

⁶¹ Bukhārī, Muslim.

man alone in privacy with a woman except that the devil will be the third one present.”⁶² Nawawī said, “If a man is alone with a non-mahram woman, then this is prohibited by the agreement of the scholars.”⁶³

Thus, the detriment resulting from the *khalwa* of a male doctor being alone with a female nurse outweighs the benefit, especially since it is possible to have a male nurse. Thus, it is not permissible for the male doctor to alone with a female patient or a female nurse, nor vice-versa.⁶⁴

⁶² Tirmidhi.

⁶³ *Sharḥ Al-Nawawī ‘alā Ṣaḥīḥ Muslim*, 9:109.

⁶⁴ *Al-Su‘aydān, al-Qawā‘id al-Sharī‘a fī al-Masā’il al-Ṭibbiyya*, 30; *Mawsū‘at al-Fiqh al-Ṭibbī*, chapter five, 772 ff.

Chapter 5: Treatment with Religiously Prohibited Substances

Well-being is one of the greatest gifts granted by Allah to His servants. This favor is only fully appreciated when one loses it, which happens when ill-health interferes with the normal state of the body. In such circumstances, a person may resort to using some religiously forbidden items as medicine, in an attempt to accelerate his recovery. In this chapter, we are going to talk about the rulings concerning this. What we mean by religiously prohibited substances is anything objectionable according to the Sharia, whether they are ritually unclean (*najis*), toxic or otherwise harmful, or ritually clean but forbidden for use (like silk garments for males).

5.1 General Principles

Islamic jurists unanimously agreed that treatment with forbidden materials is generally prohibited if there is no necessity, and if a religiously-permissible alternative is available.¹ The Prophet said: "Allah did not place your cure in what He made forbidden to you."² He also said: "Allah has sent down [both] the disease and the cure, and He has appointed a cure for every disease, so treat yourselves, but do not use forbidden substances for treatment."³

¹ *Hāshiyat Ibn 'Abidīn*, 4:113, 215. *Hāshiyat al-Dusūqī*, 4:353,354. *Al-Fawākih al-Dawānī*, 2:441. *Ḥawāshī al-Sharwānī wa Ibn al-Qāsim 'alā al-Tuḥfa*, 9:170. Qalyūbī & 'Umayra, 3:302. *Kashshāf al-Qinā'*, 2:76. *Furū'*, 2:165 ff.

² Bayhaqī, *al-Sunan al-Kubrā*. Bukhāri.

³ Abū Dāwūd. Bayhaqī, *al-Sunan al-Kubra*. Ibn al-Mulaqqin said that its chain of narration is *ṣaḥīh*. *Tuḥfat Al-Muḥtāj ilā Adillat al-Minhāj*, 92:9.

The Permanent Committee's fatwa on this matter states, "Treatment with forbidden materials is not permissible, because of the sacred texts indicating prohibition of this."⁴

In case of necessity

If necessity calls for treatment with forbidden substances, then the preferred view is that this is permissible provided that the following conditions are fulfilled:

- A competent, trustworthy Muslim physician informs that the prohibited substance will cure the sick person
- The use of this prohibited substance has been demonstrated to generally be safe
- There is no religiously permissible alternative to the prohibited substance for treatment⁵

Evidences

A. From Qur'ān

Allah says: **'He has explained to you in detail what is forbidden you, excepting that to which you are compelled.'** (Q.6:119)

This verse indicates that even the specifically prohibited things become permissible in case of necessity. Medical treatment can be a necessity, and thus prohibited substances can be used for treatment based on this verse.⁶

B. From Sunna

1. Anas ibn Malik said: "Some people from 'Urayna'⁷ came to the Messenger of Allah and found Madinah unhealthy as its climate did not suit them. So the Messenger of Allah instructed them to

⁴ Fatwās of the Permanent Committee for Scholarly Research and Ifṭā', First Collection, Vol. 25, 26, Fatwā #4243.

⁵ *Radd Al-Muḥtār*, 4:215. *Majmū'*, 4:330, 9:50. *Mughnī al-Muḥtāj* 1:307, 4:188. *Muḥallā*, 7:426.

⁶ *Tafsīr Ibn Kathīr*, 3:323. Shawkāni, *Faḥ al-Qadīr*, 2:178.

⁷ 'Urayna is a town on the outskirts of Madinah, on the road leading to the Levant, or it is an Arabian tribe. Samhūdī, *Wafā' al-Wafā' bi-Akḥbār Dar al-Mustafā*, 4:114.

accompany the milk-yielding camels, and to drink some of their urine and milk (for medicinal purposes). They did so, but after regaining their health, they killed the herdsman of the Messenger of Allah and stole the camels....”⁸

We see that The Prophet allowed those people to drink the camels’ urine for medicinal purposes, and that they subsequently recovered. Medical treatment here was thus a necessity that permitted drinking of urine, which is normally forbidden, but it is not prohibited in such circumstances.⁹

But how did the scholars deal with those ḥadīths of the Prophet in which he prohibited treatment with forbidden substances, such as the following?

- Umm Salama reported that the Prophet said: “Allah did not place your cure in what He made forbidden to you.”¹⁰
- Abu al-Darda' reported that the Prophet said: “Allah has sent down [both] the disease and the cure, and He has appointed a cure for every disease, so treat yourselves, but do not use forbidden substances for treatment.”¹¹

The scholars interpreted these two ḥadīths as indicating the prohibition of treatment with intoxicants and also the prohibition of using prohibited substances when there is no necessity, i.e. when there is another permissible alternative that replaces the forbidden material.¹² In other words, the ḥadīth of Umm Salama (and similarly the ḥadīth of Abu al-Darda') regarding the prohibition of treatment with a forbidden substance, is taken to apply to cases where one has a choice. As for cases of necessity, this is not prohibited, just as a starving person is allowed to eat unslaughtered meat if no other food is available, and wine is

⁸ Bukhārī, Muslim.

⁹ *Muḥallā*, 1:175.

¹⁰ Bayhaqī. Graded as *ṣaḥīḥ* by Ibn Hibbān.

¹¹ Abū Dawūd.

¹² Bayhaqī, *al-Sunan Al-Kubrā*, 10:9, *Majmū'*, 9:53.

permissible for a person dying of thirst if nothing else is available and similarly for someone who needs it to dislodge a morsel of food stuck in his throat if there is no alternative.¹³ It is better to reconcile the various relevant ḥadīths in a way that allows taking them all into consideration, rather than use some of the ḥadīths and neglect others. It should also be pointed out that this permissibility should not be taken to imply desirability or a permanent permission. Rather, the permission is temporary, as an exception to the norm when the requisite stipulations are fulfilled, and once the need is no longer there, the use must be halted.

5.2 Alcohol

It is not at all permissible to use pure wine as a medicine, because the Prophet has said, "Allah did not place your cure in what He made forbidden to you."¹⁴ Tariq bin Suwayd Al-Ḥadramī asked the Messenger of Allah, "In our land there are grapes which we squeeze (to make wine). Can we drink from it?" He said: 'No.' I repeated the question and said: 'We use it as a treatment for the sick.' He said: 'That is not a cure, it is a disease.'¹⁵

As for medications that contain alcohol, it appears that a small percentage of alcohol in medicine does not render it prohibited for use, nor even would such a medicine be deemed ritually impure. This is because when a small quantity of alcohol is mixed with water or medicine, it is so diluted that its effects are attenuated. The resulting liquid would not cause intoxication, and since intoxication is the rationale behind the prohibition of alcohol, this mixture would not

¹³ *Umdat al-Qarī*, 3:155. *Nayl Al-Awtār*, 1:70. *Ḥāshiyat Ibn 'Abidīn*, 5:288.

¹⁴ Bayhaqī. Graded as *ṣaḥīḥ* by Ibn Hibbān

¹⁵ Musnad Aḥmad, Ibn Mājah. Ibn al-Mulaqqin said, "Ibn Abd al-Barr said: This ḥadīth has a *ṣaḥīḥ* chain of narrators." *al-Badr al-Munīr*, 8:711.

carry the same ruling as alcohol, neither in terms of prohibition of ingesting it, nor in terms of impurity.

There are three conditions for the permissibility of using alcohol in medicines:

1. That there is no alcoholic-free alternative medicine that would help the patient.
2. That a [competent] trustworthy Muslim doctor advises the use of this medicine.
3. That the quantity of alcohol is such that it will not intoxicate.¹⁶

In accordance with this, pronouncements of the Islamic Fiqh Councils and the fatwas issued by Ifta Committees in the Islamic world have sanctioned the use of medicines containing a small quantity of alcohol, while stating that it is preferred not to use alcohol in medicines in order to avoid doubtful issues.

Resolution of the Islamic Fiqh Council of the Muslim World League

“Based on the provisions within the Sharia of removing difficulty, alleviating hardship, repelling harm to the extent possible, and [the maxims] that necessity makes prohibited things permissible, and that a lighter harm is tolerated for the sake of repelling a greater harm, the following resolution has been reached [by the council]:

1. It is prohibited to use pure wine as a cure in all circumstances, because the Prophet said, “Allah did not place your cure in what He made forbidden to you.”¹⁷ He also said, “Allah has sent down [both] the disease and the cure, and He has appointed a cure for every disease, so treat yourselves, but do not use forbidden substances for treatment.”¹⁸ He also told Tariq bin Suwayd, when asked about wine being included in medication, “That is not a cure, it is a disease.”¹⁹

¹⁶ Al-Khaṭīb al-Shirbīni, *Mughnī al-Muḥtāj*, 5:518

¹⁷ See earlier footnote.

¹⁸ See earlier footnote.

¹⁹ See earlier footnote.

2. It is permissible to use medicines containing alcohol of a small proportion, in accordance with the practices of the pharmaceutical industry, when there is no alternative, provided that such a medicine is prescribed by a trustworthy doctor. It is also permissible to use alcohol as an external disinfectant for wounds, as a sanitizer, and in creams and external ointments.
3. The Islamic Fiqh Council advises pharmaceutical companies and pharmacists in Islamic countries, as well as drug importers, to exert their [best] effort to exclude alcohol from medicines and use other alternatives.
4. The Islamic Fiqh Council also advises doctors to refrain from prescribing alcohol-containing medicines whenever possible.”²⁰

Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation

“A Muslim patient can use medicines containing a proportion of alcohol if there is not a[n alcohol-free] alternative, if it is prescribed by a trustworthy, honest doctor.”²¹

5.3 Narcotics

The default is that treatment with narcotics is prohibited, based on the evidences mentioned earlier, but Islamic scholars permitted in cases of necessity with the following conditions:

1. That treatment with narcotics is prescribed by a trustworthy, competent Muslimphysician.

²⁰ Resolution issued by the Islamic Fiqh Council of the Muslim World League, in its sixteenth session held in Makkah, from 21 – 26 Shawwāl 1422 AH / 5 – 10 January 2002 CE.

²¹ Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation, in its third session held in Amman, the capital of Jordan, from 8 - 13 Safar 1407AH / 11 - 16 October 1986 CE, in its answer to the twelfth question.

2. That there is no alternative medication to the narcotic
3. That the intention not be to circumvent the Sharia prohibition of narcotics.
4. That use of the narcotic should not exceed the extent of necessity.

So, if the narcotic-containing medicine has no alternative that is free of narcotics or other islamically prohibited substances, then it is permissible for the patient to use it, provided that it was determined to be beneficial by a Muslim doctor whose religiousness and scientific knowledge can be trusted. Allah says at the conclusion of the verse that lists prohibited foods, **“But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”** (Q.2:173)

5.4 Gelatin

Gelatin is a translucent, colorless, flavorless, insoluble substance that is extracted from the hides, tissues or bones of animals by means of lengthy boiling in water,²² [or by chemical processes].

If gelatin is extracted from animals that are permissible to eat and have been slaughtered in the prescribed manner, it is pure and can be used in medicine or in other materials. However, if the gelatin is extracted from the flesh of swine, dead animals, or permissible animals that have not been slaughtered in the prescribed manner, it is prohibited to use it in medication as the Prophet said, Allah has sent down [both] the disease and the cure, and He has appointed a cure for every disease, so treat yourselves, but do not use forbidden substances for treatment.”²³ We will now discuss separately the Islamic ruling regarding the internal and external use of such medicines.

²² *Al-Mu`jam al-Wasīṭ*, 1:150

²³ Abū Dāwūd, Bayhaqī.

5.4.1 Internal Use

1. Porcine Insulin

The majority of contemporary Islamic jurists agree on the prohibition of treatment with porcine insulin, except in the case of necessity that is governed by the following parameters:

- That the patient is in a condition where it is feared that he may die or suffer significant harm.
- That no alternative to the porcine insulin is available.
- That this is prescribed by a trustworthy, competent physician.²⁴

Proponents of this opinion rely on the view that permits treatment with impure and forbidden substances in case of necessity. They are therefore resorting to evidences (already mentioned earlier) that indicate that situations of necessity are an exception from the texts of prohibition. This would apply when there is a need for porcine insulin or other medicines derived from swine. However, the current reality in the pharmaceutical industry is that it is possible to [synthetically] manufacture human insulin without recourse to animal insulin.

2. Capsules made from porcine gelatin

It is permissible, according to some jurists, to use medicines whose enclosing capsules are made with porcine gelatin on the condition that the bones/tissue/skin have been completely transformed chemically, such that both the name and nature of the substance has changed.²⁵ Those Muslim jurists who hold this view justify this by recourse to the view, which is held by the majority of jurists, that says that impure

²⁴ Recommendations of the eighth symposium of the Islamic Organization for Medical Sciences held in Kuwait from 22 – 24 Dhul-Qi‘da 1415 AH / 22 – 24 May 1995 CE.

²⁵ *Mawsū‘at al-Fiqh al-Ṭibbī*, fifth topic: Sharia Rulings Related to Examination, Diagnosis, and Medicines, 791. Dr. Abū al-Wafā’ ‘Abd al-Ākhir, *al-Istighnā’ ‘an al-Muharramāt wa al-najāsāt*, 25.

substances become pure by chemical transformation.²⁶ Thus, even though the bones/tissue/skin are ritually impure, if they are chemically transformed in the process of gelatin manufacture, then they become pure, and the resulting gelatin can be used for ingestible capsules because the substance is no longer ritually unclean. If the name and properties of an unclean substance have entirely changed, then it is difficult to say that it is still unclean. Most jurists agree, for example, that the sacred texts concerning the prohibition of swine and wine do not apply to ashes (resulting from burning a dead pig) or vinegar (resulting from chemical transformation of the wine).²⁷ However, if the transformation involved in gelatin production is only partial, then it is not permissible to use such gelatin except in cases of necessity or dire need.

5.4.2 External Use

Contemporary Islamic jurists have two different opinions regarding the ruling of using ointments and creams that contain porcine derivatives. The preferred opinion is that it is permissible to use the ointments and creams that contain ingredients derived from pigs provided that these ingredients have been completely transformed (chemically), based on the view that chemical transformation is a means of purification, but that it is better to avoid using them if an alternative is available.²⁸

²⁶ Islamic jurists agreed that if any substance becomes transformed, such that its name and properties become changed, and the change is such that the new substance is pure and good, then it is considered pure. *Mawsū'at al-Fiqh al-Ṭibbī*, fifth topic: Sharia Rulings Related to Examination, Diagnosis, and Medicines, 801.

²⁷ *Al-Talkhīṣ al-Qayyim li-ikhtiyārāt Abī al-Abbās wa Tilm_dhihī Ibn al-Qayyim*, 121.

²⁸ *Al-Qawā'id wa al-Ḍawābiṭ al-Fiqhiyya al-Mutaḍammīna li al-Taysīr*, 290.

5.5 Other Animal Ingredients

Ingredients that are derived from animals whose consumption in Islam (such as sheep) are permissible to use in medicines, provided that the animal was killed in accordance with Islamic rules for slaughter. However, if the ingredient was taken from a normally permissible animal but one that was not slaughtered Islamically, or in the case of an animal which is not allowed for Muslims to eat (such as the pig), then such medication would not be permissible to ingest if one has a choice. However, it is permissible in case of necessity, and similarly for external use, subject to the following stipulations:

1. That the use of the medicine is necessary, and that it is used to the minimum extent necessary. This is based on the maxim, "Necessity Is Given Consideration, but in Due Proportion."²⁹
2. That after exerting reasonable effort and due diligence, no ḥalāl alternative is found, or a ḥalāl alternative would be extremely difficult to obtain, such as if it is extremely expensive, in which case we can apply the maxim, "Hardship brings ease."³⁰
3. The medicine must be prescribed by a trustworthy, competent physician.

Heparin

Heparin is a well-known medicine widely used by physicians as an anticoagulant in cases of heart disease, angina and thrombosis [amongst many other uses]. It is used for both prevention and cure. Heparin is naturally produced by the human body, but it can be derived from an external source and administered to patients when that is indicated.³¹

²⁹ *Al-Qawā'id wa al-Ḍawābiṭ al-Fiqhiyya Al-Mutaḍammīna l al-Taysīr*, 290.

³⁰ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 75.

³¹ *Mawsū'at al-Fiqh al-Ṭibbī*, fifth topic: Sharia Rulings Related to Examination, Diagnosis, and Medicines, 80, 802.

There are two types of heparin:

- a) **Standard Heparin, also known as Unfractionated Heparin (UFH)** is a polydisperse heterogeneous sulfated polysaccharide. It is extracted from the animal tissue that is rich in blood vessels, such as cow lungs and intestinal mucosa of pigs. However, this type is not considered ideal due to its side effects.
- b) **Low-molecular-weight heparin (LMWH)** is extracted from standard heparin by chemical processes. This results in the formation of new compounds with different physical and chemical properties, and therefore falls under the Islamic jurists' definition of "transformation."³² As mentioned previously, such transformation is regarded by many jurists as a means of purification.

The Islamic Fiqh Council of the Muslim World League, after extensive deliberation in a session devoted to this topic, issued the following resolution, in light of scholarly research, along with the Sharia principles of removing difficulty, alleviating hardship, proportionate repelling of harm, the maxims that necessity permits prohibited things, and that a lighter harm is tolerated for the sake of repelling a greater harm:

1. It is permissible to use for treatment the new type of heparin, Low-molecular-weight heparin (LMWH), in the absence of a *ḥalāl* alternative that would obviate the need for it, or if the *ḥalāl* alternative would prolong the [process of achieving a] cure.
2. It should not be used in excess. Rather, it should be used according to the extent of necessity. If a pure alternative is found, it should be used, for this is the default rule, and also to

³² *Mawsū'at al-Fiqh al-Tibbī*, 3, 5, 8; *Al-Ahkam al-Muta'alliqa bil-Fahs wal-Tashkhis wal-Adwiya*, 802.

take account of the juristic disagreement [as to whether chemical transformation is a means of purification].

3. The Council recommends that the ministries of health in Islamic countries should coordinate with heparin-manufacturing companies.³³

³³ Islamic Fiqh Council of the Muslim World League, Sixteenth Session, held in Makkah from 19-23 Shawwal 1424 AH / 13-17 December 2003 CE. *Mawsū'at al-Fiqh al-Ṭibbī*, 804-805: Fiqh Rulings Related to Examination, Diagnosis, and Medicines, pp.803.

Chapter 6: Medical Consent

6.1 Definitions

Lexically, the Arabic term for consent, *idhn*, denotes permission and conveying information, which in turn carries connotations of approval. As a technical term among Muslim jurists, permission has been defined as authorization, or endorsement.

Consent in the medical field refers to [understanding and] agreement of the patient or his guardian / proxy to the medical procedures necessary for his treatment.¹

6.2 Importance

It is necessary that medical treatment be administered with the consent of the patient or his guardian / proxy. If administered without consent, then the physician's actions are considered a transgression, and he/she is legally liable for any harm or damage resulting therefrom.

Furthermore, the patient has the right to choose his doctor, if his state of health allows him to do so, because the trust between the patient and the doctor has an effect on recovery. The importance of medical consent is revealed in the statements of Islamic jurists explicitly mandating consent from the patient or proxy as necessary to limit the physician's liability.²

¹ 'Abd al-Raḥmān ibn Aḥmad Al-Jur'ī, *Aḥkām al-Idhn al-Tibbī*, 1.

² *Ḥāshiyat Ibn 'Abidīn*. 6:96. *Kashshāf Al-Qinā'*, 4:35.

6.3 Ruling

The doctor must obtain consent for treatment from the patient himself, or from his legal guardian or proxy.³ The evidence for this is the following ḥadīth:

A'isha said: "We administered medicine into the mouth of the Messenger of Allah against his will, during his illness. He gestured [to us] to not do this, but we said, "[It is merely] the sick person's natural aversion for medicine.' When he regained consciousness, he said, "Medicine should be poured into the mouth of everyone in the house, except al-'Abbas, for he did not witness you [doing this]."⁴

This ḥadīth indicates that consent from an adult, sane person is essential for administering medical treatment to him, and that if the patient refuses (whether explicitly or by gesture), then he has the right to do so, in which case compelling him would be a form of transgression subject to punitive measures.⁵

It is not permissible to obtain consent by means of coercion, nor by material incitement. Thus, it is not permissible to exploit the situation of a person, such as forcing an incarcerated person to undergo treatment, or taking advantage of the financial need of the poor, destitute, or homeless by enticing them with money in exchange for conducting experiments on them.⁶

It is recommended for the patient to give his consent to undergo an Islamically-justified surgery. This is based on the default rule that medical treatment is religiously desirable, based on the fact that the Prophet practiced this, and also ordered and approved it. In the ḥadīth narrated by Usama ibn Sharik, we find that when some Bedouins asked the Prophet if they should seek medical treatment, the Prophet replied,

³ *Zād Al-Ma'ād*, 4:128. *Aḥkām al-Jiraha al-Ṭibbiya*, 237.

⁴ Bukhārī, Muslim.

⁵ *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 14:199.

⁶ *Mawsū'at al-Fiqh al-Ṭibbī*, 53,55.

“Make use of medical treatment, for Allah has not made a disease without making a remedy for it.”⁷ This clearly establishes that seeking treatment is (at minimum) desirable.

6.4 Exceptions

The default is that any medical intervention can only be carried out for a person after having obtained his permission or that of his guardian / proxy. However, there are some cases where it is not possible to obtain prior permission from the sick or injured person nor from their guardian or proxy. Therefore, there are some cases in which the requirement for consent is dropped, and we now turn to discuss these.

6.4.1 Cases involving Public Welfare

These include infectious diseases threatening the community, either because of their severity or because of rapid spread of infection among people. In such cases, the government has the right to impose treatment on patients in order that the community at large not be harmed. To this end, every possible measure must be taken to prevent the patient from transmitting the disease to the healthy, even if the patient or guardian/proxy does not consent, because public welfare overrides private interest. Also, refraining from treating the contagious disease would result in harm, and the fiqh maxim tells us, “Harm must be eliminated.”⁸

6.4.2 Critical Cases

These include cases where there is a danger to the patient’s life, or to the survival or function one of his organs, and where the patient is unconscious, or his psychological condition does not allow for soliciting his permission, and delaying the medical procedure until consent can be obtained (from the patient or guardian / proxy) would be too late.

⁷ Abu Dāwūd.

⁸ Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, page 85

An example is severe appendicitis, where it is feared that the appendix may burst and [potentially] cause the death of the patient unless an urgent appendectomy is performed. The same applies to other cases who require urgent surgery, such as near-drowning survivors, or people who have been severely injured in a fire, collapse of a building, or car accident.

In such cases, it is permissible for the doctor to proceed without the consent of the patient or his guardian / proxy, because any delay would lead to preponderant harm, and the fiqh maxim tells us that, "Harm must be eliminated."⁹ Furthermore, in such cases, it is an obligation on the doctor to intervene in this type of emergency, if he is capable of treating the patient and saving him. If he refrains from doing so, he is sinful.¹⁰

6.4.3 Minor Procedures on Children

It is customary to provide medical care to children without the need to obtain the consent of their guardians when it comes to simple treatments administered to sick or injured students, or [required] vaccinations that are carried out by school nurses.¹¹ The early Muslim scholars addressed such cases and stated that there is no need to obtain consent in such cases.¹²

6.5 Requirements for Valid Consent

For the medical consent to be valid, the following conditions must be fulfilled:

1. The consent must be given by someone who has the right to issue it; usually the patient himself. If this is not possible, then

⁹ Suyūṭī, *al-Ashbāh wa al-Naẓā'ir*, 83

¹⁰ *Tafsīr al-Qurṭubī*, 2:266.

¹¹ Dr. Muḥammad al-Bārr, *al-Mas'ūliyya al-Ṭibbiyya wa Akhlāqīyyāt al-Ṭabīb*, Page 76,77

¹² *I'lām al-Murwaqī'in*, 2:22.

consent of the patient's guardian or proxy should be sought. In some cases, the permission of one who is responsible for the nation (i.e. the ruler or his representative) may suffice.¹³

Therefore, consent given by anyone else will not be valid. For example, if a patient's brother gives consent for surgery on his brother, his consent will be considered null and void if the patient himself does not agree. This is because the patient's brother does not have authority in these circumstances, and the decision is up to the patient himself.

2. The person who gives consent must be legally competent according to Sharia, meaning that he must be an adult of sound mind. Thus, the patient's consent is invalid if he lacks either of these characteristics (whether permanently or temporarily). The invalidity of consent from a guardian or proxy who lacks these characteristics is even more obviously null and void.¹⁴
3. The consent must be given freely, without coercion. Permission issued by a person under compulsion is considered invalid, based on the words of Allah Who says, **“Whoever disbelieves in Allah after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith.”** (Q.16:106) This verse indicates that anyone who is forced to say words of unbelief or blasphemy (kufr) while his heart is secure in faith is not to be considered a disbeliever. Jurists deduced that since coercion removes accountability for a fundamental matter of belief, therefore it is more appropriate that coercion removes accountability in lesser matters.¹⁵ Ibn Abbas reported that the Prophet said, “Allah, the Most High, has overlooked my followers' mistakes and forgetfulness, and what they are

¹³ Ibn Qudāma, *al-Mughnī wa al-Sharḥ al-Kabīr*, 6:121.

¹⁴ *Aḥkām al-Jirāḥa al-Ṭibbīya wa al-Āthār al-Mutarattiba ‘alayha-*, 252.

¹⁵ *Tafsīr al-Qurṭubī* 1:181.

forced to do against their will.”¹⁶ Thus, any words or actions from a person under coercion are not taken into consideration according to the jurists.

4. The treatment for which consent is given should be permissible according to Sharia. Therefore, the patient’s consent is null and void if he consents to, for example, a tattoo procedure, or surgery for gender reassignment or lip augmentation, or changing skin color, or reducing the size of the nose,¹⁷ or any other surgeries that are Islamically problematic without a legitimate reason.
5. The person giving consent must be aware of the nature and consequences of the treatment, so that he can make an informed decision. If the treatment involves surgery, then the patient must give consent for the surgery to be performed, with explicit words (e.g. “I consent for you to perform this surgery on me,”), or unambiguous gesture (e.g. that the patient nods when the doctor asks if he authorizes the surgery).¹⁸

6.6 Termination of Consent

Medical consent is deemed to end in the following cases:

1. When its stipulated duration ends. Any treatment after that requires a new consent.
2. When the patient is cured from the disease that was being treated. So, healing is deemed to terminate consent.
3. The death of the patient.

¹⁶ Ibn Mājah, al-Ḥākim, who graded it *ṣaḥīḥ*. Busīrī said that its *isnād* is *ṣaḥīḥ*. Nawawī graded it *ḥasan*. *Majma‘ al-Zawā‘id*, 6:250, *Majmū‘*, 2:276.

¹⁷ As discussed in Chapter 12 Section 12.1.

¹⁸ *Muḡhnī*, 8:117. *Tuḡfat al-Mawdud fī Aḡkām Mawlūd*, 118. *Aḡkām al-Jirāḡa Al-Tibbiyya*, 245.

4. When the person giving consent does not have the legal capacity to do so. For example, if the patient loses his sanity, then his consent is invalid.¹⁹

Pronouncement of the International Islamic Fiqh Academy about Patient Consent

A. The patient's consent to the medical treatment is essential if the patient has the full legal capacity to give it. If he lacks such capacity, either partially or fully, then the consent of his legal guardian (or proxy) is considered, in accordance with the hierarchy of guardianship in the Sharia, and subject to the usual restriction that the guardian's consent should be in the best interest of the ward. If the guardian does not give consent for any treatment or surgery the non-performance of which would result in [clear and significant] harm for the ward, then the guardian's decision will be deemed void, and the right of consent shall then be transferred to the next person in the hierarchy, and ultimately to the ruler [or his representative].

