

## *Medicine In Islamic Culture*

### ISLAMIC MEDICAL JURISPRUDENCE PART II: THE RESPONSES OF ISLAMIC LAW TO MEDICAL DILEMMAS

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#### ABSTRACT

Judicial decisions (Fatawa) of some of the most learned juridical authorities in the Imamate (Shiite) community (maraja' al-taqlid) of present time on medical issues are examined in this paper. They will provide the reader with the responses of the Islamic jurisprudence to the most involved medical dilemmas. The paper mainly focuses on the rational viewpoints of the Islamic law on permission of family planning and birth control, strict ban of abortion especially when the embryo is four months and above in normal conditions, and legitimacy of artificial insemination by the husband. Judicial prescription of cadaver and organ donation and transplantation are also discussed in some detail. The religious rite of circumcision and its impact on the health of man is duly elaborated and the principles of medical examination explained. The principle of priority of saving human life prevails all forbidden rulings set out for observing human sanctity in ordinary cases. Also, the principle of necessity when no definitive ruling is available on a given issue, has been an important source for religious prescription in all matters pertaining to the welfare of the Muslim society.

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#### INTRODUCTION

The recent Islamization of medical practices demanded by the young Muslim physicians has been in steady increase in spite of great influence of modernization and westernization in the Islamic world. The question of whether a medical practice is religiously acceptable or unacceptable is frequently repeated and plays the most crucial role in practice.

The intellectual process that has been used by contemporary Shiite prominent jurists to legitimize the necessary extrapolation in the matters of religious life is based on the legal principles of necessity and public welfare that are evoked when the revelation is explicitly silent on a particular issue. The principle of necessity when no definitive ruling is available on a given issue, has been an important source for religious prescription in all matters pertaining to

the welfare of the Muslim society.

We have shown in the first part of this paper that there is a body of Islamic medical jurisprudence and its general aspects are presented. The purpose of this paper is to provide the reader with the responses of the Islamic law to the most common medical dilemmas that Muslim doctors as well as ordinary people are faced with in recent decades. In this respect, Islamic views towards family planning and birth control, abortion and methods of artificial insemination and tubal pregnancy are presented. The paper further investigates judicial prescription regarding cadavers and presents Islamic views on organ transplantations. The significance of circumcision and its reflections are duly elaborated. In addition, principles of decent medical examinations as dictated in the Islamic jurisprudence are examined.

### ISLAMIC ATTITUDE TOWARDS FAMILY PLANNING

Islamic literature draws extraordinary attention to the issues relevant to family and population, as is read in the Qur'an:

“Say: Travel in the earth and see how He makes the first creation, then Allah creates the latter creation; surely Allah has power over all things.<sup>1</sup>

So let man consider of what he is created.<sup>2”</sup>

These verses provoke man's thought to study people and their living environments with deep insight. Table I presents the frequency of each of these issues, which indicates their significance in the context of Islam.

Men and women have sought out ways to control conception since they began to understand the mechanism of reproduction, and measures such as douching, coitus interruptus and the use of tampons are very ancient. An examination of the Islamic literature leads one to conclude that this religion looks at family planning openly and allows birth control conditionally.<sup>3</sup> Although Muslim population growth is generally desirable, as has been opined even by two contemporary influential leading jurists,<sup>4</sup> but due to the Islamic rational viewpoint, family planning is also allowed conditionally as will be discussed below.

The Qur'an has never explicitly denounced birth control. On the contrary, there are some Qur'anic verses whose implementation will result in some sort of family planning. As we read:

“And the mothers should suckle their children for two whole years for him who desires to make complete the time for suckling; and their maintenance and their clothing must be borne by the father according to usage; no soul shall have imposed upon it a duty but to the extent of its capacity; neither shall a mother be made to suffer harm on account of her child, nor a father on account of his child, and a similar duty (devolves) on the (father's) heir; but if both desire

Table I. Frequency of the issues related to population and family appearing in the Qur'an.

