

Medicine In Islamic Culture

ISLAMIC MEDICAL JURISPRUDENCE PART I: GENERAL ASPECTS AND PRINCIPLES

SEYYED MOHAMMAD TAGHI AYATOLLAHI; Ph.D., FSS, C. Stat.

From Shiraz Univeristy of Medical Sciences, Shiraz, Islamic Republic of Iran.

ABSTRACT

Islamic medical jurisprudence, which is the subject concerned with the application of Islamic laws to the area of medicine, has never been discussed as an independent field of jurisprudence, although several selected topics, especially those concerning food and beverages, sexuality, death, wounds and injuries, and doctor-patient relations have been more discussed than others. The results of an investigation on the Islamic medical jurisprudence characterized on the basis of practicing Ijtihad are presented. A survey on the Imamate (Shiite) jurisprudence was conducted through the works of prominent Shiite jurists from 4th-10th century to the present time. The concept and methodology of practising Ijtihad is clarified and the authoritative sources of the Islamic law: The Qur'an, the Sunna, the Ijma' (consensus), and the 'Aql (reasoning) are discussed. The paper further highlights the value of human life in Islam holding reference to the topics discussed in the Imamate works which proves the existence of a body of medical jurisprudence that enjoys comprehensiveness, penetration, and flexibility. In addition, the specifications of the Islamic medical jurisprudence characterized by the organic connection between the reasoning and divine law, negation of foreign dominance, observation of public benefit, actualization of public responsibility, existence of flexible overriding rules, and the discretionary authority of the jurist are elaborated. The Shiite jurists' views to medical issues prove that pragmatism prevails and the aim is to seek a compromise between Islamic heritage and the achievements of modern medicine, as long as basic Islamic dogma is not violated.

MJIRI, Vol. 7, No.2, 123-131, 1993.

INTRODUCTION

The modern person rarely thinks of medicine as having any religious boundaries. The human body is usually perceived as a sophisticated and mysterious machine whose life-span medicine is ever struggling to extend.

In an Islamic society, everything including medicine is colored by the religion because Islam, as a complete pattern of life,¹ deals with all aspects of human life. In fact, most Muslim jurists in the classical days were also students of medicine and the Prophet Muhammad linked the importance of philosophy and medicine in the hadith

(tradition) "Science is twofold: theology and anatomy [medicine]." While the medicine practiced by Muslims and for Muslims is generally the same medicine practiced in the west today, the medical jurisprudence or legal medicine, which is the subject concerned with the application of Islamic laws to medical issues, is different. This means that the use or non-use of a renowned medical treatment by Muslim doctors will sometimes be guided more by Islamic law than purely medical considerations or non-Islamic acts.

Islamic medical jurisprudence has never been discussed as an independent field, in its own right, or as having practical relevance to contemporary Muslims, although several selected topics especially those concerning sexuality, birth control, abortion, breast feeding, foods and comestibles, death, and injuries have been more discussed than the others.²

This paper shows that there is a body of Islamic jurisprudence, which exists and is gaining more importance now. The study also presents the principles of the Islamic medical jurisprudence characterized on the basis of practicing Ijtihad, which is the salient feature of Imamate (Shiite) jurisprudence.³ This school applies Islamic heritage and the achievements of modern medicine, as long as basic Islamic dogma is not violated.

Specific issues and reflections of Islamic forensic medicine will be discussed in another paper.

THE CONCEPT AND NECESSITY OF PRACTICING IJTIHAD

The Qur'an declares explicitly that the true religion with Allah is Islamic and whoever desires a religion other than Islam, it shall not be accepted from him, and in hereafter shall be one of the losers.⁵ The message of Islam is not restricted by time and place. Rather, it is universal and eternal. The universality of Islam can be seen in numerous verses of the Qur'an, which address to all mankind using the phrase "O, People."⁶ The Qur'an also stipulates that Muhammad is the seal of prophets,⁷ which means that Islam is the last religion, qualifying it as the eternal religion. These two specifications require a mobile force that can cope with the problems and needs of the people in different periods and various places, administering their affairs properly. This force is nothing but practicing Ijtihad, that is one of the duties of the Muslim scholars to obtain deep understanding in religion and they may warn their people, as the holy book asserts.⁸

Avicenna, the most influential of all Muslim physicians and philosophers, who for many centuries held the title of "Prince of Physicians" in the Occident, and who dominates Islamic medicine to this day in the East,⁹ explains the concept of Ijtihad very brightly and says:¹⁰

"The fundamentals of Islam are static, unchangeable, and limited but the events and problems are numerous and subject to change. Each time has its own circumstances and problems. Therefore, it is necessary that in each era a group of specialists and scholars in the fundamentals of Islam and aware of the events and difficulties of that time make independent reasoning to infer the new laws and judgements from the principles of Islam."

Ijtihad or independent reasoning is a lawyer's exerting the faculties (of the mind) to the utmost for the purpose of forming an opinion in a case of law (respecting a doubtful and different point). It is an independent estimation of the jurist in a legal or theological question based on interpretation and application of the authoritative sources of the Islamic law.

AUTHORITATIVE SOURCES OF THE ISLAMIC LAW

Islamic forensic medicine cannot be truly appreciated without an estimation of the canons of construction and interpretation of the Islamic jurisprudence itself. To study the interpretation of forensic rules in the Islamic law one has to examine in fact first what are the basic sources of Islamic jurisprudence and what rules govern interpretation and which areas are permissible for debate.