B. The ruler has the right to oblige treatment in some cases, such as in the case of contagious diseases and preventive immunizations.

C. In critical cases, when the life of the victim is in danger, medical treatment shall not be contingent upon consent.

D. When carrying out medical research, it is imperative to obtain the consent of a subject who has full legal capacity. This consent should be devoid of coercion (as in the case of incarcerated persons) and financial enticement (as in the case of the poor). [Moreover,] the research must not involve any harm. It is not permissible to carry out medical research on persons that lack legal capacity (whether partially or fully), even if their guardians consent.²⁰

¹⁹ *Mawsū'at al-Fiqh al-Ṭibbī*, p.56

²⁰ Resolution of the International Islamic Fiqh Academy, held at its seventh session in Jeddah in the Kingdom of Saudi Arabia from 7 - 12 of Dhū al-Qi' da 1412 AH / 9 – 14 May 1992 CE.

Chapter 7: Confidentiality

The medical profession is important [to society], and people are trusting of it. Physicians, whether they deal with physical or mental health, will often be privy to confidential information of considerable significance from patients by virtue of the profession. This includes things that the patient confides in the doctor because he trusts him, as well as information that the doctor discovers through examinations and the medical tests carried out on the patient. Safeguarding the confidentiality of such information is an important component of medical ethics, and it is obligatory. However, in some cases, preserving confidentiality can have detrimental effects, leaving the physician in a dilemma as to whether he should keep the information confidential or disclose it.

7.1 Islamic Perspective

The default rule is that revealing [someone else's] secret is prohibited,¹ and in fact jurists are unanimous in declaring its prohibition [especially] if it would result in harm.² The evidence for this includes the following:

1. [From the Qur'ān]
Allah says, **“O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence].”** (Q.8:27) Protecting trusts includes keeping a secret, and therefore this is obligatory.³
2. [From the Sunna]
 - a) Anas ibn Mālik said, “The Prophet confided to me a secret, so then I did not disclose it to anyone after that. [My

¹ *Al-Qawānīn al-Fiqhiyya*, 283, *Ihyā' 'Ulūm al-Dīn*, 3:132, *al-Insāf*, 8:266.

² *Fath al-Bārī*, 11:80.

³ *Tuḥfat Al-Aḥwadhī*, 6:79, *Riyāḍ al-Ṣāliḥīn*, 438.

mother,] Umm Sulaym asked me about that [secret], but I did not tell [even] her.”⁴

- b) Jābir ibn ‘Abdullāh narrated that the Messenger of Allah said, “When a man tells [a person] something, then looks around [to make sure no one overheard], then this is something he has entrusted to you.”⁵ [We see that] the Prophet gave a secret the same ruling as an item left with a person for safekeeping, and it is not allowed to [violate this trust] by disclosing [the secret].⁶

These texts make clear the obligation of keeping secrets and the prohibition of disclosing them. However, in cases of necessity, it is permissible to reveal a secret, as indicated by that which Allah tells us, within the story of [the prophet] Joseph (peace be upon him), that [Joseph] said, “**It was she who sought to seduce me.**” (Q.12:26) Concealing [the secret matters] of people is a trait of the pious, and especially the Prophets, and [in this case] Joseph, peace be upon him, only revealed the secret in order to ward off [guilt] from himself [and the resultant] punishment that he was facing [which might conceivably have been] execution.⁷ [Thus,] in cases of necessity, [it is allowed to reveal confidential medical information] even if the patient does not consent, because he no longer has the right.⁸

7.2 Specific Examples

Whether the disclosure of confidential medical information is allowed or not is dependent on weighing between the resultant benefits and harms. In order to illustrate this, we will discuss some specific examples.

⁴ Bukhārī, Muslim.

⁵ Abū Dāwūd. Tirmidhi graded it as *ḥasan*.

⁶ ‘Awn Al-Ma’būd, 13:148.

⁷ Al-‘Izz ibn ‘Abd al-Salām, *Shajarat Al-Ma’ārif wa al-Aḥwal*, 291.

⁸ *Majallat Majma‘ al-Fiqh Al-Islamī*, 8/3/287.

7.2.1 Confession to a Crime

The patient may confess to having committed a crime that someone else is accused of. If the doctor is confident that the patient is telling the truth, and that it is not [merely] due to the effect of the illness, then [he must divulge this information]. [This is because] even though he is normally obligated to respect confidentiality, in this case a preponderant harm (namely, an innocent person being punished for a crime he did not commit) would result. The physician must here apply the maxim, "Warding off detriment takes precedence over bringing about benefits," in accordance with its parameters. Preventing the punishment of an innocent person takes priority over the patient's right to confidentiality. The right to confidentiality is subject to the caveat that exercising this right should not lead to causing harm to someone else.

Hence, the doctor should try to persuade the patient to confess his crime [before the authorities]. If this persuasion is not successful, then the doctor is obliged to reveal this information to the authorities.

However, he should only disclose what is [strictly] essential [to accomplish the task], without going into extraneous details. Even if this results in harm to the patient, the harm is a result of the patient's crime, rather than being a direct result of the doctor's testimony. When the Prophet prohibited harm and reciprocation of harm, [he was referring to cases where the harm] is not justified. He did not intend to prohibit causing harm to a person when they have done something to deserve it, such as transgression of the limits of Allah, or committing injustice against himself. The wronged party obtaining justice is not 'harm to be prevented.'⁹

Some jurists have mentioned, among the situations where it is obligatory to testify, the case where it is feared that the plaintiff will lose his [legitimate] right because he is unaware that there is someone

⁹ Ibn Rajab al-Ḥanbalī, *Jāmi' al-'Ulūm wa al-Ḥikam*, 304

who can testify in his favor.¹⁰ This is supported by the ḥadīth in which Zayd ibn Khālīd al-Juhanī narrated that the Prophet said, “Shall I not inform you about the best of witnesses? He is the one who offers his testimony before he is asked for it.”¹¹ Therefore, if someone possesses testimony which is of benefit to someone else, and the beneficiary is not aware of this, then the witness must reveal this and not conceal it.¹² Nevertheless, in cases where disclosure of the information would lead to major harm resulting to the doctor or his family, then he must refrain from testifying, based on the words of Allah “ **Let no scribe be harmed nor any witness.**” (Q:282) In addition, he is not required to cause harm to himself to benefit someone else.¹³

7.2.2 Incompatibility of Potential Spouses

If a man and woman present themselves for premarital screening, and the screening reveals that one of them is a carrier of a [genetic] disease that may be transmitted to the other, or result in their child being [severely] deformed, [then what is the appropriate course of action?] The fact that the couple submitted themselves to this testing implies that they consent to the results being disclosed to them. Hence, the doctor should weigh the benefits and harms of disclosure or non-disclosure. If, in the case where he decides to disclose the information, it is enough for him [simply] to say, “I advise you not to get married,” then [he should restrict himself to this], and it is not allowed to reveal details that would compromise the confidentiality of the party who is a carrier. The evidence for this includes the following:

1. Allah says, “**And those who say, ‘Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous.’”** (Q:25:74)

¹⁰ *Al-‘Ināya Sharḥ al-Hidāya*, 7:340, *Tamhīd*, 17:296, *al-‘Azīz* 13:36, *Mughnī* 14:210.

¹¹ Muslim.

¹² *Sharḥ al-Sunnah*, 10:139.

¹³ *Al-Sharḥ al-Kabīr*, 12:4.

This verse indicates that the believer wants his/her children to be righteous, and to be an asset to the life of this world and the religion. This may not be fully achieved if the child is born with a major deformity, [and hence it is permissible to reveal information that could prevent the birth of a deformed child].¹⁴

2. Abū Hurayra said: "I was with Allah's Messenger when there came a man and informed [Allah's Messenger] that he [wanted to] marry a [particular] woman of the Anṣār. Thereupon Allah's Messenger said, 'Have you looked at her?' He said, 'No.' [The Prophet] said, 'Go and look at her, for there is something in the eyes of the Anṣār.'"¹⁵

The ḥadīth indicates the importance of knowing about [potential] defects in one's fiancé[e], and that someone who has knowledge of such a defect should inform the other party by way of advice.¹⁶

3. Remaining silent [about a defect in one of the potential spouses] is tantamount to deceiving the other. It is likely that if one of them had known of the existence of this problem, he/she would not have agreed to marry that person.

An example of such a case is when one of the spouses suffers from a disease [or other infection] that can be transmitted through sexual contact [i.e. sexually transmitted disease / infection, STD / STI]. Here, the doctor must implement the maxim, "Warding off detriment takes precedence over bringing about benefit." The detriment of transmitting the disease to the [other] spouse is more serious than the benefit of not disclosing the secret. Therefore, the doctor should inform the other spouse of the nature of the disease and the harms that result from it. He should also explain to both spouses that neither of them is allowed to disclose the defects of the other, and to the contrary, they should

¹⁴ *Tafsīr al-Qurṭubī*, 4:73, *Tafsīr Ibn Kathīr*, 1:387.

¹⁵ Muslim.

¹⁶ *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 9:210.

conceal such information, [as a common courtesy] which is [in fact] one of the mutual rights of all morally responsible people.¹⁷

7.2.3 Suspicion of *Zinā*

In cases where the doctor is almost certain [but not completely], based on medical grounds, that *zinā* has been committed, it is obligatory for him to remain silent and not inform the spouse. This is based on the maxim that says, “Warding off detriment takes precedence over bringing about benefits.” The Sharia emphasizes the protection of [legitimate] lineage; precautions should be taken for this, and it is to be affirmed even on weak grounds. This implies that paternity cannot be negated without irrefutable proof.¹⁸

This is indicated by the following [evidence]:

1. Abū Hurayra narrated, “A man came to the Prophet and said, 'O Messenger of Allah, a black boy has been born to me.' He replied, 'Do you have camels?' He said: 'Yes.' He said: 'What color are they?' He said: 'Red.' He said: 'Are there any gray camels among them?' He said: 'There are some gray camels among them.' He said, 'How is that?' He said, 'Perhaps it was brought out by ancestry.’¹⁹ [The Messenger of Allah] said: 'Perhaps [the blackness of] your son was also brought out by ancestry.’²⁰

It is understood through this ḥadīth that the son is attributed to the husband [of his mother], even if they differ in complexion, such as if father is white and the boy is black or vice-versa. [The ḥadīth also indicates that] the husband is not allowed to deny paternity merely because of the difference in complexion, because of the possibility that the [suspicious] trait is due to a recessive gene from one of the husband’s ancestors. Similar would be the case if the spouses were

¹⁷ *Ifshā’ al-Sirr fi al-Sharī’a al-Islamiyya*, 103, *Qawā’id al-Aḥkām* 1:277.

¹⁸ *Mughnī*, 8:374.

¹⁹ i.e. a recessive gene, in modern terminology.

²⁰ Bukhārī, Muslim.

white while the boy is black, or vice-versa. Thus, the ḥadīth is evidence for being cautious about negating paternity, and that paternity [of the husband] should be upheld as long as there is the slightest possibility of it.²¹

2. One may not rely on medical laboratory analysis in such cases, because of the chance of error in these results. [Moreover,] the Sharia strives to attribute paternity to the husband, and to conceal people's sins. As stated above, as long as there is any possibility that the husband of the mother is the actual father, the child is attributed to him.²²

The [Saudi] Permanent Committee [for Scholarly Research and Iftā'] was asked about a woman who had committed *zinā* while married. They replied, "If a married woman commits *zinā* and becomes pregnant, then the child is [by default] attributed to her husband, based on the sound ḥadīth.²³ But, if the husband wishes to deny paternity, he may do so by the process of *mulā'ana*²⁴ (mutual imprecation) before an Islamic judge."²⁵

²¹ *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 10:134, *Tuḥfat al-Aḥwadhī*, 6:272

²² See: *Rawḍat al-Ṭalibīn*, 6:39. Al-Kāfī, 293, 294 .

²³ The hadith is found in Bukhārī and other books. Tirmidhī's version says, "The child is attributed to the [marital] bed, and the adulterer will be thwarted (or will be pelted), and their reckoning is with Allah."

²⁴ See Q.24:6-9.

²⁵ Ibn Bāz was asked about a married woman who has three children, and then got pregnant with a fourth as a result of adultery: is it permissible for her to have an abortion or should she keep the pregnancy? If she decides to keep the pregnancy, should she tell her husband [about the affair] or not? What should her husband do in this case? He replied: It is not permissible for her to abort the fetus. It is obligatory for her to repent to Allah, the Glorious, and not reveal this affair. The child will be attributed to her husband, because the Prophet, may Allah's peace and blessing be upon him, said, "The child is attributed to the [marital] bed, and the adulterer will be pelted / thwarted." (Bukhārī, Muslim)

7.2.4 Contagious Disease

[When a disease is contagious and transmissible to others]:

If the disease is contagious and treatable, but the patient is refusing treatment, then the public interest dictates that his confidentiality should be breached, by reporting him to the relevant authorities in order to [either] force him to undergo treatment, or so appropriate preventative and immunization measures can be adopted. This is because, “Warding off detriment takes precedence over bringing about benefit,” and applying the principle, “Public interest takes precedence over private interest.”²⁶ Thus, any action that is in the public interest is certainly a goal worthy of pursuing, and a desirable act of mercy, even if it results in harm to some individuals.²⁷

7.3 Resolution of the International Islamic Fiqh Academy

The following is the resolution of the International Islamic Fiqh Academy concerning confidentiality in the medical professions.

- 1.1 Confidential information [for these purposes] is anything that is conveyed by one person to another with a request to keep it secret. This includes things where the surrounding context indicates desire for confidentiality based on customary norms, as well as private information relating to an individual and his demerits which he would dislike [other] people knowing.
- 1.2 [Such] confidential information is [considered] a responsibility in the hands of the person entrusted with it, in commitment to the teachings of Islam, and [in fact] as dictated by [the principles of] chivalry and the ethics of [proper] interaction.
- 1.3 The default rule is that revealing confidential information is prohibited. To reveal [such information] without a valid justification is Islamically liable to censure.

²⁶ Shāṭibī, *Muwāfaqāt*, 3:89.

²⁷ *Majmū‘ al-Fatāwā*, 8:94.

1.4 The obligation of safeguarding confidentiality is heightened for those who work in professions wherein revealing confidential information would lead to undermining the [ethical] foundation of the profession, such as the medical field. [Vulnerable] people who are in need place their trust in [such medical professionals] with a view to obtaining sincere counsel and assistance, such that they disclose to them all information that may help them to discharge these critical responsibilities, including secrets that they do not reveal to anyone else, not even relatives.

2. An exception is made from the obligation of maintaining confidentiality in cases where keeping the secret entails greater harm for the [patient] than revealing it, or where disclosing the confidential information leads to a benefit that outweighs the harm of concealing it. Such cases are of two categories:

- a. Cases where it is *obligatory* to reveal confidential information based on the principle of commission of a lesser evil in order to obviate the greater of the two [evils], and the principle of achieving a public interest which necessitates individual(s) enduring harm so as to prevent public harm, if that is necessary. Such cases are of two types:
 - i. Those which involve preventing harm to society
 - ii. Those which involve preventing harm to an individual
- b. Cases where it is *permissible* to reveal confidential information in order to:
 - i. Achieve a public interest.
 - ii. Avert public harm.

In such cases, it is obligatory to adhere to the higher objectives and priorities of the Sharia, namely protection of faith, life, intellect, property and progeny / lineage.

Exceptions concerning situations in which it is obligatory or permissible to breach confidentiality must be explicitly specified,

clearly explained and exhaustively enumerated in the codes of practice for medical and other professions. [Such specifications must include] detailed specifications as to the manner in which the confidential information would be disclosed, and to whom. The relevant authorities should educate all [involved persons] about these situations.²⁸

²⁸ Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation in its Eighth Session in Bandar Seri Begawan, Brunei Darussalam, 1 - 7 Muharram 1414 AH / 21 - 27 June 1993 CE.

Chapter 8: Negligence and Liability

8.1 Definitions

Responsibility is, "The state or fact of being responsible, answerable, or accountable for something within one's power, control, or management."¹

Negligence, for purposes of law, is defined as, "The failure to exercise that degree of care that, in the circumstances, the law requires for the protection of other persons or those interests of other persons that may be injuriously affected by the want of such care."²

Malpractice is defined as, "Careless, wrong, or illegal actions by someone (such as a doctor) who is performing a professional duty."³

Liability, for purposes of law, is, "A broad term including almost every type of duty, obligation, debt, responsibility, or hazard arising by way of contract, tort,⁴ or statute,"⁵ and in this context typically involves the doctor who is guilty of malpractice being judicially compelled to compensate the damage that he caused.⁶

¹ Collins English Dictionary - Complete & Unabridged 2012 Digital Edition, accessed 7/11/2022. See also: Al-Zalmī, Mustafā, *Mawāri' al-Mas'ūliyya al-Jinā'iyya fī al-Sharī'a al-Islāmiyya wa al-Tashrī'āt al-Jazā'iyya al-'Arabiyya*. 6.

² *Ibid.*

³ <https://www.britannica.com/dictionary/malpractice>, accessed 07/11/2022.

⁴ Tort is, "An action that wrongly causes harm to someone but that is not a crime and that is dealt with in a civil court."

<https://www.britannica.com/dictionary/tort>, accessed 07/11/2022.

⁵ Britannica, The Editors of Encyclopaedia. "liability". *Encyclopedia Britannica*, 27 Dec. 2021, <https://www.britannica.com/topic/liability-law> accessed 07/11/ 2022.

⁶ *Tahrīr Alfāz al-Tanbīh*, 203, *Lisān al-'Arab*, 4:2610, *al-Siḥāh*, 6:2155.

8.2 Elements of Liability

A case of malpractice exists whenever three essential elements exist together:

- The official who has the right [and authority] to take the doctor and his assistants to task, such as a judge.
- The defendant, who is the person or organization being sued, such as a doctor or hospital.
- The act of medical malpractice, involving injury or damage that was caused by the doctor and / or his assistants.

There are four causes of liability

1. [**Negligence**] in following scientific principles and standards such as are regularly and customarily followed in theory and practice by physicians, and which all physicians are required to be aware of while practicing their profession. This scientific knowledge is of two sorts: foundational and novel. For novel medical issues, the knowledge [that is relied upon] should be issued by reputable organizations such as medical schools specializing in medical research and deemed competent and suitable for implementation by experts in the field. Non-compliance to such knowledge by medical professionals might be either on the theoretical level, or the practical, or both.
2. **Error**, where there was no conscious intent on the part of the [medical professional], [to depart from standard practice, nor to cause harm,] and [therefore] is not sinful, but [the professional] is nevertheless [legally] liable for [civil] damages.
3. **Ignorance** [of the requisite scientific knowledge], whether partial or total.
4. **Wanton negligence**, where the doctor deliberately commits an act that causes harm to the patient, which is the most serious of these. It is difficult to prove without a confession, but can be revealed by strong contextual indicators, such as the existence

of enmity between the doctor and the patient, or if the accused doctor had previously threatened the patient.

8.3 Liability of the Physician

A doctor [carries great responsibility] and is liable:

- a) Morally, and
- b) Religiously

as well as [potentially] criminally. The evidence for this is the ḥadīth of ‘Amr ibn Shu‘ayb, reporting from his father, from his grandfather, that the Prophet may Allah’s peace and blessings be upon him, said, “Anyone who practices medicine but is not known [to have] prior [knowledge of] medicine, he is liable.”⁷ Based on this, a doctor who acted out of ignorance or wanton negligence is held liable for whatever damage he causes, and in some cases may be subject to *qiṣāṣ* (talion), *ta‘zīr*,⁸ or financial compensation.

- a) **Moral Liability** (or responsibility) of the physician deals with the ethical aspects of the doctor-patient relationship. It relates to a set of ethical principles required of all people in general, except that these take on heightened sensitivity and importance in the context of the doctor-patient relationship. These principles include truthfulness, sincerity, maintaining confidentiality and privacy, and fulfillment of contractual obligations. In cases where the physician errs in one or more of these moral precepts, he is considered liable if the error directly or indirectly leads to harm. In such cases, the physician is held accountable for the consequences if he had no legitimate justification for violating the ethical precept.
- b) **Professional liability** (or responsibility) deals with the practical aspects of the medical profession. Such liability arises when the

⁷ Abu Dāwūd 4586, Ibn Mājah. Al-Ḥākim judged it *ṣaḥīḥ* and was confirmed by Dhahabi.

⁸ See Glossary.

physician violates one or more of the agreed-upon principles that are customarily accepted within the medical profession, and this directly or indirectly leads to harm to the patient. The professional contract between the doctor and the patient requires the former to comply with the recognized principles of the profession. Thus, it is [implicitly] stipulated that he be knowledgeable about medicine, and as adept and skillful a practitioner in as outstanding a way as is possible.

So, if a physician demonstrates a lack of knowledge and/or competence, and this directly or indirectly results in harm to the patient, then this is a situation of medical liability. An example is if, during surgery, the surgeon leaves scissors or a gauze in the patient's abdomen, he is liable for the consequences. If he did this intentionally, then he is criminally liable, and if the patient dies, [the surgeon] is subject to the requisite criminal penalty, either *qisās* or payment of blood money [as the case may be]. If it not intentional, then his liability is civil [as opposed to criminal] and requires him to pay compensation for the damage.⁹

8.4 Conditions that Remove the Physician's Liability

[The physician will not be liable if he is competent, operating with a license and consent, observing the norms of his profession, and acting with intent to cure. We will discuss these conditions in more detail.]

- a) **General Authorization**, where the ruler or government has authorized the doctor to practice his profession. Nowadays, this usually takes the form of a license granted by the Ministry of Health to the doctor permitting him to practice medicine. This is because the Sharia stipulates that those who practice medicine must be knowledgeable and competent.

⁹ *Al-Wajīz fī Ahkām al-Jirāḥa Al-Ṭibbiyya wa al-Āthār Al-Mutarattibah* 'Alayhā, 33

- b) **Private Authorization**, where permission was granted by the patient or his guardian. The physician is liable if he has not acted with the authorization of the patient. The permission of the patient's guardian / proxy is sufficient if the patient is a minor or his condition is such that he is not capable of giving consent.

There are two exceptions to this obligation to obtain consent:

- i) Critical situations where the patient's life, or one of his organs or limbs is in danger, while he is unconscious, as [often] occurs during wars, [natural] disasters or serious accidents involving cars, etc. The same applies when the patient [is not unconscious, but his condition is such that he is incapable of giving consent, nor is his guardian / proxy present to give his consent. Doctors frequently face this type of situation when dealing with ailments that require quick surgical intervention, such as appendicitis in cases where the appendix is expected to rupture, which may lead to the death of the patient unless the requisite appendectomy is performed immediately.
- ii) Situations where public interest takes precedence. For example, if the patient suffers from a contagious disease whose spread is feared, then it is permissible for the doctor to intervene without obtaining the patient's permission, in consideration of the public interest of the community. The patient's permission in these cases is not given consideration, based on the fiqh maxim, "Harm must be eliminated."¹⁰
- c) **Respecting scientific standards of the profession.** Jurists have stipulated that those who diagnose diseases, prescribe drugs or perform surgery must be proficient in their profession, have a high level of knowledge; and practice in accordance with standard

¹⁰ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85.

protocols of the profession. Therefore, a doctor is not allowed to practice if he is not academically competent and experienced.

- d) **Acting with intent to cure.** The doctor's motive should be to cure the patient and cater to the patient's interest. Thus, it is not allowed for the doctor to do anything to the patient with any other motive, such as scientific experimentation that is not in the patient's best interest. The doctor must be well-intentioned and someone the patient can depend on. He should not prescribe a medicine that will be harmful to them. If the doctor has malicious intent, and has other motives for practicing the profession, such as harming the patient, then the doctor is held criminally responsible for his acts in accordance with his intention.¹¹

8.5 Consequences for a Physician who is found Liable

Muslim jurists have agreed that a physician is not held liable for harm suffered by the patient, if [the physician] was professionally competent, acted with the consent of the patient or guardian / proxy, with the intent to cure, and was not negligent. Jurists are also in agreement that a physician is held criminally liable if two criteria are fulfilled: [that the physician] transgressed [the bounds of his authorization], and harm [resulted to the patient].¹²

In cases where a physician is found liable, he will be subject to one or more of the following consequences:

1. **Financial Compensation.** This includes *diyya* (blood money) and *arsh* (compensation awarded by a court for injuries short of death),¹³ in accordance with the amounts and procedures for enforcement stipulated by Sharia. Financial compensation is

¹¹ Al-Mas'ūliyya al-Jinā'iyya 'an Khata' Taṭbīb, 123

¹² *Maḥsū'at al-Fiqh al-Ṭibbī* 29.

¹³ *Ṣiḥāḥ* 3:995, al-*Tawqīf 'alā Muḥimmāt al-Ta'ārīf*, 1:50.

due in case of errors resulting from negligence, carelessness or failure to take necessary precautions.

2. *Ta'zīr*: This is a penalty [whose magnitude and nature] are not specified, but left to the discretion of the judge, in cases where [willful] transgression is proven. The sanction can be physical, financial or intangible. There is a type of *ta'zīr* specific to the [cases involving the] medical profession, which is barring the physician from practicing medicine, whether this suspension is unrestricted or restricted, and whether permanent or temporary.¹⁴
3. **Atonement by Fasting**. Fasting for two consecutive months is required in cases of accidental killing.
4. *Qiṣāṣ*.¹⁵ This applies in cases of intentional murder.

8.6 Resolution of the International Islamic Fiqh Council

The resolution of the International Islamic Fiqh Council regarding the liability of the physician is presented below.

1. Medicine is an evolving science and art [that aims] to be beneficial to humankind. The physician must realize that Allah is watching him while he is working, and must discharge his duty with sincerity, in accordance with the scientific and technical standards.
2. The physician will be held liable if harm ensues to the patient in the following cases:
 - a. If he intended to cause harm.
 - b. If he was not competent in medicine or in the sub-discipline [thereof] in which he undertook [to act].
 - c. If he was not authorized by the requisite official authority.

¹⁴ Fathallāh, Wasīm: *Al-Khata' al-Ṭibbī: Maḥnūmuhū wa Atharuhū*, 21.

¹⁵ See Glossary.

- d. If he undertook [the operation / treatment] without the permission of the patient or someone [with authority to] take his place.
 - e. If he deceived (or imperiled) the patient.
 - f. If he committed an error which someone of his standing should not fall into, [and which is] not tolerated by the [relevant] professional standards, or if he has been neglectful or careless.
 - g. If he breaches the patient's confidentiality without a valid reason.
 - h. If he refrains from performing his medical duty in emergency cases (cases of necessity).
3. The physician, and anyone in a similar position, will be held criminally liable in these cases if the conditions for criminal liability are satisfied, except in case of error, where he will not be criminally liable unless the error is serious.
 4. If a single medical operation was performed by an integrated medical team, each member of this team will be liable for his [own] error in accordance with the fiqh maxim, "If one is faced with the direct infliction of harm, as well as the indirect precursors [of the harm], then the direct perpetrator bears responsibility unless the person whose actions were precursors [that indirectly led to the harm] is more deserving of being held responsible." The team leader will be held jointly responsible for the actions of his assistants if he erred in directing or supervising them.
 5. The medical institution (public or private) stands liable for the harm if it was negligent in [the fulfillment of] its obligations or if it issued instructions resulting in harm to the patient without justification.

Chapter 9: Rules of Worship Relevant to Patients and Doctors

9.1 Purity

9.1.1 Tayammum

Since the Sharia is based on ease and simplicity, Allah grants those with legitimate excuses dispensations in their worship in accordance with their needs so that they may worship Him without suffering or hardship. Allah says, “... **and [He] has not placed upon you in the religion any difficulty.**” (Q.22: 78)

Therefore, if the patient is unable to purify himself with water, by performing ablution after minor ritual impurity (*ḥadath*¹) and/or by bathing after major *ḥadath* [as the case may be], because he is either physically incapable or fears that his disease will worsen, or his recovery will be delayed, he may perform *tayammum* by striking the earth once with the palms of his hands and wiping his face with his palms and then wiping his hands, as Allah says, “**If you are in a state of *janāba*,² then purify yourselves. But if you are ill or on a journey or one of you comes from the place of relieving himself or you have contacted women and do not find water, then seek clean earth and wipe over your faces and hands with it.**” (Q.5:6)

The one who is unable to use water has the same ruling as the one who does not find water. This is based on the ḥadīth narrated by ‘Ammār ibn Yāsir who reported that the Prophet said, “This would have been

¹ See Glossary.