Subject	Frequency	Subject	Frequency
Male	15	Burying	8
Female	23	City	10
Single	2	Housing	43
Infant	5	Puberty	10
Generation	8	Womb	13
Daughter	15	Marriage	112
Son	127	Divorce	22
Child	38	Homicide	153
Mother	32	Death	158
Father	110	- - - - -	- - -

weaning by mutual consent and counsel, there is no blame on them, and if you wish to engage a wetnurse for your children, there is no blame on you so long as you pay what you promised for according to usage; and be careful of (your duty to) Allah and know that Allah sees what you do.<sup>5”</sup>

This venerable verse talks about suckling babies and discusses their rights as well as their parents. As it can be seen breast feeding is recommended and a full term of suckling is determined to be two years. Having notice that breast feeding decreases the probability of conception to some extent on the one hand and given that pregnancy often causes weaning off mothers milk, it could be imagined easily how it would damage the suckling baby's natural right. Therefore, the implementation of this Qur'anic verse can practically decrease fertility and as a result play a significant role in spacing between pregnancies, which is an effective method in any family planning program. The emphasis of the Qur'an on the fact that no soul shall be imposed a duty but to the extent of its capacity, is an indication that the number of children should not be greater than the extent of the parents, be it mentally or physically. As can be seen, the Qur'an states explicitly that neither of the parents shall be made to suffer of their child. This is also another proof of the implicit prescription of family planning in Islam. Therefore, one can conclude that contraceptive methods are allowed when pregnancy makes the parents suffer harm. Based on this argument, pregnancy is allowed only if: a) the mother is physically capable of child bearing, b) the mother's life does not suffer harm of child, and c) the father has enough capacity to provide the child with his necessary and comprehensive needs. The father is supposed

to consider the conditions and necessities of the time, preventing his child from suffering difficult and stressful conditions.

The ability to marry and form a family is propounded in the Qur'an as reads:

"And let those who do not find the means to marry keep chaste until Allah makes them free from want out of His grace."<sup>6</sup>

The capacity of marriage is also a factor that results in birth control to some degree. Marriage is considered as a preventive measure against committing sexual sins. The Holy Prophet Muhammad (PBUH) is reported to have said: whoever marries has completed half of his/her faith,<sup>7</sup> which implies that marriage is a sacred covenant to attain piety. This is the reason that Islamic jurisprudence obligates one to marry in case of being involved in sexual sins,<sup>8</sup> even in the form of masturbation.<sup>9</sup> It is in this respect that Islamic jurisprudence legitimizes temporary marriage with the aim of allowing within the sacred law possibilities that minimize the evils resulting from the passions of men, which if not challenged lawfully manifest themselves in much more dangerous ways outside the structure of religious law.<sup>10</sup> Islam has ordained the father to provide welfare of his family according to usage. Imam Reza (PBUH), the eighth designated successor of the Holy Prophet Muhammad (PBUH), is reported to have said:<sup>11</sup>

"A man deserves not to be hard to his wife and children. He should expand welfare of their life such that they do not desire his death."

Islamic literature is full of such valuable recommendations,<sup>12</sup> which merit special attention. The relatively recent slogan of "less babies, better life" can also be traced in the most important authentic Islamic source<sup>13</sup> after the Qur'an.

The views and judicial decisions of contemporary leading jurists in relation to family planning can be summarized as follows:

1. Contraceptive methods are generally allowed<sup>14</sup> as long as they do not result in permanent sterilization,<sup>15</sup> and the desires of the couple cannot lift this ban.<sup>16</sup>

2. Coitus interruptus is allowable, but both parties should agree on its use.<sup>17</sup>

3. Whatever results in abortion is forbidden.<sup>18</sup> Economical and social difficulties, a large number of children, and the mother's age do not lift the ban for terminating pregnancy and committing abortion.<sup>19</sup>

4. A contraceptive measure can only be used when it does not cause any harm, organ malformation, or paralysis.<sup>20</sup>

5. There are emergency cases when pregnancy endangers the mother's life and the only measure that can be taken to save her life is through permanent sterilization. Islamic law allows permanent sterilization when all other methods of preserving the woman's life fail.<sup>21</sup>

6. The authorities of an Islamic state should take

advantage of every possible source to increase the Muslim population. If the implementation of a wise administration arrives to a conclusion that there is no possibility to administer the Muslim population wisely then they can propagate contraceptive measures,<sup>22</sup> and an Islamic state has discretionary authority to use all legitimate means to control the population growth once it is required.<sup>23</sup>

