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## **Biomedical ethics and *Qawaid Fiqhiyyah***

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### **ABSTRACT**

*Medical ethics in Islam have a close relationship with the principles and particulars of Fiqh which constitute the Islamic law. There are, in general, two main ethical principles, which Islam focuses on with regard to medicine, namely 1) the emphasis on the sanctity of human life. 2) The emphasis on seeking a cure. Qawā'id Fiqhiyyah help us in understanding the Islamic ethical values related to health sciences. Numerous Qawā'id fiqhiyyah play a role in providing the sharī'ah guide lines for the issues like*

- 1. The duties of doctor or health care taker*
- 2. The Patient-Physician relationship*
- 3. The responsibilities of the researcher working upon the human subjects*
- 4. Obligations of the members of society about human life.*

*This paper will elaborate the relationship of Qawā'id fiqhiyyah with Biomedical ethics and how one can get benefit from these Qawā'id to derive answers for contemporary ethical issues in Biomedical issues.*

Biomedical ethics is a sub-branch of applied health sciences which deals with the ethical issues related to the biomedical research and the medical practice. This is a very sensitive field of study as it is related to human life. The preservation of good human health is appraised both in medical science and in Shari'ah.

*“Narrated Usāma bin Shaīk (Allah be pleased with him):  
The Messenger of Allah said: Take the treatment,” o slaves  
of Allah! for Allah The Exalted has sent remedy for every  
illness except the death and the senility”<sup>1</sup>*

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Biomedical ethics are defined as 'the moral principles, which should guide the members of the medical profession in the course of their practice of medicine and in relationship with their patients and other members of the profession'. It is a code of conduct for the members of the medical profession in order to render the best possible services to humanity and maintain the honour and dignity of the profession.<sup>2</sup>

As it is accepted in religion that life is a consignment of Allah Almighty, therefore one must be careful of his health. This the honour of the health care takers that they get the opportunity to serve the humans in maintaining healthy life. The famous Imam of fiqh Muḥammad bin Idrīs al Shāf'ī elucidates the significance of medical knowledge as follows:

The knowledge is of two kinds; The knowledge of fiqh for religion and the knowledge of medicine for body<sup>3</sup>

In past when the medical science was not present as a multidisciplinary complex of knowledge. Limited research tools and diagnostic sources were there and mostly the treatment was made on the basis of experience. With the tremendous achievements in the field of chemistry, physics and the information technology, now the medical science is equipped with a lot of tools. Consequently, the medical or broadly saying the biomedical science has split into the basic sciences and the clinical sciences with further specialities and sub specialities.

The changing trends have raised new questions for the researchers in the field of Islamic Studies to answer in the light of Qur'ān and Sunnah. Some of these issues have been answered in past. These should be studied in the present context. Others are totally new which should be sorted out in the light of the basic sources of sharī'ah.

The ethical issues in the field of the biomedical science include:

The duties of doctor or health care taker

The Patient-Physician relationship

The liabilities of the researcher working upon the human subjects Obligations of the members of society about human life.

If we look into the basic sources of sharī'ah, we find a guideline that enables us to answer these questions. Look for example the prophetic tradition

that sets the limitations of treatment:

*“Narrated Abū Dardū (Allah be pleased with him): The Messenger of Allah said: Allah has revealed illness and remedy, therefore take the treatment and do not treat with impermissible thing”.<sup>4</sup>*

This narration allows the treatment of illness but prohibits the use of ḥarām. The use of haram things for the treatment in the absence of an effective halal thing is allowed with certain conditions and it will be discussed somewhere else in the thesis

Another prophetic narration elucidates that who has the authority to treat:

*“Narrated ‘amr bin Sho‘aib from his father and he narrates from his grandfather that the Prophet (Peace be upon him) said: He who treats and he is not known for treatment before, he will be responsible (for any mishap)”<sup>5</sup>*

According to the above mentioned narration:

One must have the medical knowledge of the illness before he treats a person

If the patient is harmed by the doctor then he will be responsible for the harm and penalty may be made upon him by the competent authority.

Thus the treating person must be vigilant, skilful and must be knowing of the treatment he is doing for the patient. If he lacks these conditions, he should avoid of any harm that can result .

Medical profession demands a sense of security in which the patient feels free to express his symptoms to the doctor. Many a time a person is having a problem which he or she does not want to reveal to any other person e.g:

- a. a person having an abscess at anal site
- b. a female person having problem in menstruation
- c. a person who has come to know that he is suffering from AIDS
- d. a couple having difficulty in intercourse etc.

