

Review article:

The Application of Necessity in Medical Treatment: An Islamic Biomedical Perspective

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Abstract:

This research paper examines the concept of 'necessity,' which derives its origin both in Islamic and common law and transcended progressively into medical law. Many aspects of medical and civil law remained closely related to each other, like 'the concept of duress', 'self-defense' and other aspects of human activities are embedded in both the systems. Likewise, the common law generally allows almost all forms of treatment, whereas Islamic law permits it, when it essentially saves one's life. All forms of medical treatments are freely and readily available to overcome sterility dilemmas in western countries, whereas in Islamic law some of the modern interventional techniques and genetic engineering are disregarded as per *Shariah* injections. Whereas, Islam does approve necessary measures to sustain sound and good health, since it is considered a part of one's obligations. Hence, its sustenance senses the subjects to avoid from undue pains and sufferings. For this purpose, medications and medical treatment is considered a recognized mode in Islamic law. Therefore, on one hand, this research paper presents arguments in favor of medical treatment, while, on the other hand, it will argue the evidences given by classical and contemporary scholars in favor of medical treatment within the framework of *Shariah*. This may attract the essence of *Shariah* doctrine of necessity.

Keywords: Necessity, Medical Treatment, Camel's Urine, Missing Organ, Medicine and Islamic Law

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Introduction

Professor John Candlish argues that; "the concept of necessity has its origin both in Islamic and common law, and in this way it is progressively becoming an important area in medical law³. Thus, in this sense, many aspects of both the systems remain closely related to each other, like 'the concept of duress', 'self-defense' and some other aspects of human activities related to civil and medical matters are embedded in both the systems. Likewise, the common law generally allows almost all forms of treatment, whereas Islamic law regards it, when it essentially saves one's life³. Certainly, many contemporary medical issues like *CRISPR*⁴⁻⁵ and other recent

developments in the field of bio-medical technology appears as divergent issues.

Normally, in western countries almost all forms of medical treatments are freely available to overcome sterility dilemmas, whereas in Islamic and jurisprudence, anyhow, does not approve all sort of novel fertilization and genetic manipulation tools⁶. Muslim scholars from around the globe agree with the Islamic ethical precincts, prior to permitting one or the other procedure, since, these innovations involve ethical bars that devolves on personal morality⁷⁻¹⁰.

In contrast, Islamic theology approves the permissible measures to withstand good health, since

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it is considered a part of one's obligations. Thus, its sustenance senses the subjects to avoid from undue pains and sufferings. For this purpose medications and medical treatment is measured a recognized approach in Islamic law¹¹. So, the main theme of this research study is medical practice and tendency towards medication in an Islamic perspective. Besides, several other areas connected to medical treatment, like 'necessity in medical treatment' and 'the usage of prohibited medicine' will be a center of debate in this research paper in order to determine the position of *Shariah* law on these issues in the following manner.

I- Necessity in Medical Treatment

The British medical association¹² holds that: "the doctrine of necessity emerged from the need to give lawful emergency treatment to adults who are unconscious and unable to consent, thus in such cases, health professionals are justified in providing treatment that is immediately necessary to save life or to prevent the deterioration in the patient's condition, unless there is a valid and applicable advance refusal"¹³.

As regard to the refusal of treatments; normally, almost all those who suffer from illness are willingly contest for appropriate medical treatment, as a research study (which is comprised on a group of two hundred forty four patients; facing multiple serious diseases) identified that "majority of them wanted to receive a life-saving treatment"¹⁴.

Certainly, very few patients refuse to consent for prescribed treatment, while majority will follow appropriate prescription by a physician. But, refusal from treatment, however, can be imagined where life survival is in question in case of lethal diseases. Such as, cancer affected patients, as they generally required radical treatment justly to prolong their lives, comparing to other patients, those who are facing usual sicknesses¹⁴.

Arguably, the treatment options might change between the time and space, that in which time it must be followed. Similarly, social values, faith base understanding and cultural variation can also affect the treatment preferences, which is why cultural and religion change play a vital role transforming various decisions of medical treatment, e.g., in case of surrogacy. The surrogate-mother if undertakes such procedures; she may not be ready to be labeled only as gestational carrier after giving birth to baby. Definitely, the overall result will be altogether different to that, what the (patient) intended-mother,

or those facing infertility problems would want. Since, in Muslim societies such procedure would be believed to run counter to the intention of God's command. Resultantly, despite the moral and ethical values, cultural variation and religion(s) might affect the free choices to medical treatment¹⁴.

Obviously, in case of refusal of the treatment (due to various reasons as identified), the patient has a right to deny medical treatment. Consequently, patient will face the outcome. Though, medical practitioner cannot enforce his choice of treatment against the will of the patient,¹⁵ but *Shariah*, emphasis on the right of the body on self¹⁶.

II- Evidences Regarding Treatment and Remedies for Physical Ailments

In addition, the Prophetic traditions provide proper remedies for abnormal conditions and physical ailments, since the Prophet Muhammad (peace be upon him) used medicine himself and prescribed it for others¹². The Prophet Muhammad (peace be upon him) said that:

لِكُلِّ دَاءٍ دَوَاءٌ فَإِذَا أُصِيبَ دَوَاءُ الدَّاءِ بَرَأَ بِإِذْنِ اللَّهِ عَزَّ وَجَلَّ

"For every illness there is a cure, and when it is properly applied to a disease; (means that when a disease gets medical treatment), it cured (with) Allah almighty's willing"¹⁷.