## THE RULINGS IN ISLAMIC LAW CONCERNING ABORTION

The word abortion is used to indicate the deliberate termination of a pregnancy. It is the most common cause of termination of pregnancy in the developed world, such that over 1.3 million deliberate abortions were reported in 1983 in North America, while 3.6 million babies were given birth in the same year.<sup>24</sup> Abortion is strictly prohibited in the Islamic law even at the early conception of a fetus.<sup>25</sup> This prohibition also applies even to illegitimate pregnancies<sup>26</sup> and when the fetus is diagnosed medically to have become congenitally malformed in any way.<sup>27</sup> The parties involved in performing the abortion are liable to be punished by the Islamic law and should pay the "blood money" as is determined in jurisprudence,<sup>28</sup> which will be discussed later.

The frequent question God asks in order to demonstrate His power and wisdom is: Did not I create you from earth? Traditions that relate the stages of human creation have been used to derive the juridical decision that although the practice of abortion is prohibited, this prohibition applies especially when the fetus is 4 months old or more,<sup>29</sup> unless the life of the mother is in some sort of danger that necessitates abortion after that specified period.<sup>30</sup> The fetus has a status of separate entity and is legally not part of a human body. Development of a fetus in the mother's womb is described in more explicit terms in Sunna. The tradition says that the fetus develops from a drop into a clot of congealed blood after 40 days, thence to a morsel of flesh after a similar period, and then the soul is breathed into it.<sup>31</sup> This does not recognize the reality of the soul-body combination necessary for the human entity. The Qur'an does not accept the dualism of soul and body as some Muslim scholars came to endorse, rather, it is considered as the beginning of the fourth stage of fetal growth, whose deliberated miscarriage entitles the person to pay the complete *diyāh*. The main sign of entering this stage is the start of heart beating in the fetus in jurisprudence terminology. Thus, in the Shiite view, abortion is illegal at all stages of human development in the mother's womb. The majority of Shiite jurists have ruled against abortion at any stage except when the mother's life is in danger.<sup>32</sup>

There is authority in Islamic law for the legalization of abortion in extreme circumstances which mainly revolve around the survival of the mother.<sup>32</sup> Islamic law ordains, in

## Islamic Medical Jurisprudence, Part II

**Table II. Qur'anic view of pregnancy stages and the blood money when deliberate abortion is induced at different stages.**

Qur'anic View of Pregnancy Stages	Juridical Stages of Fetus	Permission <sup>43</sup> or Blood Money <sup>44</sup>
1. Was he not a small seed in the seminal elements. <sup>35</sup>	Sperm (notfah)	Birth control permitted
2. Surely We have created man from a small life-germ uniting <sup>36</sup> (itself).	Zygote (amshaaj)	Pregnancy Termination not allowed
3. Then We made him a small seed in a firm resting-place. <sup>37</sup>	Settlement in the Womb (estiqrar)	20 Dinars*
4. Then We made the seed a clot. <sup>38</sup>	Embryo ('alaqah)	40 Dinars
5. Then We made the clot a lump of flesh. <sup>39</sup>	Morsel (modhghah)	60 Dinars
6. Then We made (in) the lump of flesh, bones. <sup>40</sup>	Bone ('azm)	80 Dinars
7. Then We clothed the bones with flesh. <sup>41</sup>	Flesh (lahm)	100 Dinars
8. Then He made him complete and breathed into him of His spirit. <sup>42</sup>	Spirit (volouj rouh)	1000 Dinars

\*Each Dinar is equal to 3.529 grams of pure (unalloyed) gold= 18 nokhod of gold= 1 mithqal of golden coin= normally 24 nokhod in market.

the case of an unjustified miscarriage of a fetus, compensation of a lesser magnitude than that specified in homicide cases. The blood fine for feticide is given in Table II. If, as a result of an attempted miscarriage, a live birth results but death ensues later, then the full diyah is payable.

It may be added that Islamic jurisprudence takes a more serious view of miscarriage once the embryo is 120 days old or over, as the hadith of the Prophet indicated that the embryo is endowed with soul when 120 days old.<sup>33</sup> As the embryo becomes a fetus when its features become more distinctive in the ninth week, it would seem that the penalty could be greater for feticide than for embryulcia. Perhaps what to remember is the Qur'anic verse in chapter al-Isra' - Night journey:<sup>34</sup>

"They will question thee concerning the spirit. Say: The spirit cometh by command of my Lord: of knowledge it is only a little that is communicated to you."

