

**MODERN REPRODUCTIVE TECHNOLOGIES,
AESTHETIC SURGERY AND CONTRACEPTION IN
ISLAMIC LAW: A CASE STUDY OF KHYBER
PAKHTUNKHWA**

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Abstract:

This paper questions the scientific techniques and developments in three important areas of health sciences from Islamic perspective, the first being Aesthetic Surgery commonly known as Cosmetic Surgery, the second are modern reproductive technologies particularly artificial insemination and test tube babies, the third is Contraception. The first part of the paper studies the body and face reconstruction and other related surgical specialties from Islamic Perspective. The Second is a keen analysis of Developments in Infertility & Reproductive Health Sciences; the third is the religion treatment of Contraception. The Quranic texts and Sunnah and the view point of different Imams are heavily relied upon as evidence. The concept of the creation of man, man's interference in the Law of Nature, and the relation of Bioethics with Religion all carries the discussion forward. The paper also takes in into discussion our health belief system. Do these medical possibilities in the realm of Science are sanctioned by our religion? Islam has so much to do with all areas of human related issues and so with the health engineering. Where the Muslim medical practitioners and scientists have a vast degree of contribution towards the development of health sciences, there Islam has strong remonstrance against intermeddling with the Law of Nature. Hermaphrodites, gender transformation, sale of bodily organs, induced sterilization, the handling of child birth by a male practitioner etc., have never attained any dignity in Islam and consequently by its religious codes. Pakistan claims itself to be an Islamic democracy. We as Muslims should have an unambiguous clear cut religious stance on the status of these medical practices.

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Introduction:

Whatever is supported by science can have an equal support in religion? How the questions related to medical sciences have been addressed by our Religion? Indeed our religion has a noteworthy potential to tackle the questions related to health sciences.

The paper looks to the Islamic vision of three important medical practices. Islam as a religion has its own way of looking into every matter. It gives its followers a set of dictas on the way of living a life and a visible fencing between *Halal* or what that is permitted and or what that is otherwise or *Haram*. In fact, Islam has its substantial overview about world and all its business (Gauch, H. G., 2006). “A worldview constitutes an overall perspective on life that sums up what we know about the world, how we evaluate it emotionally, and how we respond to it volitionally” (Rudolf A. Makkreel, 1999, p. 536). If we study Islam closely, we will find that is a religion of manner and method .It is a religion of pattern. All worship and transactions in Islam favors a pattern and this very way it is more of a scientific in its nature (Irzik, G., & Nola, R. 2009). According to chaos theory even things that appear to happen randomly and incongruously have patterns. The Law of Nature or Divinity too has a systematic matrix (Edward N. Lorenz, 1969). In Islam, human is the center of Creation. The entire world is created for his services. And all knowledge that adds to the well fare and benefit of a human has been approved by our religion. This ‘benefit’ term again has proper connotation. Likewise, the recognition of public benefit and it’s the role of health practices is central study in Islam. All humans have been endowed with choice and exercise of reason and mind for the furtherance and prosperity of their lives. Islam is the religion of balance and flexibility, not rigidity and extremism. It is very progressive. The ideas in Islam are in constant flux, all the way favoring public benefit and handling new problems. The body and mind entrusted to us are the sacred Ammanah of Allah ,Al Mighty and have to be answered about in the here in after (Hamdy, S. 2012). The body as the God’s Creation is not something to be exchanged, cut off to be, or meddled with (Moazam, F., 2006). There always had been large discussion among Muslim scholars about permissibility of surgical interventions in human life. The

object of which is to establish a balance between Islam's Religious heritage and modern medicine. Human body is not to unnecessarily cut off or mutilated or inflicted pain upon. This is not desirable in our religion. The Muslim scholars have their own versions of addressing the problem on the ripping off or tearing off of a human body under certain circumstances (Moazam, F., 2006). The Hanafi and Shafi set of jurists allow for the belly to be opened or tearing apart for the removal of a living fetus(modern caesarian).The other two schools i.e. Maliki's and Hunbali's differ in this point.

All the three procedures mentioned in the abstract are performed on living bodies. A body that is susceptible to pain and pleasure. Here an analogy of an Organ Transplantation may be forwarded that has its preoccupation with a both a living and a dead body, where after death a tissue or a body part is taken and implanted in another living body for a genuine medical need. According to Hanafi School the body part of the dead is considered to be "not defiling". Whereas the Maliki's claim that "a human being living or dead is pure and even the body of "a non believer" is also pure. The Hunbali Scholars asserts that "a human body is pure when alive; but he is defiled by death, and an ablution is required for its purification after its death. This is why the body and all its parts carry sanctity in themselves and are pure.

With regard to the legitimacy of contraception or fertility temporarily limited by medical practice is allowed in Islam, in keeping up with coitus interruptus, which was in practice during the lifetime of the prophet. But, it was strongly disliked.

Artificial insemination has a resemblance in approach with a sexual desire towards a woman erroneously (i.e., not being her husband).This indirect impregnation is viewed by Muslim jurists as a deliberate offer of entering into adultery, a major sin which is punishable by stoning to death under Islamic law. Modern Muslim scholars have quite frequently resorted to Public Interest Doctrine (*Maslaha*). Thus every positive medical procedure that does not cause damage to the five basic principles of Shariah (Maqasid ul Shariah) would be deemed permissible. Therefore, a positive procedure which is not in contradiction with the general spirit of Islamic law and is considered

beneficial for the public at large is deemed permissible even though its sources make no mention. That is why *Maslaha* is considered to be one of the most useful methods of the Muslim jurist for filling legal lacunae. Blood transfusions are also legitimate under the principles of *Maslaha*, despite the fact that the spilling out of blood is forbidden by Islamic law. Blood transfusion from a non-Muslim to a Muslim is allowed even if there is imminent danger of death. The Public need can serve a justification here. The need dimension must be taken into account here. 'My Lord has forbidden only indecencies, such of them as are apparent and such, as are within' (Al Qur'an, Surah Al-A'raf, 33).