Correspondingly, the Prophet (peace be upon him) said that:

مَا أَنْزَلَ اللَّهُ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً - دَوَاءً

"Allah has not sent down any disease, except he sent down its cure"¹⁸.

So, it means that Allah does not create any illness until he creates a treatment for it.

Notably, as regard to the medical treatment and medication in Islam, a tradition was reported, when Bedouins came to the Messenger of Allah and then asked:

قَالُوا: يَا رَسُولَ اللَّهِ، أَتَدَاوَى؟ قَالَ: نَعَمْ يَا عِبَادَ اللَّهِ تَدَاوُوا، فَإِنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، غَيْرَ دَاءٍ وَاحِدٍ، قَالُوا: وَمَا هِيَ يَا رَسُولَ اللَّهِ؟ قَالَ: الْهَرَمُ.

"can we use medical treatment i.e. medication?" he (the Prophet) said: "yes, oh servants of Allah", (and he the Prophet replied to them that); "you can get medical treatment", because; "Allah Almighty does not create an illness without a cure for it—except for one disease", they (the Bedouins) asked, what is that 'O' Messenger of Allah?, he (the Prophet) said that: an "senility"¹⁹.

Consequently, these traditions let us to mark that for every disease, Allah almighty has created a cure, but that is normally hidden from an ordinary/lay man, however, as per the Prophetic saying; *when it is applied properly*; indicates that medical treatment is an answer for every type of disease. Moreover, the above mentioned narrations evidently dictate that any person is allowed to seek appropriate medication and possible medical treatment²⁰. similarly, for a non-Muslim some diseases might be incurable. But, for a Muslim physician it is obligatory to search for the treatment as Allah's Messenger (PBUH) has prescribed upon us being a Muslim physician to conduct research and find the solution of unsolved.

Ibn al-Qayyim stated that the role of physicians in this regard is very important to apply appropriate medical treatment; he pointed a Jewish tradition which states: "Once the Prophet Ibrāhīm ('alayhi al-salām) asked Allah almighty: "o my Lord!; where does the disease come from?" he (Allah almighty) said that: "from me" (i.e. from my side, or I send down it), he (the Ibrāhīm-'alayhi al-salām) then asked: "where does the cure come from?" he (the Allah almighty) replied: "from me" (i.e. from my side, or I send down its cure too), he (the Ibrāhīm-'alayhi al-salām) then asked: "where is the role of physicians then?" he (the Allah almighty) said that: "a man whose hands I send and cause the cure"²⁰.

The above mentioned statement, however, strengthen the sayings of the Prophet Muhammad (peace be upon him), and encourages people to get medical treatments, and its proper application of this commandment is possible only when treatment is applied by a competent physician i.e. al-tabīb al-khāziq. Thus, medical intervention is a hope and way to recovery a good health, however, the end result is in Allah's hand, since it is he (almighty Allah) who cures; as the Holy *Quran* stated (the words of Ibrāhīm-'alayhi al-salām, arguing to his people):

وَإِذَا مَرَضْتُ فَبُهِرَ يَشْفِينِ

"And when I am ill, it is he (almighty Allah) who cures me"²¹.

Equally, almighty Allah directs medication and medical treatment in these words; 'ascribing honey which potentially cures', that:

يَخْرُجُ مِنْ بَطُونِهَا شَرَابٌ مُخْتَلِفٌ أَلْوَانُهُ فِيهِ شِفَاءٌ لِلنَّاسِ

"From its belly comes forth a syrup/drink of different colors, which contains a healing for mankind"²².

The above verse of the holy *Quran* further states that: indeed "it is a sign for those who ponder"; signifies necessity for attaining treatments and cures to further diseases, since "Allah almighty has not inflicted a disease without prescribing a cure of it, known to whoever knows it, and unknown to who does not know it"²³. This also indicate how important is to ponder upon and to do research in order to find the remedy of the ailment.

For the Christian physician, enhancement in human health is always subject to God's temptation, and hence, "redemption of humanity cannot come from humans but only from God". The Christians realize that; "from God the physician has his wisdom", "He endows man with knowledge to give glory to his mighty works, through which the physician eases, pain, and the pharmacist prepares medication, thus God's creative spirit continues without cessation of efficacy on the surface of the earth"²⁴.

III- Prophetic Guidelines on Lifestyle

Certainly, the Prophetic guidelines for each and every aspect and activity of human life is very important, for example, the imbalance and excess in the enjoyment of God's bounties, however, lead to physical and moral agony²⁵. Henceforth, the Prophet Muhammad (peace be upon him) recommend moderation and advised to stop eating before feeling of satiety. So, the Prophet said that:

مَا مَلَأَ آدَمِيٌّ وَعَاءَ شَرًّا مِنْ بَطْنٍ بِحَسْبِ ابْنِ آدَمَ أَكَلَاتُ
يُقِمْنَ صَلَاتَهُ فَإِنْ كَانَ لَا مَخَالَهَ قَلَّتْ لَطْعَامِهِ وَتَلَّتْ لَشْرَابِهِ
وَتَلَّتْ لِنَفْسِهِ

"human does not fill any pot that is worse than his stomach, so it is sufficient for the mankind to eat what will support his back, (however) if it is not possible, then (leave space) as third for food, and third for drinking, and third for breathing"²⁶.