### ISLAMIC JURISPRUDENCE AND ARTIFICIAL INSEMINATION

AID/AIH are abbreviations used to indicate, respectively, Artificial Insemination [by] Donor and Artificial Insemination [by] Husband. The term artificial insemination indicates the technique by means of which a man's seminal fluid is deposited in a woman's vagina or uterus under conditions other than sexual intercourse (usually with a special syringe) in the hope of achieving a pregnancy. AID and AIH, subjects of great controversy over the last few decades, have been extremely successful in providing previously childless couples with a much wanted baby.

AIH involves taking a specimen of the husband's semen and introducing it into the wife's vagina or uterus. Ordinarily, the physician is responsible for the procedure but sometimes

he instructs the couple how to do this for themselves at home. It is important to realize that AIH is used only in appropriate cases: where the wife has some structural or much more commonly-emotional problem that makes successful intercourse and impregnation very difficult; where the husband is unable to achieve or maintain an erection long enough to have sexual intercourse; and finally, where the concentration of sperms in the seminal fluid is abnormally low (the physician may then use special techniques to achieve a higher concentration of sperms before introducing the semen).<sup>45</sup>

The chance of pregnancy in women is reported to be 20-53% in therapeutic insemination utilizing homologous sperm and using a cervical cup<sup>46-48</sup>, 20-30% using *in vitro* fertilization (IVF) technique<sup>49,50</sup> and about 30% using gamete intra-fallopian transfer (GIFT)<sup>51</sup>. Much more controversial is AID, in which the seminal fluid is provided by a male donor, whose identity should be unknown to both husband and wife. This method is used in situations where the wife is fertile but the husband is not.

The debate over the rights of the embryo and of the genetic parents, and of the right of science to create life for childless couples returns to the question: Where does human life begin? Is human life a continuum, lacking a clear beginning (or end)? Could it begin on fertilization *in vitro*? As far as paternity is concerned, judicial opinions on embryo transfer are similar to those on tubal pregnancies in Islamic jurisprudence. But the reservations as to creating life in this manner are much stronger, at least morally.

As reported in July 1984, an infertile woman in California became the world's first person to give birth to a baby from a donated embryo. In the embryo-transfer process (developed by Genetics Research Inc. of Chicago), a fertile woman and an infertile woman who wants to have a child are monitored until they ovulate at roughly the same time. Then the donor

is artificially inseminated with sperm from the infertile woman's husband. After five days, the embryo is washed out of the donor's uterus and transferred to the recipient's uterus, where it develops. Computers are used to match the genetic traits of the donor with genetic defects. In June 1984, as reported from Melbourne, concerning the puzzle of *in-vitro* fertilization of orphaned embryos, the Victoria Attorney General said: "The present legal status of the embryos is unclear. It may be that they are not owned by anyone."<sup>52</sup>

As for the parenthood and inheritance of the child reproduced by these techniques and the statutory rights of him/her, the Islamic jurisprudence has examined the many aspects of the issue.<sup>53</sup> Islamic law rules that marriage is respectable in any nation, be it the people of the Book<sup>54</sup> or not. This means that the children of believers or non-believers are considered to be legitimate if they are reproduced through the marriage according to the laws of a certain nation. Given that, the *nasab* (blood tie) of the child is attributed to his/her parents rightly and therefore he/she inherits them.<sup>55</sup>

The Qur'an limits sexual pleasure through marriage (temporary or permanent) when it explains characters of the believers as reads:<sup>56</sup>

"And who guard their mates their private parts. Except before their mates or those whom their right hands possess, for they surely are not blameable. But whoever seeks to go beyond that, these are they that exceed limits."

