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Part 3: Jurisprudential and ethical reflections on some issues in bioethics

Treatment of the sick

Islam emphasises the importance of maintaining one's health and preventing illness, but when prevention fails, all efforts must be made to restore the health. One way of saving lives of people is to treat them when they become sick. It is a mutual responsibility of the patient and physician (or society in general). In the other words, seeking the treatment is a duty for the patient himself and everybody in the society is obliged to help the patient in treatment. On the necessity of treatment, the Prophet said:

O servants of Allah, seek treatment, for Allah has not sent down any illness without sending down its treatment (14).

This is a sample of a set of narrations that makes treatment mandatory under the situation of availability of a treatment or considering the adverse effects of holding off a treatment. On the other hand, healing people is considered as a sacred job. The physician must do his best to heal the illness, but at the same time he must know that the real healer is God. In the Qur'an, the Prophet Abraham is quoted as saying:

"And when I am sick, He restores me to health" 1

Indeed, one of the names of God is "the Healer" (Al-Shafí).

The physician must also treat the patient with respect and compassion. The Oath of the Muslim Doctor includes undertaking "to protect human life in all stages and under all circumstances, doing [one's] utmost to rescue it from death, malady, pain and anxiety. To be, an instrument of God's mercy all the way, extending medical care to near and far, virtuous and sinner and friend and enemy" (13) is necessary.

Reproduction

Due to the high value of human life, Islam attaches a very special attention to it before it starts and this continues after ending life with death. Marriage is the only proper and legitimate way for having a child. In the other words, a male and female may have a child only when they appreciate the value of human life and therefore are committed to take the full responsibility of bringing up a child in the sacred institution of family.

Marriage is not just a financial or physical arrangement for having sexual relation or living together; neither it is just a legal contract between a man and woman. Marriage is a sacred covenant between the two and God is the witness of it. Marriage is a gift of God for human beings to supplement each other and to console themselves with each other[2].

Violation of this sacred covenant by adultery or by homosexual relations is unlawful and is unanimously rejected by all Muslim scholars. Also it seems immoral to use modern biotechnology to bypass marriage and reproduce human beings artificially and out of the context of family. Of course, a married couple may use legitimate biomedical techniques for parenting.

Family planning

Islam considers child having as a great gift of God and highly recommends people to get married and establish family ties and have child. However, Islam does not compel people to get married or have child after marriage unless there is an overriding (secondary) reason which makes marriage and formation of family or having child necessary.

For example, if the only way to protect one's piety and chastity is to get married or if the protection of the people of faith from the attacks of enemies depends on the increase in the number of the members of society it becomes compulsory to get married and have child (15).

Thus, Islam allows family planning to prevent pregnancy, but does not allow its termination[3].

Now, naturally the question arises as to when pregnancy starts and whether the beginning of pregnancy coincides with the beginning of human life or not.

Abortion

Islam prohibits abortion unless there is an exceptional situation in which Shari'ah permits it as a lesser evil (16). A typical Islamic point of view can be found in the following statements by the Islamic Organization for Medical Sciences:

- The inception of life occurs with the union of a sperm and an ovum, forming a zygote which carries the

full genetic code of the human race in general and of the particular individual, who is different from all others throughout the ages. The zygote begins a process of cleavage that yields a growing and developing embryo, which progresses through the stages of gestation towards birth.

● From the moment a zygote settles inside a woman's body, it deserves a unanimously recognized degree of respect, and a number of legal stipulations, known to all scholars, apply to it.

● When it arrives at the spirit–breathing stage…the fetus acquires greater sanctity, as all scholars agree, and additional legal stipulations apply to it. (17)[4]

Abortion especially after the spirit is blown is a case of infanticide and the Qur'anic condemnation of killing one's children applies to it[5]. Islam severely condemned the practice of the pagans who killed their children for poverty or for the shame of a girl's birth. Unfortunately we see that today millions of abortions take place every year. Most of these abortions take place because the "liberated" people of our age would like to enjoy the life of sexual freedom.

When does the prohibition of abortion apply? The general Islamic view is that, although there is some form of life after conception, full human life begins only after the ensoulment of the fetus. Most Muslim scholars including the Shi'a believe that ensoulment occurs at about 120 days after conception (10)[6]. There is a minority who hold that it occurs at about 40 days after conception.