Resultantly, excess in eating and drinking from the God's bounties and its enjoyment deemed as wastage in the Holy *Quran*, as it stated:

وَهُوَ الَّذِي أَنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرِ مَعْرُوشَاتٍ وَالنَّخْلَ
وَالزَّرْعَ مُخْتَلِفًا أَكْلُهُ وَالزَّيْتُونَ وَالرُّمَانَ مُتَشَابِهًا وَغَيْرَ
مُتَشَابِهٍ كُلًّا مِنْ ثَمَرِهِ إِذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلَا
تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

"it is he who produces gardens, with trellises and without, and dates, and crops of different shapes and tastes (of all kinds), and olives and pomegranates, similar (in kind) and different (in variety): eat of their

fruit when they repine, but render the dues that is proper on the day of its harvest, and waste not by excess: for Allah loves not the wasters”²⁷.

It reported from Ibn ‘Umar (May Allah be pleased with him) said that:

قَالَ تَجَشَّأَ رَجُلٌ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ كُفْتُ جُشَاءَكُمْ عَنَّا فَإِنَّ أَطْوَلَكُمْ جُوعًا يَوْمَ الْقِيَامَةِ أَكْثَرُكُمْ شَبَعًا فِي دَارِ الدُّنْيَا

“A man burped in front of the Prophet (peace be upon him), so he (the Prophet) said that: “keep away (withhold) your burps from us! For the most hungry of you on the dooms day (of resurrection) will be those who ate most (here) in this world”²⁸.

Particularly, excess in eating and drinking cause pains and severe illness and sufferings, so to release human beings from those suffering and illness, medical sciences seek to satisfy bodily cure and treatments. Thus physicians are required to treat the patients in a requisite way²⁹. Usually, ‘the goal of medical treatment is the restoration of life’³⁰, since those who are suffering from various diseases may possibly benefit from medical treatment.²⁹

Definitely, it must be noted that, ‘treatment itself does not prevent or postpone the death’; however, ‘it does make one’s life better than it would otherwise be for a certain temporal period of the life’. Notably, whenever treatment is properly provided to the patients, “it may briefly postpone the life ending situation in such a way that the quality of life during the rest of life becomes high than that of the ailing conditions”²⁹. So, in this sense, medical treatments prolong one’s life, and makes it dependable²⁹. Thus, the purpose of medical treatment is to benefit the patient²⁹. However, the question in case of organ transplantation; “where an organ is removed from the donor for the sake of another, then how can the physician justify causing harm to a healthy person, and also the pain he will have to borne”³¹

The risk factors and the resulting disabilities during the medical treatment, however, considerations are given to various types of diseases to minimize them, hence for this purpose to achieve the required results, physicians are keenly aiming that which treatment is best to be used. Therefore, medical scientists and bioethicist are thus undertaking ethically approved research projects, like, ‘cancer’, ‘HIV-AIDS’, and other ‘degenerative neurological diseases’ are primarily under investigation, which can benefit the

human beings and might enhance their life standard³⁰.

IV- The Use of Prohibited Substances as Medicine

Indeed, almighty Allah has created cure for every kind of diseases, and hence medicine is considered a recognized tool and hope for the patients that might benefiting them. The human body is a residence of various ailments, thus using of suitable and favorable medicine is prescribed to the sick persons by the physician in order to avoid bodily harms and disorders. Various Prophetic traditions indicating that, seeking medical treatment and medicine is an obligation,³² since the body has a right over you, and its due rights must be given properly³³. The act of sending a physician towards one of his companions by the Messenger of Allah signifies that medical treatment is necessary. It is narrated from Jābir, he said that:

عَنْ جَابِرٍ، قَالَ مَرَضَ أَبِي بِنِ كَعْبٍ مَرَضًا فَأَرْسَلَ إِلَيْهِ النَّبِيُّ طَبِيبًا فَكَوَاهُ عَلَى أَكْحَلِهِ

“Ubay bin Ka’b fell ill, so the Prophet (peace be upon him) sent a physician to him, who cauterized (Burn, sear, or freeze the tissue) of him on his medial arm vein”³⁴.

Another *hadīth* which is reported by Imām Mālik in his book *al-muwatṭā* on the authority of Zayd bin Aslam said that:

حَدَّثَنِي عَنْ مَالِكٍ، عَنْ زَيْدِ بْنِ أَسْلَمَ، أَنَّ رَجُلًا، فِي زَمَانِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَصَابَهُ جُرْحٌ فَاحْتَقَنَ الْجُرْحَ الدَّمَ وَأَنَّ الرَّجُلَ دَعَا رَجُلَيْنِ مِنْ بَنِي أَنْمَارٍ فَنظَرَا إِلَيْهِ فَرَعَمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَهُمَا: « أَتَيْكُمَا أَطَبُّ » . فَقَالَا أَوْ فِي الطَّبِّ خَيْرٌ يَا رَسُولَ اللَّهِ فَرَعَمَ زَيْدٌ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: « أَنْزَلَ الدَّوَاءَ الَّذِي أَنْزَلَ الْأَدْوَاءَ

“a man received a wound/injury in the time of the Prophet (peace be upon him); and the blood clotted in his wound, so the (injured) man called two (other) men from *banu anmār* tribe, (in order to) looked at (to treat him), so the Messenger of Allah (peace be upon him) said to them; “which one of you is better physician?” they said, “o Messenger of Allah! Is there any good in medicine?” Zayd (further asserted that) the Messenger of Allah (peace be upon him) said; “the one who sent down the disease sent down the cure”³⁵.

Similarly, Ibn al-Qayyim stated that Hilāl bin Yasaf said:“The Prophet (peace be upon him) visited an

sick person and said; “send for a physician”, a man said ‘do you say that, o Messenger of Allah (peace be upon him)?’ he (the Prophet) said; “yes”; “Allah has not sent down a disease, until he sent down a cure for it”³⁶.