In summary, under the Islamic law these issues arise:

1. If the sperm used to fertilize the egg is not that of the husband, then the insemination partakes of the nature of "zina" (illicit sexual intercourse inclusive of adultery) and is strictly forbidden. In addition, the *nasab* (blood tie) of the child reproduced in this way cannot be attributed to the father or the mother because it is not the result of marriage and the child is illegitimate. Such a child does not even inherit from the mother. As this is not *zina strictu sensu* the penalty is not the "hadd" (lapidation or stoning), because the detailed conditions of hadd set out in the jurisprudence are not met.<sup>57</sup>

2. If the sperm used to fertilize the egg is that of the husband, and the method of insemination is free from the religious sins such as masturbation, which is strictly forbidden,<sup>58</sup> then it is religiously allowable and the child reproduced is legitimate. His/her *nasab* is attributed to the parents and therefore he/she inherits them. There is no difference between the rights of such a child and one that has been reproduced through legitimate sexual intercourse.<sup>59</sup>

3. Suppose that the sperm of a husband is stored properly. Assume that his wife wants to be fertilized after her husband's death by his sperm. In terms of the time of insemination after the husband's demise, two periods exist. The first four months and ten days immediately after the husband's death is considered in the Islamic law as a period during which the wife cannot be remarried, which is called death's "iddah."<sup>60</sup>

As marriage continuum still maintains in this period, insemination in the way described earlier is religiously allowable and the rulings given in 2 above are applicable. The only question arises towards how to split the inheritance, which is described in the jurisprudence texts in detail. If the insemination of the deceased's sperm is transferred beyond this period the judicial decision would be that given in 1 above.<sup>61</sup>

4. Artificial insemination of the donor by the husband is illegal.<sup>62</sup>

5. Temporary maternity by the donor is a jurid concept that has no place in Islamic family law.<sup>63</sup>

6. The egg is that of the donor and not of the surrogate mother and this raises thorny questions as to who is the permanent mother. Joint maternity of a sort could arise only through multiple suckling. The details of such legal rulings are given in the treatises issued by the most learned jurisconsult.<sup>64</sup>

7. In general, even legalized artificial insemination should be performed in such a manner that is free from any forbidden acts as dictated in the Islamic laws.<sup>65</sup>

#### JUDICIAL PRESCRIPTION REGARDING CADAVERS

The Qur'anic doctrine of bodily resurrection has raised many questions regarding the extent of saving human lives. The Qur'an explicitly speaks about God's power to bring back to life after death of humanity, in order for them to account for their deeds:<sup>66</sup>

"Hath not man seen that We have created him from a drop of seed? Yet lo! he is an open opponent. He hath coined for Us a similitude, and hath forgotten the fact of his creation, saying: Who will revive these bones when they have rotted away? Say: He will revive them Who produced them at the first, for He is the Knower of every creation."

The Qur'an also makes it clear that God has the power of bringing back to life scattered parts of a body, wherever they happen to be, even if they are entirely decomposed.<sup>67</sup>

The aforementioned Qur'anic affirmation of bodily resurrection has determined many a judicial prescription regarding cadavers. The most appropriate and religiously required act after a person dies is to bury him as soon as possible.<sup>68</sup> Islamic law prohibits mutilation of the cadaver<sup>69</sup> and thus, to cremate it.<sup>70</sup> A penalty is ordained for mutilation and cremation of the cadaver in the Islamic law.<sup>71</sup> For example, the penalty for cremating a cadaver is determined to be 100 Dinars (352.9 grams pure gold), which is equivalent to one tenth of complete blood money (*Diyah*).<sup>72</sup> This penalty should be spent in charity purposes on behalf of the deceased person.<sup>73</sup> Examination of these rulings reveals that the human body is highly respected, even after death. However, under certain circumstances, in order to establish

the cause of suspicious death, autopsy was permitted in the classical juridical texts.<sup>74</sup> Through further extrapolation, the practice of postmortem dissection was permitted, for instance, to retrieve a valuable object that might have been swallowed by a deceased person.<sup>75</sup> There was still doubt about the use of human cadavers for medical research until more recently. Nevertheless, the principle of human welfare has been evoked by the jurists to allow this, in spite of many traditions attributed to the Prophet, which support the sanctity of human remains that should be buried, including any part of the body that contains flesh, sinews, and bones (eg, fingers, toes, and so on).<sup>76</sup>

In the recent rulings obtained on the use of cadavers for research, the prominent juridical authorities in the Shiite school of Islamic law have ruled that it is permissible to do so only in the case of the cadavers of nonbelievers.<sup>77</sup> As for the Muslim cadavers, it is strictly forbidden and in case of mutilation, blood money should be paid as penalty accordingly.<sup>78</sup> It is permitted if and only if saving the life of a Muslim or Muslims necessitates to do so exclusively. In such cases the conservative way to fulfil religious duty is also to pay the blood money as ordained.<sup>79</sup> The Muslim cadaver must be promptly buried.<sup>80</sup> The jurists have provided no documentation of this ruling, but it is probably deduced from the rule about respect for the Muslim dead preserved in some traditions.