Imamate jurisprudence considers the following as the four authoritative sources of the Islamic law: the Qur'an, the Sunna, the Ijma' (Consensus), and the 'Aql (reasoning).¹¹

The Qur'an

The Qur'an is the divine book which was revealed to Muhammad (p.b.u.h.), the messenger of God. It is the main authoritative source of the jurisprudence and the most significant one, which consists of 114 Suras (chapters). Each Sura has 4 (Sura CXII) to 286 (Sura II) Ayas (verses). The Shi'a, believe that the Qur'an is the created word of God, and not uncreated and eternal. More importantly, the text of the Qur'an as it is to be found in the textus receptus, which is in the hands of everyone in the shape of a book, is accepted wholly by the Shiite.¹²

The Sunna

The Sunna comprises the Prophetic and his Ahl al-Bayt sayings, customs and practice, which are the sound proof of the Shiite jurisprudence. Ahl al-Bayt literally means the "People of the house" which refers to the immediate descendants of such a family of the same "house" or Bayt. In this compound form, Ahl al-Bayt is used in the Qur'an especially in reference to the immediate family of Prophet Muhammad, as we hear:¹³

"And God wishes to remove from you [all kinds of] uncleanness, O members of the family [of Muhammad]

and thoroughly purify you."

All the prominent commentators of the Qur'an are unanimous in the opinion that the term *Ahl-al-bayt* in this verse refers to Muhammad's daughter Fatima, his cousin, son-in-law and immediate successor Imam 'Ali, and his two beloved grandsons Imam Hassan and Imam Hussayn.¹⁴ In Shiite writings, it includes in addition, other nine Imams of the progeny of Imam Hussayn as well. The Prophet's family are his chosen heirs and are entrusted with the task of exemplifying and explaining further the prophetic message and the Shari'ah (laws and codes of behavior explained in the Qur'an and commented upon in every detail by model of Prophet's life) after the Prophet's death. The Prophet himself has shown that the tradition (Hadith) known as the "hadith al-thaqalayn," which sects of Islam accept, refers specifically to the matter of succession.¹⁵

The Ijma' (Consensus)

The search for al-Ijma' (consensus) in matters of Shari'a entails a meticulous examination of the systematic works of individual jurists, from the earliest generation on, to discover the authoritative and binding opinion of the Prophet and the Imams on a particular question in dispute. Research is, in fact, geared to discovering the Sunna that must illuminate al-Ijma', with certainty, to render the discovered opinion authoritative. It is only when the opinion of the infallible Imam is revealed with certainty that "consensus" can be used as evidence for the execution of decision.¹⁶ According to some procedures, to arrive at Ijma' it is necessary to obtain the agreement of all the jurists of one single period.¹⁷ In Imamate law there is a category of reliable narrators who collectively form a group known as *As'hab al-Ijma'*, who are the prominent fuqaha' who have related Imams' opinions with certainty.¹⁸ The Imamates have mentioned several ways of "discovering" the opinion of an Imam with certainty to arrive at consensus.¹⁹

The 'Aql (Reasoning)

The Shiites have developed their own legal jurisprudence in which a prominent place is given to the faculty of reasoning (al-'Aql). In the jurisprudence of the Imamates the priority of reason is in accord with their rational theology, in which reason is prior to both sources of revelation, the Qur'an and the Sunna. This does not mean that the revelation is not regarded as all-comprehensive; on the contrary, there is recognition of the fact that it is reason that acknowledged the comprehensiveness of the revelation by engaging in its interpretation and discovering all the principles that Imamates need to know. It rejects the *Ijtihad* based on "presumptive proof" (*al-Zann*), which is sometimes derived from inductive reasoning (*al-Quyas*).²⁰

FORENSIC EXPERTISE

Brown²¹⁻²² stated that "the Qur'an, apart from some mention of wounds and a vague popular embryology, contains hardly any medical matter." But by the 1960s research had suggested that the Qur'an's hidden meaning is infinite and hence may encompass all advances in human knowledge. The posthumously published Arabic treatise of al-Ghawabi²³ was based on the life-time experience of a consultant gynecologist and obstetrician. He argued that as in the Sura of "The Resurrection" [*al-Qiyama*] the Qur'an reads:²⁴

"Does man think that We shall not gather his bones? Yea! We are able to make complete his very fingertips."

This verse referred to the fingers, and that it indicated a technique some twelve and a half centuries before it was first discovered in 1884 by the forensic scientists of England. It is along these lines that the meaning of the Qur'an has been described as infinite and hence may encompass all advances in human knowledge.

The first Muslim adjudicator to employ forensic expertise, in the widest sense of the term, was Imam 'Ali, for in some of his judgements one observes the use of scientific analysis and testing.²⁵

A woman was extremely fond of one of the *Ansar*²⁶ and attempted to seduce him by various means, but when all failed, she tried to implicate him the criminal charge of rape. She took an egg and poured its white on her clothes and between her thighs. She then went to Caliph 'Umar and claimed that the man in question had raped her. Caliph 'Umar wanted to penalise the young man, but the latter pleaded with him to investigate the basis of the accusation. So Caliph 'Umar consulted the Imam 'Ali. The Imam said: "Fetch me boiled hot water." He then poured it on the albumen until this was removed from the dress and collected in a pot. The Imam tasted the substance, and recognized its nature. This forced the woman to confess.

Although this case was decided in the final analysis on the basis of a confession, it nevertheless shows only too clearly that forensic medicine in an embryonic form has an age-old basis in the Shari'a.

