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RESEARCH ARTICLE

ISLAMIC PERSPECTIVE OF MEDICAL SURGERY AND ITS TERMS AND CONDITIONS.

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Abstract

Imam Shafi has said: " العلم علمان علم الابدان و علم الاديان. " (Knowledge is of two types: Knowledge of the body, and knowledge of the religion.) Although apparently these two kinds of knowledge may seem to be very different in nature, viz., knowledge of religion relates to spirituality, while knowledge of the body relates to materialism, there is a very strong relation between the two. All bodily actions and organs are connected with some commandments of the Jurisprudence. Therefore, in essence the human body is a target to the knowledge of religion. Various actions of the Jurisprudence are dependent upon the integrity and functioning of bodily organs. Therefore whereas Islam has made it incumbent upon a human to follow the other rulings of its Jurisprudence, it has also necessitated them to take care of their bodily health and seek treatment to disease. That is the reason why the human kind has in every period of time made every possible effort to improve its bodily health and the Muslim scholars have also always given an importance to the knowledge pertaining to body. In the modern day, where the progress of Medical science has raised many questions, it has also raised a very important question of whether it is permissible or not to physically intervene, cut open, transplant, and purchase or sell a human organ? If it is permissible, then with what prerequisites, and if not, for what underlying reasons. Every aspect of this discussion is a subject in and of itself and volumes have been inked about them. In the following article an overview of the conditions that permit medical surgery and its reasons for being permissible is presented briefly.

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Introduction:-

Because surgery is a science that alongwith its benefits, also holds many dangers to humanity, and if caution is not practiced during these procedures human organs are at stake, the Islamic Jurisprudence has not left a clear and unmarked ground open for this field of science, but has put certain restrictions upon it so that the needs of the people needing surgery are met and alongwith that the negative and harmful aspects of surgery are also kept in check.

In short, the Islamic Jurisprudence has neither declared medical surgery absolutely permissible, nor absolutely impermissible, instead, it has allowed it if it fulfills the basic conditions and where there is a genuine need for it, and

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where it is not genuinely required or where it fails to fulfill the basic conditions set forth by the Islamic Jurisprudence, it is declared impermissible. Therefore in the forthcoming we present those basic conditions which need to be complied with for surgery to be permissible in Islam.

Conditions in which surgery is permissible:-

First Condition:-

The first condition for Medical Surgery to be permissible is that the specific action performed through that surgery should be permissible itself. In other words, the action achieved through the surgery should be in principle allowed for in the Islamic Jurisprudence.

Therefore Dr. Ahmed Ashrafuddin writes:-

(يعتبر اذن الشارع بفعل الجراحة اهم الشروط المعتمدة لجواز الجراحة الطبية.)

Translation: The most important requisite for Medical Surgery to be permissible is that the surgical action should be permissible in the Islamic Jurisprudence.

Therefore it is not permissible for a patient to get whatever kind of surgery that he may wish, neither is it permissible for a surgeon to perform whatever surgery he may wish to perform, rather it will be impermissible to perform any sort of surgery unless the action achieved through that surgery is itself permissible.

Second Condition:-

The second condition for medical surgery to be permissible is that the patient undergoing the surgery should be in need of that operation. This need may be a necessity in terms of life- or limb-saving or the patient may be in severe pain or prone to harm without the surgery.

The Jurisprudents of early days have discussed this condition, as Shaikh Musa Hijawi writes:-

(ويصح استنجاهه لحلق شعر و تصيره ولختان وقطع شيء من جسده للحاجة اليه ومع عدمها يحرم ولا يصح)

Translation: To get a hair cut, or a circumcision, or a surgery on any body parts, in exchange for a payment for this service, is permissible on condition that there is a need for this action, otherwise it will be impermissible and wrong.

The above specifies that the action of surgery is permissible dependent upon the existence of a need. Surgery without need will be impermissible. As Shaikh Mansoor Bin yousuf has clarified this in these words:

(ومع عدمها اي يحرم القطع عند عدم وجود الحاجة.)