### ISLAMIC VIEWS ON ORGAN TRANSPLANTATION

The question of organ donation and transplantation and also blood transfusion has found a significant place in the Islamic jurisprudence,<sup>81</sup> which merits special attention. At this point, both religious beliefs regarding bodily resurrection and cultural norms about the treatment of the dead with respect and consideration make the donation of bodily organs loathsome to Muslim sensibilities. Moreover, belief in the separation of soul and body and their ultimate unity at the time of resurrection at the popular level has greatly affected the cultural outlook on the matter of cadavers. However, the response of the jurists in this connection has been relatively flexible.

In the contemporary rulings it appears that there exists a consensus regarding the right of a living person to donate certain parts of the body with condition that it would not lead to intentionally wounding oneself or forfeiting one's life to save another.<sup>82</sup> However, if it is deemed that by risking one's life one may be able to save his fellow-man from impending death, then one could undertake to donate a part or an organ that is needed. At this point the discretion is given to the person who can decide after a careful risk-benefit analysis in which "the probability of saving the recipient's life is substantially greater than the risk to the donor's life or

health".<sup>83</sup> Although in the case of donation of bodily parts the recipient is not required to be a Muslim, in order to protect the donated organ of a Muslim from being cremated by the recipient, according to some Muslim jurists it is necessary to state the condition that the organ must be separately buried if the recipient were to make a last will of testament requiring cremation of his/her body. This is in regard to the living donors of organs and tissues. The majority of the Muslim scholars belonging to various schools of Islamic law have invoked the principle of priority of saving human life and have permitted organ transplant as a necessity to procure that noble end.<sup>84</sup>

It is possible to summarize the Islamic view on organ transplant by pointing out the underlying principle of saving human life. Whereas the limited right of a person is recognized on his/her body, which is a trust from God and as such is to be preserved and respected, donation of organs from both living and dead has been regarded as permissible in the case of a living person as long as his/her life is not endangered,<sup>85</sup> whereas in the case of a dead person there must exist his/her last will of testament permitting thus. There are, however, larger questions still unresolved and these deal with the modes of transfer that are ethically acceptable under all circumstances. Whereas explicit gifts of bodily parts with the stated prerequisites are legally valid in Islamic law, their sale is invalid. In such cases a conservative view is taken by the jurists to compromise between fulfilment of religious duty of the Muslim and the demand of an organ or biologic materials by the recipient. This view recommends that the money that is exchanged between the donor and the recipient should take place on the intention of the permission given by the former to the latter and not the organ or material itself.<sup>86</sup>

Muslim scholars have still to make distinctions in the matter of qualitative differences between cadaver organs and other biologic materials that are renewable in the body, such as blood, skin, and bone marrow. In the history of Islamic jurisprudence, one can detect opinions that have regarded the use of these materials in the form of donation, and even their sale under certain circumstances, permissible.<sup>87</sup> However, the modern trends in medical research point to their increased material value and hence, the temptation to engage in their commercial enterprise. These questions are still far from being discussed in the Islamic world, where there is still little demand of the organs and other biologic materials. It is correct to assert that academic institutions in the Islamic world are still struggling to define their world view, which is in large measure imported from the West and which only recently has been re-evaluated by a growing number of Muslim physicians who are committed to find solutions to the ethical problems in medical practice from Islamic sources.<sup>88</sup>

## CIRCUMCISION: A RELIGIOUS RITE

Circumcision is a minor surgical procedure for removing all or part of the foreskin (prepuce) of the penis. The historical basis of this practice is unknown, but it can be traced back to ancient times. When circumcision is performed for non-medical reasons-i. e. as a religious rite or as a routine hygienic measure- the operation is best done in the first one or two weeks of life.