The sufferer expresses his illness because he is trusting upon the physician.. This trust should be fulfilled and must not be damaged. The doctor should keep the information in confidentiality and should not share it with other persons without the consent of the patient. The Prophetic teachings guide us about the confidentiality as follows:

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*“Narrated Abu Huraira from the Prophet (Peace be upon him):He who vents the agony of the Muslim, Allah will vent his suffering on the Day of Judgment .He who makes the convenience for a person in difficulty in this world, Allah will bless him with conveni--ence in this world and hereafter. He who conceals the (defects of a) Muslim, Allah will conceal his defects .Allah remains in the help of his slave until the slave remains in the help of his brother”<sup>6</sup>*

The same also applies to the case when a researcher or a laboratory worker gets some information about a person which he does not want to be shared e.g. information related to the genetic diseases or specific behavior etc. Nevertheless sometimes such confidentiality harms the other members of the society e.g. a person going abroad with tuberculosis of the lungs(Pulmonary Kocks) visits a doctor and he wants the doctor to keep it secret so that he can move abroad.The doctor should not hesitate in declaring him as a patient of T.b..Firstly because it is his duty to inform the competent authority of any illness in the person going to another country.

Secondly,if he does not declare him as a sufferer of a contagious disease,he is imposing harm to the other members of the family and the society who will otherwise take the necessary pre-cautious measures against the disease. However this confidentiality can be revealed according to the need. The physician should decide the extent up to which the information may be shared. Let us have an example of the person suffering from a sexually transmitted disease like AIDS. AIDS (Acquired Immunodeficiency Virus) is a disease which severely affects the immune system of the patient. It is transmitted through the sexual contact and also through blood .Therefore, the wife or the husband should be informed that her or his life partner is having the disease. Similarly, a health care set-up should be informed that its employee is having AIDS.But there is no need to inform other persons about the illness of the person.

Medical ethics in Islam has a close relationship with the principles and particulars of fiqh which constitute the Islamic law. Rather they are so much interlinked with each other that it is difficult to separate them .A doctor or a

researcher on human subject must have the concerned knowledge of fiqh in order to fulfill the good ethical standards as liked by Allah Almighty. The patient or the volunteer of the human research should have the knowledge about the status of his act according to sharī'ah

There are, in general, two main ethical principles, which Islam focuses on with regard to medicine.

1. The emphasis on the sanctity of human life; the Holy Qur'ān says: “whosoever saves a human life, saves the life of the whole mankind”.<sup>7</sup>
2. The emphasis on seeking a cure. This is derived from a saying of Prophet Mohammad (PBUH): There is no disease that God has created, but He has also created its treatment.<sup>8</sup>

The ethical issues in biomedical science demand that they should be solved on the basis of the qualities told in Holy Qur'ān that are necessary for a good human being. These issues will remain unsolved if they are looked upon for the mere financial incentives. The increasing carving for the money itself has created many ethical issues in the field of medical science. The qualities like justice, mercy, love, truthfulness, humbleness, humility and most important taqwā help in the solution of these ethical issues.

Maqāsid al sharī'ah also help the jurists in determining the boundaries of the research and treatment. The five Maqāsid al sharī'ah set the priorities in hierarchy. These maqāsid are as follows:

- Protection of religion
- Protection of life
- Protection of progeny
- Protection of wealth
- Protection of wisdom<sup>9</sup>

Every step which is taken for the preservation of these five Maqāsid will be Maslahah (benefit) and every step which is taken to interrupt these is Mufsidah (evil). Harām (the prohibited) food is permitted upto the extent thereof because saving life is amongst the Maqāsid al Sharī'ah. It must be kept in mind that maqāsid al sharī'ah is a sensitive field and needs a deep

understanding of sharī'ah.

The biomedical ethics should be set in the light of the basic sources of sharī'ah. The sharī'ah maxims also called as Qawā'id Fiqhiyyah derived from these sources help us in understanding the Islamic ethical values related to health sciences as we shall see in the coming lines.