Of course, as soon as the zygote settles inside a woman's body, it deserves a unanimously recognized degree of respect and it cannot be aborted. The Qur'an uses the word "Haml" to describe pregnancy[7].

In Arabic, the term "Haml" means to carry, and this starts when the zygote is implanted in the uterus and not before it. The late Ayatollah Khu'i said: "The criterion in applying the [word] 'pregnant' for a woman is correct only after settling down (Istiqrar) the zygote in her womb because just entering the sperm in her womb does not make her pregnant" (15).

Thus, from the very beginning of the pregnancy its termination is prohibited and the zygote must be protected. The showed respect to the zygote at this early stage does not necessarily mean that it is a real or actual human being.[8]

After starting pregnancy, the zygote is in a state of active potentiality to become a human being with the full genetic code of the human race in general and of the particular individual. As we can see above in the verse 23:13, implantation of the ovum in the uterus constitutes the first stage of the creation of man.

According to a Hadith, Ishaq Bin 'Ammar asked Imam Al–Kazim whether it is permissible for a woman who fear pregnancy to drink some liquid to abort what is in her uterus or not. Imam replied: "No." Ishaq said: "That is the zygote (Nutfah)." Imam replied: "Verily the first thing to be created is the zygote" (18).

However, after creating the spirit, it becomes a real human being. For this reason, the Shi'a jurists like late Ayatollah Khomeini, Ayatollah Khamenei, Ayatollah Lankarani and Ayatollah Sistani declare that it is

allowed to abort fetus to save the mother's life before the ensoulment. But after that, it is not allowed to sacrifice fetus for the sake of the mother (19).

In his famous medical work called, "Canon", Ibn Sina studied techniques of bringing embryo out of womb.[9] Although his discussion is medical in nature and not jurisprudential, he makes it very clear that such operations can only take place in clearly defined situations when there is no other option. In order to block the way for any misuse by those who may want to commit abortion, he restricts such operations to three cases (20).

Death

Islam places great emphasis on the sanctity of life and at the same time on the reality of death. Indeed, to have a better appreciation of life one needs to remember death and that there is no way to escape from it. So everybody can realize that one must benefit from his/her life optimally.

Thus, Islam considers remembrance of death as a source of vitality and spiritual power. "Everyone is created for a life span and dying is a part of the contract (with God) and the final decision (of term) is up to God. The quality of life is equally or more important than duration of life" (21). In his supplication for noble characters (Makaarim Al-Akhlaaq) Imam Sajjad, the fourth Imam of the Shi'a, asks God:

Let me live as long as my life is used in serving Thee. When my life becomes a pasture for Satan, be pleased to call me back to Thee before Thy wrath advances towards me or Thy anger be fixed upon me.

Death consists of separation of soul from body. In the same way that we cannot define empirically the time of ensoulment with certainty and accuracy, we are unable to define the exact time of departure of the soul scientifically. Therefore, death is diagnosed by its physical signs. However, when there is a doubt, maximum caution must be taken into account.

It should be noted that there is a difference between reaching an irreversible state in which death becomes decisive and actually dying. Second if a person still shows some vital signs like heart beating and even if (this is really an if) we can scientifically confirm that his soul has departed from the body, nothing must be done which people may consider it as hastening one's death or a disrespectful act to human life.

It seems to me that one can distinguish between saving a respected life (which is compulsory in Islam) through medical treatment or financial support or something else and prolonging life artificially.[10] For example, suppose that someone is dying definitely because of an advanced cancer and lack of cure for him and that the most can be done for him is using some medicine just to keep him alive for few days.

The cost of the medicine is so high which is not affordable for the whole family and they will be greatly troubled. Is it necessary for the patient himself or for his relatives or for the others to take this measure? Or if this can be done by a very painful and major surgery is it necessary for the patient to undergo such

an operation while there is no possibility of cure?

I think it seems reasonable to suggest that “the physician and the family should realize their limitations and not attempt heroic measures for a terminally ill patient in order to prolong the artificial life (or misery). The heroic measures taken at the beginning of life (i.e. saving a premature baby) may be more justified than at the end of a life span, though each case has to be individualized” (21).

Suicide

If we have not created our life and it is just a gift of God for which we are held responsible, it is obvious that we have no absolute power on our lives. Life is a trust of God and we must take care of it to our best. This is the case with all blessings of God, whether they are physical or spiritual. We can benefit from them, but we cannot destroy them or waste them. No one should say I like to burn my property or harm my health or damage my reputation.