Circumcision is performed as a religious rite among Muslims. It is desirable to be performed just a week after the male baby's birth, but it can be postponed to a later date until puberty. Once he attains puberty, it becomes a personally and individually incumbent obligation on him to undergo the operation, being circumcised. The same rite also applies to a new male to Islam.<sup>89</sup> This religious rite is so strong among Muslims that even in a secular country like the United Kingdom a heavy demand exists among the Moslem population. The length of the waiting list caused many to perform religious circumcision outside the hospital. It is reported that during 1989, 104 circumcisions were performed in a university hospital in Leeds (UK). Only one boy had to be taken back to the operating room from the recovery room to control bleeding.<sup>90</sup> Other less common complications followed a pattern similar to those reported by others.<sup>91</sup> The main reason for circumcision is the belief that it improves cleanliness. It would also appear to provide a significant degree of protection against penile cancer, as this is extremely rare in circumcised men.<sup>92</sup> Cancer of the cervix is also said to be less common in women who are married to circumcised men. Circumcision for specific medical rather than ritual reasons is performed in cases such as abnormal tightness of the foreskin which causes painful or difficult urination.<sup>93</sup>

## THE RULINGS IN THE ISLAMIC LAW CONCERNING MEDICAL EXAMINATION

Islam establishes a sanctuary domain for men and women, both individually and collectively. In terms of marriage, look and palpation, they are divided into two groups: intimate and non-intimate. Intimate is the one with whom marriage is prohibited by Islamic law, usually because of kinship. A woman in this category is not required to veil herself in front of the intimate man. The second category are not intimate enough to have access to the women's apartment (*Harem*). He is an outsider and stranger from a juridical point of view, and is the one before whom a Moslem woman is supposed to veil herself.<sup>94</sup> The following Qur'anic verses determine the border of juridical intimacy.

"And marry not women whom your fathers married, except what has already passed; this surely is indecent and hateful, and it is an evil way. Forbidden to you are your mothers and your daughters and your sisters and your

paternal aunts and your maternal aunts and brothers' daughters and sisters' daughters and your mothers that have suckled you and your foster-sisters and mothers of your wives and your stepdaughters who are in your guardianship. (bom) of your wives to whom you have gone in; but if you have not gone in to them, there is no blame on you (in marrying them), and the wives of your sons who are of your own loins, and that you should have two sisters together, except what has already passed; surely Allah is Forgiving, Merciful.<sup>95</sup>"

"Say to the believing men that they cast down their looks and guard their private parts; that is purer for them; surely Allah is aware of what they do. And say to the believing women that they cast down their looks and guard their private parts and do not display their beauties except what appears thereof, and let them wear their head-coverings over their bosoms, and not display their beauties except to their husbands or their fathers, or the fathers of their husbands, or their sons, or the sons of their husbands, or their brother, or their brothers' sons, or their sisters' sons, or their women, or those whom their right hands possess, or the male servants not having need (of women), or the children who have not attained knowledge of what is hidden of women; and let them not strike their feet so that what they hide of their beauties may be known; and turn to Allah all of you, O believers! so that you may be successful.<sup>96</sup>"

Islamic jurisprudence generally forbids men of touching or looking at the body of a non-intimate woman, and vice versa, be it for the sake of pleasure or not.<sup>97</sup> Islamic law permits a man to look at a woman or touch her body in case it is necessary for the sake of medical treatment, but in such cases he should behave so decently such that if he can treat the patient through looking, he should not go any further to touch her and vice versa.<sup>98</sup> If medical treatment requires one to examine the genital organs of somebody, it is necessary to do so by looking through a mirror,<sup>99</sup> but if there is no alternative except observing the genital organs it is allowed to do so.<sup>100</sup> In general, in any sort of medical treatment, surgery, blood transfusion, orthopedics, etc... men should go to male doctors and women to female doctors as the first priority, unless the same gender doctor is not available. In emergency cases, a woman is allowed to be treated and examined by a male doctor to save her life and the male doctor is allowed to treat his female non-intimate patient decently.<sup>101</sup>