² See Glossary.

enough for you," and he struck the earth with his hands once, then he shook them and wiped his face and his palms."³

Scenarios pertaining to *Tayammum*

1. If the patient is only mildly sick, and does not fear that using water may lead to death, severe sickness, delay of recovery, increase of pain (such as headaches, toothaches, and the like); or is able to use warm water without any possibility to cause harm, it is **impermissible** for him to perform *tayammum*. This is because *tayammum* is permitted to ward off harm and such a patient is not likely to be harmed, and since water is available for him, he is obligated to use it.

If the patient has a condition that entails the risk of death or loss of an organ, or further sickness that may lead to death or the loss of an organ or forfeiting a benefit, then it is **permissible** for him to perform *tayammum*. This is because Allah says: **"And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful."** (Q.4:29)

2. If a patient is suffering from immobility and does not have a helper to bring him water; it is **permissible** for him to perform *tayammum* or have someone else help him perform it.
3. If a person has a wound, sore, fracture, or a disease in which the use of water may cause him harm, and he enters the state of *janāba*,⁴ then it is **permissible** for him to perform *tayammum*. If it is possible for him to wash some parts of the body with water, it is obligatory to do so; the rest may be purified by *tayammum*.

Tayammum is nullified by all those things that nullify ablution, and [also] when the patient becomes capable of using water. If *tayammum* was performed due to lack of water, it is nullified when water becomes available.⁵

³ Muslim, *Kitāb al-Hayḍ*, *bāb al-tayammum*.

⁴ See Glossary.

⁵ *Majmū‘ Fatāwā Ibn Bāz*, 12:239.

9.1.2 Vaginal discharge

This is a white [or colorless] substance whose texture varies between that of pre-seminal fluid (*madhy*) and sweat, and it is discharged from the vagina.⁶ Vaginal discharge is of two types: natural and pathologic, both of which have the same ruling [as follows].

1. In terms of purity and impurity, the preferred jurisprudential opinion is that vaginal discharge is pure. The evidence for this is as follows:

- ‘Ā’isha reported, “I used to scrape off the [dried] semen from the garment of the Messenger of Allah.”⁷

The semen that the mother of the Believers used to scrape off resulted from sexual intercourse because none of the prophets had wet dreams. Undoubtedly, the semen resulting from sexual intercourse has to be mixed with the vaginal discharge. It should be taken into consideration that since the vaginal discharge is something normal, its mixing with the semen is unavoidable. Accordingly, if this discharge had been considered impure, the semen would be considered so as well; in this case, scraping would not be sufficient [to remove the impurity], and it would be necessary to wash the garment because impurity can only be removed by water. Accordingly, since ‘Ā’isha considered it sufficient to scrape off the (drop of) semen from the garment, this means that a woman's vaginal discharge is pure.

- Vaginal discharge is pure like other bodily discharges (such as sweat). This has been confirmed by physicians.

2. In terms of ablution, the preferred jurisprudential opinion is that vaginal discharge does not nullify it. The evidence for that is as follows:

- Umm ‘Aṭīyya, said, “We did not consider muddy and yellowish discharge to be anything [of menstrual blood].”⁸

⁶ *Al-Durr al-Mukhtār*, 1:515, *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:474.

⁷ Abu Dāwūd, *Nasā’ī*, Ibn Hibbān [who] graded it as *ṣaḥīḥ*.

⁸ Bukhārī.

- There is no evidence that vaginal discharge nullifies ablution. It is well known that vaginal discharge is an issue the occurrence of which among people is commonplace (‘*umūm al-balwā*), and therefore it is not conceivable that the Lawgiver would remain silent on the clarification of this ruling despite people encountering it so frequently.
- Adopting the opinion that ablution is obligatory for women who secrete this discharge – even though physicians state that it occurs frequently and repeatedly with all normal women – brings about hardship for women. While a woman can be vigilant at home and perform ablution for prayers easily, this would be difficult during travel, Hajj, ‘*umra*, and at work.⁹

9.1.3 Splints, Casts and Medical Patches

If a part of the body that is [normally] washed for ritual purification, needs to be covered with adhesives, splints, or medical dressings – and the need for that covering has been clearly established – then wiping over the covering satisfies the need for washing the body part. In this case, purity is considered complete without the need to also perform *tayammum*. Purity is also not nullified if the splint or the adhesive is removed.¹⁰

Muslim jurists have agreed on the legitimacy of wiping over splints instead of the regular washing or wiping of the limb in ablution, *ghusl* or *tayammum*, based on need, because removing them will cause hardship and harm. The ruling of wiping over a splint is applicable in other similar cases such as wiping over a bandage, plaster, dressing, or medicine that has been applied to a wound and prevents water from reaching [the skin underneath].

⁹ *Al-Muḥallā* 1:243. *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:481.

¹⁰ *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:436.

Note: Ibn ‘Uthaymīn said, “If there is a wound on a part of the body that must be washed or wiped for ritual purification, then there are [different] scenarios:

- a) If the wound is exposed and washing does not cause any harm, it must be washed, if it is among the places that must be washed [in *wuḍū’* or *ghusl*].
- b) If it is exposed and will be harmed by washing but not by wiping, it must be wiped and not washed.
- c) If it is exposed and will be harmed by both washing and wiping, one should perform [a full] *tayammum* for it.
- d) If it is covered with an adhesive bandage or the like that is necessary, he should wipe over that covering; this will dispense with the need for washing and *tayammum*.¹¹

9.1.4 Blood Loss or Transfusion

1. **Blood that comes out from other than the urethra or rectum**, such as blood that comes out of the nose, teeth, a wound, etc., does not nullify the ablution because there is no evidence for it. By default, the state of purity remains unless there is evidence for its nullification. However, it is preferable, and precautionary, for the person to perform ablution in order to avoid the scholarly disagreement regarding this issue, especially when the blood that exits is a lot.

The evidence for this opinion is:

1. The ḥadīth narrated by Jābir ibn ‘Abdullah of the story about a man from the Anṣār whom the Prophet sent with one of the Muhājirīn to keep a watch at the entrance of the mountain-pass. One of the polytheists shot him with an arrow three times causing him to bleed, but he did not break his prayer. Rather, he continued to pray even as the blood flowed.¹²

¹¹ *Majmū‘ Fatāwā wa Rasā’il Ibn ‘Uthaymīn*, 11:123.

¹² Abu Dāwūd, Ibn Ḥibbān.

2. Presumption of continuity. The default is that the state of purity remains in effect unless there is proof for the contrary. Since nothing [unequivocal] has been reported from the Prophet about purity being nullified by bleeding, Nawawī said, “It has never been proven that the Prophet obligated ablution because of that.”
3. The notion that ablution is nullified by bleeding is contrary to various narrations about the practice of the early generations of Muslims. This includes the statement of al-Ḥasan al-Baṣrī who said, “The Muslims have continued to pray even with their wounds [bleeding].”¹³

2. Blood loss from the two natural outlets (urethra and rectum)

The preferred opinion is that this does not invalidate ablution. This is because ablution that is unanimously considered valid by scholars cannot be ruled to be nullified except by [equivocal] proof from the Qur’ān, Sunna, or scholarly consensus. Moreover, since this issue is related to sick persons, and sickness is one of factors that bring about alleviation [in religious rulings in accordance with the] removal of hardship stipulated in the Qur’ān, and this gives support to [this, more lenient view].¹⁴ Hence, the preferred opinion is that blood flowing from the body does not nullify ablution. However, it is preferable to perform ablution due to the scholarly disagreement on this matter, and out of caution.

The [validity of] ablution of patients who undergo dialysis, in which the blood is removed from the body, filtered, and then returned to the body, is not affected by this procedure, and they do not need to renew

¹³ Bukhārī, *Wudu’*, “The opinion of those who consider the need to ablution only when blood comes out from the anterior and posterior private parts.”

¹⁴ *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:425.

their ablution after it.¹⁵ Similarly, the infusion of blood into the body also does not nullify ablution.¹⁶

9.1.5 Urinary Catheters

Catheterization is to insert a tube (i.e. a catheter) into the bladder through the urethra, so as to drain urine into a bag placed next to the patient's bed, without requiring any action from the patient. The ruling [concerning this] is as follows:

Whoever is in a continuous state of minor *ḥadath*¹⁷ does not need to perform ablution for each individual prayer. Such a person's ablution is not nullified unless a cause of minor impurity occurs other than the chronic one, in which case he must perform ablution. For example, a patient who continuously excretes urine does not have to perform ablution [each time some urine comes out]; however, if such a patient passes wind or stool, he must perform ablution. Jurists excluded a scenario from this ruling: if the [cause of this] minor *ḥadath* occurs infrequently, while most of the time the patient does not experience it, then he must perform ablution.

The evidence for this is the ḥadīth narrated by 'Ā'isha who said, "Fāṭima bint Abī Ḥubaysh came to the Prophet and said, 'O Messenger of Allah! I am a woman who experiences intermenstrual vaginal bleeding, so I am never [ritually] pure. Should I abstain from ritual prayer?' He said, 'No, [for] that is only [bleeding from] a vein and is not menstruation. Therefore, when the menstrual bleeding comes, then abstain from the prayer, and when it departs, then wash the blood from yourself and pray.'"¹⁸

The Prophet did not command the woman with abnormal intermenstrual vaginal bleeding (*istihāḍa*) to perform ablution for every

¹⁵ *Fiqh al-Sunnah*, 1:55, *Fiqh Al-Nawāzil fī al-'Ibādāt*, 18, Fatwas of the permanent committee #2461

¹⁶ *Maṣū'at al-Fiqh al-Ṭibbī*, 4:427.

¹⁷ See Glossary.

¹⁸ Bukhārī, Muslim.

prayer; rather, he instructed her to follow the rulings of menstruation during her period, only and to perform ghusl and resume prayer when her period was over. Outside of actual menstruation (and other nullifiers of purity), it is not obligatory for her to perform ablution or wash her body. Therefore, the person who continuously excretes urine also does not have to perform ablution until he excretes something other than urine.¹⁹

9.1.6 Menstrual Cycle Disorders

A woman who experiences abnormal intermenstrual vaginal bleeding will be in one of three categories:

- A) The woman with abnormal bleeding since the beginning [of puberty, and who therefore does not have a menstrual routine]
- B) The woman with a [previously established] menstrual routine
- C) The confused woman, [who is unaware of when and how long she last had her period, and therefore does not know her menstrual routine]

A) Abnormal Bleeding since Puberty

This is the woman whose first menstrual period occurred while she was already having abnormal vaginal bleeding. Such a woman does not [necessarily] know that she is in the state of *istiḥāda*²⁰ except by the bleeding continuing beyond the maximum duration of menstruation. Such a woman is either able to distinguish between the menstrual blood and the abnormal bleeding, or not. For example, the menstrual blood might be dark and malodorous, in contrast to the non-menstrual blood which is bright red.

A woman who can discern between the two different types of bleeding (*mumayyiza*) is considered to be menstruating when she is able to recognize her bleeding as menstrual, and in the state of *istiḥāda* when the blood is recognized as non-menstrual bleeding. [This is the rule that

¹⁹ *Fiqh Al-Nawāzil*, 1:15.

²⁰ See Glossary.

she follows,] regardless of whether the duration of the menstrual period thus determined is shorter than the longest [possible] menstrual period or equal to it. The evidence for this is the ḥadīth in which the Prophet said in response to a question from Fāṭima bint Abū Ḥubaysh, “The blood of menstruation is dark [literally: black] and recognizable.”²¹ Also, the discharge [of menstrual blood] requires *ghusl*, so we can resort to judgment on the basis of [physical] characteristics, similar to the case of distinguishing semen (*maniyy*) [which requires *ghusl*] from pre-seminal fluids (*madhy*) [which does not].²² As for the woman who experiences abnormal bleeding from the time she reaches puberty, but who is unable to distinguish between menstrual and non-menstrual blood, the preferred opinion is that she observes her menses for the average length of menstrual periods, i.e., six or seven days each month. The evidence for this is the ḥadīth in which the Prophet said to Ḥamna bint Jaḥsh, “Observe your menses for six or seven days, according to [your best estimate of] Allah’s knowledge, then perform *ghusl*.”²³ Since such a woman does not have a [known] menstrual routine, she should take the average period of most women (i.e. six or seven days) as her reference point and consider that to be [the duration of] her period.²⁴

B) The Woman with a Menstrual Routine

This is the woman who regularly experiences vaginal bleeding on certain days of the month even if the duration of the menses varies, e.g., if she experiences bleeding for three days in one month, five days in the second month, and seven days in the third month: then she again experiences three, five, and seven days [of menstrual bleeding].

²¹ Abū Dāwūd, *Nasā’ī* and graded as *ṣaḥīḥ*.

²² *Al-Muḥadhdhab*, 1:80, *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:455.

²³ Abu Dāwūd, *Tirmidhī*.

²⁴ *Rawḍat al-Ṭālibīn*, 1:256, *al-Mubdī‘*, 1:244. *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:156.

If this woman experiences bleeding that exceeds the maximum duration of menses, then [there are two scenarios]: either (a) she can distinguish between the two [types of bleeding], or (b) she is not able to distinguish.

(a) In the former case, she can distinguish, and she also has a menstrual routine. If the results she arrives at based on distinguishing [the two types of blood] are in accordance with her routine, then there is no disagreement that she should follow this mutually reinforced knowledge.²⁵ However, in cases where the two conflict, the preferred view is that she should follow her routine in preference to the result of distinguishing.

The evidence for this includes the following:

- The ḥadīth narrated by Umm Ḥabība bint Jaḥsh who complained to the Messenger of Allah about [abnormal] bleeding. He told her, “Wait [abstaining from ritual prayer] as long as your normal period used to prevent you [from praying], then perform *ghusl* [and resume praying].” After that, she performed *ghusl* before each prayer.²⁶
- [The evidence of] a woman’s menstrual habit is stronger because it cannot be invalidated, whereas the color [of blood, [especially] if it exceeds the number of days of her regular period, can be a false indicator. Therefore, we give priority to the stronger of the two indicators.²⁷
- The ability to distinguish the type of blood by color or odor can change due to the woman’s age, diet, medication, or psychological state. Therefore, it is safer to rely on her menstrual routine as the criterion for judgment.

²⁵ ‘*Āriḍat al-Aḥwadhī*, 1:170, *Rawḍat al-Ṭalibīn*, 1:262, *Mughnī* 1:366.

²⁶ Muslim.

²⁷ *Furū* ‘, 1:246.

- The ability/possibility to distinguish the type of blood by color or odor may differ from one woman to another or even with the same woman. Therefore, doctors and those experienced with such matters do not give much consideration [to the color of the blood].²⁸

(b) If the woman experiencing *istihāḍa* is unable to distinguish between menstrual blood and abnormal bleeding, or if she is [normally] able to do that but the characteristics of the blood are indeterminate [in this case], then if her bleeding exceeds her usual menstrual routine, but does not exceed the maximum duration of menses (which is 15 days according to the majority [of jurists]), then she is considered to be menstruating for the entire period in which she bleeds as long as the bleeding does not exceed the maximum duration of menses. [This ruling is because] a change in routine is possible, and one instance is sufficient [according to most jurists, to rule that the routine has changed].²⁹

C) The Confused Woman

This is the woman who has no pre-established routine, nor is she able to distinguish [menstrual from non-menstrual blood.] Such a woman will fall into one of three categories:

- i) The woman who forgot the duration of her menses but remembers the time of occurrence [of her period].

Such a woman may know, for example, that her period occurs at the beginning of the month but doesn't remember how many days it lasts. This woman [in this example] should observe her period for six or seven days at the beginning of each month, since this is the average duration of menses, as indicated by the Sunna³⁰ where the Prophet said,

²⁸ *Maṣū'at al-Fiqh al-Ṭibbī* 4:462

²⁹ *Badā'i' al-Ṣanā'i'*, 1:41, *al-Muqaddimāt*, 5:46, *Rawḍat al-Ṭalibīn*, 1:259.

³⁰ *Mughnī* 1:374.

“Observe your menses for six or seven days, according to [your best estimate of] Allah’s knowledge, then perform *ghusl*.”³¹

- ii) The woman who forgot the timing [of her period] but remembers the duration.

Such a woman should observe her period for the duration that is her routine, starting from the time of the month in which she is most confident that her menses used to begin [in the past].³²

- iii) The woman who forgot both the duration and timing.

Such a woman should do her best to determine the start of her menses, [failing which she chooses an arbitrary start date], and then should observe her period for six or seven days. Any bleeding outside of that is considered *istihāda*.³³

9.2 Prayer

9.2.1 Facing the *Qibla*

Facing the *qibla* in Makkah³⁴ is a condition for the validity of prayer, as evidenced by the Quran, Sunna, and scholarly consensus.

- From the Qur’ān
Allah, the Almighty, says: **“We have certainly seen the turning of your face, [O Muhammad], toward the heaven, and We will surely turn you to a *qibla* with which you will be pleased. So turn your face toward al-Masjid al-Haram. And wherever you [believers] are, turn your faces toward it [in prayer].”** (Q.2:144)
- From the Sunna

³¹ Abū Dāwūd, Tirmidhī who graded it as *ḥasan ṣaḥīḥ*.

³² *Al-Durr al-Mukhtār*, 1:480, *Rawḍat al-Ṭālibīn* 1:265, *Mughnī* 1:374.

³³ *Mughnī* 1:373, *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:464.

³⁴ See Glossary.

The Prophet said, “When you stand up to pray, perform the ritual ablution properly and then turn towards the *qibla* and recite *takbīr*.”³⁵

- From scholarly consensus

Muslim scholars have unanimously agreed that it is obligatory to face the *qibla* during prayer except during fighting [in battle] or when performing supererogatory prayers while riding an animal [or any vehicle].³⁶

There are two possible scenarios regarding a patient facing the *qibla* for prayer.

- a) If the patient can face the *qibla* himself, whether on his own or by facing his bed towards the *qibla*, it is obligatory for him to do so. If he prays facing another direction, he must repeat the prayer [in the direction of the *qibla*] since he has omitted a condition of prayer that he was able to fulfill.
- b) If the patient is unable to face the *qibla*, or make his bed face it, and does not have anyone to help him, and fears missing the prayer time, he should pray as best as he can, and his prayer is valid because he is considered excused.³⁷

If he becomes capable of facing the *qibla* after completing the prayer, then he does not need to repeat the prayer, according to the majority of scholars. This is because of the generality of evidence [indicating] that if the person responsible for fulfilling an obligation exerts his best effort in trying to fulfill it, then he is considered to have discharged his obligation. Allah said, “**Allah does not charge a soul except [with that within] its capacity.**” (Q.2:286)

The situation of such a patient is analogous to that of a person who fears for his safety while engaged in a battle or is physically restrained and is therefore permitted to pray in any direction. People under such

³⁵ Bukhāri, Muslim. *Takbīr* is saying, ‘*Allāhu akbar*’ (God is greater).

³⁶ Ibn Hazm, *Marātib al-Ijmā’*, p. 31.

³⁷ *Mawsū‘at al-Fiqh al-Ṭibbī* 4:531.

conditions are not obligated to repeat their prayer, even when their excuse no longer exists.³⁸

9.2.2 Co-joining Prayers

It is permissible for a patient to combine [i.e. co-join] the two afternoon prayers (*ẓuhr* and *‘aṣr*), and to combine [co-join] the two evening prayers (*maghrib* and *‘ishā’*) if there is a hardship in performing each prayer in its prescribed time. The evidence for this is the following:

- Ibn Abbas reported that the Messenger of Allah co-joined *ẓuhr* and *‘aṣr* prayers, and *maghrib* and *‘ishā’* prayers in Madinah without fear or rain.”³⁹

This ḥadīth indicates that the Messenger of Allah co-joined the two prayers while resident, without being in a state of fear, nor experiencing rain or travel. This leaves the possibility that the co-joining was due to illness, since [the vast majority of] scholars agreed that combining prayers is not permissible without a valid excuse.

- Sickness is one of the valid excuses because of which Allah relieves the hardship of his worshippers.⁴⁰

9.2.3 Missing Friday and Congregational Prayers

There are many sacred texts clarifying the virtues of congregational prayers, including the following [ḥadīth]: ‘Abdullah ibn ‘Umar reported that the Messenger of Allah said: **“A man’s prayer in congregation is of twenty-seven times higher [merit] than his prayer alone.”**⁴¹

There is much wisdom and benefit in congregational prayer, including:

- [Congregational prayer] is an actualization of servitude to the Lord of the worlds. A Muslim’s going to the mosque and

³⁸ *Al-Baḥr al-Rā’iq*, 1:498, *Majmū’*, 3:243.

³⁹ Muslim.

⁴⁰ *Maṣū‘at al-Fiqh al-Ṭibbī* 4:518.

⁴¹ Bukhāri, Muslim.

leaving behind what occupies his time indicates the sincerity of his servitude.

- [Congregational prayer] is an actualization of the unity of the Muslim *umma*. Allah says, **“Indeed this, your religion, is one religion, and I am your Lord, so worship Me.”** (Q.21:92)

Therefore, gathering for Friday and congregational prayers is a practice that emphasizes the unity of the community that Islam seeks to establish.⁴²

A [Male]⁴³ Patient’s Missing Friday and Congregational Prayers

It is permissible for a [male] patient who finds difficulty in going to the mosque to not attend the Friday and congregational prayers. However, a minor illness, such as a mild fever or a headache, is not considered a valid excuse that exempts a Muslim man from attending congregational prayers. Therefore, whenever a male patient finds himself unable to attend the congregational prayers, it is permissible for him not to attend them. Ibn al-Mundhir said, “I do not know of any disagreement among the people of knowledge that a sick person is allowed to absent himself from congregational prayers due to illness.”⁴⁴

The evidence for the permissibility of missing congregational prayers due to illness includes:

1. When the Prophet was ill, he did not lead the congregational prayers, even though his house was next to the mosque, and he said, “Tell Abu Bakr to lead the people in prayer.”⁴⁵
2. Ibn ‘Abbās narrated that the Prophet said, “Whoever hears the call (to prayer) and does not come to it, there is no prayer for him⁴⁶ unless he has a [legitimate] excuse.”⁴⁷

⁴² *Maṣū‘at al-Fiqh al-Ṭibbī* 4:579

⁴³ Females are not obligated to pray in congregation.

⁴⁴ *Al-Ishrāf*, 2:126.

⁴⁵ Bukhārī, Muslim .

⁴⁶ i.e. his prayer will not be accepted.

⁴⁷ Ibn Mājah. Al-Ḥākim graded it *ṣaḥīḥ* according to the criteria of Muslim and Bukhārī.

The evidence for the permissibility of missing the Friday prayer due to sickness is [the following ḥadīth]: Tāriq ibn Shihāb narrated on the authority of Abū Mūsā that the Prophet said, “The [congregational] Friday prayer is a rightful obligation on every Muslim, except four [types of people]: a slave, a woman, a [minor] boy, and a sick person.”⁴⁸

Missing Friday and congregational prayers for hospitalized male patients

There are two cases for male patients admitted the hospital:

- i) Patients who are unable to leave their beds, due to the severity of their illness or because of their doctor’s orders. Such patients are not obligated to pray in congregation.
- ii) Patients who are able to move. [The ruling concerning their praying in congregation] depends on the circumstances;
 - If the mosque is close to the hospital, or if the hospital’s prayer room is near their rooms and going to [the mosque or prayer room] does not cause undue hardship, they must go to the mosque or to the hospital’s prayer room and it is impermissible for them to not attend the congregational prayers.
 - However, if the mosque is outside the hospital and far from it, or if the hospital’s prayer room is far from the patients’ rooms and going to either of them causes undue hardship, then it is permissible for them to not attend the congregational prayers.

As for the Friday prayer, it is permissible for the male patient to not attend it due to [a qualifying] illness.⁴⁹

⁴⁸ Abū Dāwūd. Al-Ḥākim graded it as *ṣaḥīḥ* according to the criteria of Muslim and Bukhārī, and Dhahabī confirmed him.

⁴⁹ *Mawsū‘at al-Fiqh al-Tibbī* 4:583

9.2 Fasting

9.3.1 Nullifiers of Fasting

The Nullifiers of Fasting are:

1. Sexual intercourse
2. [Fast-conscious] eating
3. [Fast-conscious] drinking

The evidence for [these three] is what Allah says: **“It has been made permissible for you the night preceding fasting to go to your wives [for sexual relations]. They are clothing for you and you are clothing for them. Allah knows that you used to deceive yourselves, so He accepted your repentance and forgave you. So now, have relations with them and seek that which Allah has decreed for you. And eat and drink until the white thread of dawn becomes distinct to you from the black thread [of night]. Then complete the fast until the sunset.”** (Q.2:187)

4. Menstrual and postpartum bleeding.

The Prophet said, “Is it not the case that when a woman menstruates, she neither prays nor fasts?”⁵⁰

Limitations concerning the Above

These fasting nullifiers do not take effect unless all three of the following conditions are met.

1. **Knowledge** of the legal ruling and the time of fasting. If he is unaware of the legal ruling or the [proper] time of fasting, then his fast remains valid, as Allah says: **“Our Lord, do not impose blame upon us if we have forgotten or erred.”** (Q.2:286), and, **“And there is no blame upon you for that in which you have erred but [only for] what your hearts intended.”** (Q.33:5)

Evidence from the Sunna also confirms the ruling. ‘Adī ibn Ḥātim said, “When this verse was revealed, **‘And eat and drink until the white thread of dawn becomes distinct to you from the black thread [of**

⁵⁰ Bukhārī.

night].' (Q.2:187), I took two threads, a black one and a white one, and put them under my pillow. I continued looking at them [throughout the night], but neither could I make out the black thread from the white, nor the white from the black. So, the next morning I went to the Messenger of Allah and told him what I had done. He said to me, 'In that case your pillow is very broad. [That verse] is [referring to] the darkness of the night and the whiteness of the dawn.'"⁵¹ We see that the Prophet did not tell him to make up his fast, since 'Adī was unaware of the ruling and misunderstood the meaning of the verse.

Evidence for the ruling on being unaware of the time of fasting is based on what Asmā' bint Abī Bakr said, "We broke our fast [one day] during the lifetime of Messenger of Allah on a cloudy day [thinking that the sun had already set] but then the Prophet did not order them to make up the fast. If making it up had been an obligation, he would have ordered them to do so, and if he had done so then this ruling would have been transmitted to the *umma*. Allah says, "**Indeed, it is We who sent down the Qur'ān and indeed, We will be its guardian.**" (Q.15:9). Since this was not transmitted, in spite of ample reasons to do so, we know that the Prophet did not order them to make up the fast. Since the Prophet did not order them to make up the fast, it is understood that it was not an obligation. Therefore, if a Muslim wakes up believing it to be night and eats and drinks, then he realizes that his eating and drinking occurred after the breaking of dawn, he is not obligated to make up that fast since he was unaware of the time of fasting.

2. **Remembering**, as opposed to forgetting, that one is fasting. If a fasting person eats or drinks out of forgetfulness, his fast remains valid and he does not have to make it up. Allah says, "**Our Lord, do not impose blame upon us if we have forgotten or erred.**" (Q.2:286) This ruling is also supported by the ḥadīth narrated by Abū Hurayra who said that the Messenger of Allah said, "If anyone forgets that he is

⁵¹ Bukhārī, Muslim.

fasting and eats or drinks, he should complete his fast, for it is only Allah Who has fed him and given him drink.”⁵²

3. Intentionality. This means that the fasting person willingly chose to engage in the nullifying act. If he did not do it willingly, his fast remains valid, whether or not he was forced to invalidate his fast as Allah says regarding the believer being forced to commit an act of disbelief, **“Whoever disbelieves in Allah after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their breasts to disbelief, upon them is wrath from Allah, and for them is a great punishment.”** (Q.16:106) Since a person who commits an act of disbelief is not judged to be a disbeliever if he does so out of coercion, it is even more appropriate that lesser actions are not considered sinful under such circumstances.

Accordingly, if a fasting person unintentionally inhales dust, and he tastes it in his throat and it reaches his stomach, his fast is not invalidated because he did not inhale the dust deliberately. Similarly, if a person is forced [by someone else threatening to kill him, for example] to break his fast, his fast remains valid since he did not intend to do so. Likewise, if a person experiences a wet dream, his fast remains valid since the sleeping person has no volition.

9.3.2 Specific Medical Conditions

[We will now discuss] the effect of medical procedures, nutritional patches, and oral medications on the fast.

1. Asthma Inhaler

This device contains aerosolized medicine that consists of chemicals, water, and air/oxygen. It is used by deeply inhaling while simultaneously pressing the inhaler [to release the medication]. Using an asthma inhaler does not invalidate the fast, because:

⁵² Muslim.