Our situation in this world is like a guest who is invited to a guesthouse. Whatever there is in the guesthouse was put by the host for the benefit of the guest. However, the guest cannot burn himself inside the house or destroy the guesthouse or the things put there. It seems more interesting when considering our body as a guestroom for the spirit; so we must observe regulations for using this room which set out by God. We must try to please God by preserving life and health, promoting quality of life and alleviating suffering.

Euthanasia

Islam is against euthanasia (mercy killing). Muslim jurists regard euthanasia as an act of murder. Murder can be performed with a gun or with a syringe by a series killer or by a physician or even by the murdered himself. For example, Ayatollah Khomeini declared that any measure for hastening death of someone is considered as a murder (22). Also Ayatollah Makarim Shirazi declares:

Killing a human being even out of mercy (euthanasia) or with the consent of the patient is not allowed (22).

He adds that the main argument for such prohibition is applying the verses and Ahadith which indicate prohibition of murder (Qatl) to such cases. The philosophy beyond this prohibition may be the fact that permitting such acts leads to many misuses; for any weak and trivial excuses, acts of euthanasia or suicide may take place. Moreover, medical judgements usually are not certain and there have been cases in which people who had no hope for life were mysteriously saved from death.

Organ transplantation

This is practised in almost all Muslim countries. Three situations can be imagined here:

● Donor is living and is willing to donate some organs. This is normally allowed, provided that such donation does not pose any danger to the donor's life. For example, a healthy person can donate one kidney to another person and still live reasonably. Indeed, this may become obligatory when it turns to be the only way to save a respectful life and is not going to put himself in an unbearable situation or harm him. One cannot donate any organ on which his life depends like heart or brain (23, 24).

● Cadaveric donation: As said above, Islam has high regard for the dead and this determines many religious and moral decisions regarding cadavers. However, many Muslim scholars have permitted cadaveric organ donation, if the person has made this decision before death or his guardian (Wasiyy) approves that (25, 26).

● Donation after brain death: This depends on whether to accept legally brain death as death or not. Therefore, it will be reduced either to a or b. Many Shi'a scholars like Ayatollah Khamenei, Ayatollah Bahjat and Ayatollah Tabrizi, do not allow any transplantation that leads to the termination of life even in this state and even if the donor has put in his will that after death his organs can be given to those in need (27).

● This is to show maximum care and respect for human life. However, there is a ground for suggesting the possibility of donating organs after brain death in order to save lives of the recipients whose lives cannot be saved otherwise. Of course, this can be carried out only after permission is granted by the guardians or after approving organ donation by the donor before brain death. In the year 2000, the parliament of the Islamic Republic of Iran passed a law which allows organ transplantation after brain death under certain circumstances. The Guardian Council (that is responsible for checking the laws passed in the parliament against the constitution and the Islamic Shari'ah and endorsing them when there is no conflict) once rejected the proposed law, but in the second time made no comments during the legal time. As a result, practically the law is now in effect in the country.

1. Qur'an: 26: 80
2. Qur'an: 30:21
3. Family planning in itself is not forbidden, but there are methods of family planning which are not allowed. The details are discussed by Muslim jurists.
4. It has to be noted that although this organization mainly follows Sunni understanding of the Islamic law, what has been mentioned above is in general acceptable to both Sunni and Shi'a Muslims.
5. Qur'an: 6:151 & 81:2
6. For example, see (7). My humble view is that the reason for fixing 120 days is to provide a practical guideline for settling the cases in which parents or medical staff need to make a decision. Otherwise, in reality it may be possible that in some cases the ensoulment would take place slightly later.
7. Qur'an: 19:22; 31:14; 46:15
8. As we saw earlier in the discussion about animal life, the necessity of respect for life is not limited to human life.
9. The Canon of Medicine (original title in Arabic Al-Qaanun fi al-Tibb) is a book by the great Persian philosopher, scientist and physician, Ibn Sina. The book was based on both his own personal experience and on the medieval Islamic medicine in general, as well as traditional Persian and Arabian medicine. It is considered as one of the most famous books in the history of medicine and remained a medical authority for centuries.
10. This is the author's humble view which he takes to be in compliance with the views of Muslim jurists. However, the

issue needs further investigation.

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