### **Sharī'ah Guidelines for the Research upon Human Objects**

The research involving the human beings is different from that involving the materials. It is neither the matter of mathematical numbering that is arranged as wished to have the required result nor is it the agriculture based in which seeds and plants are dealt. Rather it involves the man, the crown of creature. So the researches must be very much precautious not to make any harm to the subject under research. It is also accepted worldwide that sanctity and dignity of a person should not be affected. We shall see what are the guidelines provided by shari'ah for the research involving human subjects. Following maxims taken from *Al-Majallah* elucidate the Shari'ah guidelines in the context of treatment & research involving human subjects:

1. لا ضرر ولا ضرار<sup>10</sup>

*(Neither harm nor reciprocation of harm.)*

This implies that one should neither suffer any harm nor should impose harm to others. A person should not endanger his health or life. Also a physician or a researcher should not do any harm to his patient.

2. الضرر يزال<sup>11</sup>

*(Harm is to be removed.)*

This implies that if a person is really suffering from an ailment that is disturbing his daily activities and he is becoming dependant on others, then possible permissible means are used to cure his ailment. A person gets injury to his nose because of which his nasal bone is severely broken. There is a need to reconstruct the bone through surgical measures. If it is not reconstructed the person will suffer physical as well as mental stress. The Prophet (PBUH) even allowed the adjustment of the nose made by gold.

*“Narrated Arfajah bin Sa'd that he got injury to his nose in the battle of Kulāb before Islam. He made a nose of silver but foul*

*smell started to come from it. The Prophet (PBUH) directed him to use the nose made of gold*.<sup>12</sup>

3. الضرر يدفع بقدر الامكان<sup>13</sup>

*(Harm is to be removed as much as possible.)*

This stresses the removal of harm from the society and individual .The epidemics like cholera, gastroenteritis, and spread of the viral and bacteriological infections should be controlled by the relevant department of government using all possible means which are permissible in sharī'ah

4. يتحمل الضرر الخاص لدفع الضرر العام<sup>14</sup>

*( A special harm is tolerated in order to remove the common one.)*

This implies that sometimes a harm of a particular person may be tolerated if it provides benefit to a large group of people.Let us have an example of a person suffering from Contagious disease who is insisting on a physician to issues him the fitness certificate to work abroad.It will put him in trouble if the physician fails him in the medical test .This is a harm on his part. On the other hand if the physician issues him the fitness certificate, it will put the society at large in danger as this person is strongly liable to spread the disease Therefore ,the physician must act with integrity and avoid giving such person the fitness certificate as a special harm is tolerated in order to remove the common one.

5. الضرر الاشد يزال بالضرر الاخف<sup>15</sup>

*(Greater harm is removed by the lesser one.)*

Many a times a surgeon comes across a situation in which he has to decide whether the affected part should be removed or saved. In these circumstances he will see what imposes a greater harm to the patient either removal or saving the organ. Similarly, an obstetrician must have to choose between the abortion at the initial stage of pregnancy when the fetus is suffering from an anomaly or the continuation of pregnancy.

6. الضرورات تبيح المحظورات<sup>16</sup>

*(Necessity renders the things permissible)*

This implies that to save a life, those things which are not allowed to be utilized can be utilized according to the need. An example is the use of pork and wine for the one who has nothing to eat & drink and is endangered to die.

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The absence of children affects the life of a married couple and it is a stress which can be removed within the permissible limits. Artificial insemination technique is many of the times carried out by the collection of semen in bottle, the doctor has to expose the lady and inject the fertilized ovum into the uterus. These steps which are impermissible under ordinary circumstances may be allowed keeping in view that necessity permits the impermissible things permissible. But it is limited up to the extent of necessity as mentioned in the following qā'idah.

7. الضرورات تقدر بقدرها<sup>17</sup>

*(Necessitates are estimated by the extent thereof.)*

This implies that one should restrict himself up to the extent of need. This maxim provides a guideline at various places. See for example a case when a physician has to examine the wound on the thigh of person. He must avoid exposing the adjacent areas unnecessarily. Only that area which is helpful in the decision of the management should be exposed. Similarly a woman in labor pains should not be exposed unnecessarily in front of other ladies. The person who is eating pork in the absence of other food must restrict himself up to the extent of need. He should take only such amount of pork that can save his life.

8. اذا ضاق الامر اتسع<sup>18</sup>

*(Latitude should be afforded in the case of difficulty.)*

This implies that when the masses of people are suffering from a difficulty in a particular problem, they will be given relaxation from shari'ah. This maxim is used by the scholars who favor the organ donation in case of need. A necessary condition in such a case is that the relaxation given does not violate any other textual injunction.