In another equally interesting (maternity) case two women appeared before the Imam 'Ali, one having given birth to a male and the other to a female, both deliveries having taken place at the same time and in the same locality. Both women claimed to be the mother of the boy. The Imam weighed an equal measure of the milk of each of them. He decided that the woman whose milk was the denser was the mother of the boy.

The above arbitral decision, naturally enough, is not regarded by jurists as a binding precedent or by any means as an accurate method of proof. Yet it is another example of the origins of the medical jurisprudence in Islam, to which a large contribution was made by *Ahl al-Bayt*.²⁷

The role of the Ismaic medical jurisprudence is patently, of paramount significance, not least to doctors involved with the Muslim World.

CREATION OF MAN

The Embryology mentioned in the Qur'an is difficult to comprehend, but it is around such complexity that both the Qur'an's supremacy and controversial nature (i.e., controversial to non-Muslims) revolve.

The Creation of man is a recurrent theme in the Qur'an. It is instructive to quote by way of illustration various verses from certain Suras, which describe creation. From the Sura of "The Believers" (al-Mu'minum):²⁸

"And certainly We created man of an extract of clay. Then We made him a small seed in a firm resting-place. Then We made the seed a clot, then We made the clot a lump of flesh, then We made (in) the lump of flesh bones, then We clothed the bones with flesh, then We caused it to grow into another creation, so blessed be Allah, the best of the creators."

From the Sura of "The Pilgrimage" (al-Hajj):²⁹

"We created you from dust, then from a small seed, then from a clot, then a lump of flesh, complete in make and incomplete, that We may make clear to you; and We cause what We please to stay in the wombs till an appointed time, then We bring you forth as babies, then that you may attain your maturity."

The Sura of "The Resurrection" (al-Qiyama) contains the verses:³⁰

"Was he not a small seed in the seminal elements? Then he was a clot of blood, so He created (him) then made (him) perfect."

And the Sura of "The Star" (al-Najm) states in the verse.³¹

"From the small seed when it is adapted."

On examining these two verses in the original one sees that the Qur'an has, by saying "nutfa min manyin yumna" and "min nutfa in idhatumna" drawn a distinction between the gushing liquid and the motile spermatozoa contained within the liquid; it was only in 1680 A.D. that the microscope enabled scientists to verify this distinction.

But it is the Sura of "The Companies" (al-Zumar) which contains considerable scientific interest:³²

"He creates you in the wombs of your mothers—a creation after a creation—in triple darkness."

Some interpreters either quote these verses as an example of vague embryology, or, if they are Muslims, as three stages of darkness within the ovary, the fallopian tubes, and the womb. But in fact the fetus whilst in the uterine cavity is surrounded by three protective sets of tissues, which appear to the naked eye as one membrane, but the modern surgeon is capable of distinguishing the

three separate layers: the chorion, the placenta which is specialized part of the chorion, and the thin amnion which covers the placenta and umbilical cord.

Yet another example of the substantive medical content of the Qur'an is taken from the Sura of "The Night Comer" (al-Tariq):³³

"So let man consider of what he is created. He is created of water pouring forth. Coming from between the back and the ribs."

The vertebral column consists of a series of vertebrae extending from the cervical (neck) vertebrae above to the coccyx (tail) bone below. The ribs form the chest. Sperm is formed in the seminiferous tubules in the testicles and the blood supply to these comes from two arteries: internal and external. The internal one is a direct branch of the aorta. The aorta travels between the vertebral column and bones of the chest, i.e., between the back and the chest: "between the loins and breast-bones."

A further example is provided in the Sura of "Women" (al-Nisa):³⁴ "We shall make them enter fire: so oft as their skins are thoroughly burned, We will change them for other skins, that they may taste the chastisement."

The fact that pain sensory centres are located in the skin was not known in the olden days.

VALUE OF LIFE

Islam has ordained an extraordinary respect to the value of human's life. Apart from hygienic teachings of Islam which incumbent devotional duties upon Muslims, such as fasting or visiting pilgrimage, provided that they have no harms on mankind, there exists many commands and rules for preserving man's life and dignity. The value of life is so expensive that the crime of murdering one is considered to be equivalent to that of all mankind, and on the contrary, rescuing one from death is like doing so to all people of the world. The Qur'an explicitly states this fact as: "Whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all people; and whoever keeps it alive, it is as though he kept alive all people."³⁵ One can perceive from this eloquent verse how valuable the life is. Of course, other issues concerning the prohibition of endangering human rights such as unfair imprisonment, exile and torture can be deduced from this divine statement. Islamic jurisprudence prescribes using any forbidden materials and acts such as drinking alcoholic beverages, forbidden meats and non personal belongings if and only if they can help ones survivorship. It is not only permitted but also obligatory. If for example the only treatment is restricted to eat his own flesh for survivorship, he must do so and delay his death even for a few seconds. Perhaps something can be found in the meantime to rescue him from death.³⁶

Based on the Qur'anic teachings, two detailed chapters

concerning the value of life have been opened in the Imamate jurisprudence books. One is called "Kitab al-Qisas," which deals with punishment by retribution or retaliation. This chapter is based on the Qur'anic verse which says: "And there is life for you in (the law of) retaliation, O men of understanding, that you may guard yourself."³⁷ This chapter deals with the deliberated crimes imposed on a person that cause infirmity or malformation of him or result in death. It gives the statutory right to the victim or his heirs to punish the criminal by retaliation in the same way. Of course, in case of undeliberated crime one who committed the error must pay the victim or his heirs or legatees the compensation and/or blood money. The second is called "Kitab al-Diyat" which talks about compensation for wounds, injuries, and loss of life. The values of all organs of mankind from hair to nails are determined in detail and if one commits an error by mistake that harms somebody, he must pay the appropriate value of money determined by the Islamic laws to the victim in compensation. The judicial system of an Islamic state is liable to implement the laws fairly.³⁸ Legal aspects of death and asphyxia (drowning, suffocation, traumatic asphyxia, hanging, strangulation), death from burning, death from starvation and neglect and from cold exposure, infanticide or child murder, legal aspects of wounds, head and other injuries, and blood and blood stains, are among the many titles that have been discussed in the Imamate prominent jurist books in details.