Questionably, various sayings of the prophet Muhammad (peace be upon him) have prohibited using of those things which are forbidden by the Allah almighty, but what if on the one hand, the nature is forbidding one thing at one time and made allowed at another time as an exemption or dispensation? For example; when the Prophet (peace be upon him) was asked about use of alcohol for medicinal purposes, he (the Prophet) expressed hatred, and said; “this is not a medicine, rather a disease”³⁷.

Commenting on the abovementioned *hadīth* al-Baydāwī, expressed; it is possible that he (the Prophet) termed it in general sense, while Tāriq bin Sūaid needed it in particular, since, he may have the knowledge of the disease, which may be cured through application of alcohol. However, he learned (from the Prophetic saying) that alcohol might cause an increase and does not absolve him (from the sin). Thus, for this reason jurists have differed in the permissibility of alcohol for medication³⁸. While, ‘Aynī explaining the *hadīth* stated that, medication by unlawful substance, like, using wine for medicinal purposes have the same effect. Equally, drinking it in case of extreme thirst, also to swallow and gulp-down the bread. He further stated that, according to Ibn Ḥazm;³⁹ ‘in case of necessity’, one can use alcohol as medicine, since Allah almighty has made an exemption in case of duress. Thus, eating and drinking of the prohibited in state of necessity has the same effects as for the medicinal purpose⁴⁰.

In addition, Ibn al-Jawzī, said: the above mentioned *hadīth* indicates that, it is not permissible to drink alcohol, even for the sake of necessity, such as quenching thirst and medication, and that is the view of Imām Ahmad. Whereas, according to Imām Abū Ḥanīfah; it is permissible, and Imām al-Shāfi‘ī have three views in this regard: the two of his views are similar to (Hanbalī’s) doctrines, while the third view is about the permissibility for medicinal use and not to alleviate the thirst⁴¹. Now the question arises that whether alcohol and other unlawful substances can be used as medicine? So, this question will be responded separately under the head of ‘*medication by unlawful substance*’ right after the brief discussion on the subsequent interconnected issues, as follows:

i- Using Camel’s Urine as Medicine

There is another issue of medication by unlawful i.e. other than alcohol; the Prophetic tradition;

اشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا

“drink from their (camels) milk and urine”

as a medicine, is very famous *hadīth*, which is reported by authentic books on *hadīth*⁴². Commenting on the said *hadīth*, ‘Aynī, stated: Muhammad bin ‘Alī said; ‘there is nothing wrong with the urine of camel’s, cattle and sheep, so these can be used for medication’⁴³. Whereas, according to Muhammad bin al-Hassan; ‘it is permissible to use (camel’s urine) for medical treatment because of necessity, however, it does not mean that it is factually pure, and that is why it is not permissible (to use it for treatment) except for necessity’⁴⁴. Ibrāhīm said; ‘they are getting treatment with camel’s urine, and (he does not see) there is any wrong in it’⁴⁵. ‘Attā tendered that; ‘everything we eat their meat, there is nothing wrong with its urine’⁴⁶. Whereas, Abū Ja’far said; “there is nothing wrong with the camel’s urine to use it for medication”⁴⁷.

Additionally, al-Shawkānī stated that: Ibn Raslān maintained in *sharh al-sunan*; the most authentic view of our school (i.e. al-Shāfi‘īs): ‘it is permissible to get treatment by impure things except for alcoholic due to the Prophetic *hadīth* of ‘*urnīyen*; in which the Prophet (peace be upon him) commanded them to drink from camels urine (as medicine)’⁴⁸. He (al-Shawkānī) further stated that; according to al-Bayhaqī⁴⁹ these two *hadīths* if proved as *Ṣaḥīḥ*, then these will be subject to the meaning of prohibition, so to bring them together then it is not necessary to get treatment by prohibited, i.e. with alcohol and by unlawful substance, thus these will be deemed as prohibited except for necessity, since we cannot combine them without having necessity⁵⁰. Moreover, Ibn Shās al-Mālikī stated that; Imām Mālik said; ‘there is nothing wrong with drinking cattle’s urine (as medicine)’⁵¹. As, due to the Prophetic tradition;⁵² treatment by impurities (unlawful substances) is permissible⁵³.

Resultantly, from their argumentation, it seems that the rule of permissibility of camel’s urine can be extended to other unlawful substances, if no lawful alternative is available. ‘Aynī, stated; according to al-Baghawī: ‘it is permissible (due to the facts/reason mentioned); drinking of urine, blood and carrion for treatment; if a Muslim physician indorses/recommends it as curable, provided that if he does not find other permissible things what is sufficient

instead of it⁵⁴. Indeed, al-Zayla‘ī maintained permissibility of treatment by unlawful substances, such as; alcohol, and urine, however, if a Muslim physician suggests that it has a cure, save-as; if he is unable to find *ḥalāl* (permissible) alternates, since sanctity/prohibition rises for necessity⁵⁵.

ii- Replacing Missing Organ with Gold

Generally, the usage of gold for men is prohibited in *Shariah*, however a *ḥadīth* clearly indicating the permissibility. The story of ‘Arfajah bin As‘ad in very important to note that, “whose nose was cut off at the battle of al-Kilāb, and he got a silver nose, but it afflicted an infection, so the Prophet (peace be upon him) ordered him to get a gold nose”⁵⁶.