- a) The spray emitted from the asthma inhaler is an aerosol that only reaches the lungs, in order to widen the vessels and bronchioles that are tightened by asthma. This spray does not reach the stomach and it is not food, drink, or anything similar. Even if some of it reaches the esophagus and then the stomach, the amount will be very small as the inhaler contains only 10 ml of the liquid medicine which is sufficient for two hundred doses. This means that each inhalation contains a negligible amount (0.05 ml) of liquid medicine.
- b) Sniffing water into the nose and rinsing the mouth are permissible for the fasting person even if some residual water reaches the stomach with the swallowing of saliva. Therefore, what reaches the stomach from using an inhaler does not invalidate one's fast because it is analogous to such water left over after rinsing the mouth.
- c) Using a *miswāk* (tooth stick) does not invalidate the fast although, according to doctors, it contains eight chemical substances that protect the teeth and gums from diseases. [These chemicals] are broken down by saliva and then enter the throat. A Prophetic *mu'allaq* ḥadīth⁵³ in Ṣaḥīḥ al-Bukhārī states that 'Āmir ibn Rabī'a said, "I saw the Messenger of Allah using a *miswāk* while he was fasting more times than I could count." Since it is excusable for these tiny particles to reach the stomach given that this happens unintentionally and the amount is negligible, the same is also true for the tiny particles contained in the inhaler.
- d) There is no certainty about the possibility that a tiny amount of medication from the inhaler will reach the stomach. This may

⁵³ A *mu'allaq* ḥadīth is one that is cited without its accompanying chain of narration, usually for brevity.

or may not actually occur. The default is that the fast is valid; the certainty of the state of fasting is not displaced by doubt.⁵⁴

2. Dialysis

Some patients suffer from kidney failure and need to undergo a procedure (called dialysis) every two or three days to detoxify their blood and remove the harmful substances from their bodies. There are two main types of dialysis:

- i) **Hemodialysis**, in which the patient is connected to a dialysis machine through their vein. The machine extracts the patient's blood, filters it, removes waste and toxins, sometimes also adding glucose and salt, and then returns the blood into the body.
- ii) **Peritoneal dialysis**, in which the dialysis takes place through the peritoneum, which is a membrane in the abdomen. A catheter is surgically inserted above the navel through which fluid containing large amounts of glucose and salt are pumped into the abdomen. These remain in the peritoneum, which then exchanges this fluid with the blood [and waste products diffuse across the peritoneum from the blood]. The fluid is then extracted from the body, and the process is repeated.

In light of this information, [the Islamic ruling concerning] dialysis [for a fasting person depends on the] specifics [of the procedure]: If it involves providing glucose or other nutrients, then it invalidates the fast, since such substances are like food and drink that nourish and strengthen the body. However, if it does not involve nutritional substances, then it does not invalidate the fast. Cleansing the blood from toxins is not one of the nullifiers of the fast specified [in the sacred texts].⁵⁵

⁵⁴ *Maʿwṣūʿ at al-Fiqh al-Ṭibbī* 4:637

⁵⁵ *Maʿwṣūʿ at al-Fiqh al-Ṭibbī* 4:652.

3. Medicinal Patches

Medicinal patches do not invalidate the fast, since they are not food or drink, do not pass through the throat or reach the digestive tract, nor does their taste reach the throat. They do not nourish or strengthen the body, and therefore, do not have the same effect as food and drink. However, if the medicinal patches are analogous to eating or drinking, such that they strengthen or nourish the body, then in this situation, precaution calls for ruling the fast invalidated.

4. Therapeutic Injections

Intradermal and intramuscular therapeutic injections do not invalidate the fast, because by default the fast remains valid until there is clear evidence that it is invalidated. These injections are neither food nor drink, and they do not have the characteristics of food or drink. They are analogous to applying oil to the skin or taking a shower, whereby the pores of the skin absorb the oil or water, a process that does not invalidate the fast. Ibn Taymiyya said, "Applying oil to the skin does not invalidate the fast, without a doubt."⁵⁶

As for intravenous injections containing water and nutrients such as calcium, glucose, and others, they can contain as much as 10% or more water, as is the case in antibiotic injections. Therefore, such injections invalidate the fast because the body benefits from the water and nutrients they contain.⁵⁷

9.3.3 Dispensations for breaking the fast

1. Overview

Allah enjoined fasting upon Muslims just as He enjoined it upon previous nations. Out of His mercy to His servants, Allah does not burden them with more than they can bear, and so he allows those with valid excuses to not fast. These people are: The elderly who are unable to fast, the sick, and travelers. Moreover, women who are menstruating

⁵⁶ *Majmū' al-Fatāwā*, 25:267, *Mawsū'at al-Fiqh al-Ṭibbī* 4:659.

⁵⁷ *Ibid.*, 4:660.

or have postpartum bleeding are not allowed to fast. This shows Allah's mercy with His servants as He does not burden people beyond their capacity.

The dispensation for illness is based on the words of Allah **"But if any of you is ill or on a journey, the same number (should be made up) from other days."** (Q.2:184) When [Allah] made fasting obligatory,⁵⁸ He repeated the dispensation for the sick person and the traveler to not fast on the condition that they make up the missed days, saying, **"And whoever among you is ill or on a journey [during them] - then an equal number of days [are to be made up]."** (Q.2:185) This means that it is permissible to break the fast for one who is sick and who finds it difficult to fast or who may be harmed by fasting, and also for the traveler. If he breaks his fast or refrains from fasting, then it is obligatory on him to make up the missed days. Allah says: **"Allah intends for you ease and does not intend for you hardship."** (Q.2:185) That is, Allah allows you to not fast if you are sick or traveling, while He prescribes it on those who are healthy and settled in their homes, out of His lenience and mercy.⁵⁹

2. Breaking the fast due to illness

Sick people are of two types:

1. If the sick person is unable to bear the fast, he is obligated to break it (or not fast).
2. If the sick person is able to fast but with hardship and suffers harm, he is permitted to break it (or not fast).

Thus, if a patient is unable to fast, it is obligatory for him not to [try to] fast. However, if he is able to fast with difficulty that does not amount to putting his life at risk, then he has the choice to fast or not. If doctors have not advised him to refrain from fasting, and he [therefore] fasts, but then experiences some hardship, then he is permitted to break his

⁵⁸ Exegetes mention that Q.2:184 encouraged fasting, and then later Q.2:185 made it an obligation.

⁵⁹ *Tafsīr Ibn Kathīr*, 1:503.

fast. The permission to break the fast, in this case, is not contingent on advice from a doctor, since the patient is more aware of his own ability.⁶⁰

Physicians are permitted to advise patients not to fast [if they have good reason to believe that fasting will make the sickness worse, or delay recovery]. If they believe that a patient's life is at risk, then it is obligatory on them to advise the patient to refrain from fasting. Similarly, if they believe that a patient's organ (or limb) might be impaired due to fasting, [they are also required to instruct the patient to not fast.] This is because impairment of an organ (or limb) is the highest degree of hardship, which necessitates dispensations such as breaking the fast.

3. Obligation to Make up Missed Days

Illnesses that warrant breaking the fast are of two types:

i) Curable illness

A patient who expects to recover from his [qualifying] illness is permitted to break his fast but is required to make it up after he recovers. Allah says, **“So whoever among you is ill or on a journey [during them] - then an equal number of days [are to be made up].”** (Q.2:184) [Hence,] if someone is unable to fast due to an excuse that [he was expecting to recover from, but the excuse] is still in effect by the time he dies, and he has no one to fast on his behalf, then he does not owe expiation (*kaffāra*) since it was an obligation that he did not have the opportunity to fulfill. His obligation to fast is waived, like the waiving of the obligation of Hajj on account of a valid excuse [such as not being able to afford it].

ii) Chronic illness

A patient who has a chronic illness has the same ruling as the elderly person who is unable to fast and for whom the preferred opinion is that he must feed a needy person for each missed fast. It was reported that when Ibn Abbas recited the verse, **“And upon those who are able [to**

⁶⁰ *Aḥkām al-Jirāḥa al-Tibbiyya*, p. 556.

fast, but with hardship] - a ransom [as substitute] of feeding a poor person [each day]." (Q.2:184), he said, "This verse is not abrogated, and is meant for the old men and women who have no strength to fast and so should feed a needy person for each day of fasting they miss."⁶¹

9.4 Hajj (Pilgrimage)

9.4.1 Hajj of Sick People

Hajj to the sacred House of Allah is the fifth pillar of Islam. It is a great pillar that Allah has legislated as He says, **"And [due] to Allah from the people is a pilgrimage to the House - for whoever is able to find thereto a way."** (Q.3:97)

As is clear from the verse, having the financial means is one of the conditions [for the obligation] to perform Hajj. Having the physical ability, however, is not one of the conditions. [Thus:]

1. The sick and the elderly who have the financial means are included in the obligation, so if they are unable to perform Hajj themselves, it is obligatory for them to delegate someone else to perform it on their behalf. However, if an elderly person suffers from dementia or psychiatric illness, he is no longer responsible to perform Hajj, neither himself nor by delegating someone else.
2. If someone is physically able to perform Hajj with help, such as a blind person, it is obligatory on him to perform it himself if he is able to find someone to assist him. The assistant can be a volunteer or paid, if the pilgrim is able to pay the assistant, in which case the pay should be equal to the fair-market rate.
3. It is not permissible for the physically able sick person to have someone perform the Hajj on his behalf during his lifetime. However, if someone is [financially] able to perform Hajj but is [physically] unable to do so on – neither his own, nor with assistance from someone else –

⁶¹ Bukhārī.

then he is obligated to send⁶² someone else to perform Hajj on his behalf.⁶³

[We now turn to discuss] the effect of [specific types of] medical treatment on the restrictions [of *iḥrām*] and a person's ability to perform the pillars and obligations of Hajj.

9.4.2 Medicine containing fragrance

It is prohibited to apply perfume when in a state of *iḥrām*⁶⁴ even for medicinal purposes. If someone does this, he is required to pay expiation (*fidya*). The preferred view is that lotions and ointments are permissible for the person in the state of *iḥrām* provided that they are not perfumed. There is no evidence, [neither] from a sacred text nor from scholarly consensus, that prohibits them, and it is not sound to consider these are analogous to perfume.

9.4.3 Wearing a surgical gown

If a pilgrim needs to perform surgery, and is asked to wear a stitched surgical gown, then he is not considered sinful as he is obliged to do this. Allah says, **“He has explained in detail to you that He has forbidden you, excepting that to which you are compelled.”** (Q.6:119) Allah also says **“But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him.”** (Q.2:173) Nevertheless, a redemption (*fidya*) is due from him as the Prophet instructed Ka‘b ibn ‘Ujra when he suffered from head lice and needed to have his head shaved (which is normally prohibited for the person in *iḥrām*), **“Shave your head and fast three days or feed six needy people or sacrifice a sheep.”**⁶⁵ Other actions [that are medically necessary] are

⁶² i.e. sponsor.

⁶³ Bukhārī.

⁶⁴ See Glossary.

⁶⁵ Bukhārī, Muslim.

analogous to this. While they violate the state of *iḥrām*, they [are not sinful if medically necessary,] not do [they] nullify the Hajj itself.⁶⁶

9.4.4 Using medical gauze

Medical gauze is a type of cotton fabric placed on wounds and burns to protect them from infection or to stop bleeding. Its application to a patient's body can be in one of two possible situations:

- a) Using gauze [on the patient's torso] out of necessity. This is permissible, for it does not fall under the category of stitched clothes that are prohibited in *iḥrām*, since it does not cover the whole body or an entire limb. Furthermore, the intent of the lawgiver in prohibiting stitched clothing is to prevent ostentation and the display of luxury, and these will not be the case with medical gauze.
- b) Using gauze on the head of the person in *iḥrām*, to the extent that it covers the whole head. This is not permissible for a male in the state of *iḥrām*, so [although he is not sinful if dictated by medical necessity], he must either slaughter an animal, feed six needy people, or fast three days in expiation, based on the aforementioned ḥadīth of Ka'b ibn 'Ujra.⁶⁷

9.4.5 Menstrual Suppressant Medications

It is permissible for a woman to take medication to prevent menstruation in order to be able to perform Hajj freely or to fast the whole month of Ramadan, on the condition that she consults with a qualified physician who confirms that it is not harmful to her health. In that case, she can take this medication until she has completed her *tawāf*⁶⁸ or fasting. However, if it is established that the pills will be harmful to her health, she should refrain from taking them, regardless

⁶⁶ *Maṣū'at al-Fiqh al-Ṭibbī* 4:683.

⁶⁷ *Maṣū'at al-Fiqh al-Ṭibbī* 4:684.

⁶⁸ See Glossary.

of whether [she wanted to take this medication] for the sake of fasting the whole month of Ramadan with others or to perform *ṭawāf*.⁶⁹

⁶⁹ *Ibid.* 4:700.

Chapter 10: Reproductive and Gender Issues

10.1 Sexual intercourse

It is permissible for a husband to derive pleasure from his wife however he wants, except for penetrative intercourse during menstruation, and anal intercourse. Penetrative intercourse with a menstruating wife before she attains ritual purity is forbidden and a major sin, for which the offender must repent and seek forgiveness from God.

The evidence for this is as follows:

1. Allah says, **“And they ask you about menstruation. Say, "It is harm, so keep away from wives during menstruation. And do not approach them until they are pure. And when they have purified themselves, then come to them from where Allah has ordained for you. Indeed, Allah loves those who are constantly repentant and loves those who purify themselves.”** (Q.2:222)
2. Anas reported that among the Jews [of Madina], when a woman menstruated, they did not eat with her, nor did they mingle with them within their houses; so the Companions of the Prophet asked the Prophet [about this matter], whereupon Allah revealed [the verse that begins], **“And they ask you about menstruation. Say, "It is harm, so keep away from wives during menstruation.”** (Q.2:222) Then the Messenger of Allah said, **“Do everything other than copulation.”**¹
3. Nawawī cited scholarly consensus on the prohibition.

As for anal intercourse, it is prohibited by inference from the verse, **“And when they have purified themselves, then come to them from**

¹ Muslim.

where Allah has ordained for you.” (Q.2:222) The phrase, “from where Allah has ordained for you,” implies from the vagina, as suggested by the following verse, **“Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish,”** (Q.2:223) for the anus is not a place of cultivation. Abū Hurayra reported that the Messenger of Allah said: “Cursed is the one who has intercourse with a woman in her posterior.”²

10.2 Inherited Diseases

10.2.1 Preventive Approaches

1. Premarital Genetic Screening (PGS)

Premarital screening is a panel of tests carried out on couples who are planning to get married before they get married. The goal is to ensure that neither the prospective husband nor wife have prevalent diseases that would pose a risk to their partner, or to any offspring resulting from the marriage. This is permissible and is consistent with the higher purposes of Sharia, and with attaining the type of welfare that is taken into consideration by Sharia. The evidence for this is as follows:

1. Allah says: **“At that, Zechariah called upon his Lord, saying, ‘My Lord, grant me from Yourself a good offspring. Indeed, You are the Hearer of supplication.’”** (Q.3:38) Allah also says: **“And those who say, ‘Our Lord, grant us from among our wives and offspring comfort to our eyes and make us an example for the righteous.’”** (Q.25:74)

The first verse indicates that the prophets, peace be upon them, prayed for Allah to bless them with good offspring. The second verse indicates that the believers supplicate to Allah to grant them comfort through their spouses and offspring. Offspring will not be good, nor a source of comfort, [in many cases] if born with a genetic disease that may lead to a deformed body, lack of limbs or bodily parts or mental disability.

² Abū Dāwūd, Ibn Mājah. Būṣīrī graded it as *ṣaḥīḥ*.

2. The fiqh maxim says, "Harm must be removed."³ Refraining from conducting PGS could prove harmful to the offspring in cases where the parents are carriers of abnormal genes, because such genes may be inherited by the offspring resulting in a corresponding genetic disorder. The purpose of PGS is to ensure that neither potential parent is a carrier of any of common genetic diseases, and therefore it is permissible, in the interests of warding off this harm.⁴
3. PGS serves the goal of protecting lineage and offspring, which is one of the five higher objectives of the Sharia, for which there are many sacred texts attesting to the importance of initiating and preventing harm or destruction to any of these five. Awareness of the genetic status of the prospective father and mother can contribute to protecting lineage, as it reduces the likelihood of genetic diseases, since some of these diseases can be prevented, or their effects averted, in advance.

al-Ghazzālī wrote, "The objectives of Sharia regarding creation are five: to preserve their religion, life, mind, lineage and property. Thus, everything that entails preserving these five fundamentals is considered a *maslaha* (benefit/welfare). [Correspondingly,] anything that results in loss of one of these fundamentals is a *mafsada* (source of damage), and to eliminate it is a benefit."⁵

4. It is obligatory to avert harm before it occurs, using all possible means, because prevention is better than cure. This is implied by the maxims, "Harm is repelled as much as possible,"⁶ and, "Warding off detriment takes precedence over bringing about benefits."⁷

³ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85.

⁴ *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1239.

⁵ Ghazālī, *Mustaṣfā* 174.

⁶ *Al-Dawabiṭ wa Al-Qawā'id al-Fiqhiyya*, 279.

⁷ Subkī, *al-Ashbāh wa al-Nazā'ir*, 1:123.

It is permissible for a government to impose PGS if a particular genetic disease is prevalent in a region, or if otherwise dictated by the public interest. However, it is essential to protect the confidentiality of the people involved, and not to disclose them unless dictated by necessity or dire need.⁸ A woman's guardian has the right to require that her suitor undergo PGS if there are indications that he, or his future children, are likely to be affected by the disease in the future.

2. Avoiding marriage between close relatives

The Sharia permits consanguineous marriage, as we find explicitly stated in the words of Allah **“O Prophet, indeed We have made lawful to you your wives to whom you have given their due compensation and those your right hand possesses from what Allah has returned to you [of captives] and the daughters of your paternal uncles and the daughters of your paternal aunts and the daughters of your maternal uncles and the daughters of your maternal aunts who emigrated with you...”** (Q.33:50) The practice of the Prophet also indicates its permissibility, for he married his first cousin, Zaynab bint Jaḥsh and he gave his daughter Fāṭima in marriage to his cousin ‘Alī ibn Abī Ṭālib. From a medical perspective, some physicians have warned against consanguineous marriage, because it may result in [slightly increased chances of] genetic disorders in the fetus, which may lead to low birthweight, [congenital malformations], and [other] physical and/or mental problems. As a result, they do not recommend it, and warn against it. However, other distinguished physicians disagreed, saying that the practice is not dangerous, and it is not appropriate to forbid it. They concluded that, most often, consanguineous marriage is not harmful, and the reported percentage of genetic disorders in the fetus is sufficiently low as to warrant neither prohibition nor warning against it. However, if it is medically proven that the two parties (the potential spouses) are afflicted with [or carriers of] the same genetic disease, such that it is likely that their offspring would be afflicted with the disease,

⁸ *Mawsū‘at al-Fiqh al-Ṭibbī*, Topic 3, 1241.

then it would be most appropriate for them not to marry, and it would be religiously disliked (*makrūh*) for them to marry.⁹ It may even be prohibited for them to marry, in cases where it is most likely that their offspring would suffer from the genetic disease.

10.2.2 Annulment of Marriage due to a Genetic Disorder

Either of the spouses has the option to move for annulment of the marriage if the other spouse is afflicted with a defect that impedes the desired outcome of marriage, or a contagious disease. Similar is the case if the children would be afflicted with a major defect or disease. Muslim jurists have mentioned, among the defects that permit annulment, several instances of less serious certain serious hereditary diseases. Hence, hereditary diseases can be a cause for annulment of the marriage.

The evidence for this is that it is confirmed that [Caliph] ‘Umar annulled marriages due to white leprosy, black leprosy and mental derangement. He said, “If any man marries a woman who has white leprosy, black leprosy or mental derangement [without being told of her condition by her guardian], and consummates the marriage, then she is entitled to all of her *mahr* (bridal payment), and the husband should be compensated by her guardian.”¹⁰

Genetic diseases are similar to leprosy and might even be worse and more serious. Therefore, such genetic diseases are grounds for annulment of a marriage, whether they were established before the marriage contract or after. Nevertheless, if the other (healthy) spouse is aware of the defect and accepts it, then they have the right to not move for annulment.

⁹ *Mawsū‘at al-Fiqh al-Ṭibbī*, Topic 3, 1231.

¹⁰ Bayhaqī, *al-Sunan al-Kubra*, 14222. Dāraqutnī. Malik said: Her husband should be compensated by her guardian if this guardian is her father or brother, and knows that she has such a disease.

10.3 Assisted Reproduction

The desire for children is a natural tendency in humans, and one of the greatest objectives of marriage. Hence, infertility is a disease for which treatment is [religiously] recommended, and if an appropriate medication is found, then there is no objection to using it. If it cannot be treated through medication, then assisted reproduction is an option. There are several types of assisted reproduction that we will now turn to, along with the ruling for each.

10.3.1 Intrauterine Insemination

This involves injecting the husband's semen into the appropriate part of his wife's womb, or the canal between the uterus and vulva, in order to facilitate internal fertilization of an ovum. This procedure is permissible under certain parameters and conditions, based on the following evidence:

- Safeguarding of progeny is one of the higher objectives of the Sharia, and this can [normally] only [legitimately] be achieved by marriage in which natural sexual intercourse occurs between a man and a woman. If that is not attainable, then recourse may be taken to this intrauterine insemination to achieve this important objective.
- Intrauterine insemination is analogous to natural fertilization, because what they have in common is the desire to obtain offspring by ḥalāl means.
- The highest goal of the marital relationship is reproduction, by which the human species is preserved. The Prophet encouraged having many children when he said, "Marry loving, fertile women, for I shall outnumber the [other] nations by means of you on the Day of Resurrection."¹¹ If this cannot be achieved

¹¹ Abū Dāwūd, Nasā'ī, al-Ḥākim said it is *ṣaḥīḥ*.

[naturally], but there is another method to achieve it, then it is permissible to use it in order to achieve this objective.

- Islamic jurists have mentioned that pregnancy in humans can be achieved through other than sexual intercourse, by *istidkhāl*, which is insertion of the husband's semen into the wife's vagina by the wife herself using her finger or a piece of cotton. For some such cases, many jurists have ruled that if pregnancy results, then paternity of the husband is legally recognized, and the wife will have to observe the *'idda* (waiting period following divorce or death) [even if no sexual intercourse took place]. If insertion of semen has the same ruling as sexual intercourse for the purposes of paternity and *'idda* then it should have the same ruling in terms of permissibility.¹²

Conditions for Permissibility

Jurists have stipulated the following in order for this procedure to be permissible are as follows:

1. It must be verified that the man, from whom the sperm is taken, and the woman into whom it is inserted, are currently united in a legitimate marriage.
2. The procedure should be carried out by mutual consent of both spouses.
3. All necessary precautions must be taken to prevent the husband's semen from becoming mixed with someone else's semen, at every stage of the process, so as to prevent the confusion of lineages. Thus, the procedure must be conducted without delay [after obtaining the semen], in the presence of the husband, and the surplus semen must be discarded. Also, the procedure should be performed in a government¹³ medical

¹² *Sharḥ Faḥ al-Qadīr*, 4:353. *Al-Baḥr Al-Rā'iq*, 4:69, *Tuḥfat al-Muhtāj*, 8:231, *Mughnī*,8:80

¹³ Presumably because government hospitals and clinics are more likely to be regulated.

institution, under the supervision of a number of reliable and trusted Muslim doctors.

4. There must be a medical indication for this procedure, so it is not permissible to resort to this method except in the case of utmost necessity, or dire need, and after exhausting all other means of infertility treatment.
5. Physicians must fully be sure that this procedure will not cause any physical or mental harm to the mother, nor to the fetus after birth.
6. There should not be violation of any Islamic regulations, such as for a male doctor to be alone with the woman who is to be inseminated, or for the *'awra* to be exposed more than necessary.¹⁴

10.3.2 In Vitro Fertilization

[In vitro fertilization is where sperm fertilizes an ovum “in glass,” i.e. outside the human body, in a laboratory.] There are several possible scenarios for the technique, [depending on the identity of the parties involved]:

- a) The husband’s semen and the wife’s ovum are extracted, fertilized externally, and the fertilized ovum (zygote) then implanted in the wife’s uterus.

This scenario is **permissible**, based on the following evidence:

- i. Offspring is a gift from Allah that He had bestowed upon the best of His creation (i.e. the messengers and the prophets), and He made them seem good and lovable to people. “**Beautified for people is the love of that which they desire - of women and sons, ...**” (Q.3:14) Since it is permissible to enjoy the blessings of Allah, and so when something prevents this enjoyment, it is

¹⁴ *Mawsū‘at al-Fiqh al-Ṭibbī*, 3:1179-1180, resolution of the International Islamic Fiqh Academy in its third session in Amman, 8 Safar 1407 AH / 11 October 1986 CE, Fatwā of Dār al-Iftā’ al-Misriyya,, Vol.10, Fiftieth year, 1403 AH / 1983 CE, 1432-1433.

allowed to [take legitimate means to] remove this obstacle. Similarly, if there is a means for attaining one of the blessings of Allah, there is no objection to pursuing it. In vitro fertilization is a means for attaining the blessing of offspring, and hence it is permissible to carry it out between spouses.

- ii. In vitro fertilization is analogous to natural fertilization. Both are a means to obtain legitimate offspring. In natural fertilization, the husband's sperm fertilizes the wife's egg as a result of sexual intercourse. In external fertilization, the only difference is that the fertilization is carried out in a petri dish, after which the zygote is implanted in the uterus of the wife herself. Hence, it should be permissible.
- iii. Infertility is either congenital or arising from a condition that occurs after birth. It is permissible to treat a [congenital] defect that impedes the attainment of the objective of marriage, as shown by the jurists having allowed medical intervention in cases of vaginal atresia / vaginal agenesis and imperforate hymens. As for non-congenital infertility, we have already discussed how Islam urges people to seek medical treatment.

We have already mentioned the ḥadīth in which some Bedouins asked the Prophet, 'O Messenger of Allah, should we make use of medical treatment?' He replied, 'Make use of medical treatment, for Allah has not made a disease without making a remedy for it, except for one.' They asked, 'What is [that one]?' He replied, 'Old age.'¹⁵ Hence, treating infertility is permissible according to Sharia, and in vitro fertilization is one such method that uses the sperm and ovum of a married couple [in this case].¹⁶

¹⁵ See the footnote following earlier mention of this ḥadīth.

¹⁶ *Maṭṭaʿat al-Fiqh al-Ṭibbī*, 3:1196, Resolution of the International Islamic Fiqh Academy in its third session in Amman, 8 Safar 1407 AH / 11 October 1986 CE.

Conditions for Permissibility

This permissibility is subject to the conditions already mentioned under 10.3.1, most prominently:

1. It is not allowed to use any biological elements from a person other than the husband and wife.
2. The procedure must be conducted while the man and woman are still married to each other. It is not permissible to use the husband's stored semen to perform it after the death of the husband, or after divorce.
 - b) The sperm of a man other than the husband is used to fertilize the wife's ovum, and the fertilized ovum then implanted in the wife's uterus.
 - c) The sperm of the husband and the ovum of the wife are fertilized externally, and the fertilized ovum then implanted in the uterus of a woman who has volunteered for the purpose.
 - d) The sperm of a third-party man is used to fertilize the ovum of a fourth-party woman the fertilized ovum then implanted in the uterus of the infertile married woman.
 - e) The sperm of the husband is used to fertilize the ovum of a woman other than his wife, and then the fertilized ovum is implanted in his wife's uterus.
 - f) The sperm of the husband is used to fertilize the ovum of his wife and then the fertilized ovum is implanted in the uterus of his other wife.

All of these methods (b through f) are absolutely prohibited, either intrinsically (where the gametes of someone other than the married couple are used), or because they lead to confusion of their consequences of lineages, loss of maternity and other Islamically objectionable elements. Other evidence for this includes:

1. Allah says: **"Upon the father is the mothers' provision and their clothing according to what is acceptable,"** (Q.2:233) and also, **"Call [adopted sons] by [the names of] their fathers; it is more just in the sight of Allah."** (Q.33:5)

This indicates that the biological father, i.e. the man from whose sperm the child was conceived, is the rightful owner of paternity, and hence scenarios b) – f) of in vitro fertilization are in conflict with the Quranic understanding of fatherhood, since they involve mixing of lineage.

2. Allah says: **“And they who guard their private parts, except from their wives....”** (Q.23:5- 6)

These verses contain commandment to protect the genitals from other than one’s spouse. This command is interpreted in an absolute sense, and therefore includes protecting them from being seen or touched by others, as well as making sure that the man’s sperm does not enter anyone other than his wife.