Distinguished jurists (Fuqaha/Mujtahids) have also written down some chapters on their treatises on other issues of legal medicine. They have looked at problems of medicine from jurisprudence angle in detail, and deduced the judicial decision after researching the sources of jurisprudence exerting their mental faculties to the utmost in their Fatawas (legal opinions). These topics can be briefly summarized as hunting, fishing, and slaughtering animals,³⁹ foods and beverages,⁴⁰ breast feeding, child bearing and fostering children,⁴¹ organ transplants, artificial insemination,⁴² dissection of cadavers,⁴³ cosmetic surgery, doctor-patient relations, physician fees and liability of physicians and medical system,⁴⁴ sexual functions and criminal abortion,⁴⁵ birth control and family planning,⁴⁶ and etc. These materials constitute the body of medical jurisprudence which needs to be worked out and compiled independently. In addition, developments in medicine have complicated the picture of medicine such as death and sexuality which requires practicing Ijtihad in the new fields of medicine by the competent jurists. It is highly important that the medical profession appreciate and understand both medical and legal aspects of the subject. They must be familiar with the Islamic medical laws which are concerned with the doctors and their relations with public. Therefore, a course on the Islamic medical jurisprudence is suggested to be taught to the medical

students and the related medical, paramedical, and health personnel in order to facilitate practicing of medicine in an Islamic society.

PRINCIPLES OF THE ISLAMIC MEDICAL JURISPRUDENCE

There are some principles and rules in the Islamic jurisprudence that can be applied to the health and medical system of an Islamic state in order to overcome the existing complicated shortcomings. Islamic jurisprudence is set up to administer an Islamic society efficiently and justly and has objective application and feasibility in the society. Medicine is an important issue in the life of Muslims which could be administered within the scope of that. The Islamic jurisprudence is dynamic and takes into consideration the two important factors of time and place when the process of Ijtihad is practiced in order to resolve the difficulties of a Muslim community logically.⁴⁷ The Islamic medical jurisprudence is progressive and paves the road of health promotion and medical developments if it is applied properly.

Islamic medical jurisprudence is elaborated on the basis of some principles that are briefly stated here:

Reasoning and Divine Law

Reasoning has a special place in the Islamic jurisprudence, as stated earlier. The jurists believe in an organic connection between the intellect and the divine canon laws. The connection is called inseparable or accompaniment rule (Qa'edah Molazamah). This rule states: "Whatever commands the divine law is judged by reasoning and whatever commands reasoning is judged by the divine law." In addition, there is recognition of a fundamental need of interpretation of the revelation by reason, all the more so when the authority invested with divine knowledge is in occultation. It can explore a law itself and can restrict a law or generalize it. It can be an efficient aid for inference from other sources. The validity of reasoning in the scope of religion in this respect is that the Islamic commands and rules touch the realities of life, and thus Islam has not put any unknown and non-resolvable mystery for its teachings.⁴⁸

Negation of Foreign Dominance

The holy Qur'an negates any kind of dominance of non-Muslims over Muslims.⁴⁹ The jurists have inferred the negation of foreign dominance over the Muslims from the teachings of the Qur'an and elaborated the rule of negation of foreign dominance. This rule obligates any Muslim to strive for the independency of the Islamic countries in all aspects and capacities and necessitates the provision of self-sufficiency in all dimensions.⁵⁰ Even if the political relations of the Islamic governments with foreign countries cause

Muslim's dependence, these kinds of relationships will be unlawful and the contracts that have been concluded on this basis are null and void.⁵¹ Of course, this issue does not contradict the proper use of their experiences, civilization, sciences, and techniques because the Qur'an teaches the Muslims to listen to all kind of speech and follow the best.⁵²

This rule can be applied to the health and medical system of Muslim countries. The oppressors have tried to keep the third world and other developing or underdeveloped countries backward. The oppression has caused these countries to suffer from inefficient health and medical systems, shortages of medicine and manpower, and have made them dependent to the superpowers. This has guaranteed the superiorities of them over the oppressed countries. Unfortunately, this has been the most successful policy of the new colonialism. At present, almost in all developing countries without exception, the pharmacies, hospitals, and clinics are full of the various medicines that are products of foreign countries. It is more regretful if we know that in addition to import of foreign product the culture of scientific and technology dependency is imported with and suggests the morality of weakness to the people of these countries not letting their personality to grow independently.⁵³

In the light of this leading rule, many firm steps are to be taken. The following list may be considered as an outline for further actions. Promotion of preventive measures, public health education, propagation of hygienic culture of Islam in the society, training manpower in such a way that the minimum academic requirements is observed, design a service and manpower system less dependent to the physicians such as auxiliary village health workers, revival of the role of physicians in Islam which emphasises on the leadership and spirituality manner of them in the medical system, holding the medical workshops in collaboration with the experienced experts in the relevant fields, establishment of an efficient system of health therapy and medical education, take advantage of Islamic medicine and the revival of traditional medicine in a cohesive and correct way which is the product of many centuries of mankind experiences and the connections of all these with the needs of society and evenly distribution of them which needs a precise academic, cohesive, and well established planning. These are the things that should be considered in order to achieve this goal.