Commenting on the said *ḥadīth*, al-Ḥattābī maintained; ‘using of gold is permitting for men out of necessity, such as tying teeth with it, and in similar cases’⁵⁷, as an exemption⁵⁸. ‘Aynī, said; ‘the one whose nose is cut down, he can take a nose of gold’, since, a nose made of silver (for nose) is rusted; hence it is necessary to get a nose made of gold on the basis of necessity. He further stated that; ‘Ibn Munzīr argued on the *ḥadīth* of ‘Arfajah: that it is easy for men to use gold out of necessity, such as tying teeth etc⁵⁹. Kasānī maintained, ‘it is unanimously permissible; for the men, for tying their teeth with gold, so, there is no disagreement in this regard; if a nose is made of gold, since a nose made (for nose) of silver is rusted, as “necessity override the prohibition” is a golden rule in Islamic law⁶⁰. Similarly, this rule can be extended to other organs, like finger, ear, etc.,⁶¹ so, if necessity demands, auxiliary damaged organs can also be made of gold⁶². The view of Ibn al-Humām is very important to note in this regard, as he stated; according to Imām Abū Ḥanīfah: originally it is prohibited, but permissible out of necessity⁶³.

V- Conclusion

Consequently, the Prophet Muhammad (peace be upon him) permitted the silk and gold for men out of necessity, since silk was considered a cure for the itch, however, initially it was not allowed for them to wear, because the companions were aware of its prohibition due to the text. But, the Messenger of Allah upon necessity granted permission to the patients (ill/sick persons), and not for others. In the same way usage of gold was made allowed in case of dire need and the story of ‘Arfajah bin As‘ad is worth noting. Similarly, using camel’s urine as medicine; the Prophet of Islam also granted permission to the patients from

the tribe of ‘uraina (‘urnīan) and ‘ukl. Nevertheless, consuming camel’s urine is factually impure, but its proscription is relaxed for medical necessity. Accordingly, Ibn Raslān asserted that, unlawful items become permissible in case of necessity for medication. Save for, using *ḥarām* substances as medical remedy is permissible when there is certainty of cure, in the absence of a *ḥalāl* alternative as per ‘Uthmānī’s assertion. Correspondingly, the *Quranic* verses: “make not your own hands contribute to (your) destruction”, and “do not kill yourselves”, undoubtedly indicate impermissibility for the patients to refuse from getting treatment through unlawful substances in case of non-availability of lawful alternatives. ‘Aynī contended that, the evidences regarding ‘wearing of silk dress, drinking of camel’s urine and using of golden visages permissibility out of necessity and one cannot deny it permissiveness due to the text. Resultantly, same is the case with wine; which is absolutely *ḥarām*, but patients may use it as medicine in the absence of *ḥalāl*, on the recommendation of an expert Muslim physician⁶⁴.

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FD perceived, conceived and designed the study, while **MMS** participated in its design and helped **FD** in critical review. **FD** solely did data collection and its analysis. **FD** did manuscript writing and drafting. **AKA** did final review of the manuscript. **FD** takes responsibility/accountability for all aspects of work in ensuring that queries related to the integrity of the study are appropriately investigated and resolved. All the authors read and approved the study.