Translation: مع عدمها means that without a need it is impermissible to cut and pierce the human body.

Because the action of surgery is dependent upon the existence of a need therefore the Jurisprudents have written that if a patient and a surgeon make a contract where they agree that a certain operation will cost a certain amount and the patient becomes healthy prior to that operation being performed and does no longer need that surgery, then the contract will automatically become null and void since there remains not a need. As the Jurisprudents write:

(لو استأجر انسانا لقطع يده عند وقوع الأكلة او لقطع السن عند الوجع فبرأت الأكلة وزال الوجع تنتقص الاجارة.)

Translation: If a patient appoints on payment a surgeon to dissect his gangrenous hand, or extract an aching tooth, but his hand's gangrene or his toothache itself is relieved, the contract will be nullified. (The surgery or tooth extraction remains permissible no longer and neither shall the surgeon be paid.)

Summary:-

The summary of the above excerpt is that the permissibility of any interception in a human body is dependent upon the need. If and until when the need is present, the action of surgery is permissible and receiving payment on that surgery is also permissible, and when there no longer remains a need, neither the action of surgery nor receiving payment for it will remain permissible.

Consensus of scholars:-

This is the very ruling upon which majority of scholars are in agreement. As Dr. Muhammad Bin Shanqiti writes:

(فسخ الاجارة على فعل الجراحة اذا زالت الحاجة قبل المباشرة. 5)

Translation: If that need for which the surgery was going to be performed ceases to exist before the operation is performed, then the contract upon which the surgery was going to be performed shall become void too. (Neither the operation will be performed nor the agreed upon payment for that operation be made since the need existing no longer nullifies this affair.)

The above ruling is in accordance to the Jurisprudents of the Hanafi school of thought. (6)

And the same is the point of view of the Maliki Jurisprudents. (7)

And the same is the decision by Shafi Jurisprudents. (8)

Similarly, the Hanbali Jurisprudents also agree to this. (9)

Summary:-

The above mentioned detail is summarized as the surgery being permissible in presence of there being a need and impermissible in its absence. As is the principle:

(ما جاز لعذر بطل بزواله. 10)

Translation: If a matter is permissible because of there being a necessity, the ruling of that being permissible becomes invalid once the necessity is no long.

Third Condition:-

The third condition for medical surgery being permissible is that the patient itself must permit the surgeon to perform the surgery when the patient is capable of granting such a permission, if not, permission has to be given by someone duly representing the patient.

As Dr. Shanqiti writes:-

(مما يشترط لجواز فعل الجراحة الطبية ان ياذن المريض بفعالها اذا توفرت فيه اهلية الاذن واما اذا لم يكن اهلا فانه يعتبر اذن وليه كابيهِ مثلاً. 11)

Translation: Among the conditions under which medical surgery becomes permissible, one is that the patient gives permission for the act of surgery whereas the patient is capable of granting the permission, if not, the permission from a caretaker shall be trusted.

Capacity to grant permission:-

About the prerequisites for granting permission, Dr. Shanqiti writes:

(وتتحقق هذه الابلية المشترطة لاعتبار الاذن بوجود امرين احدهما البلوغ والثاني العقل ومن ثم لا يعتبر اذن الصبي ولا المجنون. 12)

Translation: The prerequisite for being able to grant permission depends upon two factors, one is of sanity, the other being mature. Therefore a permission granted by a child or an insane person is not valid.

Difference between permission of a child and an adult:-

Differentiating between the permission of a child and an adult Imam Ibn Al Qayyim writes that if an adult grants a permission and some loss occurs, then the surgeon will not be held responsible, but if a child patient gives permission and a loss occurs then the operation surgeon will be held responsible since the child's permission is not valid to begin with. As he writes:

(فان كان بالغاً عاقلاً لم يضمنه لانه اسقط حقه بالاذن فيه وان كان صغيراً ضمنه لآنه لا يعتبر اننه شرعاً. 13)

Translation: If the person granting the permission was a sane adult, the surgeon will not be held responsible if there is a loss because the patient withdrew his claim upon granting the permission, but if the patient was a child who granted the permission then in case of a loss the surgeon will be held responsible since a child's permission is not valid.