Public Benefit (Maslaha)

In Islam the commands (Ahkam) are functions of a set of real interests and mischiefs. It is declared that they are not at the same level of importance. This has caused the jurists to open a chapter so called "interruption" (Tazahom) and "important and most important" (al-Ahamm wa al-Ahamm).⁵⁴ This makes the task of the jurists in confrontation with the situations in which the interests and mischiefs of

the society are present. Islam has permitted to the scholars ("Ulema") to estimate the degree of importance of the interests based on the hints and leading points in Islam and prefer the more important interests to the less important ones and come out of the deadlocks.⁵⁵

As an example, dissection of the cadaver is known as a tool of medical education which is required for the development of medical needs of an Islamic society. This is an instance of the chapter of interruption in the jurisprudence. On the one hand respecting the dead body of a Muslim and expediting his burial ceremonies is obligatory. On the other hand, medical education and researches at present time can only be conducted through dissection. The two interests are in contradiction. It is clear that the interest of medical education and research takes priority over the expedition of burial ceremony and respecting the dead. Therefore, in case that a non-Muslim cadaver is not sufficient and take priority to the unknown dead to the known one and observing some other characteristics, this rule permits to use the dead body of a Muslim as a cadaver in an anatomical laboratory.⁵⁸

Public Responsibility

In the Islamic culture, human being is committed. His/her commitments lead him/her to enjoin good and prevent evil.⁵⁷ The jurisprudence obligates enjoining the good and preventing evil. If enjoining good and preventing evil need to be done by a collaborative work it is required to do so in such a collective action.⁵⁸ The constitution of the Islamic Republic of Iran states that enjoining good and preserving evil is a public duty of the nation in a mutual basis, the state to the people and the people the state.⁵⁹

A part of this principle includes the affairs that are in connection with the individual and community health. Health affairs, discovery of epidemics and endemic factors and prevention of communicable diseases, teaching the people, prevention of anything that is in contrary with public health and health education are parts of the commitments that at least a group of people have to the others such that they can prevent Muslims to die.

Overriding Rules

The rules and regulations in the Islamic jurisprudence have sufficient flexibility to deal with the necessities of life and manage the affairs of a society. This characteristic is the mystery of its permanency. The flexibility of the Islamic jurisprudence lies in a set of controlling rules that govern all commands and rules and overriding them. These rules are properly called "overriding rules" (Qawa'ad al-Hakimah). The overriding rules play the role of the high inspector of the laws, commands and the judgments and control them appropriately. Among them, are "compelling" or "hard" (Haraj) and "damage" or "harm" (Zarar) rules, on the mankind. In fact, these rules have the right to veto others.⁶⁰

The "damage" or "loss" rule prohibits the cause of any kind of loss whether personal or public damages. Enjoyment of an individual or a group of people must not end with the loss or suffer of the others as one can learn from the Qur'an. This rule stipulates plainly that: "La Zarar wa La Zihar fi al Islam."⁶¹ In the Islamic rules and regulations no loss or damage is allowed to be done to the individuals and to the societies and the way of extending loss to the others is announced to be locked.⁶² This rule does not permit anyone to pollute the environment and be indifferent towards the requirements of personal or community health. Thus, its proper application can take out a huge burden of the communities' difficulties in providing the public health.

The "compelling rule" states that if in confrontation with the strained circumstances, emergency approaches are required to preserve the life of Muslim(s), the Qur'anic teachings lead us to pursue the suitable way to get rid of such conditions.⁶³ The mobilization of potentialities of an Islamic society to promote the level of health education can be considered as an optimal movement in confrontation with many strained circumstances and emergency condition of the society.

The Discretionary Authority of the Jurist

Islam has given authority to the Islamic state or in other words to the Islamic community for running the country justly. This authority was given to the holy Prophet and his infallible successors during their time. During the complete occultation of the twelfth Imam (the present time) the authority is transferred to a competent and righteous jurist. The discretionary authority of the jurist (wilyat al-faqih) has a wide scope in that the Islamic state under his leadership and the al-Hawadith al-Waqi'a (future contingencies) and due to the recent needs of the Muslim community can promote new laws, which Shari'a holds no reference previously. This is a key phrase derived from the rescript of the twelfth Imam and used as a technical term in the jurisprudence to refer to future difficulties that might be encountered by Shi'ite, for which jurists must be consulted. It is also known as one of the three fundamental "investiture traditions" that were extrapolated for all-comprehensive authority of the jurists. For example, a law can be ordained to determine a ceiling for the number of children in a family in order to make a balance between the population size and their needs and resources. Discretionary authority of an Islamic state, if applied properly, guarantees the proper application of the divine laws and lets the legislative, judicial and executive body of the system to harmonize with time needs and well organized of the system in each era.⁶⁴

REFERENCES

1. The Qur'an V/3: "This day have I perfected your religion for

you and completed my favour unto you, and have chosen for you as religion Al-Islam." Many Shi'ite and Sunni commentators of the Qur'an have confirmed that this verse was revealed at Ghadir Khumm and concern the spiritual investiture (Walayat) of Imam 'Ali ibn Abi Talib, upon whom be peace, and is a proof of the immediate caliphate of Imam 'Ali after the death of Prophet, upon them be peace. See Bahrani, *Ghayat al-maram*, p. 336, whereas six Sunni and fifteen Shi'ite hadiths concerning the occasion and reason for the revelation of the above Qur'an verse are cited; Amini, Sh. A., *al-Ghadir* (38 vols.) and al-Musawi, M.H.H., *'Abaqat al-Anwar* (34 vols.), dealing with the rijal of tradition of al-Ghadir occasion.