3. These scenarios are, in their essence, equivalent to *zinā*, because both lead to the same result of inserting the semen of a man into the uterus of a woman to whom he is not legally married. Since *zinā* is prohibited, these scenarios are likewise prohibited.¹⁷

10.3.3 Using fertilized ova for research

It is permissible to use frozen embryos in research and experiments according to the more correct juristic view. This opinion was adopted by the Islamic Fiqh Council of the Muslim World League, and by a majority vote of the Islamic Organization for Medical Sciences in Kuwait.

The resolution of the Islamic Fiqh Council’s 17th session (19-23 Shawwal 1424H / 13-17 December 2003) states, "It is permissible to obtain stem cells, to grow them and use them with the goal of [medical] treatment, or for permissible scientific research, provided that their source is ḥalāl, for example any surplus zygotes remaining from in vitro fertilization if they are donated by the parents. It should be ascertained that they will not be used to initiate a pregnancy that would

¹⁷ *Mawsū‘at al-Fiqh al-Tibbī*, Topic 3, 1194.

be Islamically prohibited.”

However, this permissibility is subject to six conditions:

1. This scientific research must be consistent with the higher objectives of The Sharia. Hence, it is not permissible to carry out experiments whose intent is to change the nature created by Allah, nor to exploit science for evil or corruption.
2. The goal of the research should be to achieve Islamically legitimate interests that are essentials or strong needs, not merely embellishments. Hence, the goal of research on embryos should not be merely to produce cosmetics, for example.
3. There must be no other alternative to using the fertilized ova to conduct the research to achieve the desired benefit.
4. The fertilized ova used in scientific research must not subsequently be transferred to a uterus.
5. The spouses must give explicit consent.
6. The relevant authorities must give consent, and the experiments must be conducted under their supervision, in order to ensure the above conditions are fulfilled.

The evidence for the permissibility to carry out experiments on fertilized ova (subject to the above conditions) is as follows:

1. The research and experiments on fertilized ova are not being carried out on an [actual] fetus or a human, but [merely] on a collection of cells.
2. There are many benefits resulting from research and experiments on fertilized ova, including giving the chance to [otherwise infertile] people to have offspring, determining the strength [or weakness] of sperm to fertilize, identifying the factors that lead the fertilized ovum to either attach to the wall of the uterus or not, etc. The life of these fertilized ova is not considered expendable in service of these [greater] interests, since they only acquire the dignity of human life after ensoulment.

3. There are only two possibilities for the fate of surplus fertilized ova:
 - a. Either they are left in the test tube to grow and then end up being discarded, because the maximum recorded lifetime [in a laboratory] is sixteen days.
 - b. Or they are frozen and kept for further research and experiments.

In either case, the eventual outcome is that they perish, and no doubt the second situation is preferable because of the consequent benefits.

10.4 Abortion

10.4.1 Spontaneous Abortion

Spontaneous abortion is that which occurs without volition or external intervention. A ruling of permissibility or prohibition here is not applicable because the abortion does not occur by a deliberate intention of the pregnant woman or by her act. There is no consequent sin or accountability because intentions are taken into consideration in Sharia and in this case, there is no intention of abortion.

10.4.2 Elective Abortion for Moral Reasons

Unlawful sexual intercourse may be committed with the consent of the two parties, or by forcing a woman to commit it against her will (rape).

1. *Zinā*

There is consensus among Islamic jurists that if the fetus is ensouled, abortion is not permissible as long as the mother's life is not endangered, because the fetus has become a human soul with all the rights and duties that a living human being enjoys.¹⁸

¹⁸ *Hāshiyat Ibn 'Abidīn*, 3:185. Qarafi, *al-Dhakhīra*, 4:419. *Nihāyat al-Muhtāj*, 8:442. *Furū'*, 2:281.

However, if the fetus is not ensouled, the jurists differed whether abortion is permissible or prohibited, and the most cautionary view is as follows: If the afflicted woman is known for righteousness and chastity, and the pregnancy is in its first forty days, then there is no objection to an abortion, as it helps her to maintain her chastity and honor, conceals her indiscretion, protects her, and facilitates her repentance. But if pregnancy is beyond the first forty days, which is the time when the fetus' features start to form begins, or if the woman is known to be promiscuous, then prohibition of abortion is what is most compatible with the objectives of Sharia which, call for blocking the means of immorality and preserving human life.

2. Rape

- I. There is consensus among the jurists that abortion is not permissible if the fetus is ensouled as long as the mother's life is not endangered. Also, there is no disagreement among the jurists that if pregnancy is in its first forty days, abortion is permissible, because:
 - This is a case of necessity or a near-necessity. Sharia maxims stipulate that "necessity renders prohibited matters permissible" and "harm must be eliminated."
 - If pregnancy continues, the woman may suffer from physiological and psychological ailments, and her life may be endangered. Jurists of the Hanafi school of jurisprudence have listed reasons for abortion that are less serious than the above-mentioned, such as the likelihood of the mother's inability to breastfeed the child, and therefore abortion in our case is more justified.¹⁹
- II. If the embryo has passed the first forty days since conception, but is still not ensouled, and if the [negative] consequences of the rape can be alleviated, by changing the woman's environment, [social support,] and the like, then it is most

¹⁹ *Ḥāshiyat Ibn 'Abidīn*, 3:185. *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1332.

appropriate to not allow abortion. However, if the woman is not capable of bearing the consequences, such that she would suffer from psychological or physical harm if she does not abort, then abortion is permissible for the following reasons:

- The raped woman played no part in the sin or crime, so if it is possible to alleviate her condition by abortion before the ensoulment of the embryo, then this is permissible.
- This is a case of necessity or near-necessity, and so abortion is permissible.

Other instances of sexual intercourse that happen without the woman's consent take the same ruling as that of rape. These include a man having unlawful intercourse with her while she is sleeping or under anesthesia or the like.²⁰

10.4.3 Elective Abortion for Medical Reasons

There are two scenarios:

1. To prevent illness or death of the mother

Abortion in this case may be indicated on either preventative or therapeutic grounds. By preventative grounds, we mean that the pregnant woman has no immediate danger to her health, but the doctor predicts a medical danger based on objective evidence. Therapeutic grounds would be if there is already a medical danger to the woman that can only be resolved by abortion. The ruling in this case is dependent on the age of the fetus:

a) If the fetus is in the pre-ensoulment stage, which is 120 days, then abortion is permissible if the life of the mother's life is dependent on this. Some jurists even stipulated that abortion is obligatory in this case.²¹

The evidence for this is as follows:

²⁰ *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1332.

²¹ Fatwā of the Permanent Committee for Scholarly Research and Iftā', the Kingdom of Saudi Arabia, #17576 on 19/1/1416, Fatwā of Al-Azhar Fatwa _Committee, #1084, 1200

- The general maxims of Sharia calling for eliminating harm, such as “A greater harm should be eliminated by a lesser harm,” and therefore safeguarding the life of the mother is more important than protecting an inanimate fetus that has not yet been ensouled.
- The jurists of the Hanafi school of jurisprudence have permitted abortion of the fetus before ensoulment due to a valid excuse such as the lack of a wet nurse. Hence, permitting abortion to save the mother’s life is even more justified.
- The mother has rights and duties, as an autonomous person, and therefore the mother should not be sacrificed to preserve a fetus that is not yet an autonomous person and does not yet have rights.²²

This ruling has 4 stipulations:

- i. There must be a real danger to the mother’s life if the fetus is not aborted.
- ii. The threat to the mother’s life is established by the testimony of two trustworthy specialist doctors.
- iii. The danger to the mother’s life is related to leaving the fetus in her uterus.
- iv. Abortion must be the only possible [reliable] treatment for the mother.

b) If the fetus is in the post ensoulment stage, then there are two opinions among jurists:²³

The first opinion: Abortion is impermissible after the ensoulment even if it leads to the death of the mother.²⁴

²² *Qawā'id al-Aḥkām*, 1:88, Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85ff. *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1334.

²³ *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1334.

²⁴ *Ḥāshiyat Ibn 'Abidīn*, 2:252. *al-Dhakhīra*, 2:470. *Nihāyat al-Muḥtāj*, 8:442. *Furū'*, 2:281.

The second opinion: Abortion is permissible if it is the only way to save the mother's life. This is the more preferable opinion, and the evidence for it is as follows:

- The general maxims of Sharia state that "Severe harm is removed by lesser harm," and "When one of two harms is inevitable, the lesser harm is to be selected." The mother's death is considered a greater harm than the fetus' death, because of the impact on her husband, [any children] and other family members, and hence saving the mother's life takes priority over saving the fetus.

Moreover, "Certainty takes priority over speculation," and hence the certainty of danger to the mother's life must be alleviated, taking priority over the speculative future life of the fetus. In fact, without this intervention to save the mother's life, the lives of both the mother and the fetus would be endangered. Thus, saving one of them takes priority over the death of both.

- Another Sharia maxim states that "Hardship begets ease." For the family, the hardship resulting from the mother's death is greater than the loss of a fetus that may cause the death of both itself and the mother, sooner or later.²⁵ Hence, the hardship which would arise from the mother's death can be eased by abortion in this case.

This ruling is subject to the same 4 stipulations mentioned above.

2. Fear of abnormalities, disease or death for the fetus.

There are three possible cases:

a) Congenital abnormalities in the fetus

If the abnormalities are discovered prior to ensoulment: Abortion is permissible if the abnormalities are confirmed to be severe, because the Sharia maxim states that, "The lesser of the two harms is to be selected." The abortion of the fetus is the lesser harm, because the birth

²⁵ Suyūṭī, *al-Ashbāh wa al-Nazā'ir*, 187, *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 3, 1336, 1337.

of a severely deformed child entails harm to the child, the family and the wider society. Accordingly, the lesser harm (viz. abortion of the fetus) is selected in order to ward off the greater evil (viz. the subsequent harms of the deformed fetus on the family and the society), especially in cases where the deformities of the fetus are unlikely to be cured.

If the abnormalities are discovered after ensoulment: Aborting the fetus is impermissible due to the following evidence:

- General evidence of Sharia that prohibits the killing of a human soul without a legitimate cause.
- The unanimous agreement of the scholars on the prohibition of abortion after ensoulment.²⁶

b) The mother having transmitted a disease to the fetus

Abortion is not permissible if the fetus is already ensouled at the time of the disease. The evidence is as follows:

- Abortion after ensoulment is tantamount to killing a soul without legitimate cause.
- It is difficult to verify that the fetus has been afflicted with the disease. From experience, we find that in many such cases, it later transpired that the fetus was actually not affected.
- No scholar has deemed it permissible to kill the diseased mother due to a terminal illness. Hence, it is even less justified to kill a fetus whose illness has not been proven.

But if this happened before ensoulment, and it is possible to detect the transmission of the disease to the fetus within the first forty days, then abortion becomes permissible, because the organogenesis of the fetus is still incomplete. We also take into consideration the opinion of those jurists who permit abortion at this stage even without a reason, bearing in mind that continuation of the pregnancy may be harmful to the mother.

²⁶ *Mawsū‘at al-Fiqh al-Tibbī*, Topic 3, 1339, 1340.

However, after this stage when the fetus becomes fully formed, its right to live must not be forfeited merely on account of the possibility of disease. Moreover, the likelihood of the fetus catching the disease from its mother (in many cases) is very low, and it can be reduced further by a cesarean delivery, for many of the infections occur when the fetus is delivered vaginally.²⁷

c) Feared or confirmed fetal death.

There are two scenarios here:

i) A pregnant woman dies with a living fetus in her womb.

The preferable opinion is that it is permissible to surgically open the woman's abdomen to rescue her unborn child.²⁸ The evidence is as follows:

- Allah says in the Holy Quran: **“Whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely.”** (Q.5:32)
- To leave the fetus to die after the mother's death, in spite of being able to save him/her is tantamount to killing an innocent soul. Accordingly, making an incision in the mother's abdomen to save the life of her child becomes necessary.²⁹
- A Sharia maxim states that “When there is a trade-off between two evils, the remedy of the greater is sought by doing the lesser evil.” The evil of making an incision in the mother's abdomen is lesser than the evil of the death of her child. This is a matter of preserving a life by damaging part of the dead.³⁰

This permissibility is subject to two stipulations:

- i. It is more likely than not that the fetus will live after the mother's death.

²⁷ *Ibid.*, Topic 3, 1342.

²⁸ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 88, al-Mawārdī, *al-Hāwī*, 3:231, *al-Dhakhīra*, 2:479, *al-Muḥalla*, 5:166.

²⁹ *Al-Muḥalla*, 5:166, al-Shanqīṭī, *al-Jirāḥa al-Ṭibbiyya*, 301.

³⁰ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 88.

- ii. The age of the fetus is declared, by trustworthy doctors, to be such that it is expected to survive if it is taken out of its mother's abdomen.

ii) A fetus dies in the womb of its mother, as a result of a disease or assault.

It is permissible to abort the fetus in this case. However, the preference is to carry out the abortion without surgery and without cutting up the fetus inside the uterus, based on the following reasoning:

- Leaving the fetus inside the uterus is harmful to the mother and "Harm must be eliminated," according to the Sharia maxim. Moreover, leaving the dead fetus in the womb might prevent her from becoming pregnant again, and if she had been divorced then her waiting period would be unnecessarily prolonged.
- Taking the dead fetus out is an aspect of medical treatment, which has been ordained and encouraged by the Prophet who said: "O worshippers of Allah! Use medical remedies, for indeed Allah has not made a disease without making a cure for it, with the exception of old age."³¹

10.5 Sex Selection

Sex selection refers to actions and procedures that are undertaken with the goal of choosing the sex of the fetus as male or female. The methods used for this can be classified into natural (non-medical) and medical.

10.5.1 Natural Methods

Such methods include following a certain dietary regimen and chemical douche. The chemical douche method is based on the knowledge [based on empirical studies] that an acidic vaginal environment is more conducive to X-bearing (female-producing) sperm, whereas an alkaline

³¹ See earlier footnote.

pH is more favorable to Y-bearing (male-producing) sperm. Therefore, some women use an acidic or alkaline vaginal douche [in an attempt] to prepare the uterus with the pH appropriate to the desired gender, in addition to timing the intercourse with respect to ovulation. Such methods are permissible, and unobjectionable, because they are a means by which to attain an objective that is essentially permissible.

10.5.2 Medical Methods

The common denominator among [most] medical methods of sex selection is that they seek to fertilize the ovum with sperm carrying the [chromosomes for the] desired gender. There are various techniques for such sperm sorting, including density gradient centrifugation, and electrostatic sorting. Contemporary Islamic jurists disagree regarding the permissibility of such methods. Some jurists permitted these methods, provided that measures are taken to avoid mixing of lineages, and that their use does not become widespread but is strictly limited to cases of [dire] need, so as not to upset the natural balance of the male-female ratio in the population. Other jurists prohibited these methods except for medical necessity, such as in the case of genetic diseases (for which they specified a number of stipulations). This [latter] opinion is most prudent.

In its Nineteenth Session, the International Islamic Fiqh Council of the Muslim World League resolved the following:

“The International Islamic Fiqh Council reiterates the principle that the Muslim should submit to whatever Allah has decreed, and to be content with whatever He grants us, [be it] a male or female, and to praise Allah for that, because there is blessing in what the Creator chooses. The Qur’ān has criticized the people of Jāhiliyya³² for not submitting and not being content with a female child. **“And when one of them is informed of [the birth of] a female, his face becomes dark, and he suppresses grief. He hides himself from the people because of**

³² The pre-Islamic era.

the ill of which he has been informed. Should he keep it in humiliation or bury it in the ground? Unquestionably, evil is what they decide.” (Q.16:58-59) [Nevertheless,] there is no objection to one desiring a male or a female child, based on [the fact] that the Qur’ān has indicated that some of the prophets supplicated [to Allah] to grant them a male child.

On that basis, the International Islamic Fiqh Academy resolves the following:

1. It is permissible to choose the gender of the fetus by natural methods, such as following a certain diet, chemical douches, and timing intercourse with respect to the time of ovulation, because these are permissible means that do not involve any dangerous / troubling element.
2. No medical intervention to choose the gender of the fetus is permissible, except in cases of medical necessity for genetic diseases which affect males but not females or vice-versa. In that case, intervention is permissible, within established Sharia parameters, if that is [based] on the decision of a special committee of specialists comprising no fewer than three trustworthy physicians, who unanimously affirm that the case calls for a medical intervention in order to protect the fetus against a hereditary disease. [Furthermore,] the medical report should be presented to the proper *iftā’* council in order issue the appropriate verdict for [the particular case].
3. [There is a] need to establish bodies that directly and precisely supervise hospitals and medical centers that carry out such operations in Islamic countries, in order to prevent any violation of the content of this resolution. The relevant

authorities in Islamic countries should issue policies and directives to this end.³³

10.6 Birth Control and Family Planning

Discussion of contraceptive methods is important Islamically because this is related to preservation of lineage / progeny which is one of the higher objectives of the Sharia. The [entire] Muslim community has agreed that Sharia was established to preserve the five necessities: religion, life, intellect, lineage / progeny, and property. Evidence that confirms that importance of progeny / lineage includes the following:

- Allah says, **“So now, have relations with them and seek that which Allah has decreed for you.”** (Q.2:187) Exegetes have explained “that which Allah has decreed for you,” as “children.”³⁴
- Abundance of children is a means of victory and dignity for the [Muslim] community. Allah the Exalted, mentioned multitudinousness as a sign of favor upon the Children of Israel: **“... and We reinforced you with wealth and sons and made you more numerous in manpower.”** (Q17:6) Also, the Prophet Shu‘ayb said to his people: **“And remember when you were few and He increased you.”** (Q.7:86)
- The sacred texts that encourage marriage also indicate the importance of progeny, since having offspring is one of the greatest objectives of marriage.³⁵

10.6.1 Birth Control

Scholars have agreed on the impermissibility of permanent contraception whereby reproductive capability is extirpated, whether it

³³ Islamic Fiqh Council of the Muslim World League in its 19th session, held in Makkah, 22 - 27 Shawwāl 1428 AH / 3 - 8 November 2007 CE,

³⁴ Rāzī, *al-Tafsīr al-Kabīr*, 5:92.

³⁵ *Mawsū‘at al-Fiqh al-Tibbī*, Topic 3, 1252.

be by issuing a universal law [mandating such sterilization], or by establishing a system that imposes birth control on couples. Also, [individuals and] spouses are not permitted [even voluntarily] to undergo permanent sterilization, except in cases of necessity, such as if a [trustworthy] physician advises this in order to protect the woman's life.

A resolution of the International Islamic Fiqh Council states: "[Permanent] birth control is not permissible at all. Preventing pregnancy out of fear of poverty is not permissible because Allah is the continual Provider, the Possessor of power, the Strong. Allah says, **"And there is no creature on earth but that upon Allah is its provision."** (Q.11:6) [It is also prohibited] for any other reason that is not given consideration by the Sharia. As for taking measures for preventing or delaying pregnancy in individual cases in order to avoid confirmed harm [that would otherwise result], such as if the mother is unable to give birth naturally and would need a Cesarean section, then in such cases there is no Islamic prohibition. Similarly, if delaying pregnancy is for other Islamic or health reasons, which a trustworthy Muslim doctor affirms, [then this too is permissible]. In fact, it might become obligatory to prevent pregnancy in the case of confirmed harm to the mother where her life is in danger, provided this is confirmed by a trustworthy Muslim doctor.

As for a general call for [permanent] birth control, this is not permissible for the aforementioned reasons. Even more sinful is to impose [birth control] on populations, especially at a time when huge amounts of money are being spent on the global arms race for the sake of domination and destruction instead of spending it on economic development, construction and [other] needs of nations."³⁶

³⁶ *Ibid.*, Topic 3, 1256. Resolution of the Islamic Fiqh Council of the Muslim World League in its third session, 1400 AH. Resolution of the Council of Senior Scholars, Saudi Arabia, #42, 13 Rabī' II, 1396 AH.

10.6.2 Family Planning

Since procreation and preservation of the human race are among the aims of marriage in Islam, it is not allowed to abandon this aim, for that would conflict with the [relevant] sacred texts. These texts indicate the importance of protecting progeny that it should be protected, and that having many children is recommended. [Indeed, as we have mentioned earlier,] preservation of progeny is one of the five higher objectives of the Sharia. However, it is permissible to practice temporary birth control, with the intention of spacing out pregnancies, or postponing pregnancy for a certain period of time if there is an Islamically legitimate necessity. This should be based on appraisal of the situation by the spouses, with mutual consultation and consent. This permissibility is also subject to certain conditions:

- that it does not result in harm, and
- that it is done by an Islamically legitimate method, and
- that it does not involve violence to an already-existing pregnancy.³⁷

10.7 Gender Reassignment Surgery

Sexual dimorphism among humans has a role in the preservation of humans, and the species continues to survive as a result of the usual well-known procedure of sexual intercourse between the two genders. Males and females each have their own specific characteristics and distinguishing qualities that were conferred on them by Allah. Any intervention to change these characteristics or to disrupt their functions is not appropriate. However, intersex individuals may have both male and female organs [or otherwise ambiguous genitalia], and we will address details related to such individuals within what follows. People

³⁷ Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation in its fifth session, held in Kuwait, 1 - 6 Jumādā II, 1409 AH / 10 -15 December 1988 CE.

undergo gender reassignment surgery for several reasons, and we now will discuss each of these separately.

10.7.1 For Personal Desire

This is the case where surgery and/or other treatment is used to transform a person from fully [biologically] male to female, or vice-versa, by the removal of, addition to, or changing the structure of certain organs. This type of procedure is prohibited, because it contradicts the higher objectives of Sharia and the general principles of Islamic jurisprudence. The prohibition is based in the Qur'ān, the Sunnah, *Qiyās* (analogical reasoning), and reason.

Evidence from the Qur'ān

Allah says, “[Satan said,] ‘And I will mislead them, and I will arouse in them [sinful] desires, and I will command them so they will slit the ears of cattle, and I will command them so they will change the creation of Allah. And whoever takes Satan as an ally instead of Allah has certainly sustained a clear loss.’” (Q4.119)

This verse indicates the prohibition of changing the creation of Allah unnecessarily, and this is the case in this type of gender reassignment surgery, since the surgeon excises the penis and testicles (in the case of male-to-female transformation), or removes the breasts and eliminates the vaginal canal (in the case of female-to-male).

Evidence from the Sunna

Ibn ‘Abbās said, “The Messenger of Allah cursed those men who [deliberately] seek to resemble women and those women who [deliberately] seek to resemble men”³⁸ This ḥadīth confirms the prohibition of men seeking to resemble women and vice-versa, and that this is an accursed act. The type of surgery under discussion is a means for a person to achieve this forbidden act, and therefore is prohibited.

³⁸ Bukhārī.

Evidence from *Qiyās*

By analogy, the prohibition of gender reassignment surgery takes the same ruling of the prohibition of men assuming the manners of women and vice versa as the two cases share a deliberate change of the creation of Allah. Other similar conclusions can be achieved by drawing an analogy between this act and the prohibition of using hair extensions and the prohibition of tattooing, since they all involve changing the creation of Allah.

Rational Evidence

1. Such surgery lacks medical and Islamic justification, for such situations do not constitute necessity under the rules of Sharia, nor does it achieve an Islamic or medical benefit for the patient, not to mention the potential harm and damage that results.
2. It involves exposing the *‘awra* without any Islamic necessity.
3. It involves trickery and deception. The prohibition of deception is established in the Sunna, for the Messenger of Allah said: “Whoever deceives us, he is not of us.”³⁹
4. Such surgery results in physical, psychological and social harms, besides the risks from anesthesia, and surgery (which are both permissible only in cases of necessity).⁴⁰

A resolution from the Islamic Fiqh Council of the Muslim World League states the following:⁴¹

For the male whose male organs are perfectly developed, and [similarly] the female whose female organs are perfectly developed, are not allowed to [undergo surgery to] convert their gender to the other. Attempting to do so is a [religious] crime that entails a penalty, because this is changing the creation of Allah, and Allah has forbidden such change by

³⁹ Muslim.

⁴⁰ *Maṣū‘at al-Fiqh al-Ṭibbī*, Topic 6, 987, *Aḥkām al-Jirāḥa Al-Ṭibbiyya*, 201.

⁴¹ The 11th session, held in Makkah, 13 Rajab 1409 AH / 19 February 1989 CE.

informing [us] of what Satan said, “...and I will command them so they will change the creation of Allah.” (Q.4:119) And it has been reported in the ḥadīth from Ibn Mas‘ud that the Prophet said, “Allah has cursed women who tattoo [others] and those who have themselves tattooed, women who pluck hair from their eyebrows, and women who make spaces between their teeth for beauty, the changers of Allah’s creation.”⁴²

10.7.2 Pseudohermaphroditism

[Pseudohermaphroditism, “is a condition in which the individual has a single chromosomal and gonadal sex but combines features of both sexes in the external genitalia, causing doubt as to the true sex.”⁴³] Thus, a person may actually be a female [chromosomally] but a male in appearance, or vice-versa. Medical intervention to correct or stabilize sex in such cases is permissible based on the following evidence.

- The permissibility of seeking treatment. [Various] sacred texts encourage the seeking of treatment for diseases in general, and pseudohermaphroditism is a congenital physiological anomaly [and it is allowed to treat it]. [We have already mentioned the ḥadīth in which the Prophet said, “Allah has sent down [both] the disease and the cure, and He has appointed a cure for every disease, so treat yourselves, but do not use forbidden substances for treatment.”⁴⁴
- Harm should be removed [according to the fiqh maxim], and Pseudohermaphroditism results in physical, psychological, and social harms. Therefore, it is permissible for a Muslim to eliminate this harm, as the Prophet said, “There is to be no harm, nor reciprocating harm.”⁴⁵

⁴² Muslim.

⁴³ Britannica.com

⁴⁴ See earlier footnote.

⁴⁵ See earlier footnote.

- This surgery aims to restore the abnormal situation to normalcy. This goal is permissible, and is not considered changing of Allah's creation.⁴⁶

10.7.3 True Hermaphroditism (Amphigonadism)

This refers to individuals whose sex cannot be determined because they have the [physical] signs of both male and female [e.g. both testicular and ovarian/vaginal tissue]. For such cases, gender is determined on the basis of various criteria that include:

- Chromosomes
- Internal sexual organs, such as the ovaries and the uterus in females, and the prostate and vas deferens in the males.
- Psychological tendencies

A resolution of the International Islamic Fiqh Council of the Muslim World League stated the following:⁴⁷

“[Regarding] the individuals who have indicators of both male and female, one should consider what is preponderant: if masculinity is dominant, it is permissible to treat them medically in order to remove the ambiguity of femininity. An individual whose femininity is dominant may be treated medically in order to remove the ambiguity of their masculinity. [This is] regardless of whether the treatment is by surgery or hormone therapy, because this is an ailment from which cure is sought through treatment. It is not [considered] changing Allah's creation.

10.8 Hymenorrhaphy

Virginity has great importance in Muslim societies because its presence indicates a woman's chastity, and its absence arouses suspicion, and may lead to a negative reaction from her husband and family that result

⁴⁶ *Maṭṭū'at al-Fiqh al-Ṭibbī*, Topic 6. 982.

⁴⁷ The 11th session, held in Makkah, 13 Rajab 1409 AH / 19 February 1989 CE.

in her being [physically] harmed and/or divorce. [Hymenorrhaphy (also called hymenoplasty is a surgical procedure to reconstruct the hymen of a woman,) and people have various reasons for wanting to do so:

1. Reconstructing the hymen of woman whose promiscuity is well-known, for the sake of concealing her sin
2. Reconstructing the hymen of a married woman for enjoyment during sexual intercourse with her husband
3. Repairing a congenital defect in the hymen
4. Reconstructing the hymen of a girl who has lost her virginity due to a factor beyond her control, such as an accident or rape, in order to conceal [the loss of the hymen, for the sake of warding off suspicion from her and preventing any resulting injustice towards her.]
5. Reconstructing the hymen of a woman who committed *zinā* only once, without this being publicly known, for the sake of encouraging her to repent.

We will now discuss the ruling for each of these cases.

10.8.1 Concealing Well-known Promiscuity

Scholars have agreed on the prohibition of hymenorrhaphy for a woman who has lost her virginity through *zinā* if this is widely-known among the public. The evidence for this is as follows:

1. The procedure [in this case] is devoid of benefit, and [moreover] requires her to expose her *'awra* without Islamic justification.
2. Such surgeries lead to several evils, including:
 - Opening the door to promiscuity,
 - The surgeon effectively assisting in promiscuity
 - Deception, because it gives the illusion of chastity.