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- Fazli, Dayan, Surrogacy and Inter-Related Issues: A Legal Analysis from the Perspective of Islamic Law, *J. Appl. Environ. Biol. Sci.*, 7(6):31-40, 2017.
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- ‘Aynī, maintained that, ‘proof of medicine and medical treatment is present in the Prophetic traditions’, ‘Aynī, Nukhbu al-Afkār fī Tanqīh Mabānī al-Akhbār fī Sharḥ Ma’ānī al-Āthār, vol. 14, p. 167 (Wizārat al-Awqāf wa-Shūwūn al-Islāmīyah, Qatar, 2008). Therefore, medication is permissible for all, and they (human/patients) are obligated to take medicine. ‘Aynī, at, p. 173
- BMA; is a professional body of doctors in London, comprised of various committees, including medical, forensic legal, civil and public committees. The aim is to “look after doctors so they can look after you”, in order to insure the highest quality of treatment and healthcare services through medical technology.
- Everyday Medical Ethics and Law, (A handbook compiled by eight members board of BMA, UK), p. 101 (British Medical Association, Ethics Department, London, 2013).
- Bonnie Steinbock; (*edits*), the oxford handbook of bioethics, p. 327 & 353–354 (oxford university press, 2007).
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- An event, in which Salmān told to Abū Dardā that, “your soul has a right on you, your Lord has a right on you, and your family has a right on you; so you should give rights of all those who has a right on you”, after which Abū Dardā came to the Prophet and narrated the whole story. The Prophet (peace be upon him) said, “Salmān has told (spoken) the truth”. Al-Bukhārī, Ṣaḥīḥ al Bukhārī, in book reference: book no. 30, chapter no. 51, ḥadīth no. 75, English translation: vol. no. 3, book no. 31, ḥadīth no. 189; At-Tirmidhī, Jāmi‘at-Tirmidhī, In book reference: book no. 36, chapter no. 63, ḥadīth no. 111, English translation: vol. 4, book no. 10, ḥadīth no. 2413, further verses of the Holy Quran in chapter no. 2, verse no. 195: (وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ) and chapter no. 4, verse no. 29, stated that: (وَلَا تَقْتُلُوا أَنْفُسَكُمْ), indicates that it is impermissible for a patient to refuse from getting medical treatment.
- Al-Muslim, Ṣaḥīḥ Muslim, in book reference: book no. 39, chapter no. 26, ḥadīth no. 95, English translation: book no. 26, ḥadīth no. 5466; Bonnie Steinbock; (*op. cite.* note 10, at, p. 18). The first caliph has a similar view, “when he was asked that, if he wanted to see a physician”, he replied; “the physician has already seen me, (he was then asked that), what did he say?, he (the caliph) said; (and recited a verse no. 16, chapter no. 85, of the Holy Quran); ‘Allah has the performer of what he desires’. Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, vol. 4, p. 212 (Cairo, 1986).
- Al-Bukhārī, Ṣaḥīḥ al Bukhārī, in book reference: book no. 76, chapter no. 1, ḥadīth no. 1, English translation: vol. no. 7, book no. 71, ḥadīth no. 582; Ibn Mājah, Sunan Ibn Mājah, Arabic reference: book no. 31, ḥadīth no. 3565, English reference: vol. no. 4, book no. 31, ḥadīth no. 3439, and Arabic reference: book no. 31, ḥadīth no. 3564, English reference: vol. no. 4, book no. 31, ḥadīth no. 3438.
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- Ibn al-Qayyim, the Prophetic Medicine; *Al-Tibb al-Nabawī*. Abd el-Qader Abd el-Azeez, pp. 19-20, 21 & 25 (Dār al-Gḥadd al-Jadeed, al-Mansūrā, Egypt, 2003).
- Al Quran, chapter no. 26, verse no. 80.
- Al Quran, chapter no. 16, verse no. 69.
- Al-Shawkānī, *Nayl al-Awṭār min Aḥādīth Sayyid al-Akhyār Sharḥ Muntaqā al-Akhbār*, vol. 9, p. 89 (Dār al-Hadīth, Egypt, 1993). Ibn al-Qayyim, (*op. cite.* note 16, at, p. 165).
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26. At-Tirmidhī, Jāmi‘at-Tirmidhī, in book reference: book no. 36, chapter no. 47, ḥadīth no. 77, English translation: vol. 4, book no. 10, ḥadīth no. 2380.
 27. Al Quran, chapter no. 6, verse no. 141.
 28. Ibn Mājah, Sunan Ibn Mājah, Arabic reference: book no. 29, ḥadīth no. 3475, English reference: vol. no. 4, book no. 29, ḥadīth no. 3350
 29. ‘Abdulaziz Sachedina (*op. cite* note 21).
 30. Bonnie Steinbock; (*op. cite* note 10, at, p. 91, 166, 196–197, 203 & 223).
 31. This question is grappled the surgeons at Boston’s Brigham hospital of United States in 1957, when a surgery of kidney transplantation is demanded by the ‘Leonard Marsden; 17-year’ to be carried. Leonard assented to donate a kidney to his twin named ‘Leon’. ‘The surgeons then hesitated, that whether by subjecting Leonard to surgery they would be providing him with any benefit?’ The question of benefits, however, to clear the way, “the twins parents petitioned the Massachusetts supreme judicial court to rule on the issue”. ‘Justice E. A. Counihan’, after hearing testimony from the brothers of their ‘emotional attachment’, decided that: “if the transplantation is not carried out, and ‘Leon’ died. Resultantly ‘Leonard’ would suffer an emotional commotion and disturbance, hence it would adversely affect his health, life and even the well-being”. The surgery of kidney transplantation would thus confer as a ‘medical benefit’ i.e. ‘medical interest’ for both the brothers. The judge further ruled that, “the surgeons would not be harming ‘Leonard’ just to benefit ‘Leon’, and even in the medical context; the benefit of emotional attachment should not be understood too narrowly”. So, accordingly, those who have emotional relations or emotional attachment to the patients (recipients) can make organ donation to them. Thus, the meaning of emotional attachment can be extended to other relations as well, because sometimes an ordinary emotional attachment is stronger than the blood relations. Therefore, despites of the blood relations, a person can donate organs to which he has an ordinary relations like friends, lover, and even to a strange person. Bonnie Steinbock (*op. cite* note 10, at pp. 223–224 & 245).
 32. Al-Qardāwī, Yūsuf ‘Abdallāh al-Qardāwī, *Fatāwā M’āshira*, (Mansūrā, Dār al-Wafā, 1994, vol. 2, p. 528). ‘Aynī, asserted that, medication an obligation on the patients. ‘Aynī, (*op. cite* note 7, at, p. 173).
 33. The story of Salmān and Abū Dardā (May Allah be please with them), is discussed above in ‘medical treatment in Islam’ which is reported by Al-Bukhārī and At-Tirmidhī. Al-Bukhārī, Ṣaḥīḥ al Bukhārī, in book reference: book no. 30, chapter no. 51, ḥadīth no. 75, English translation: vol. no. 3, book no. 31, ḥadīth no. 189; At-Tirmidhī, Jāmi‘at-Tirmidhī, In book reference: book no. 36, chapter no. 63, ḥadīth no. 111, English translation: vol. 4, book no. 10, ḥadīth no. 2413.
 34. Ibn Mājah, Sunan Ibn Mājah, Arabic reference: book no. 31, ḥadīth no. 3622, English reference: vol. no. 4, book no. 31, ḥadīth no. 3493.
 35. Mālik bin Anas, Al-Muwattā, Arabic reference: book no. 50, ḥadīth no. 12, English reference: book no. 50, ḥadīth no. 1725.
 36. Ibn al-Qayyim (*op. cite* note 16, at, pp. 164-165).
 37. عن وإيل الحضرمي، أن طارق بن سويد الجعفي، سأل النبي صلى الله عليه وسلم عن الخمر فنها أو كره أن يصنعها فقال إنما أصنعها للذواء عليه وسلم عن الخمر فنها أو كره أن يصنعها فقال إنما أصنعها للذواء (فقال: إنه ليس بدواء ولكنه داء) “it is reported from wail al-Hadramī; that ‘Tāriq bin Sūaid a-Ju’fī asked Allah’s Messenger about liquor, he (the Prophet) forbade its use and he expressed hatred, so ‘Tāriq said that I prepare it as a medicine, “whereupon he (the Prophet) said; “it is not a medicine, but an ailment”. Al-Muslim, Ṣaḥīḥ Muslim, in book reference: book no. 36, chapter no. 3, ḥadīth no. 15, English translation: book no. 23, ḥadīth no. 4892; see also, Abū Dāwūd, Sunan Abī Dāwūd, in book reference: book no. 29, chapter no. 11, ḥadīth no. 19, English translation: book no. 28, ḥadīth no. 3864.
 38. Al-Baydāwī, Tuḥfat al-Abrār Sharḥ Maṣābiḥ al-Sunnah, vol. 2, p. 537 (Wizārat al-Awqāf wa-Shūwoon al-Islāmīyah, Kuwait, 2012).
 39. He was, (Abū Muḥammad ‘Alī bin Aḥmad bin Sa’īd ibn Ḥazm az-Zāhirī, died. 456.H), a prominent jurist and codifier of Zāhirī fiqh which is founded by Dawūd bin Alī bin Khalāf az-Zāhirī; so al-Zāhirīyyah or az-Zāhirī considered as 5th school of thought in Islamic law and jurisprudence.
 40. ‘Aynī, Nukhbu al-Afkār fī Tanqīḥ Mabānī al-Akhbār fī Sharḥ Ma’ānī al-Āthār, vol. 2, pp. 378-384 (Wizārat al-Awqāf wa-Shūwoon al-Islāmīyah, Qatar, 2008).
 41. (هَذَا الْحَدِيثُ دَلِيلٌ عَلَى أَنَّهُ لَا يَجُوزُ شَرِبُ الْخَمْرِ لِأَجْلِ الضَّرُورَةِ كَالْعَطَشِ وَالتَّداوِي، وَهُوَ مَذْهَبُ أَحْمَدَ بْنِ حَنْبَلٍ. وَقَالَ أَبُو حَنِيفَةَ: يَجُوزُ، وَعَنِ الشَّافِعِيَّةِ ثَلَاثَةُ أَوْجُهٍ: اثْنَانِ كَالْمَذْهَبَيْنِ، وَالثَّلَاثُ: يَجُوزُ لِلتَّداوِي دُونَ الْعَطَشِ). Ibn al-Jawzī, Kashf al-Mushkil min Hadīth al-Sahihayn vol. 4, p. 222 (Dār al-Waṭan, Riyadh, n.d).
 42. Al-Bukhārī, Ṣaḥīḥ al Bukhārī, in book reference: book no. 76, chapter no. 6, ḥadīth no. 9, English translation: vol. no. 7, book no. 71, ḥadīth no. 590; Al-Muslim, Ṣaḥīḥ Muslim, in book reference: book no. 28, chapter no. 2, ḥadīth no. 13, English translation: book no. 16, ḥadīth no. 4131; Al-Nasā’ī, Sunan an-Nasa’i, In book reference: book no. 37, chapter no. 7, ḥadīth no. 59, English translation: vol. 5, book no. 37, ḥadīth no. 4029, At-Tirmidhī, Jāmi‘at-Tirmidhī, In book reference: book no. 28, ḥadīth no. 2177, English translation: vol. 4, book no. 2, ḥadīth no. 2042. Moreover, using *ḥarām* substance as medical remedy is permissible when there is certainty of cure, in the absence of a *ḥalāl* alternative.’ Uthmāni, Muḥammad Taqī, Takmilah Faḥ al-Mulhim bi Sharḥ Ṣaḥīḥ Muslim, vol. 2, p, 177 & 188, (Damascus, Beirut, Dār al-Qalam, 2006).
 43. (عن محمد بن علي، قال: لا بأس بأبوال الإبل والبقر والغنم، أن يتداوى (أين، *op. cite* note 36, at, vol. 2, pp. 387-390).
 44. (قال محمد بن الحسن، وقد يجوز أن يكون أباح العلاج بها للضرورة إليها، (op. cite note 39) لا لأنها ظاهرة في نفسها، ولا مباحة في غير حال الضرورة إليها).
 45. (op. cite note 39) (كانوا يستشفون بأبوال الإبل، لا يرون بها بأساً).
 46. (op. cite note 39) (عن عطاء قال: كل ما أكل لحمه فلا بأس ببوله).
 47. (op. cite note 39) (عن أبي جعفر، قال: لا بأس بأبوال الإبل أن يتداوى بها).
 48. (قَالَ ابْنُ رَسَلَانَ فِي شَرْحِ السُّنَنِ: وَالصَّحِيحُ مِنْ مَذْهَبِنَا يَعْني الشَّافِعِيَّةَ جَوَازُ التَّداوِي بِجَمِيعِ التَّجَاسُاتِ سِوَى الْمُسْكِرِ لِحَدِيثِ الْعُرَيْبِيِّ فِي الصَّحِيحَيْنِ