2. See Najafi, al-Shaykh Muhammad Hasan al-, (d. 1266/1850). *Jawahir al-Kalam fi Sharh Shara'i al-Islam*, vols. 29 and 42, 6th ed. Tehran: al-Maktaba al-Islamiyah, 1398/1980; al-Mufid. *Mumamrnat b. Muhammad al-Nu'man. al-Jawame' al-Fiqhiyah*, Qum: Library of Ayatollah al-Uzma Mar'shi al-Najafi Publications, 1404/1986. Khomeini, Seyyed Ruhollah al-Moosavi. *Tahrir al-Wasilah*, Najaf, n.d.; Golpaygani, Seyyed Mohammad Reza al-Moosavi. *Majma' al-Masa'el*, vol.3, Qum: Dar al-Qur'an al-Karim Publications, 1364/1985.
3. Imamate (Shi'ite) jurisprudence; the jurisprudence related to the Holy Prophet Muhammad and his successors (the twelve Imams). Two fundamental principles embodied in the doctrine of Imamate. First, is that of Nass, that is, the imamate is a prerogative bestowed by God upon a chosen person, from the family of the Prophet, who before his death and with the guidance of God, transfers the Imamate to another by an explicit designation (Nass). Second, is that of 'Ilm. This means that an Imam is a divinely inspired possessor of a special sum of knowledge of religion, which can only be passed on before his death to the following Imam. In this way the Imam of time becomes the exclusively authoritative source of knowledge in religious matters, and thus without his guidance no one can keep to right path (see Kulayni, M.b.Y., *Kafi*, I, p. 208). This special knowledge includes both external (Zahir) and esoteric (Batin) meanings of the Qur'an (Ibid, p. 261). For further details see: Jafri, S.H.M., *The origins and early development of Shi'a Islam*. London: Longman Ltd., 1979; Tabatabaie, S.M.H., *Shi'a*, Qum: Ansarian Publications, 1401/1981. At present, of approximately one billion Muslims in the world, almost every fourth is a Shi'a who reside largely in Iran, Iraq, India, Pakistan, Syria, Lebanon, Azarbayjan, but also scattered all over the world (Extracted from PC Globe Software, version 4, 1991). It is the official religion of the Islamic Republic of Iran according to article 13 of her constitutional law.
4. The Qur'an, III/19.
5. The Qur'an, II/85.
6. See The Qur'an, II/168; IV/174; X/23, 57.
7. The Qur'an XXXIII/40.
8. The Qur'an, IX/122.
9. Nasr, S.H., *Science and Civilization in Islam*. pp. 209-212. Cambridge: Harvard University Press, 1968.
10. Avcina (Ibn Sina), al-Husayn (d. 1037). *Kitab al-Shifa' (al-Ilahiyyat)*, final section, ed. G. Anawati, S. Zayid et alia. Cairo, 1960.