The relevant Sharia regulations are attested to by explicit sacred texts.

10.8.2 For Enjoyment

It is not permissible to perform hymenorrhaphy for a woman who lost her virginity as a result of a legitimate marriage, regardless of whether she is still married, divorced or widowed. The evidence for this is as follows:

1. The results of this surgery are not guaranteed. It might lead to harm to the wife [such as] her private parts suffering infection. This is forbidden, because the Prophet said: “There is to be no harm, nor reciprocating harm.”⁴⁸
2. This surgery does not achieve any benefit. To the contrary, it involves several contraventions, including exposing her *‘awra* without Islamic necessity.
3. It entails squandering money in an inappropriate wrong way, which is an act of extravagance that is rejected by Sharia. Allah says, “.... **and do not spend wastefully.**” (Q.17:26).

10.8.3 Repairing a Congenital Defect

According to the preferred view [of the two views among] scholars, it is not permissible to reconstruct a defective hymen (for instance, if a girl was born without a hymen, or her hymen is not conspicuous). The evidence for this is as follows:

1. There is no Islamic basis for this operation, because it is a clear case of deception, which is forbidden by Sharia. The Prophet said, “Whoever deceives us, he is not of us.”⁴⁹
2. It conflicts with the ḥadīth of the Prophet in which he said, “None of you [truly] believes until he loves for his brother that which he loves for himself.”⁵⁰ Thus, every believer is ordered to love for his brother that which he loves for himself, and to hate for his brother that which he hates for himself. So, would the

⁴⁸ See earlier footnote.

⁴⁹ Muslim.

⁵⁰ Bukhārī, Muslim.

surgeon, in this case, be happy marrying this girl whose hymen he has reconstructed?!

10.8.4 Involuntary Loss of Virginity

It is permissible to perform hymenorrhaphy on a girl who has lost her virginity due to a non-shameful factor beyond her control, such as

- A jumping incident
- Beating [or other trauma]
- Hemorrhage
- Rape

[The purpose of this is] in order to conceal [the loss of the hymen, for the sake of warding off suspicion from her and preventing any resulting injustice towards her.] The evidence for permissibility is as follows:

1. A minor girl, who is not fit physically for sexual intercourse, and who lost her hymen due to an accident [for example], would not be suspected of fornication.
2. Hymenorrhaphy in such a case assists the girl in maintaining her chastity and purity, and in dispelling her psychological burden. It also protects her from suspicion in the present and in the future. Thus, this is an act that involves relieving Muslims from distress, [something which is encouraged in the famous ḥadīth].

This permissibility is subject to observation of the following:

1. In the case of hymenorrhaphy after rape, it should first be verifying that the victim is not pregnant. If she is pregnant, then it is prohibited to abort [after 120 days], and hymenorrhaphy is [also] prohibited as it does not achieve any benefit for the girl in this case.
2. The crime of rape must be proven by evidence meeting the standards of the Sharia.
3. A medical examination of the victim must be performed immediately after the rape or other incident, in order to verify the reason for damage to the hymen and to determine the medical

procedures which will need to be taken. Details [of this examination] should be documented in an [official] medical report.

4. Surgery should be carried out by the medical team who initially deals with the case. Furthermore, the surgery should be performed by a female surgeon unless dictated by necessity, or it should be performed in a public hospital.

10.8.5 Concealing a non-Habitual Indiscretion

It is prohibited to perform hymenorrhaphy for a woman who committed *zinā* only once, without this being publicly known, [even] for the sake of encouraging her to repent. This case is treated similarly to the case of the habitually promiscuous woman, and the same reasoning applies.⁵¹

The resolution of the International Islamic Fiqh Academy, in its eighteenth session, stated:

“It is permissible to reconstruct the hymen that has been lacerated due to an accident, rape, or coercion. It is not permissible to reconstruct the hymen when it was the result of an act of immorality [i.e., *zinā*], in order [thereby] to block the ways to immorality and deceit. [In cases where the surgery is permissible,] it is most appropriate that it be carried out by female physicians.”

⁵¹ *Mawsū‘at al-Fiqh al-Tibbī*, Topic 3, 1040 ff.

Chapter 11: Death and Dying

11.1 Religious Protocol for Death

There are religious protocols for the time of imminent death, which can be recognized by various signs. The desirable etiquettes associated with this time include the following:

1. [Reciting words of] remembrance of Allah and supplicating to Allah, [especially] for mercy and forgiveness for the dying person. Umm Salama reported that the Messenger of Allah said, "When you visit a sick or dying person, you should utter good words because the angels say *Amen* to what you say."¹
2. One should remind the dying person to be optimistic in his expectation of Allah, and not to despair of the mercy of Allah, for the Prophet has said, "Let none of you die without having good expectations from Allah."²
3. The dying person should be positioned to face the *qibla*. He should be turned on his right side with his face towards the *qibla*. If that is not possible, he is to be positioned on his back with his feet towards the *qibla*. However, if moving him will cause him suffering, or if he is in a hospital bed connected to medical equipment [that cannot be easily moved], he should be left as he is.
4. [It is recommended] to instruct the dying person to say the testimony of faith,³ [not by directly asking him but rather] by repeating this in his presence so that he will [take the hint] and say it [himself]. The Messenger of Allah has said: "Prompt your dying ones to say *Lā ilāha illa Allāh*."⁴ The one who is doing the

¹ Muslim.

² Muslim.

³ i.e. "There is none worthy of worship but Allah," *Lā ilāha illa Allāh*.

⁴ Muslim.

prompting should endeavor to ensure that the testimony be the last words uttered by the dying person.

5. The eyes of the deceased should be closed because the Prophet closed the eyes of Abū Salama when he died, saying, “When the soul is taken, the sight follows it.” Some members of his family began to weep loudly. He then said: “Do not supplicate for yourselves anything but good, for the angels say *Amen* to what you say.”⁵

11.2 Brain Death

11.2.1 Is brain death regarded as actual death?

If beating of the heart and respiration stop, and this is followed by cessation of brain-stem [activity], then this is recognized as death by both physicians and Islamic jurists. If some parts of the brain die, or if a person goes into a coma as a result of a concussion or because of toxic medicines and drugs without death of the brainstem, then this is not considered to be [death, nor] brain death. However, if brain death is medically diagnosed according to the [various] criteria, and specialists judge that brain [activity has permanently and irreversibly ceased], even if the heart and respiration continue, then physicians regard this as a state of death equivalent to that in which the heart and breathing have [also] stopped. Contemporary [Muslim] jurists, [however] are divided on the issue of whether brain death brings into play all the regulations of [normal] death, or if that is not the case until the heart and respiration stop.

The first opinion is that brain death is not considered death, for the purposes of Sharia, until there is cessation of the cardiac, respiratory, and circulatory systems. [According to this view,] brain death is merely a precursor of [actual] death. This view was adopted by the Council

⁵ Muslim.

of Senior Scholars in the Kingdom of Saudi Arabia, as well as the Islamic Fiqh Council of the Muslim World League, and the text of their resolution is as follows:⁶

“If a sick person has resuscitation equipment attached to him, it is permissible to disconnect [the life support] if all the functions of the brain have permanently ceased, and a committee of three specialist physicians declare that this cessation is irreversible, even if the heart and respiration continue to be artificially maintained. However, the person is not considered dead, for the purposes of Sharia, until the heart and respiration completely stop after the disconnection of the life support.”⁷

This opinion was [also] adopted by many contemporary researchers.

The second opinion is that if the specialist doctors declare, in accordance with the [established] criteria and stipulation, that the brain functions have permanently and irreversibly ceased, and the brain has started to decompose, then the person is pronounced as dead for the purposes of Sharia, even if the heart continues to beat and ventilation/respiration is ongoing under the effect of the life support. This opinion was adopted by the International Islamic Fiqh Academy of the Organization of the Islamic Cooperation, and the text of their resolution is as follows:

“A person is regarded as dead, for the purposes of Sharia, with the result that all of the regulations of death come into play, when either of the following two indicators is present:

- (1) If his heart and respiration have totally ceased, and physicians have ruled that such cessation is irreversible

⁶ Resolution of the Council of Senior Scholars in the Saudi Arabia #181, dated 12 Rabi' II 1417 AH, *Ma'wṣū'at al-Fiqh al-Ṭibbī*, 4:1651.

⁷ Resolution of the Islamic Fiqh Council in its 10th session in Makkah, 24-28 Safar, 1408AH, corresponding to October, 17th, 1987 CE.

- (2) If all of his brain functions have permanently ceased, and specialized, experienced physicians have ruled that such cessation is irreversible, and the brain has started to decompose.”⁸

This opinion was [likewise] adopted by many [other] researchers.

Evidence in support of brain death not being true death

1. The fiqh maxim, “Certainty is not displaced by doubt.”⁹
The person was known with certainty to have been alive prior to this, and there is doubt as to whether he has actually died, by virtue of his heart and breathing still continuing [even though that is by means of] life supporting devices. Hence, we rule in accordance with the certainty of his being alive until [such time as] the doubt is displaced (i.e. when heart and breathing both stop).

2. The fiqh maxim, “The default is that that which was originally [the case] remains as it was.”
The original fact here is that the patient was alive, so we adhere to this until we are certain that it is no longer the case.

3. Preservation of life is one of the higher objectives of the Sharia, and ruling that the patient is alive in this case is consistent with this tremendous objective [by erring on the side of caution].

Evidence in support of brain death being true death

1. Regarding brain death as a true death is the view of people of expertise and experience (i.e. physicians). These people are reliable in this domain, and therefore it is obligatory to defer to them. This is in consideration of their pronouncement there is no known case in which brain death was pronounced in which the patient returned to [normal] life, and all known cases in which the patient

⁸ The decision of the International Islamic Fiqh Academy in its 3rd session in Amman, 8 - 13 Safar 1407 AH / 11 - 16 1986 CE.

⁹ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 56.

returned to [normal] life were cases where the conditions for brain death were not satisfied.

2. According to the Maliki school of jurisprudence,¹⁰ a newborn is not considered alive if he does not cry, even though he may urinate, breathe or move. [In other words,] if the newborn's action is not voluntary, such as crying or suckling, then the baby is not considered to be alive. The same is true for the person in the state of brain death, as his movement is artificial and not voluntary.
3. Life ends when the body becomes unable to serve the soul or responds to its dictates, and this is an indication that the soul has left the body.¹¹ The same is the case with brain death, for the organs of the body become irresponsive to the doings of the soul, and the movement that exists in some cases is involuntary and resembles that of a slaughtered animal.

Issues affected by this disagreement

The disagreement over the status of brain death is reflected in several issues that include the following.

i) Organ Transplantation

According to the first opinion, which regards brain death as not being true death, it is prohibited to transplant from the brain-dead person [to another person] any organs that his life depends on (e.g. the heart) [while cardiac and respiratory function is being maintained on life support]. This is because the organs are effectively being removed from a living person, and no jurist has permitted this. To the contrary, [taking a vital organ (i.e. necessary for life) from a live person] is unanimously prohibited, because it entails the killing of a living person. According to the second opinion, which regards brain death as true death, it is permissible to transplant all of the organs [of the brain-dead person], whether essential for life or not, because the organs are

¹⁰ *Sharḥ al-Zarqānī 'alā Mukhtaṣar Khalīl*, 2/122.

¹¹ Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, 4:494. Zarkashī, *al-Manthūr fī al-Qawā'id*.

[effectively] being removed from a dead person; and this is permissible according to the majority of scholars.¹²

ii) Death Certificate

According to the first opinion, a death certificate is not issued until the heart and breathing have stopped, regardless of how long that takes. But according to the second opinion, a death certificate is issued as soon as the brain death is confirmed.¹³

11.2.2 Disconnection of Life Support

According to the preferred opinion from [among the two views held by] jurists, it is permissible to remove life support from a brain-dead person whose breathing has become artificial, [fully maintained by a ventilator] device. This is the view of the majority of contemporary jurists,¹⁴ and the resolution of the Islamic Fiqh Academy of the Organization of the Islamic Conference was issued in accordance with this, as previously mentioned. They cited the following evidence in favor of this opinion:

- i. These [life-support] devices serve no purpose for such a patient, for it is the devices [and not the soul] that are causing the functioning of the systems of the body.
- ii. These devices prolong the suffering of the death throes for the patient, which is a form of torture.
- iii. These devices increase the distress of the patient's family and relatives, for they lament his condition and are grieved at the situation in which he is.

11.3 Incurable Illnesses

The faith of Muslims entails that they believe that illness and recovery are controlled by Allah that seeking treatment and taking medicine are

¹² *Mawsūʿat al-Fiqh al-Ṭibbī*, 4:1665.

¹³ *Mawsūʿat al-Fiqh al-Ṭibbī*, 4:1665.

¹⁴ *Mawsūʿat al-Fiqh al-Ṭibbī*, 4:1714.

acts of adopting the means that Allah has laid down in the universe. It is [also] forbidden to despair of the relief or mercy of Allah, the Exalted. Rather, it is appropriate to retain hope that healing will occur by the permission of Allah. It is the duty of physicians and relatives to boost the patient's morale, and to pay close attention to taking care of him, [including] relieving his physical and psychological pains, regardless of whether healing is expected or not.

Seeking Treatment

[Notwithstanding the above, from the limited human perspective, some] illnesses may be deemed incurable by physicians based on medical capabilities available in each time and place, and the circumstances of the patient. The default ruling is that it is permissible to seek treatment, based on relevant verses of the Qur'an, and on the verbal and applied Sunna of the Prophet, in addition to the fact that preserving life is one of the higher objectives of the Sharia. It should be known that losing hope in healing is tantamount to a despairing of Allah's relief and mercy, whereas Allah says, "**Who despairs of the mercy of his Lord except for those astray?**" (Q.15:56) And also, "**Indeed, no one despairs of relief from Allah except the disbelieving people.**" (Q.12:78)

It could be that [an illness] before which the physician is helpless will be cured by Allah without any [apparent] cause, or by means of a medication that the patient or the treating physician does not know [about]. The Prophet said: "There is no disease except that it has a cure, and when the medicine is applied to the disease it is healed with the permission of Allah."¹⁵

11.4 Euthanasia

Euthanasia (also known as mercy killing) is a practice whereby assistance is given to a person to die painlessly by his own hand, or at

¹⁵ Muslim.

the hand of someone else, in order to relieve him of [further] acute pain associated with an incurable disease. This is accomplished either by administering to him a lethal drug or withdrawing from him life-support equipment without which he cannot stay alive, such as ventilators and resuscitators, or withholding treatment that he cannot live without. Some physicians believe that there is a humane motive for such euthanasia, since it is intended to end the patient's torment and suffering, and perhaps the suffering of his family and relatives as well.

11.4.1. Non-Consensual Euthanasia

It is prohibited for a physician or any other person to end the life of a terminally ill patient, whether by injecting him with a lethal drug, or suffocating him, or by any other means, [even if the motive is] compassion and mercy. Such an act is prohibited, and its perpetrator is liable for worldly legal punishment. He is also under the threat of divine punishment in the Hereafter for the intentional killing of a human being without a just cause, because the pretext of mercy has no grounds in the Sharia.

The evidence for the prohibition of such an act is as follows:

1. From the Qur'ān

- i. Allah says, **“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law].”** (Q.17:32). This verse implies the prohibition of every soul that Allah has forbidden to kill.
- ii. Also, Allah says, **“And never is it for a believer to kill a believer except by mistake But whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.”** (Q.4:92-93) The phrase, “Never is it for a

believer,” indicates prohibition, and implies that it is not ever correct, under any circumstances, to kill a believer except by mistake, and that if he intentionally does so, then he falls under the severe threat mentioned.¹⁶

2. From the Sunna

Many ḥadīths of the Prophet indicate that it is forbidden to kill a person whom Allah has declared inviolable without a just cause.

e.g.

- i. Abū Hurayra reported that the Prophet said, “Avoid the seven ruinous [sins].” It was asked, “What are they, O Messenger of Allah?” He replied, “Associating [anyone or anything] with Allah [in worship]; [practicing] sorcery, killing of one whom Allah has declared inviolable without a just cause, consuming the property of an orphan, consuming *ribā*, fleeing from the battlefield, and falsely accusing chaste, unaware, believing women [of *zinā*].”¹⁷
- ii. ‘Abdullāh ibn ‘Umar reported that the Messenger of Allah said, “A Muslim remains in latitude concerning his religion as long as he does not take a life unjustly.”¹⁸

3. From *Ijmā’*

Ibn Qudāma said, “Muslims are unanimous in prohibiting the killing of a person without a just cause, based on the Qur’an, Sunna and *Ijmā’*.¹⁹ al-Qarāfī [even] reported *ijmā’* [specifically] on the prohibition of killing a sick person in acute pain [even if the objective is] to relieve him of the pain of the illness.²⁰

4. From the higher objectives of the Sharia

¹⁶ *Al-Jāmi’ li-Aḥkām Qur’ān*, 5:201, *Tafsīr Ibn Kathīr* 1:569.

¹⁷ Bukhārī, Muslim.

¹⁸ Bukhārī.

¹⁹ *Al-Dhakhīra*, 12:271, *Mughnī* 11:443.

²⁰ *Sharḥ Tanqīḥ al-Fuṣūl*, 2:210.

²⁰ *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:1695 ff.

Among the higher objectives of the Sharia is the preservation of life, and blocking any means leading to its loss. The pretext of intending mercy is not taken into consideration in Islamic law. Were it to be acceptable as something justifying killing or as a mitigating factor, then [this would be a slippery slope] that could make it very difficult to prosecute murderers. Contemporary scholars and jurists, under the auspices of Fiqh Councils and fatwā bodies in various Islamic countries, have declared the prohibition and criminality of such mercy-killings.²¹

11.4.2 Consensual Euthanasia

It is prohibited for anyone, whether sick or not, to consent to or approve of someone else ending his life. Such permission does not confer any right to kill the person, and if the killing occurs, all the parties are sinful. [This is] because the soul is sacred and becomes violable only by legal and just causes prescribed by Sharia, and permission is not one of these causes. Hence, such an act is classified as killing without a just cause [i.e., murder] which is unanimously prohibited, as the afore-mentioned evidence of Qur'ān and Sunna establishes. Similarly, the patient does not have the right to authorize anyone to undertake any Islamically prohibited act, because the human body belongs to Allah as He says: **“To Allah belongs the dominion of the heavens and the earth and whatever is within them.”** (Q.5:120) No one has the right to use anything in a way prohibited by the owner. Muslim [scholars] are in consensus that it is prohibited for any person to kill himself or someone else without a just cause, and similarly it is prohibited for anyone to cut off any organ or limb of his body [without a legitimate reason]. Ibn al-Qayyim says, “It is not permissible to have the audacity to sever a limb/organ that Allah and His Messenger did not order or obligate to be severed. For example, if a person giving the permission for someone else to cut off his ear or finger, this is

²¹ *Mawsū'at al-Fiqh al-Tibbī* 4:1695 ff.

impermissible, and the consent given does not exempt the person [who does so] from the sin.”²²

11.5 Autopsies and Dissections

The basic principle is that the human being possesses sanctity while alive, and after death, and so it is not permissible to interfere with him or his corpse in any way that causes harm. Physicians sometimes perform dissections of the human body after death for different reasons. The Islamic ruling on this depends on the motive of this procedure as follows.

1. If the purpose is to discover the cause of death (i.e. an **autopsy**), such as if [for example] it is feared that he died from a contagious disease for which precautions would need to be taken to protect [others], or if it is done [pursuant to a court order] when a crime is suspected, then this is permissible, for it achieves many interests in the domains of safety, justice, and protecting the community against infectious diseases. The evil of violating the sanctity of the corpse is outweighed by the resultant public welfare, regardless of whether the corpse belongs to a person who is inviolable (i.e. not subject to capital punishment) or not.
2. If the purpose of is to train physicians to become intimately familiar [with human anatomy] for the purposes of surgery (i.e. **dissection**), then according to the preferred view [from among the two views] of jurists, this is permissible with the corpses of violable persons [only], except in cases of Sharia-sanctioned necessity. The fatwā of permissibility was issued by numerous juristic bodies, including the following:

The Resolution of the Council of Senior Scholars in the Kingdom of Saudi Arabia

“In view of the fact that:

²² *Tuḥfat al-Mawdūd bi Aḥkām al-Mawlūd*, p.136.

- the Sharia aims to realize and maximize benefits, and to dispel and minimize evils,
- and permits the lesser of two evils in order to avert the greater,
- and that when there is a conflict between two benefits the greater benefit is chosen,
- and that dissecting animals does not dispense with the need to dissect human beings,
- and that are many benefits [that arise from] [human] dissection including scientific advancement, in various medical fields:

The Council deems it generally permissible to dissect a human corpse. Nevertheless, in view of:

- [the fact that] the Sharia’s concern for the dignity of a Muslim while dead is the same as while he was alive, based on the ḥadīth related by Aḥmad, Abū Dāwūd and Ibn Mājah on the authority of ‘Ā’isha ﷺ that the Prophet said: “Breaking a deceased person's bone is akin to breaking it while he was alive.”²³
- [the fact that] dissection involves demeaning of the dignity of the dead
- and since there does not exist necessity for [abasing the corpse of an inviolable human being] due to the availability of corpses of violable persons,

the Council holds that [physicians] should suffice with dissection of such corpses, and not interfere with the corpses of inviolable people, given that the circumstances are such as we have mentioned.”²⁴

Evidence for this Permissibility

1. *Qiyās*

Analogy is applicable here in a couple of ways:

²³ Abu Dāwūd, Ibn Mājah.

²⁴ Resolution of the Council of Senior Scholars in Saudi Arabia in its 9th session, decision #47, 20 Sha‘bān 1396 AH.

1. Dissection is permissible, by analogy to the permissibility of making an incision in the abdomen of a deceased pregnant woman to deliver a fetus that is likely to survive.
2. Dissection is permissible, by analogy to the permissibility of cutting open the belly of a deceased person to retrieve stolen property that he has swallowed, to fulfill the needs of the living [person who was robbed] by returning his property to him. A similar interest is present in the case of dissection for teaching purposes, because the objective is either saving the life of a [future] patient (which is ranked as something essential), or relieving the [future] patient of the pain associated with a disease (which is ranked as a legitimate need). Similar is the case in the case of autopsy in criminal cases, or in cases where infectious diseases are involved, and in fact such cases are more worthy [of permissibility than dissection for instructional purposes].

2. General Principles of Sharia

The general principles and objectives of Sharia indicate that when there is a conflict between two interests (or benefits), the stronger one is given priority, and when one of two evils are inevitable, the lesser should be chosen. Engaging in dissection of cadavers for instructional purposes is in the public interest, and the resulting benefits accrue to the entire community, for the expertise thereby gained can be used to reduce the harmful effects of diseases from community members, and to provide protection by the permission of Allah. This therefore falls under [the juristic category of] *maṣlaḥa mursala*, [public welfare] which [is consistent with the spirit of] the sacred texts, [and which the texts] indicate [in general terms, even though there is no explicit text substantiating the practice]. On the other hand, the benefit of not engaging in such dissection [in the interests of not violating the dignity of the corpse] is a private interest, the benefit of which is limited to the deceased person alone. So, there is a conflict between two interests, and no doubt, the stronger, certain, public interest (i.e., allowing such dissection) must be given priority over the weaker, private interest (i.e. not allowing the dissection). Hence, such dissection is permissible,

because it results in saving lives, and the evil [of violating the dignity of the corpse] is outweighed by the benefits.

3. That without which an obligation is not fulfilled is itself an obligation

It is necessary [for people] to learn surgery and other branches of medicine in order to meet the community's need for these beneficial sciences. This cannot [yet] be [fully] achieved without engaging in dissection whereby surgeons can have practical understanding of the theoretical sciences [of anatomy, etc.] and therefore such dissection is permissible, based on the fiqh maxim, "That without which an obligation is not fulfilled is itself an obligation."²⁵

Conditions for the permissibility of dissection

Scholars have laid down the following conditions for autopsy to be permissible:

1. The death of the person, whose body is to be dissected, must be ascertained [before starting].
2. It is necessary to obtain the consent of the family of the deceased person [whose body will be used in the dissection], if his identity is known. [This consent may be obtained] before or after death. However, consent is not required in the case of unidentified corpses.
3. There should not be any financial compensation involved.
4. The dissection should be limited to the extent of necessity. [i.e. it is not permissible to cut more than is required.]
5. The remainder of the corpse should be buried, because the general rule is to hasten the burial of the deceased.
6. There must exist a necessity to perform the dissection.²⁶

²⁵ Subkī, *al-Ashbāh wa al-Nazā'ir*, 2:90.

²⁶ *Aḥkām al-Jirāḥa al-Ṭibbiyya*, 169 ff. *Mawsū'at al-Fiqh al-Ṭibbī*, Topic 2 300.

Chapter 12: Contemporary Issues

12.1 Plastic Surgery

[The specialty of] plastic surgery includes procedures performed to improve the appearance or the function of the external organs of the body.¹ There are several types of plastic surgery [treatments] with different purposes. The jurisprudential ruling differs according to each type of plastic surgery and the reasons for resorting to it, so we will now proceed to address this.²

12.1.1 Cosmetic Surgery

The common denominator across the various types of cosmetic surgery is that they are primarily performed to improve and beautify the external appearance or proportioning of bodily parts, with improvement of function being a secondary consideration. Examples include hair transplantation, electrolysis (hair removal), various surgeries for improving the appearance of facial parts (such as blepharoplasty (reshaping of the eyelids), rhinoplasty (reshaping of the nose), ear lips), surgeries for improving the figure, abdominoplasty (stomach tucks), rhytidectomy (face lifts), and dermal filler injections [to augment lips or other body parts].³

The ruling of this type of surgery varies depending on the purpose behind it:

a) If the purpose is to treat a congenital or contracted deformity that led a part of the body to have an unnatural appearance leading to unwanted attention and astonishment from people, or if the deformity causes pain or hinders the proper functioning of a body part, such as if

¹ Saleh al-Fawzān, *al-Jirāḥa al-Tajmiliyya*, 48.

² Saleh al-Fawzān, *al-Jirāḥa al-Tajmiliyya*, 128 ff.

³ Other common cosmetic surgeries include mammoplasty (modifying the appearance of the breasts) and liposuction (removing excess fat).

it causes impaired sight or hearing. In such cases, the surgery is permissible, based on the following:

1. These defects result in physical and psychological harm, which call for a concession for surgical intervention to alleviate the harm. This is because this is a situation of need that can be treated in the same way as necessity.⁴
2. Such surgery shares the common denominator of need with other types of Islamically legitimate surgery. The need in the case of non-cosmetic surgery is to remove the pain, which is a physical detriment, whereas cosmetic surgeries in this category often involve both physical and psychological detriment.

There are sacred texts prohibiting altering Allah's creation, such as: "[Satan said,] 'And I will mislead them, and I will arouse in them [sinful] desires, and I will command them so they will slit the ears of cattle, and I will command them so they will change the creation of Allah.' And whoever takes Satan as an ally instead of Allah has certainly sustained a clear loss." (Q.4:119)

'Abdullah ibn Mas'ud reported that the Prophet cursed women who tattoo [others] and those who have themselves tattooed, women who pluck hair from their eyebrows, and women who make spaces between their teeth for beauty, the changers of Allah's creation."⁵

However, the procedures under discussion here do not fall under the implication of these sacred texts, for the following reasons:

1. These cases involve a legitimate need for change, and this justifies an exception from the texts of prohibition. Nawawi, said, while explaining the ḥadīth above, said, "As for [the Prophet's] words, 'those who make spaces between their teeth for beauty,' it means that they are doing so for the purpose of beautification This indicates that what is forbidden is to do so

⁴ Suyūṭī, *al-Ashbāh wa al-Nazā'i'r*, p 88, Ibn Nujaym, *al-Ashbāh wa al-Nazā'i'r*, 91.

⁵ Muslim and others.

seeking beauty, whereas if there was a need [for the procedure] for medical treatment or because of a defect, then there is no objection.”⁶ So, Nawawī is clarifying that if there is a legitimate need other than cosmetic beautification, then the prohibition does not apply.

2. The primary intention behind this type of surgery is to eliminate harm, and not to change the physical appearance. The beautification and physical change (in this case improvement) are a fortuitous [side benefit].
3. Elimination of deformities and defects should not be regarded as an alteration of the creation of Allah, Exalted is He, because the surgical intervention aims to restore the normal appearance of the body part rather than changing it from that normal state.

b) If the purpose of cosmetic surgery is only to improve the appearance, or to appear more youthful, or to take on a particular appearance in imitation of others, and without a medical justification. In such cases, the surgery is not permissible for the following reasons.