In short, for surgery to be permissible a permission has to be present either from the patient or a responsible instead, otherwise surgery will not be permissible.

Fourth Condition:-

For medical surgery to be permissible the fourth condition is that the surgeon should have full competence to perform the operation.

As Dr. Shanqiti writes:-

(يشترط لجواز فعل الجراحة الطبية ان يكون الطبيب الجراح اهلا للقيام بها وادائها على الوجه المطلوب)14

Translation: For medical surgery to be permissible it is also required that the surgeon performing the medical surgery should be fully competent to perform that surgery and should be able to perform the operation aptly.

This implies that the surgeon should have complete relevant knowledge and an in-depth understanding of the operation to be performed and then should also be able to perform the surgical action in light of his knowledge and understanding in a good manner. Imam Ibn Qadamah clarifies this in these words:

(ان يكونوا ذوى حذق فى صناعتهم ولهم بها بصارة ومعرفة لآته اذا لم يكن كذلك لم يحل له مباشرة القطع. 15)

Translation: It is necessary for surgeons to have full competence in their field and have excellent cognizance and understanding of this act of surgery, otherwise without this skill it will be impermissible for them to intervene in a human body.

Likewise, Shaykh Burhanuddin Ibrahim writes:-

(واقضى ذلك انهم اذ لم يكن لهم حذق فى الصنعة انهم يضمون لآته لا تحل لهم مباشرة القطع فاذا قطع فقد فعل محرماً فيضمن سرائبه)16

Translation: The above condition also implies that if the surgeon is not competent enough in his profession then they will also be held responsible for whatever intervention he has performed in the body, because such an intervention was not permissible for them in the first place. When he intervened without skill, he committed an impermissible act and for this reason he will be held responsible for a loss caused by his intervention.

This same condition is explained by Shaykh Ahmad Bin Zurooq in these words:-

(واما الفصد والكى فلا خلاف فى جوازهما بشرط معرفة الفاعل. 17)

Translation: And as far as cupping and staining is concerned, so there is not a difference of opinion in them being permissible, the condition being that the person performing these should be fully competent.

NOTE: From the above excerpts it becomes clear that it is of utmost importance for a surgeon to first have true knowledge and competence and this will be judged through their experience. As Shaykh Shahabuddin Qilyoobi writes:

(التجربة دليلا على مهارة الطبيب اذا ظهرت من خلالها اصابته ونذر خطئه)18

Translation: The clear evidence to a surgeon's competence is their experience, expressed during the act of surgery, that they perform the surgery correctly in most instance and make mistakes rarely.

Summary:-

The condition discussed herein is summarized as until and unless the surgeon is competent of performing surgery, it is not permissible for him to perform it, and neither is it permissible for the patient to permit such a surgeon to perform the surgery, otherwise the act of surgery will be considered impermissible.

Fifth Condition:-

The fifth condition for surgery to be permissible is that physicians should be hopeful that the act of surgery will cure the patient, and if the chances of the patient dying because of this surgery, then performing the surgery will be permissible. If the chances of patient dying after this surgery are higher, then the Islamic Jurisprudence will regard this surgery as being impermissible. Therefore Imam Izz Bin Abdus Salam writes:

(واما مالا يمكن تحصيل مصلحة الا بافساد بعضه كقطع اليد المتأكلة حفظا للروح اذا كان الغالب السلامة فانه يجوز قطعها)19

Translation: And whereas achieving the best is not a possibility but upon damaging certain organs, for example, resecting a gangrenous hand for saving life, then under these circumstances if the chance of the patient's well-being are higher then such an intervention will be permissible.

In essence, to safeguard human life, if resecting a damaged limb becomes incumbent and if that involves a greater chance of the life being saved, then only at that point cutting that specific limb will be permissible, otherwise it will be impermissible. For this reason, it is customary to keep the well-being of the patient in view, and if the patient is at risk for a greater loss as a result of the treatment itself then such a treatment is prohibited as well. As Imam Baghwi writes:

(والعلاج اذا كان فيه الخطر العظيم كان محظوراً 20)

Translation: That treatment which contains a significant danger to the patient is prohibited.