11. Ayatollahi ('Alem) Shirazi, Seyyed Mohammad Baqir. **Shenakht-e-Din**, pp. 356-394, Qum: Nemayeshgah wa Nashr-e Kitab, 1365/1986. This scholarly work gives a penetrative and comprehensive account of the fundamentals of Ijtihad in the Imamate jurisprudence that we have owed to report a summary here.
12. Saduq, Sh. Ibn Babuya, **Risalat al-I'tiqadat** trans. A.A.A. Fyze, A Shiite Creed, Calcutta, 1942.
13. **The Qur'an**, XXXIII/33.
14. See for example Sunni sources al-Razi, Fakhr al-Din (d. 606/1210). **Tafsir Mafatih al-Ghayb**, part 6, 783; al-Zamakhshari, Jarollah (d. 538/1144). **Tafsir al-Kashhaf**; Soyouti, Jalal al-Din; **al-Durr al-Mant hoor**, Part 5, p. 169.; al-'Asqalani, Ibn Hajar, **al-Isabah**, Part 4, 407; Hanbal, Ahmad, **al-Musnad**, Part 3, P. 259; and Shiite sources: al-Tabarsi, **Tafsir al-Tibyan**; Razi, Abu al-Fotouh, **Tafsir al-Qur'an** Tabatabaie, S.M.H., **al-Mizan fi Tafsir al-Qur'an**.
15. See for example Neishabouri, Muslim b. Hajaj, **Sahih Moslem**, vol. 7, p. 122, Cairo: 1377/1937; Tirmidhi, M.b.I., **Sunan al-Tirmidhi**, p. 307. Cairo: 1356/1937; Hanbal, Ahmad, **al-Musnad**, vol. 3, pp. 14 and 17, vol. 4, pp. 26 and 59, vol. 5, pp. 182 and 189, Cairo: 1313/1895; Ibn Hajar al-Makki, **al-Sawa'eq al-Muhriqah**, pp. 75, 87, 90, 139, 2nd ed. Beirut: Dar al-Kotob al-'Elmiah, 1405/1985.
16. See Mufid, Mumammad b. Muhammad al-Nu'man al-Awa'il **al-Maqalat fi Madhahib wa al-Mukhtarat**, also includes **Sharh 'Aqa'id al-Saduq aw Tashih al-Itiqadat**, ed. Abbasqoli Wa'iz Charandabi, Tabriz: Rada'ie, 1371/1951; Muzaffar, Muhammad Rida al-, **Usul al-Fiqh**, 3 vol. in two, Najaf: Dar al-Nu'man, 1967.
17. Ansari, Murtaza Muhammad Amin al-, **Rasa'il Al-Arba'a** also known as **Fara'id al-Usul**, Qum: Mustafavi, 1374/1954.
18. Sachedina, A.A., **The Just Ruler in Shiite Islam**, New York: Oxford University Press, 1988.
19. Sachedina, A.A., **Islamic Messianism**, Albany: State University of New York Press, 1981.
20. See Ayatollah, S.M.B., **Shenakht-e-Din**, pp. 394-356; Jafari, Sh.M.T., **Manab'ee-Fiqh**, Tehran: Intishar Ltd., 1349/1970; Mughnieh, Sh.M.J., **Fiqh al-Imam Jafar al-Sadiq**, pp. 379-386, 2nd ed. Beirut: Dar al-'Elm, 1978.
21. Brwon, E.G., **Arabian Medicine**. Cambridge, 1921.
22. Brown, E.G., **Arabian Medicine**. 2nd edition, London, 1962.
23. al-Ghawabi, H., **Bet ween Medicine and Islam** (Arabic Text), Cairo, 1967.
24. **The Qur'an**, LXXV/3-4.
25. Ghanem, I., **Islamic Medical Jurisprudence**, pp. 28-29, London, 1982.
26. Companions of the Holy Prophet Muhammad who invited him to join them in Medina, where he migrated from Mecca in 621 A.D. and established his rule are called Ansar.
27. Ghanem, I., **Islamic Medical Jurisprudence** pp. 28-29, London, 1982.
28. **The Qur'an**, XXIII/12-14.
29. **The Qur'an**, XXII/5.
30. **The Qur'an**, LXXV/37-38.
31. **The Qur'an**, LIII/46.
32. **The Qur'an**, XXXIX/6.
33. **The Qur'an**, LXXXVI/5-7.
34. **The Qur'an**, IV/56.
35. **The Qur'an**, V/32.
36. Najafi, al-Shaykh Muhammad Hasan al-, (d. 1266/1850). **Jawahir al-Kalam fi Sharh Shara'i al-Islam**, Kitab al-At'ameh wa al-Ashrabeh, 6th ed. Teheran: al-Maktaba al-Islamiah, 1398/1980.
37. **The Qur'an** II/179.
38. Najafi, al-Shaykh Muhammad Hasan al-, (d. 1266/1850). **Jawahir al-Kalam fi Sharh Shara'ia al-Islam**, vol. 42, 6th ed. Teheran: al-Maktaba al-Islamiah, 1398/1980; al-Mufid, Mumammad b. Muhammad al-Nu'man. **al-Jawame' al-Fiqhiyah**, pp. 559, 687-696, 787-795, Qum: Library of Ayatollah al-'Uzma Mar'shi al-Najafi Publications, 1404/1986; Khomeini Seyyed Ruhollah al-Moosavi, **Tahrir al-Wasilah**. Golpaygani, Seyyed Mohammad Reza al-Moosavi, **Majma' al-Masa'el**, vol. 3, pp. 247-262, Qum: Dar al-Qur'an al-Karim Publications, 1364/1985; Khansari, Seyyed Ahmad Mousavi, **Jame' al-Madarek fi Sharh al-Mokhtasar al-nafe'**, vol. 5, Tehran: Maktabah al-Saduq, 1405/1985.
39. See al-Mufid, Mumammad b. Muhammad al-Nu'man. **al-jawame' al-Fiqhiyah**, pp. 663-666, Qum: Library of Ayatollah al-'Uzma Mar'shi al-Najafi Publications, 1404/1986; Khansari, Seyyed Ahmad Mousavi, **Jame' al-Madarek fi Sharh al-Mokhtasar al-Nafe'**, vol. pp. 93-135, Tehran: Maktabah al-Saduq, 1405/1985; al-Shiraz, Muhammad al-Husayni, **al-Fiqh**, vol. 75, pp. 199-329, 331-484, Beirut: Dar al 'Uloom, 1409/1988.
40. See Muhaqqiq al-Hilli, A.J.b.H., **Shara'i' al-Islam**, Beirut, 1978; Shahid al Awwal', M.b.M., **al-Dorous al-Shar'iyah fi Fiqh al-Imamiyah**; Hilli, M.b.H., **Tabserah al-Mota'allimin fi Ahkam al-Din**; Khumayni, S.R., **Tahrir al-Wasilah**, **Towdhih al-Masael**; Hakim, S. Mohsin, **Towdhih al-Masa'el**.
41. Najafi, al-Shaykh Muhammad Hasan al-, (d. 1266/1850). **Jawahir al-Kalam fi Sharh Shara'i al-Islam**, vol. 29, pp. 314-348, 6th ed. Teheran: al-Maktaba al-Islamiah, 1398/1980; Mughnieh, Sh.M.J., **Fiqh al-Imam Jafar al-Sadiq**, vol. 5, pp. 219-235, 310-316, 2nd ed., Beirut: Dar al-'Elm, 1978.
42. Ayatollahi ('Alem) Shirazi, Seyyed Mohammad Baqir. **Shenakht-e-Din**, pp. 395-402, Qum: Nemayeshgah wa Nashr-e Kitab, 1365/1986.
43. Golpaygani, Seyyed Mohammad Reza al-Moosavi. **Majma' al-Masa'el**, vol. 3, pp. 247-262, Qum: Dar al-Qur'an al-Karim Publication, 1364/1985.
44. See Najafi, al-Shaykh Muhammad Hasan al-, (d. 1266/1850). **Jawahir al-Kalam fi Sharh Shara'i al-Islam**, vol. 42, pp. 24-51, 6th ed. Teheran: al-Maktaba al-Islamiah, 1398/1980. Hakim, Seyyed Mohsin, **Most amsakal-'Orwah al-Wothqa**, vol. 12, pp. 222-226, Najaf, 1392/1973; Golpaygani, Seyyed Mohammad Reza al-Moosavi. **Majma' al-Masa'el**, vol. pp. 268-269, Qum: Dar al-Qur'an al-Karim Publications, 1364/1985; Mughnieh, Sh.M.J., **Fiqh al-Imam Jafar al-Sadiq**, vol. 6, pp. 183-188, 2nd ed., Beirut: Dar al-'Elm, 1978, Khomeini, Seyyed Ruhollah Mousavi, **Tahrir al-Wasilah**, vol. 2, p. 560 Najaf.
45. Golpaygani, Seyyed Mohammad Reza al-Moosavi, **Majma' al-Masa'el**, vol. 3, pp. 244-247, Qum: Dar al-Qur'an al-Karim Publications, 1364/1985.
46. Khomeini, Seyyed Ruhollah Mousavi, **Tahrir al-Wasilah**,