1. The Quranic verse 4:119 (cited above) mentions altering of Allah’s creation in a negative light, as one of Satan’s ploys to mislead human beings. Surgery for purely cosmetic reasons is deemed to fall under the implication of the verse, for it is motivated by whims and desires, and does not serve any deeper purpose.⁷
2. The ḥadīth of ‘Abdullah ibn Mas‘ud, cited above, indicates that whoever commits these actions is cursed, because these actions constitute altering the creation of Allah.

⁶ Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 13:107.

⁷ *Tafsīr al-Ṭabarī*, 5:183. Māwardī, *al-Nukat wa al-‘Uyūn*, 1:530. Ibn al-Jawzī, *Zād Al-Masīr* 2:205.

3. This surgery is often undertaken for the purposes of deception and deceit, both of which are prohibited in Islam.⁸

12.1.2 Reconstructive Surgery

This type of surgery is distinguished by the fact that its primary objective is to restore the function of the body part, or to repair a defect that impairs proper functioning, and improvement of the appearance and/or restoring proportion to the body is secondary or fortuitous. This type of surgery is one of the most common branches of plastic surgery. It not only predates cosmetic plastic surgery, but it is also the origin of this surgery. It emerged to repair damage suffered by burn victims and patients whose limbs were severed in accidents. Microsurgery is one type of such reconstructive surgery. What was discussed above in 12.1.1 (a) could also be classified as reconstructive surgery.

It is permissible to undergo this type of surgery because it repairs congenital or contracted defects and deformities. The permissibility of such procedures is supported by the general evidence for the legitimacy of seeking treatment or surgery, as well as the legal maxims which show that hardship should be eliminated, and harm must be avoided. This type of surgery, therefore, is not categorized among the prohibited interventions that alter the creation of Allah. Nevertheless, for this surgery to be permissible, it must fulfill the general conditions of plastic surgery.

12.1.3 Genital Surgery

This type of surgery could conceivably be classified as either cosmetic (because it often aims to improve [or change] the external appearance of the genitals) or reconstructive (because it often aims to improve the function). Overall, it probably has more in common with reconstructive surgery, because it is generally more concerned with function than

⁸ *Aḥkām al-Jirāḥa Al-Ṭibbiyya*, 193 ff. *Mawsūʿat al-Fiqh al-Ṭibbī*, Topic 6, 870 ff.

appearance. Examples are gender reassignment surgeries, labiaplasty, phalloplasty, and hymenoplasty.

The guidelines already mentioned above apply to this type of surgery. Thus, if the purpose is to treat abnormalities that cause pain or may be harmful to the person, or if they affect sexual function, then the surgery is permissible. However, if the objective is solely to improve the appearance of the genitals [or to change for the purpose of gender reassignment for an otherwise naturally male or female person], then it is prohibited because it alters the creation of Allah and can potentially result in harm. Furthermore, such surgery would require uncovering the genitals to the doctor, whereas the general rule is that it is prohibited to expose the genitals to anyone except a spouse.

12.1.4 General Stipulations

1. That the surgery must not involve alteration of the creation of Allah, Exalted is He. The alteration that is prohibited is to perform surgery to modify an apparently normal organ, whether it be to improve appearance, or for the sake of disguise, or inflict punishment or torture. Operations that are intended to cure diseases, defects or deformities (whether congenital or contracted) do not fall under the prohibition.
2. That physical or psychological harm would result if the surgery were not performed.
3. That the surgery does not result in deception about a person's reality, such as by presenting an old person as if he is young.
4. That the objective of the surgery is not the impermissible type of imitation of disbelievers or immoral people, whether it is the imitation of a particular person or of disbelievers or immoral people in general.
5. That the surgery does not lead to men looking like women or vice-versa.

6. That the surgery does not require the exposure of the genitals or *'awra* unless there is a necessity or valid need.
7. That the surgery does not involve excessive cost, for extravagance and wastefulness are frowned upon in Islam, unless there is genuine need for the operation.
8. That the surgery does not cause more serious damages or deformities than those from which treatment is sought.
9. That the materials used in the surgery, such as sutures and injected substances, be pure. Using a ritually impure substance is not permissible except in cases of necessity.

In addition, the stipulations that were previously mentioned for medical surgery in general (as discussed in 4.2.2), and the maxims that call for eliminating harm and alleviating hardship, and especially balance between benefit and harm, are still applicable here.

12.2 DNA Analysis

12.2.1 Introduction

Genetics is, “The study of heredity and the variation of inherited characteristics.”⁹ DNA (deoxyribonucleic acid) is, “A self-replicating material that is present in nearly all living organisms as the main constituent of chromosomes. It is the carrier of genetic information.”¹⁰ DNA is transmitted from parents to children. Persons who are closely related have more DNA in common, but everyone has unique DNA (except for most identical twins). DNA can be extracted from any human cell, and modern DNA analysis techniques are extremely accurate. Thus, a DNA profile usually serves as a unique genetic

⁹ Oxford Languages, Google Dictionary.

¹⁰ Ibid.

fingerprint of a person.¹¹ This genetic fingerprint is particularly useful for forensics (such as for identifying rapists, killers, or identity thieves) and determining lineage (such as to establish or negate paternity).¹²

12.2.1 Use in Forensics

It is permissible to use the DNA to identify a criminal, and to use such evidence for prosecution, in any criminal cases other than those involving *hudūd*¹³ or *qiṣāṣ*.¹⁴ This is because there is much evidence from the Qur'an and the Sunnah indicating that it is permissible to rely on circumstantial evidence for judgment in criminal cases other than those involving *hudūd* or *qiṣāṣ*. This opinion has been adopted by the jurists of the fiqh councils and conferences that were consulted for the preparation of this handbook.¹⁵

The relevant evidence is as follows:

- This is a means toward a legitimate end, and the fiqh maxim states, “Means take the ruling of the ends.”¹⁶
- Doing so achieves many benefits and avoids much harm, and both these goals are the higher objectives of the Sharia.
- Doing so is in line with the opinion of most jurists, who deem it valid to act on and judge by circumstantial evidence. Indeed, this has been the general practice of governors and judges from the time of the Companions of the Prophet up to this day, as Ibn al-Qayyim has said: “Experts, governors, and judges have

¹¹ See also: Seventh resolution of the Islamic Fiqh Council of Muslim World League on DNA, issued in its sixth session held from 22 - 26/ Shawwāl 1422 AH / 5 – 10 January 2002 CE, in Makkah, 343. *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:1557.

¹² ‘Umar al-Subayyil, *al-Basma al-Wirāthiyya*, 4.

¹³ *Hudūd* prescribed punishments that are specifically mandated by sacred texts.

¹⁴ See glossary.

¹⁵ *Mawsū‘at al-Fiqh al-Ṭibbī*, 4:1570, *al-Basma al-Wirāthiyya*, 36.

¹⁶ Shāṭibī, *Maqāṣid*, 2:64.

always relied on shrewdness and indicators to restore rights to people, identify clues that enable them to deduce the truth, and once such [incontrovertible] indicators become manifest, they will not use witness testimony nor confession to override them.”¹⁷

As for the reasoning behind not using such evidence in cases of *ḥudūd* or *qisās*, it is as follows:

1. According to many scholars, *ḥudūd* and *qisās* penalties are only enforceable based on witness testimony or confession.
2. The Sharia aspires to ward off these, more severe punishments where there exists reasonable doubt of guilt. Even though DNA can usually, in principle, identify a person with certainty, nevertheless in practice there are uncertainties involved in proving guilt. For example, DNA samples from the scene of the crime are often partial, or damaged, which would not be sufficient to uniquely identify an individual. DNA strands from different [samples or people] can also become mixed. Furthermore, “even full DNA profiles may match with a person other than the culprit.”¹⁸ And even if the DNA is a certain match, it might merely prove that the individual was present at the scene of the crime, but not necessarily that he is guilty.¹⁹

Notwithstanding the above reasoning, some jurists do allow imposing *ḥudūd* and *qisās* penalties based on circumstantial evidence and indicators, even in the absence of witnesses or confession. Examples include:

- Some jurists [a minority] allow for a woman to be convicted of *zinā* (fornication or adultery) if she becomes pregnant while

¹⁷ Ibn al-Qayyim, *al-Ṭuruq Al-Hukmiyya*, 28.

¹⁸ Naomi Elster, “How Forensic DNA Evidence Can Lead to Wrongful Convictions,” JStor Daily, 12/06/2017, <https://daily.jstor.org/forensic-dna-evidence-can-lead-wrongful-convictions/>, accessed 5/20/2022.

¹⁹ *Mawsū‘at al-Fiqh al-Tibbī*, 4:1570 ff.

unmarried, [provided there is no evidence of rape. This was the view of Imam Malik.]²⁰

- Some scholars allow a woman to be convicted of *zinā* in *li'ān*²¹ if she refuses to formally respond (by swearing to her innocence) to her husband's formal accusation of infidelity. This is the view of the Maliki, Shafi'i and Zahiri schools, and one opinion among the Hanbalis.²²
- Some scholars allow a person to be convicted of drinking alcohol if the smell of it is detected from him or he vomits up alcohol. This is the Maliki view, and one opinion among the Hanbalis.²³
- Some scholars allow a person to be convicted of theft if the stolen property is found in his possession.²⁴

So, if the use of DNA evidence can be considered analogous to the above cases, then such evidence could potentially be used even in cases of *ḥudūd* and *qiṣāṣ*. In that case, it would be at the discretion of the judge as to which of the two views he chooses to apply, in light of the other relevant circumstances of a particular case.

12.2.3 Use for Establishing Paternity

The pre-modern Muslim jurists resorted to various means of establishing paternity, and three of these were unanimously agreed upon:

- *firāsh* [the default, that for a child born within a marriage, the father is assumed to be the husband of the child's mother.]
- *iqrār* [acknowledgment of paternity by a man, provided the claim is feasible.]
- testimony of reliable witnesses

²⁰ *Bidāyat al-Mujtahid*, 2:440, *San'ānī*, *Subul al-Salām*, 4:1276.

²¹ See Glossary.

²² *Bidāyat al-Mujtahid*, 2:219, *Mughnī* (3:380

²³ *Bidāyat al-Mujtahid*, 2:445, *Subul al-Salām*, 4:1314.

²⁴ *Al-Turuq Al-Hukmiyya*, 103.

Use of DNA to establish paternity is deemed acceptable by contemporary jurists, but they do not give it priority over the above three, agreed-upon methods. Thus, if any of the above three traditional procedures can be applied, then the judge may not resort to DNA evidence. Furthermore, it is not permissible to use DNA to check paternity in cases where it has already been established, to safeguard people's privacy and honor. The authorities must prevent such use of DNA technology and impose penalties on those who violate this. The Islamic Fiqh Academy of the Muslim World League adopted this opinion. Its resolution states the following:

"Fifth: It is permitted to resort to the DNA analysis in the domain of paternity in the following cases:

- a. Cases where there is dispute over the paternity of a person of unknown lineage, including the different types of disputes mentioned by the jurists, regardless of whether there is a lack of evidence, or opposing evidence that is equivalent on both sides, or more than one man had a relationship with the mother of the child.
- b. Cases of confusion, where newborns [or children in general] have become mixed up at hospitals, child-care centers, etc., and similarly cases of confusion regarding test-tube babies [i.e., embryos conceived by means of in vitro fertilization].
- c. Cases where children become lost or mixed up as a result of accidents, natural disasters, and wars, such that it becomes difficult to identify their families. [The same applies to cases of] unidentified corpses are found, or [cases] where the identity of prisoners of war [cannot otherwise be established].

It is not allowed to use DNA analysis to negate a lineage that has already been legally established. Nor is it allowed to use DNA analysis as a substitute for *li'ān* for purposes of negating paternity of the husband. This is because the legitimacy of *li'ān* is established by Qur'ān, Sunnah and *ijmā'*, and it contains an element of ritual worship, and so it is not permissible to cancel it, nor to replace it by another

analogous procedure regardless of the accuracy of the new procedure.”²⁵

12.3 Genetic Engineering

Genetic engineering is, “the deliberate modification of the characteristics of an organism by manipulating its genetic material.”²⁶ It has many medical applications, and we will discuss the most important of these.

12.3.1 Gene Therapy

Gene therapy involves altering human genes, by replacing a faulty gene or adding a new gene, to treat or stop disease.²⁷ With regard to an Islamic perspective on gene therapy, we observe that there are several general rules and principles concerning medical treatment in general that are relevant:

1. The general objectives of the Sharia, which aim to take care of the necessities, needs, and luxuries of human beings, to appraise benefits and harms, and to observe the maxims that are relevant to this, such as, “Avoiding harm takes precedence over bringing about benefit,” “A lesser harm is endured for the sake of repelling a greater harm,” “Harm must be eliminated,” “Harm should not be eliminated by a comparable harm,” and “Necessity renders prohibited matters permissible.”²⁸

²⁵ Symposium on Sharia Judgeship in the Contemporary Era, 20:11, Resolution of the Islamic Fiqh Council in its sixteenth session held in Makka from 21 – 26 Shawwāl 1422 AH / 5 – 10 January 2002 CE.

²⁶ Oxford Languages Google Dictionary. See also: Sa’d al-Shuwayrikh, *Aḥkām al-Handasa al-Wirāthiyya*, 37.

²⁷ Mayo Clinic Staff, “Gene Therapy,” 12/29/2017, <https://www.mayoclinic.org/tests-procedures/gene-therapy/about/pac-20384619> accessed 5/22/2022.

²⁸ Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, 85, Subkī, *al-Ashāh wa al-Nazā’ir*, 1:54.

2. Taking means and likely causes into consideration. A prohibited means is prohibited, even if used to accomplish a noble goal. Thus, it is not permissible to use any Islamically prohibited technique for gene therapy, except in case of such necessity that renders prohibited matters permissible. Ibn al-Qayyim regarded the rule of '*sadd al-dharâ'i*' (blocking the means to harm or evil) one of the greatest principles of Sharia.²⁹
3. The goals and results of the medical treatment must be taken into consideration. The Islamic jurists do not rule on a human action without examining the consequences of the action and weighing the resultant benefits and harms.³⁰

Thus, the default is that gene therapy is permissible if it does not cause harm or involve anything contrary to Islamic teachings.

We will clarify the Islamic rulings regarding gene therapy by presenting the resolutions of some of the Fiqh Councils.

Resolution of the Islamic *Fiqh* Council of the World Muslim League

- It is permissible to take advantage of the science of genetic engineering to prevent or treat a disease, or to mitigate its harm, on the condition that this does not lead to greater harm.
- It is not permissible to use any of the tools or means of genetic engineering for evil purposes, nor for anything that is Islamically prohibited.
- It is not allowed to use any of the tools or means of genetic engineering to interfere with the human personality, or human accountability, or to intervene in the human gene pool under the pretext of improving the human race [i.e. eugenics].
- It is not permissible to carry out research, or to carry out any treatment or diagnosis, or DNA profiling, except after having carried out, in advance, a precise cost-benefit analysis of [engaging in such] activities, and after obtaining approval valid

²⁹ *Sharḥ Tanqīḥ al-Fusūl*, 2:95, *Ighāthat al-Lahfān*, 1:366.

³⁰ al-Shātibi, *Muwāfaqāt*: 5:177.

under the Sharia. It is also obligatory to observe the strict confidentiality regarding the results and to respect the provisions of the noble Sharia which calls for respecting the rights and dignity of the human being.

- It is permissible to use the tools and means of genetic engineering in the fields of agriculture and animal husbandry, on condition that all precautions are taken to prevent the occurrence of any harm, even in the long term, to humans, animals or the environment.³¹

Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation

Gene therapy refers to transferring a part of [a sequence of] nucleic acid or a healthy gene or replacing a defective gene with a healthy gene in the diseased cell in order to restore the normal function that this gene performs.

Gene therapy is divided into two categories, based on the type of cell being treated:

The first type: Gene Therapy for Somatic Cells

[Somatic cells] are all the cells of the body [with the exclusion of ova and sperm]. The ruling [concerning this] differs depending on the [intended] goal. If the goal is to treat an illness, [such therapy] is permissible, subject to certain conditions; the most important of which are:

1. This type of treatment must not lead to a greater harm than the harm that already exists.
2. That there is preponderant confidence that this treatment will lead to healing or reduction of pain.
3. That there is no [reasonable] alternative.

³¹ Resolution of the Islamic Fiqh Council of Muslim World League issued in its 15th session held in in Makkah, in Rajab 1419 AH / 31 October 1998 CE.

4. That the Sharia stipulations for organ transplantation (with regard to the donor and recipient) are observed. [These conditions] were alluded to by the Fiqh Council in its resolution no. 57 (8/6). Also, the gene transfer process must be carried out by competent, experienced, and trustworthy specialists.

As for the use of gene therapy to acquire specific [bodily] characteristics, such as [a specific] physical appearance, it is not permissible because it involves altering the creation of Allah, which is prohibited. [Moreover,] it also involves vainness, and debasing of human dignity, in addition to there being no necessity or pressing need for such procedures

The second type: Gene Therapy for Germ Cells

This is gene therapy for gametes (reproductive cells). The ruling [for this type of gene therapy] is that it is permissible to conduct genetic testing on gametes to find out whether they have a genetic disease or not.

As for the gene therapy of gametes as it is often practiced today, without regard for the Islamic regulations, especially the prohibition of mixing of lineage, this is Islamically prohibited on account of the risks and harm it entails.³²

12.3.2 Human Reproductive Cloning

The Arabic word for cloning, *istinsākh*, is morphologically derived from the root *n-s-kh*, the semantic range of which includes meanings of copying, removal, replacement and transformation. As a technical scientific term, cloning is "the process of generating an identical copy of a cell or an organism."³³ Reproductive cloning of humans is an issue that has ethical dimensions. It involves one of the following procedures:

³² Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation in its 21st session held in Riyadh, 15 - 20 Muharram 1435 AH / 18 - 22 November 2013 CE.

³³ Britannica.com, accessed 5/23/2022.

- Somatic Cell Nuclear Transfer (SCNT): transferring the nucleus from a somatic cell to an egg from which the nucleus has been removed
- Embryo twinning: splitting a fertilized egg at the blastula stage, before the embryo has begun differentiation.³⁴

1. SCNT Cloning

This involves transferring the nucleus of a somatic cell containing 46 chromosomes to an egg from which the nucleus has been removed, so that the cytoplasmic factors affect the [cell with the] new nucleus to cause it to divide and grow undergo the stages of development of an embryo, such that it results in an organism of the same gender as the one was the source of the somatic cell, and visually indistinguishable from it.

The majority of contemporary scholars regard SCNT cloning [for humans] as prohibited, and this is the unanimous view of all the fiqh councils, Islamic scholarly bodies, and specialized societies and organizations. They based this prohibition on several proofs, including the following:

1. The statement of Allah **“O People, if you should be in doubt about the Resurrection, then [consider that] indeed, We created you from dust, then from a sperm-drop, then from a clinging clot, and then from a lump of flesh, formed and unformed - that We may show you. And We settle in the wombs whom We will for a specified term...”** (Q.22:5)

In this verse, Allah describes the different stages of the creation of the human. These stages are seen to be a manifestation of honor for the human being, whereas cloning involves a departure from, and a trifling with, this natural creation process.

2. ‘Abdullah ibn Mas‘ud said, “The Messenger of Allah, the truthful and credible, told us, “Verily the creation of each one of you is brought together in his mother’s womb for forty days

³⁴ *Mawsū‘at al-Fiqh al-Tibbī*, 3:1441 ff.

in the form of a *nutfā* (a drop), then he becomes an *'alaqa* (clinging substance) for a like period, then a *mudgha* (morsel of flesh) for a like period, then there is sent to him the angel who blows his soul into him and who is commanded with four matters: to write down his sustenance, his life span, his actions, and whether he will be blessed or wretched.”³⁵

This ḥadīth explains the different stages of the creation of man, whereas cloning leads to a different sequence.

3. Cloning leads to genealogical confusion and even chaos, because a person could potentially have children without marriage. Reproductive cloning results in separation of procreation from sexual intercourse, and thus contravenes the natural way of Allah in the universe.³⁶

2. Embryo Twinning

This involves artificially splitting a fertilized ovum, after the four-cell stage (optimally at 6- to 8-cell stage) into two distinct embryos, such that each resulting embryo is potentially capable of developing into a separate fetus. One of these embryos is usually implanted in the mother's uterus while the other is frozen for potential use in the future. Most contemporary jurists agreed that embryo twinning is prohibited, based on evidence that includes the following:

1. The statement of Allah “**And We have certainly honored the Children of Adam.**” (Q.17:70) Embryo twinning, since it artificially multiplies the number of embryos, is an affront to the unique identity of each person, and is therefore at variance with this honoring.
2. Among the natural laws of the universe established by Allah is the fact that humans have different physical characteristics (with very few exceptions), whereas embryo twinning is at

³⁵ Bukhārī, Muslim.

³⁶ *Mawsū'at al-Fiqh al-Tibbī*, 4:1458 ff.

variance with this, because it will result in two people who have identical physical characteristics.

3. One of the essential higher objectives of Sharia is the safeguarding of lineage, and embryo twinning could lead to compromising of this value, such as if the embryo is implanted in the wrong womb, or the womb of a woman other than the donor of the ovum, or the womb of the mother but after she has been divorced or widowed.

The resolution of the Islamic Fiqh Academy upheld the prohibition of human reproductive cloning via both the above methods, as well as via any other methods that artificially multiplies the numbers of embryos.³⁷

12.4 Organ Transplantation

12.4.1 Auto-transplantation

Auto-transplantation is the transfer of an organ or tissue from one part of the body to another in the same person. Examples of this include skin (auto)grafting, tendon transfers or autografts, muscle transplants / transfer, and some types of nose and ear repairs. In general, the fiqh councils, Islamic scholarly bodies and researchers regard such medical operations as permissible, on condition that there is no undue danger of harm (in which case the maxim, “Harm should not be eliminated by another harm,” would apply. The evidence for this includes:

1. The general evidence that establish the permissibility of medical treatment and surgery.
2. The general principles that urge the elimination of harm, such as the maxim, “Harm must be removed.”
3. Analogy (*qiyas*): There is agreement that it is permissible to amputate a limb to save a life and ward off harm. Hence, to remove a body part to and transplant it to another bodily

³⁷ Resolution of the International Islamic Fiqh Academy, the 10th session held in Jeddah, 23 – 28 Şafar 1418 AH / 28 June – 3 July 1997 CE;

location to prevent death or remove harm, is more worthy of permissibility.³⁸

12.4.2 Living Donor Allograft Transplantation

The Islamic ruling on this varies according to the identity of the transplanted organ / substance as follows:

1. Replenishable substances

Contemporary jurists in general regard it as permissible to transfer replenishable substances – such as blood, skin and bone marrow – from one living person to another. The evidence for permissibility includes the following:

- This falls under the category of permissible treatment, and therefore is included in the general implication of the ḥadīth, “Make use of medical treatment, O servants of Allah, for Allah has not sent down any disease without making a remedy for it.”³⁹
- The donor will not [typically] suffer [undue] harm, because the body automatically replenishes what has been removed.
- The general evidence that indicates the desirability of removing harm, alleviating suffering and helping people.

2. Organs essential for life

Jurists unanimously prohibit the donation of organs such as the heart or [entire] liver from a living donor, because it is tantamount to murder of the donor. Allah says, “**Do not throw [yourselves] with your [own] hands into destruction,**” (Q.2:195), and “**Whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.**” (Q.4:93) Removal of an essential organ from a person’s body leads to death, and the jurists are unanimous that it is prohibited to kill an innocent person to save the

³⁸ Al-Shanqiti, *Aḥkām al-Jirāḥa Al-Ṭibbiyya*, 335.

³⁹ See earlier footnote.

life of another. Similarly, it is prohibited to transplant any organ(s) that would lead to the donor's life being significantly impaired, even if he would not die, for example to remove the cornea from both eyes of the donor.⁴⁰

3. Genitals

The contemporary fiqh councils distinguish between organs that are responsible for transmitting genetic material to posterity, such as the testicles and ovaries, and those that are not. They prohibited the transplantation of the former, in order to safeguard and prevent mixing of lineage, and permitted the latter in cases of justified Islamic necessity.

The resolution of the International Fiqh Council stated the following:

"1. Since transplantation of sexual glands, such as testicles and ovaries [involves tissues that] continue to bear and secrete [the donor's] genetic material, even after they are transplanted in a new host, their transplantation is Islamically prohibited.

2. Transplant of [other] elements of the reproductive apparatus, which do not transmit genetic material, is permissible (except for the anterior and posterior pudenda) in cases of justified Islamic necessity, pursuant to the criteria and guidelines explained in Resolution #26 (1/4) of this council."⁴¹

4. All other organs

Scholars have two different rulings concerning the transplant of organs not falling under any of the three above-mentioned categories, for example transplant of one kidney, or one cornea.

The first opinion is that such transplants from a living donor are not permissible. This is the view of some contemporary jurists, and their evidence includes the following:

⁴⁰ Resolution of the International Islamic Fiqh Academy issued in its 4th session held in Jeddah, 18 – 23 Şafar 1408 AH/ 6 – 11 February 1988 CE.

⁴¹ Resolution of the International Islamic Fiqh Academy issued in its 6th session held in Jeddah, 17–23 Sha'ban 1410 AH / 14–20 March 1990 CE.

1. The default is that the human body of an innocent person is worthy of respect, and it is therefore not allowed to cut it open except in cases of necessity. Kidney or cornea transplants are not, strictly speaking, situations of necessity, because the recipient can still [typically] continue living without the transplant.
2. Organ transplantation entails risks and harms for both the donor and the recipient, such as rejection of the organ by the recipient's body, which in turn necessitates administering immunosuppressant drugs that leads to potential complications since the patient is now immunocompromised. There is no compelling reason to justify taking on these risks and harms.⁴²

The second opinion is that it is permissible to conduct such transplants from a living donor. This is the view of most contemporary jurists, and their evidence includes the following:

1. The words of Allah **“Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely.”** (Q.5:32) The words, **“And whoever saves one - it is as if he had saved mankind entirely,”** are of general implication, covering all cases of saving a life, including where someone donates an organ in order to save the life of a fellow human being.⁴³
2. The words of Allah **“Allah intends for you ease and does not intend for you hardship.”** (Q.2:185) This verse conveys that the intent of the Lawgiver (Allah) is to make life easier for His servants, and not to impose hardship. Allowing human organ

⁴² Yusuf Al-Ahmad: *Aḥkām Naql A'dā' al-Insān*, 320.

⁴³ Fatwa of the Islamic Supreme Iftā' Council in Algeria dated 6 Rabī' I 1392 AH. See *Majalat Al-Buḥūth al-Islamiyya*, Issue #22, 47.

transplantation is a means for attaining ease, and a mercy for the afflicted, and is therefore seen to be consistent with the objectives of the Sharia.

3. Such transplants are part of permissible medical treatment, falling under the general implication of the advice of the Prophet, "Make use of medical treatment, O servants of Allah, for Allah has not sent down any disease without making a remedy for it."⁴⁴
4. If a Muslim donates his organs, he is helping his brother, relieving his affliction, keeps harm away from him, and fulfilling his need. It is an act of altruism, which Islam recommends, as is confirmed by extensive evidence, including the verse, "They give [them] preference over themselves." (Q.59:9)
5. Organ transplantation can be considered a necessity, which therefore permits what is normally not allowed, like the permission for men to wear silk if they are afflicted with scabies, and for men to have a gold tooth filling in cases of necessity, even though silk and gold are normally not allowed for men.

The maxim states, "Necessity renders prohibited things permissible."⁴⁵ A person who is in urgent need of an organ transplant, such as an individual with renal failure, is suffering hardship which qualifies as necessity, and therefore allows him to remove this harm from himself even if it requires resorting to something that was originally prohibited.⁴⁶

This permissibility is subject to conditions and criteria that have been stated in the resolutions of various fiqh councils. These include the following:

⁴⁴ See earlier footnote.

⁴⁵ Ibn Nujaym, *al-Ashbāh wa al-Nazā'ir*, 85.

⁴⁶ *Aḥkām al-Jirāhah Al-Ṭibbiyya*, 371 ff.

- 1 The removal of an organ from the donor must not cause him damage that hinders him from leading a normal life, because the maxim, "Harm may not be eliminated by an equivalent or more severe harm." In such cases, the donor would be throwing himself into ruin, which is prohibited by Q.2:195.
- 2 The donor must donate the organ voluntarily, without coercion.
- 3 The organ transplant must be the only possible means to treat the patient.
- 4 The success of both the removal and implantation procedures must be known (with high confidence) to be safe.
- 5 The organ should be obtained via donation, not sale, for it is not permissible to buy and sell human organs.