- حَيْثُ أَمَرَهُمْ - صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - بِالشَّرْبِ مِنْ أَبْوَالِ الْإِبِلِ لِلتَّدَاوِي) Al-Shawkānī(*op. cite.* note 10, at, vol. 8, p. 234).
49. He was (Aḥmad bin Ḥusayn bin ‘Alī bin Mūsā al-Kurasānī, Abū Bakr al-Bayhaqī al-Shāfi‘ī, died. 458.H)
50. (قَالَ النَّبِيُّ: هَذَا مِنَ الْخَيْثَانِ إِنْ صَحَّ مَحْمُولَانِ عَلَى النَّهْيِ عَنِ التَّدَاوِي بِالْمُسْكِرِ وَالتَّدَاوِي بِالْحَزَامِ مِنْ غَيْرِ صَرُورَةٍ لِيَجْمَعَ بَيْنَهُمَا. وَبَيَّنَّ حَيْثُ (العُرَيْنَيْنِ) (*op. cite* note 44).
51. (قال مالك: ولا بأس بشرب بول الأنعام). Ibn Shās, al-Mālikī, ‘Aqd Jawā‘ir al-Saman‘īyah fī Madhab ‘Aalim al-Medina, vol. 3, p. 1303 (Dār al-Gharb al-Islāmī, Beirut, Lebanon, 2003).
52. As discussed earlier, in which he allowed drinking of camel’s urine as a medicine.
53. (التَّدَاوِي بِسَائِرِ النَّجَاسَاتِ جَائِزٌ), Ibn al-Hājib, Jāmi‘ al-Ummahāt, p. 568 (Al-Yamāmah lil-Ṭibā‘ah wa-al-Nashr wa al-Tawzī‘, 2000).
54. (يجوز للتعليل شرب البول والدم والميتة للتداوي إذا أخبره طبيب مسلم أن يشفاه، ولم يجد من المباح ما يقوم مقامه). Aynī, Binayah Sharh al-Hidayah, vol. 12, p. 271 (Dār al-Kutub al-‘Ilmīyah, Beirut, Lebanon, 2000).
55. (يَجُوزُ التَّدَاوِي بِالْمَحْرَمِ كَالْخَمْرِ وَالْبَوْلِ إِذَا أَخْبَرَهُ طَبِيبٌ مُسْلِمٌ أَنَّ فِيهِ شِفَاءً، وَلَمْ يَجِدْ غَيْرَهُ مِنَ الْمُبَاحِ مَا يَقُومُ مَقَامَهُ وَالْحُرْمَةُ تَرْتَفِعُ لِلصَّرُورَةِ). Al-Zayla‘ī, Tabyīn al-ḥaqā‘iq Sharḥ Kanz al-Daqā‘iq, wa-Hāshiyat al-Shalabī, vol. 6, p. 33 (Dār al-Kutub al-Islāmīyah, Beirut, 1313.H). Ibn Nuḡaym, Al-Baḥr al-Rā‘iq Sharḥ Kanz al-Daqā‘iq, wa-Miḥnat al-Khālīq, vol. 8, p. 233 (Dār al-Kutub al-Islāmī, n.d). Ibn ‘Ābidīn, Al-Durr al-Mukhtār, wa-Hāshiyat ibn ‘Ābidīn, radd al-Muhtār, vol. 5, 228 (Dār al-Fikr, Beirut, 1992).
56. (عَنْ عَبْدِ الرَّحْمَنِ بْنِ طَرْفَةَ، أَنَّ جَدَّهُ، عَرْفَجَةَ بْنَ أَسْعَدَ قَطَعَ أَنْفَهُ يَوْمَ الْكَلَابِ فَاتَّخَذَ أَنْفًا مِنْ وَرَقٍ فَأَتَتْهُ عَلَيْهِ فَأَمَرَهُ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَاتَّخَذَ أَنْفًا مِنْ ذَهَبٍ). Abū Dāwūd, Sunan Abī Dāwūd, in book reference: book no. 36, chapter no. 1577, ḥadīth no. 19, English translation: book no. 35, ḥadīth no. 4220; see also, Al-Nasā‘ī, Sunan an-Nasā‘ī, In book reference: book no. 48, chapter no. 41, ḥadīth no. 123, English translation: vol. 6, book no. 48, ḥadīth no. 5165; see,
- At-Tirmidhī, Jāmi‘at-Tirmidhī, In book reference: book no. 24, chapter no. 31, ḥadīth no. 54, English translation: vol. 3, book no. 22, ḥadīth no. 1770.
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60. Kasānī, Bada‘ī‘ al-Sana‘ī‘ fī Tartīb al-Shara‘ī‘, vol. 5, p. 132 (Dār al-Kutub al-Islāmīyah, Beirut, 1986). ‘Aynī, (*op. cite* note 50, at, p. 120).
61. Due to the reason, al-Qāzī, maintains permissibility for other organs also. Az-Zarkashī, Al-Manthūr fī al-Qawā‘id Fiqh al-Shāfi‘ī, vol. 2, p. 25 (Wizārat al-Awqāf al-Kūwatīyah, 1985).
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63. (وَلِأَجْلِ حَيْفَةِ أَنْ الْأَصْلَ فِيهِ التَّحْرِيمُ وَالْإِبَاحَةُ لِلصَّرُورَةِ). Ibn al-Humām, Fatah al-Qadir, vol. 10, p. 23 (Maktaba, Rashidīyah, Quetta, 1998).The most important rule drawn here is “permissibility of organ transplantation and tissue grafting etc. For details, see Dr. Dayan’s upcoming manuscript on it.
64. (*op. cite.* note 39, at, 385-387). Juristic Decisions on some Contemporary Issues, p. 261 (Islamic Fiqh Academy, New Delhi, India, 2014).