- Najaf; Golpaygani, Seyyed Mohammad Reza al-Moosavi. **Majma' al-Masa'el**, vol. 3, pp.244-247, Qum: Dar al-Qur'an al-Karim Publications, 1364/1985.
47. Khomeini, S.R., Message to the Clerics, **Kayhan** 3.12. 1367/1988.
48. Motahhari, Sh. M., 'Khatm Nobowwat' in **Muhammad Khatam Payambaran**, vol. 1, pp.560-561, Tehran: Hoseinieh Ershad Publications, 1345/1966.
49. **The Qur'an**, IV/147; V/63.
50. Lari, Seyyed Abd al-Husayn, **Qanun dar Ettehad Dowlat wa Mellat**, pp. 12-15 Shirza: Mohammadi Publications, 1326/1908; **Hidayat al-Talibin**, p. 62, Shiraz: Mohammadi Publications, 1342/1924; Ayatollahi, S.M.T., **Wilayat Faqih Zirbanay-e-e-Fikri-e-Mashrouteh-e-Mashrou'eh**, Tehran: Amir Kabir Publications, 1363/1984.
51. Khomeini, S.R., **Tabrir al-Wasilah**. vol.1, p. 486.
52. **The Qur'an**, XXXIX/17-18.
53. Nilforoushan, M.A., Zarrabi, J. and Mirfattahi, M.B., **Behdasht**. pp. 8-9, Tenran: Ministry of Health, 1363/1984.
54. Ayatollahi, Seyyed 'Abu al-Muhammad, **Dhakhirah al-'Ihad li Yawm al-Ma'ad** Shiraz: Noor Publications, 1330/1952.
55. Motahhari, Sh. M., 'Khatam Nobowwat' in **Muhammad Khatam Payambaran**, vol. 1, pp.564-565, Tehran: Hoseinieh Ershad Publications, 1345/1966.
56. Khomeini, S.R., **Towzih al-Masaa'el**. Nos. 2878-2886.
57. **The Qur'an** III/104.
58. Khomeini, S.R., **Towzih al-Masaa'el**. Nos. 2786-2787.
59. **Islamic Republic of Iran Constitution Law**, Article 8.
60. Motahhari, Sh.M., 'Khatm Nobowwat' in **Muhammad Khatam Payambaran**, vol. 1, p. 566, Tehran: Hoseinieh Ershad Publications, 1345/1966.
61. al-Hurr al-'Aameli, Sh.M.H., **Wisa'el al-Shi'a** (Kitab Ehya' Mawat), chapters 7 and 8; Ansari, Sh. Mortaza, **al-Makasib, Qa'edeh LaZarar**, p.368; Esfahani, Sh. al-Shari'ah, **Qa'edeh La Zarar**, p. 4-5.
62. Beheshti, S.M., Bahonar, M.J. and Golzadeh Ghafouri, A., **Shenakht Islam**, p.457, Tehran: Farhang Islami Publications, 1360/1981.
63. **The Qur'an**, II/185, 173; VI/119; XXII/78.
64. Na'ieni, Sh.M.H., **Tanbih al-Ummah wa Tanzih al-Millah**, pp. 97-102; Tabatabaie, S.M.H., **Wilayat wa Zi' amat in Marja'iyat wa Rowhaniat**, (2nd. ed.), pp. 82-84; Lari, S.A., **Ta'lieqat at-Makasib**, vol. 2, **Qanun dar Ettehad Dowlat wa Millat, Qanun Mashrouteh Mashrou'eh**; Khomeini, S.R., **al-Hokumat al-Islammiah**, Najaf, 1978.