12.4.3 Deceased Donor Allotransplantation

Most fiqh councils and contemporary Islamic scholarly bodies deem it permissible to transplant an organ from the body of a dead person into a living one. Their evidence includes:

1. The general evidence that permits seeking treatment, as already discussed in Chapter 4.
2. The removal of the organ from the deceased donor is not a violation of his dignity, because the removal is not futile, nor is the organ destroyed, rather it is put to beneficial use.
3. The fiqh maxims, including, "A greater harm should be eliminated by a lesser harm." For the patient to remain suffering is a greater harm than to take an organ from a deceased person to help him.

This permissibility is subject to conditions and criteria that have been stated in the resolutions of various fiqh councils. These include the following:

1. The death of the donor must be verified. This refers to natural death, or potentially brain death for those jurists who consider this sufficient, as has already been discussed in section 11.2.

2. The donation of the organ must have been authorized by the deceased before his death, or by his heirs after his death. In the case of unidentified persons, or individuals with no heirs, the ruler (or his representative, such as a judge) can potentially give authorization.
3. Confidence that the transplantation will be successful, and that no harm will result to the beneficiary of the organ.
4. The organ transplant must be the only possible way to treat the patient.
5. The dignity of the deceased must be preserved, and the body not disfigured [more than necessary] during the removal of his organ(s).

12.5 Body Banks

12.5.1 Human Milk Banks

A human milk bank is a specialized location that collects milk from mothers, who either donate their milk or sell it to the bank at a specified price, following which the bank sells the collected milk to mothers who wish to breastfeed their children.⁴⁷ With regard to the ruling concerning such banks, it is crucial to note that in Islamic law, breastfeeding creates a bond analogous to a blood relationship. So, for example, just as a man is prohibited from marrying his biological sister, it is likewise forbidden for him to marry his milk-sister (i.e., a girl who was breastfed by the same woman as he), as we find mentioned in Q.4:23 and clarified by the ḥadīth, “Milk kinship makes prohibited [for marriage] whatever blood-ties do.”⁴⁸

The Resolution of the International Islamic Fiqh Academy stated the following in this regard:

⁴⁷ *al-Mawsū‘a al-Ṭibbiyya al-Fiqhiyya*, 487, Dr. Ismā‘īl Marḥabā, *al-Bunūk al-Ṭibbiyya al-Bashariyya*, 322.

⁴⁸ Bukhārī, Muslim.

First: Human milk banks first emerged in the West, and later faced some technical and practical challenges which led to a decline [in their numbers] and decrease in popularity.

Second: Islam regards breastfeeding as creating a bond similar to kinship, and milk-kinship makes prohibited [for marriage] what blood-ties do, by the consensus of Muslim jurists, one of the [higher] objectives of Sharia is to safeguard the lineage of a person, whereas milk banks tend to lead to confusion or doubt regarding lineage.

Third: The societal relationships within societies in the Muslim world provide abundant [avenues], through natural breastfeeding, to cater to the needs of premature or under-weight babies for human milk, which obviates the need for milk banks.

Accordingly, the council resolves:

First: To not allow the establishment of [human] mothers' milk banks in the Islamic World.

Second: To prohibit using milk from such banks [to feed infants]."⁴⁹

12.5.2 Sperm Banks

Sperm banks are special locations where men's semen is stored, until such time as it is needed to carry out artificial insemination or IVF.⁵⁰

There are two types of accounts in sperm banks:

- private accounts, opened by individual clients who have exclusive access to their own semen
- public accounts, which obtain semen from donors, or buy it, mix it with a cryo-preservative solution and freeze it. Thereafter, the bank proceeds to sell the sperm to women and men who need [or want] it.

⁴⁹ Resolution of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation in its 2nd session held in Jeddah, 10 - 16 Rabi' II, 1406 AH22 - 28 December, 1985 CE.

⁵⁰ Ismā'īl Marḥabā, *al-Bunuk al-Ṭibbiyya al-Bashariyya*, 364.

The Islamic ruling of establishing sperm banks varies, depending on the impetus behind storing the sperms, and how they will be used.

There are two cases:

- i) Public sperm accounts, where the sperm is offered for sale to whoever needs it. This is prohibited by consensus of the jurists, because it entails confusion of lineage. We have already mentioned that safeguarding of lineage is one of the higher objectives of Sharia. We have also mentioned that, even for in vitro fertilization, it is forbidden to use sperm, an ovum or a uterus from other than a husband and wife married to each other.
- ii) Private sperm accounts, to be used later to fertilize an ovum from man's own wife. Contemporary jurists have disagreed over this, and there are two views:

The first view is that it is **forbidden** to create such sperm banks, based on the following evidence:

1. The Qur'ān indicates that the uterus of the woman is the resting place of the sperm of the man. Allah says, "**Did We not create you from a liquid disdained? And We placed it in a firm lodging.**" (Q.77:20-21) Storing the semen in a sperm bank is a wanton act, taking place in other than its true resting place.⁵¹
2. Storing sperm in banks has potential risks, such as mix-ups of sperm (whether deliberate or inadvertent), and more so given the commercial nature of the activity and the existence of corrupt individuals. Hence, the potential benefits of such facilities are outweighed by the harms, and therefore they should be regarded as prohibited, in keeping with the maxim,

⁵¹ *Al-Masā'il al-Tibbiyya al-Mustajidda*, 2:203.

“Warding off detriment takes precedence over bringing about benefits.”⁵²

The second view is that it is **permissible** to establish such sperm banks, based on the following evidence:

1. Establishing such banks to facilitate artificial insemination or IVF is a means to help couples have children and is a legitimate form of medical treatment. This is useful to men who have a low sperm count, or low sperm motility, as well as people who become infertile in the aftermath of disease, such as cancer patients who have received radiation or chemotherapy. Similar is the case of men who suffer from testicular diseases, or need to have their testicles removed, or some paraplegic men. In such cases, sperm can be taken from the man when they are in good health, and then stored, to be used later, after he is not capable of naturally conceiving a child, to fertilize the ova of his wife.
2. Most Islamic jurists, contemporary researchers and fiqh councils permit artificial insemination between a man and a woman as long as they are married to each other other [at the time of insemination]. Since such artificial insemination is allowed, there is no reason to oppose the storing of the husband’s sperm in order to carry out artificial insemination at a later date, for there is no evidence indicating that fertilization must be done immediately.

Nevertheless, this permissibility (for those jurists who allowed it) is subject to some conditions:

1. That the objective of establishing sperm banks is only to facilitate artificial insemination or IVF between married couples.

⁵² See this maxim in: Suyūṭī, *al-Ashbāh wa al-Nazā’ir*, 176, Ibn Nujaym, *al-Ashbāh wa al-Nazā’ir*, 90, *Durar al-Ḥukkām Sharḥ Majalat al-Aḥkām*, 1:37.

2. That the collection and storage of sperm, as well as the insemination, take place while the spouses are married to each other.
3. That sperm be stored for the exclusive use of the man himself, and that it shall not be donated or sold to anyone else.
4. That the only solution to the infertility is for the semen to be stored in the sperm bank. If there is an alternative method, then the storage will no longer be permissible.
5. That the sperm only be stored with the knowledge and consent of the man.
6. That it be ensured that the storage of sperm will not result in any adverse consequences for the resultant fetus.
7. That the stored sperm be discarded as soon as the objective has been realized and they are no longer needed, to prevent them from being used in a prohibited way.
8. That the identity of the owner of the sperm be verified through precise methods such as DNA analysis.
9. That tight security, both human and electronic, be provided to the sperm bank.
10. That the staff and people in charge be upright, trustworthy, competent people.
11. That the sperm banks be officially under the supervision of the government.⁵³

12.5.3 Ova Banks

One of the most important motivations behind establishing ova banks is to facilitate the process of IVF, especially if previous such attempts had failed, because the process of extracting the ova is costly and often painful. Hence, it is advantageous to store surplus ova, for future use in in vitro fertilization, or potentially for use in research.

⁵³ See: *Inshā' Bunūk al-Maniyy*, Dr. Saleh al-Fawzān. *Majalat al-Dirāsāt al-Islāmiyya*, King Sa'ūd University

Jurists differed on the ruling relating to the establishment of these banks. Some forbid it, out of precaution, in order to safeguard lineage and to prevent Islamically prohibited use of these ova. Other jurists permitted them, because of their role in facilitating IVF, subject to several conditions and guidelines aimed at safeguarding lineage, as already mentioned above in the discussion on sperm banks. Most contemporary jurists allow the use of excess fertilized eggs in experiments and research because these ova do not possess the sanctity of living beings. Moreover, the public interest derived from beneficial research on surplus ova outweighs the detriment.

12.5.4 Blood Banks

There is no disagreement among contemporary jurists on the permissibility of establishing blood banks. The evidence for this includes:

1. One of the greatest objectives of the Sharia is the preservation of life, and the establishment of blood banks contributes to saving many lives in cases where people need blood, especially after accidents.
2. There is often a need for quick access to blood while treating injuries, especially accident victims, and during some operations. Hence, establishing blood banks is part of providing medical treatment to the people, and falls under the implication of the general evidence that permits seeking medical treatment.
3. The implication of some of the fiqh maxims such as, "Harm must be removed," and "That without which an obligation is not fulfilled is itself an obligation."

The Council of Senior Scholars in the Kingdom of Saudi Arabia addressed the permissibility of establishing blood banks and specified the conditions that must be met. The resolution included the following statements: "It is permissible to establish an Islamic bank that collects

blood from donors, stores it and uses it to rescue Muslims who are in need [of it], provided that the bank does not take monetary compensation (from the patients nor their guardians) in return for the blood given to help them. [Furthermore,] this should not become a commercial for-profit enterprise. [This permissibility is based on the principle of] public interest for the Muslim [society].”⁵⁴

12.5.5 Tissue and Bone Banks

A need exists for such banks, to facilitate skin and bone grafts for the treatment of burns and other accident victims. The skin and bones are usually taken from deceased donors and stored in these banks under special conditions for their preservation and avoidance of contamination. It is permissible to establish tissue and bone banks, and the evidence for this includes the following:

1. Grafting of skin and other tissues can only be carried out by using grafts that have been stored under specific conditions. Such operations are deemed Islamically permissible, and in some cases may even be a necessity and then considered as an obligation. Hence, it is permissible, and often obligatory, to establish such banks, based on the famous fiqh maxim, “That without which an obligation is not fulfilled is itself an obligation.”⁵⁵
2. Analogy to the permissibility of establishing blood banks, for just as it is allowed to store blood in special locations for use in times of need, likewise it is permissible to store skin and bones similarly.⁵⁶

⁵⁴ Resolution of the Council of Senior Scholars in Saudi Arabia, No. 65, 7/2/1399 AH.

⁵⁵ See the study of Dr. ‘Abdullah al-Najjār, *Madā Mashrū ‘iyyat Inshā’ Bunūk al-Julūd al-Bashariyya fi al-Fiqh al-Islāmī*, 373, submitted to the 8th symposium of the Islamic Organization for Medical Sciences.

⁵⁶ See the study by ‘Ujayl al-Nashmī *Bunūk al-Julūd*, 321, submitted to the 8th symposium of the Islamic Organization for Medical Sciences.

3. Removal of skin from a deceased person is not considered a violation of his dignity, nor mutilation. The harm arising from this is less serious than the harm that would result to the live patient who is suffering from serious burns [or infection or trauma], and for whom not receiving a skin graft might even result in death. Hence, the permissibility of such banks is an instance of the fiqh maxim, "A greater harm should be eliminated by a lesser harm."

Nevertheless, there are stipulations governing the permissibility of such banks, in order to prevent any misuse of parts of the human body, and to inhibit any commercial exploitation of them. These conditions include:

1. The bank must be managed by a trustworthy health authority operating under the supervision of the government; it must be led by trustworthy and competent officials.
2. The storage of tissue and bones must be proportional to the actual or expected need, because of the fiqh maxim, "Necessity is given consideration, but in due proportion."
3. Tissue and bones should only be procured with the consent of the donor before his death, or the permission of his heirs after death.
4. Tissues and bones must be obtained in the form of donations. It is not allowed to buy or sell human organs, for that is a violation of human dignity.
5. The process of removal of the tissue or bone should not be done in a way that is disrespectful or humiliating.⁵⁷

⁵⁷ See the recommendations of the 8th symposium of the Islamic Organization for Medical Sciences, Kuwait.

12.6 Gifts from Medical Companies

12.6.1 Donor Motivations

There are many reasons why pharmaceutical companies offer gifts to medical organizations or people working in the medical field. The most prominent motivations are the following:

1. Marketing of company products, which has three scenarios, depending on what the doctor is expected to do in return for accepting the gift:

a) The doctor prescribes the drug that he has agreed with the company to market to his patients even though other drugs are *more effective or more appropriate* for their condition. This is not permissible, for such a doctor is betraying the trust of the patient.

b) The doctor prescribes the drug that he has agreed with the company to market to his patients although other drugs are *cheaper* than that drug. This is also prohibited, for it involves harm to the patient, and regard for the interests of the pharmaceutical company at the expense of the patient. Causing harm is prohibited, based on the ḥadīth, “There should be no harming, nor reciprocating harm.”⁵⁸

c) The doctor only prescribes the drugs of this specific company, even though there are other drugs of similar price and efficacy. It is not allowed for the doctor to accept a gift in this situation, because by doing so, the doctor is effectively acting as a broker for the pharmaceutical company, whereas he is supposed to be acting on behalf of and acting in the interests of the patient. The resulting conflict of interest is sufficient to prohibit the practice. Furthermore, for the doctor to accept gifts in exchange for looking out for the pharmaceutical company’s interest, by prescribing their medications exclusively, is disadvantaging other pharmaceutical companies who have not given such gifts. This constitutes a harm to these other firms, and harm is prohibited, as we

⁵⁸ See earlier footnote.

find in the ḥadīth of the Prophet, “There should be no harming, There should be nor reciprocating harm.”⁵⁹

2. Facilitating the business dealings of the pharmaceutical company, for which there are two scenarios:

- a) The doctor, in return for the gift, disregards some of the conditions (regarding safety, etc.) that are normally required to be observed by pharmaceutical companies. If these conditions have been put in place to protect the public interest, and have been established by responsible authorities, then it is prohibited to give or accept gifts that are intended to circumvent these conditions. Such gifts constitute bribery, and “The Prophet cursed the one who gives a bribe and the one who takes it.”⁶⁰
- b) Some medical practices or doctors stipulate that companies they deal with must give gifts (in various forms) before the companies receive the right to sign contracts or collect debts. It is not allowed to request nor to take such gifts, because they are a form of bribery and unjust devouring of other people’s property. Allah says in this regard, “O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.” (Q.4:29)

3. Scientific research, where the pharmaceutical company gives a grant to fund research, or sponsors a scientific or medical conference, without seeking to exploit this for financial gain or to advertise the company’s products. There is no objection to accepting such funding, because by default gifts are permissible. In some cases, this might even be praiseworthy, as a form of cooperation for the sake of righteousness and piety.⁶¹

4. Charity. Some pharmaceutical companies provide free samples to clinics or doctors as a service to society, to be distributed at no cost to

⁵⁹ See earlier footnote.

⁶⁰ Abu Dāwūd, Tirmidhī.

⁶¹ See Q.5:2.

patients who cannot afford these drugs and alleviating the suffering of the poor who cannot afford the cost of the drug (in part or full). This is a noble endeavor, and all who are involved in this will be rewarded, God willing.

5. Gifts that are contractually stipulated. Companies working in the medical field often sign contracts with public and private health organizations. Sometimes, the organization stipulates, as part of the contract, that the company supply them with (for example) a certain number of computers or photocopiers. In such cases, the computers and photocopiers are not considered gifts, because they are contractually stipulated. If the company consents to the stipulation, and the stipulation itself does not involve anything Islamically prohibited, then this is permissible, and in fact it then becomes necessary to honor this promise, because Prophet has said, “Muslims abide by their stipulations.”⁶²

12.6.2 Types of Gifts

1. Trifling Gifts, which include inexpensive calendars, agendas, and pens carrying the company logo. There is toleration for accepting such gifts, which do not have any impact on the doctor’s decision-making, such that he would not be influenced to prescribe this company’s drugs to his patients. Nevertheless, if he abstains from accepting these gifts, out of piety and to avoid suspicion, then that is praiseworthy.

2. Scientific excursions and conferences. Some companies fund scientific excursions or sponsor attendance at conferences.

- a) If the funding is tied to an obligation to prescribe the company’s drugs or instruments, then it is not permissible. The default assumption is that the doctor should strive to serve the interests of the patient, and prescribe the most appropriate drug for

⁶² Abu Dāwūd, al-Ḥākim.

them, rather than serving the interests of these companies. Prohibiting this blocks, the means that might lead to corruption or harm that might arise from the doctor exclusively prescribing drugs from a single company. This could potentially lead to disadvantage or harm for the patient, because there may be a more effective and cheaper drug manufactured by a different company.

b) If the funding is unconditional, then if it is motivated by desire to serve scientific research, then it is permissible, because the general principle is that gifts and donations are permissible. But if the funding is part of a marketing strategy for the company's products, then it is not permissible to accept it.

3. Free samples of drugs and other medical supplies. If these samples and supplies are offered to introduce and acquaint the doctor with the company's products, it is permissible to accept them, based on the default permissibility of gift. However, if there is an accompanying stipulation that the doctor will market these products or otherwise benefit the interests of the company, then it is not permissible to accept.

4. Training courses for medical devices offered by the manufacturer.

If these courses are part of a contract between the doctor's office (or hospital) and the manufacturing company, then this is valid, and the stipulation must be fulfilled, for Muslims abide by their stipulations. However, if these courses are part of a marketing strategy for the company, then they are not permissible.⁶³

⁶³ Quoted from a paper entitled, "Gifts of companies operating in the medical field," submitted by Prof. Abd al-Raḥmān ibn Aḥmad al-Jarī to the Second Jurisprudence Conference held at Imam Muḥammad ibn Sa'ūd Islamic University, 4175 ff.

12.7 Medical Insurance

The Arabic word for insurance (*ta'mīn*) is derived from the morphological root having the meaning of security, which is appropriate, because modern insurance aims to secure individuals and companies against potential risks in exchange for payment of premiums. There are two prominent mechanisms of insurance.

12.7.1 Cooperative Insurance (Fraternal Benefit Societies)

Cooperative insurance is a voluntary association of people, all facing a similar level of risk, who each make a specific contribution to the cooperative. The resulting income will be used to compensate any member who suffers an incident leading to financial need. If the sum of the contributions exceeds the need of this individual, the members have the right to take back the rest in proportion to what they paid. If the funds are not sufficient to cover the need, then the members are asked to pay more to cover the deficit. A cooperative insurance company does not seek to make a profit, but only to mitigate the unforeseen losses that might afflict some of its members. They agree to pool together with others who have been afflicted with risks.⁶⁴

This type of insurance is Islamically permissible, because it is consistent with the objectives of the Sharia that call for voluntary social solidarity.

Evidence for this includes:

- Allah says, “**Cooperate in righteousness and piety.**” (Q.5:2)
- Abū Mūsa reported that the Prophet said, “The relationship of the believer with another believer is like (the bricks of a) building, reinforcing each other.”⁶⁵ He illustrated this by interlacing the fingers of both hands.” This ḥadīth encourages cooperation among the believers, comparing them to the bricks of a single structure.

⁶⁴ *Al-Gharar fī al-‘Uqūd wa Āthāruhu fī al-Taṭbiqāt al-Mu‘āṣira*, 641.

⁶⁵ Bukhārī, Muslim.

- Jābir ibn ‘Abdullāh said, “The Messenger of Allah sent a delegation towards the coast, and appointed Abū ‘Ubayda ibn al-Jarrāḥ in command. There were 300 [individuals], and I was among them. We set forth, and then at some point along the way, our provisions were [almost] depleted. Abū ‘Ubayda ordered that the [remaining] provisions of the army be gathered up. This was done, and found to amount to two bags of dates. [Abū ‘Ubayda rationed these, such that] he would supply it to us a little every day, until [that too] was consumed. [Eventually,] we were getting only one date per day.”⁶⁶ This ḥadīth indicates the Islamic desirability of cooperation and solidarity.

In this light, the Council of Senior Scholars in the Kingdom of Saudi Arabia, as well as other fiqh councils, issued a fatwa that permitted this type of insurance.⁶⁷

12.7.2 Commercial Insurance

In this type of insurance, the person being insured undertakes to pay a specific premium to the insurer (i.e., the insurance company).

Commercial insurance companies are for-profit ventures, and the shareholders are the beneficiaries of the profits. Contemporary jurists have two different opinions regarding this type of insurance:

- a) That it is prohibited. This is the view of the majority of contemporary jurists, including the Council of Senior Scholars

⁶⁶ Bukhārī.

⁶⁷ Fatāwā of the Permanent Committee, 15:287 and the fatwās that follow. Decision No. 51 on 4/4/1397 AH. *Fiqh Al-Nawāzil*, Muḥammad ibn Husayn al-Jizānī, 3/266-287. The decision of the International Islamic Fiqh Academy of Organization of Islamic Cooperation in its 2nd session in Jeddah, 10 - 16 Rabī‘ II 1406 AH 22 – 28 December, 1985 CE.

in the Kingdom of Saudi Arabia and the Islamic Fiqh Academy in Makkah.⁶⁸

- b) That it is permissible. Some contemporary jurists hold this view.

The stronger view is the former [i.e., that it is prohibited], based on the following evidence:

1. Sales involving *gharar* (uncertainty regarding outcome) have been prohibited in a sound ḥadīth,⁶⁹ and commercial insurance involves *gharar* because the insured does not know, at the time of signing the contract, the exact sum of money that he will pay or receive. He might pay one or two installments of the premium before being struck by a disaster; in which case he would be entitled to the full return from the policy. Alternatively, the disaster may not occur at all, in which case he would have paid all the premium installments without receiving anything in return. Similarly, the insurer cannot determine that he will give or receive with respect to any single insured party.
2. Commercial insurance involves two types of usury / interest: *ribā al-faḍl*⁷⁰ and *ribā al-nasī'ah*.⁷¹ The former occurs when the insurance company pays the insured more than the total of his premiums, as the latter occurs when the company pays the insured an equal or lesser amount. Both types of *ribā* are forbidden.
3. Commercial insurance falls under the category of consuming people's money unjustly [which is prohibited in Q.4:29]. For

⁶⁸ Resolution of the Council of Senior Scholars in Saudi Arabia, #55, on 4/4/1397A H, *Fiqh Al-Nawāzil*, 3:268-2687, Fatāwā of the Permanent Committee 15:275 and the fatwās that follow. Resolution of the Islamic Fiqh Council in its 1st session held in Makkah on 10 Sha' bān 1398 AH.

⁶⁹ Muslim.

⁷⁰ i.e. selling an item for another of the same genus, with simultaneous exchange, but unequal quantities.

⁷¹ i.e. selling an item for another of the same genus, without simultaneous exchange.

example, in the case where the insured party pays premiums and does not receive anything in return, the insurance company has effectively consumed his money unjustly.⁷²

12.7.2 Health Insurance

Health insurance usually involves a person undertaking to pay regular premiums to an insurance company (or other organization), in return for the company covering the cost of his treatment for the duration of the contract.

- a) If such an agreement is made directly with the institution providing the treatment, then it is permissible, if measures are implemented to minimize the *gharar*. This is considering the abundant need for this type of contract, in the interests of preserving life, intellect, and lineage which are primary objectives of the Sharia. Such measures include the following:
 - The obligations of both parties must be clearly specified.
 - The current health of the insured party, as well as his potential future conditions, should be studied carefully.
 - The financial claims from the hospital (or other organization that is providing treatment) must be correlated to the services provided and must not be arbitrary amounts as is [often] the case with commercial insurance companies.
- b) If health insurance is provided by an Islamic insurance company (e.g. based on the cooperative model), which carries out its activity in accordance with Sharia guidelines, then this is permissible.
- c) If the health insurance is through a [conventional] commercial insurance company, then it is not permissible, because it includes *gharar* and ambiguity. For instance, the insured might

⁷² *Al-Mu`āmalāt al-Māliyya al-Mu`āšira fī al-Fiqh al-Islamī*, 122. *Fiqh Al-Nawāzil* 283-285. *Mawsū`at al-Fiqh al-Ṭibbī*, 4:1812 ff.

pay a small sum of money, but receive treatment that costs a lot more. Or he may not need treatment for years, in which case he is not getting any return, and he is effectively paying for something that is expected but might or might not occur. This is tantamount to the insurance company consuming his money unjustly [Q.4:29], and it is not permissible to cooperate in sin and aggression [Q.5:2].

Glossary ⁷³

- *Allah*: The Arabic word for God, the Creator and Sustainer of the universe. Islam teaches pure monotheism, that God has no partners, parents, or children.
- *'awra*: those parts of the body that are required to be covered, and this varies depending on who else is present. In the presence of others, the man's *'awra* is from the navel to the knee, and the woman's *'awra* is the entire body except for the face and hands (and the feet, according to some jurists).
- *fatwā*: a non-enforceable expert opinion of a Muslim jurist, that is morally binding on a person who trusts the learning and piety of that jurist and has no reason to believe that the jurist is wrong.
- *ghusl*: washing the entire body, which is required to exit the state of major *ḥadath* [q.v.]
- *ḥadath*: a state of ritual (intangible) impurity that renders a person unable to perform the ritual prayer until he/she performs the requisite act of purification. Minor *ḥadath* is brought about by (for example) urination or defecation, and necessitates ablution (*wuḍū'* [q.v.]). Major *ḥadath* is brought upon by (for example) sexual intercourse, and necessitates washing the entire body (*ghusl* [q.v.]). There is some difference of opinion among the schools of Islamic law regarding some of the nullifiers of *wuḍū'*.
- *ḥadīth*: a transmitted report about something that was said, or done, or approved, by the Prophet Muhammad.

⁷³ Prepared by Dr. Suheil Laher.

- *ḥalāl*: permissible under Islamic law, the opposite of *ḥarām*. These terms can be used to describe food, drinks or actions.
- *iḥrām*: the state of pilgrim sanctity that one must enter immediately before the Hajj. While in this state, people are subject to various restrictions, including not being allowed to use perfume, not being allowed to cut hair or nails, and (for men specifically) not being allowed to wear stitched garments.
- *istiḥāḍa*: abnormal, intermenstrual vaginal bleeding. This does not lead to a state of major *ḥadath*, in contrast to both menstrual and postpartum bleeding.
- *janāba*: post-sexual intercourse state of ritual impurity.
- *khalwa*: a state of privacy between a man and a woman who are not permanently unmarriageable to each other.
- *li'ān*: Mutual imprecation, where a man accuses his wife of adultery, and she has the right to deny it. See Quran, 24:6-9.
- *qibla*: the direction of the Ka'ba (the first building established on the earth for monotheistic worship, built by the Prophet Abraham) in the city of Makkah, which today is part of Saudi Arabia.
- *qiṣāṣ*: retaliation. In Islamic criminal law, a sane adult who intentionally causes injury to another person without right is subject to retaliation (conducted under legal supervision) from the victim or his family if they request that. In case of willful murder, *qiṣāṣ* would involve execution of the murder.
- *ribā*: In Islamic commercial law, *ribā* is a legal term signifying an unjustified increase given by one party to the other in a sale or loan contract. The most common type of *ribā* is interest charged on a loan.

- *ruqya*: words or invocations that are recited for the purpose of preserving health or repelling disease, black magic, etc. A *ruqya* can be Islamically prohibited if it involves utterances of polytheism. In contrast, certain verses of Qur'ān, and certain supplications from the ḥadīths are examples of common Islamic *ruqya*.
- *sunna*: normative Islamic practice that is derived from the teaching of the Prophet Muhammad.
- *Ta'zīr*: the technical term in Islamic law for a punishment whose details are at the discretion of the judge or government due to the fact that the sacred texts do not mandate a specific punishment for the offense in question.
- *tayammum*: "dry ablution," is a substitute for *wuḍū'* [q.v.] and/or *ghusl* [q.v.] in exceptional circumstances, and consists of striking the palms on sand (or stone or soil, according to many jurists) and then wiping the face, and then striking the palms on the ground again and this time wiping the arms (or merely the hands upto the wrists, according to some schools).
- *ṭawāf*: Circumambulating the Ka'ba seven times as one of the required parts of the hajj
- *wuḍū'*: ablution that is required before ritual prayer. Details can be perused in the books of fiqh.

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