9. المشقة تجلب التيسير<sup>19</sup>

*(Difficulty begets ease)*

This implies that when a person or a society or a group of people in large are facing a health-problem and the solution apparently seems against shari'ah, then the jurists and scholars will aid in their solution keeping in view the primary sources of Shari'ah and the secondary sources. They will also see the customs and consider the severity of the need of that group of people. A textual example is of Tayummum (تيمم).

Urinary catheterization technique is used for the patients who cannot freely pass the urine because of the reasons like surgery or paralysis. It can be internal or external. Internal Catheterization means that the catheter (tube) is passed in to the bladder through penis. External Catheterization means that the catheter (tube) is fixed to a cover outside the penis. Whatever the case may be, the catheter or tube is fixed to the urine bag. There is no obstruction to the urine and the drops of the urine continuously collect in the urine bag. This difficulty will bring ease for the patient regarding Wuḍū. The person is declared disabled and he will benefit from the relaxation in such a way that he will perform Wuḍū once when the time of Salāh will enter. He then can offer Salāh whether Farḍ, Wājib or nafl till the end of the time. There is no need for him to perform new Wuḍū for every salāh during the time of that salāh. However he has to perform Wuḍū if his Wuḍū invalidates because of the reasons other to that particular reason i.e. continuous flow of urine. Also his Wuḍū will end when the time of Salah will end.<sup>20</sup>

10. الامور بمقاصدها<sup>21</sup>

*(Matters are determined in the light of intention.)*

This is first of the five universal Sharī'ah maxims. A good action performed with a good intention will be rewarded. However a bad action performed with a good intention is not valid. A physician can see the abscess at the perianal region in order to adopt the proper management. Similarly the sperms which are surplus in test tube techniques can be stored in order to utilize them for the purpose of research.

11. الكتاب كالخطاب<sup>22</sup>

*(Correspondence resembles conversation)*

The consent given in written form on the papers either by description or by signing the consent form by the patient undergoing the surgery or the research subject is just like the oral consent.

It helps in determination of the Islamic standard of ethics at the consent of the patient. The consent of the person or the guardian is required in case of surgical procedure or in the case of research purposes. If a patient or his

guardian sign the performa of acceptance, it will be considered as permission given verbally.

12. الجواز الشرعي يناق الضمان<sup>23</sup>

*(Legal permission is incompatible with liability.)*

A person who has the proper knowledge and skill of surgery is allowed by law and by sharī'ah to perform the surgery. If some mishap occurs during the surgery that endangers the life of the patient or permanent disability, no charge will be imposed to the physician.

13. الضرر لا يزال بمثله<sup>24</sup>

*(Injury may not be met by injury.)*

To remove the harm from a patient is a good act but it should not be removed by imposing another injury. It is for this reason that even those scholars who favor organ donation, do not permit to donate the organ which is only single in body like heart, brain, liver etc.<sup>25</sup>

14. ما حرم فعله حرم طلبه<sup>26</sup>

*(When it is forbidden to perform an act, it is also forbidden to request it.)*

Suicide is impermissible as it is a sort of interruption in the property of Allah Almighty who has given it as an consignment. Neither a person can do suicide nor can he request a doctor to help him in doing suicide. Similarly, induced abortion without any threat to the life of mother and after the inbreathing of spirit is just like killing a human being.<sup>27</sup> Neither a mother can use any mean to intentionally abort her baby nor she can request a doctor to induce her pregnancy without any considerable reasons (like real danger to her life). The fees taken by the physician for such induced abortion will be Harām.

15. إذا بطل الشيء بطل ما في ضمنه<sup>28</sup>

*(When a thing becomes void, the thing contained in it also becomes void).*

The surgery which is performed for change in sex is against the principles of Sharī'ah, therefore it is impermissible. Consequently, the organ- donation to fulfill the purpose of sex-change-will-also-become-impermissible.

### Conclusion

Qawā'id Fiqhiyyah play a vital role in establishing the guidelines of

Sharī'ah for research upon the human objects. Medical issues should be seen in the light of Qawā'id in order to have a sound approach towards the religious ruling of that particular issue. Things which are impermissible under ordinary circumstances become permissible in the situation of necessity which must be estimated by the extent thereof. This is stated in the Qawā'id of Ḍarūrah (necessity). The Qawā'id of Ḍarar (Harm) help the physician in preferring the removal of one harm over other. Also they define the responsibilities of the health professionals in removal of the harm. Surgical interventions must be carried out in the light of the first universal qā'idah which is related to the intention.

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