The Islamic Jurisprudence lays particular emphasis upon safeguarding the human life and for this reason an action through which the life of a patient is jeopardized is considered impermissible. As Imam Ghazali writes:

والشريعة الاسلاميه لاتبيح فعل الجراحة التي يغلب على ظن الطبيب هلاك المريض بسببها لان ذلك مخالف لاصول الشرع التي راعت حفظ النفس (واعتبرته من الضروريات. 21)

Translation: The Islamic Jurisprudence has not permitted that action of surgery about which the overwhelming opinion of the physician is that the patient will die because of that surgery because in this situation, declaring it permissible will go against those principles of the Jurisprudence that account for safeguarding a human life and such principles are considered essentials of the religion.

Summary

The above condition is summarized as the action of surgery will only be permissible when the chances of patient getting better are higher, otherwise surgery will be impermissible.

Sixth Condition:-

For surgery to be permissible, the sixth condition would be that for the patient there should not be available any other treatment as a lesser alternative to surgery. As Imam Shokani writes:

قد اتفق الاطباء على انه متى امكن التداوى بالاخف لا ينتقل الى ما فوقه ومتى امكن بالدواء لا يعدل الى الحجامة ومتى امكن بالحجامة لا يعدل الى قطع (العروق. 22)

Translation: Surgeons agree that when treatment is possible through medicine then a higher grade of treatment shall not be resorted to. Therefore when treatment is possible with drugs, then cupping shall not be resorted to, and when cupping affords a possible treatment then cutting open the veins shall not be resorted to.

So the mode of treatment most suitable for a specific patient will be used. Therefore, if for a patient, any mode of treatment other than surgery may prove useful, then surgery on that patient will not be permissible. This decision can only be accurately made by an experienced physician. As Imam Ibn Qayyim writes:

(ومن حذق الطبيب انه حيث امكن التدبير بالأسهل فلا يعدل الى الأصعب ويتدرج من الأضعف الى الأقوى. 23)

Translation: The skill of a physician is expressed by not proceeding to a stronger medication when treatment is possible with a lighter one; in the process, he gradually progresses from weaker to stronger medications.

Summary

Summarizing the above-mentioned condition, surgery is only permissible according to the Islamic Jurisprudence when there is no other alternative mode of treatment lighter to surgery. If there exists an alternative, the act of surgery will be impermissible.

Seventh Condition:-

For surgery to be permissible, the seventh condition is that the surgery itself should not cause an even bigger harm to the patient. If the act of surgery poses a bigger harm to the patient then surgery will not be permissible according to the Islamic Jurisprudence because a principle is:

(الضرر لايزال بمثله. 24)

Translation: A harm may not be countered with an even greater harm.

In the present era there are certain surgeries that pose a greater harm to the patient than benefit, an example of this would be the surgery to treat kyphoscoliosis, where often times the patient undergoing surgery to correct this condition suffers from greater harm. What is that harm, Dr. Syed Muhammad Wabb writes:

(فالغالب في الجراحة انها تنتهي بالشلل النصفى. 25)

Translation: In this operation the patient's lower body is paralyzed most often.

In short, these kind of operations are harmful.

Discussion:-

The above-mentioned conditions elaborate that the Islamic Jurisprudence has allowed surgery for the benefit of the humans, but has not left the field unrestricted, instead, it has imposed certain conditions that define the true target of the act of surgery, defining when and upon whom is surgery permissible and when and upon whom is surgery not permissible.

Because the principle is:

26) (ما جاز لعذر بطل بزواله-

Translation: That order of the Jurisprudence that becomes permissible in presence of a certain reason, becomes null and void upon removal of that specific reason.

Therefore if the need for a surgery truly exists in a patient then surgery will be permissible upon that patient, and in a patient where there is no well-defined need, the same act of surgery will be impermissible and prohibited.

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