Nevertheless, the principle of saving human life prevails all forbidden rulings in connection with observing and palpation of non-intimate body organs for medical diagnosis and medical education. Therefore, the sole purpose of medical education and learning does not juridically set up permission to do the forbidden acts per se both for medical students and professors or other paramedical parties.<sup>102</sup> If the only method of learning and medical education necessitates to violate the forbidden rulings of palpation and

observation, it is permitted provided that the student is so confident that in his/her future career he/she need such medical knowledge through that special medical education method. In addition, the student should be sure enough that in his prospectus career he will be faced with patients and the responsibility of saving their lives will be entrusted to him. However, the limit of necessity in such violations should be strictly observed.<sup>103</sup>

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10. Temporary marriage (Mut'ah) is a definitely established historical fact that was practiced at the beginning of Islam, namely between the commencement of the revelation and the migration (Hijrah) of the Holy Prophet Muhammad (P.B.U.H.) to Medina. The legitimacy of the mut'ah marriage continued from the time of the hijrah until the death of the Holy Prophet as this verse, revealed after Hijrah, proves, "And those of whom ye seek content [istamta'tum, from the same root as mut'ah] (by marrying them), give unto them their portions as duty" (The Qur'an, IV/24). Those opposed to Shiism contend that this verse from the "Chapter on Women" was later abrogated. They consider the verse "Except before their mates or those whom their right hands possess, for they surely are not blameable" (The Qur'an, XXIII/6) from the "Chapter on Believers" as an abrogated verse. But the Shi'ah do not accept this view, because the verse legalizes marriage unconditionally and without making reference to its permanency. On the other hand, this verse was revealed in Mecca (before Hijrah), while the verse on Mut'ah was revealed in Medinah (after Hijrah). It is inconceivable that the former could abrogate the latter, as chronology forms the basis of the rule of abrogating. In fact, the word of the second caliph recorded by all sources who said "There are two mut'ahs which existed in the time of the Prophet of God and Abu Bakr which I have banned, and I will punish those who disobey my order", are the best proof that up to the time of his ban such marriages were still practiced (For further details of legitimacy of Mut'ah see the famous commentary book on the Qur'an written by prominent Sunni scholars such as Fakhr al-Razi in Tafsir Mafatih al-Gheib, part 3; Muhammad b. Jurair al-Tabari in Tafsir al-Kabir, part 5 and Jarallah al-Zimakhshari in Tafsir al-Kashaf under the Qur'anic verse IV/24; also see the authentic collection of hadiths by the eminent Sunni traditionist Muslim b. Hajaj in Sahih part 1, p. 467 [Bab al-Mut'ah bi al-Hajj wa al-'Umrah] and p. 535 [Bab Nikah al-Mut'ah], Cairo, 1306/1888; Ahmad b. Hanbal [founder of Hanbali Sunni school of law], al-Musnad, part 1, p. 25 and part 2, p. 95; Abu'Isa Muhammad b. 'Isa b. Surat al-Tirmidhi, Sunan; even Malik b. Anas [founder of Maliki Sunni School of law], death 179/795 legitimizes Mut'ah, his judicial decision [fatwa] quoted by well-known Sunni scholars such as Mulla Sa'ad al-Taftazani in Sharh al-Maqasid, Borhan al-Deen al-Hanafi in Hidayah and Ibn Hajar al-Makki al-'Asqalani in Fath al-Bari). It is inconceivable that if mut'ah had been abrogated and forbidden it would not have continued to be commonly practised by Muslims during the lifetime of the Holy Prophet and after his death until the time of the second caliph; that if mut'ah had been abrogated no action would have been taken to forbid it. Islam is a universal religion and in its legislation takes all types of human beings into consideration. Considering the fact that permanent marriage does not satisfy the instinctive sexual urge of certain men and that adultery and fornication are according to Islam among the most deadly of poisons, destroying the order and purity of human life, Islam has legitimized temporary marriage under special conditions by virtue of which it becomes distinct from adultery and fornication and free of their evils and corruptions. These conditions include the necessity for the woman to be single, to become married temporarily to one man at one time, and after divorce to keep a period during which she cannot be remarried ('iddah), half of the time that is required after the permanent marriage.
11. Jame' al-Sa'adaat, Vol. 2, p. 143.
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13. Nahj al-Balagha (ed. Feiz al-Islam), Hekmat 135, p. 1153.
14. See Golpaygani SMRM: Majma' al-Masa'el, No. 109, 485-6; Khomeini SRM: Estef'ta'at, quoted from Fiqh al-Tabib, pp. 198-199.
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