As Muslims we have a conclusion that our life summary is already predetermined by Allah, Al Mighty. There is a clear concept of pre destination and a concept of testing & experiment, which allows certain degree of free will to exercise judgments. Surgical mastery and carpentry is a sacred trust and to be utilized for the benefit of human and prevent illness and finish deformity not to intermeddle with the Law of Nature & Perfection (Atiyeh, B. S., Kadry, M., Hayek, S. N., & Musharafieh, R. S. 2008). Apologetics is an aspect of Islamic health ethics. It refers to the practice of giving *Fatwas* by Muslim Scholars to blindly invade any such medical practice that is back grounded in Western norms.

Muslim countries have recently been introduced with heavy strokes of modern medicine developments. Cosmetic surgery is one of them. The very name indicates its purpose that is cosmetic in nature, i.e. for the allurements of aesthetic senses of a human. The purpose does not seem to support any of the *Maqasids* of Shariah. It does not fall within the listing of essential surgeries. Therefore surgeries that are performed for beautification are entirely unnecessary and have been declared unlawful (haram) and are not permissible.

Human body is sacred and subjecting it to any change for no genuine reason is a sin and tantamount to intermeddling in the Divine Law. Muslims as true followers are required to follow Islam in letter and spirit. Muslims must be very thankful to Allah, Almighty for everything that he has awarded them and must show complacency on that. Changing any part or shape of any part is like complaining and thanklessness on our part.

These surgeries are desire oriented and thus never accommodated by our religion. The standards set by media, sports celebrities are never to be followed by a believer. Mutilation and self-torture is so clearly prohibited in Islam. Even in religious observances no hardship or pain has been imposed (Thameem Ushama, 2015). It is narrated from Muslim traditions that Allah, Almighty has blessed the Muslim community with valuable gifts and concessions. Facilitations are peculiar to Prophet Muhammad (S.W.S) and his *Ummah*, and the communities that existed before the prophet were not so privileged to enjoy these blessings. In this context al-Tabarī has recorded a Tradition on the authority of *Qatādah* about this community that it has been gifted with three things. First of all; God has not made any hardship in religion (Al Qur'an, Surah Al-Hajj, 78), Secondly; God has made Muhammad (peace be upon him) as a witness for this community (Al Qur'an, Surah Al-Baqarah, 143) and lastly, God has offered human beings the right to call Him without any intercessor(s) for every call there will be response from Him, whether immediately or later (Al Qur'an, Surah Ghāfir, 60).

Cosmetic surgery is a deliberate and self-inflicted body torture. It is a form of oppression that obstructs women's mental and physical health. Conservative set of scholars have even gone to the extent of saying that medical students may learn it but, they should not practice it until not genuinely required. They should instead advise patients against it. Additionally, surgeries performed with the object of disguising the identity of criminals are also not permissible. Lastly surgeries performed for changing sex and giving in to stray whims also are strictly prohibited. However, surgeries for the purpose of deciding gender in cases of pseudohermaphroditism are allowed.

Methodology:

This study is primarily based on Pakistani society. The traditional library research method is used for developing notes & discussion. The primary data is collected from books and scholarly articles. For secondary data, semi structured interviews were conducted from three focus groups (all Muslims) in society, the patients who already have undergone the treatments or are intending to take ones, their families, the surgeons or medical practitioners or clinicians who operated those patients .The

views were taken out of them. Their justifications were analyzed. Their approach on Islamic Law on the procedures was taken.

Study was conducted group wise. For study, Cosmetic Surgery was kept in a second group because it is something very expensive, and the purpose wise it is very different from other two, i.e., Artificial insemination and contraception: and this way they were kept under one group.

Contraception & Islam

Sexuality in Islam is the lawful method of procreation within wedlock (Srikanthan, A., & Reid, R. L., 2008). Islamic beliefs on planning a family indicate that family planning is not forbidden. There is large range of opinions on contraception. The opinions vary declaring the activity as permissible to disapproved but not forbidden. A set of fundamentalist Muslims contraception in all its forms violates God's intentions. Historically, coitus interruptus has been approved in the Holy Quran. There is a pre requisite justification attached about economic, social and health indications. Muslim authorities using the principles of analogy permit modern methods of contraception as long as these are lawful, safe and temporary. Here, the use of any such device is permitted that is reversible and not induced abortion. Irreversible methods causing sterilization are not permitted. Again contraception is permitted to be used only within a marriage. The medical examination is to be carried out by a woman practitioner. A woman can perform contraception only with the consent of her husband. Improving the quality of married life, the health risks to a woman and a child, the financial distress all are to be kept under consideration before the treatment. In Khyber Pakhtunkhwa, where certain families are living below poverty line, this treatment becomes a moral obligation rather. In contraception decision making, a woman consultant if unavailable a male consultant can be sought about.

In Khyber Pakhtunkhwa, certain additional factors are also taken into account while making decision for family planning like the family pressure, the gender and number of children opinions of other women, socioeconomic background etc. all that is permissible but the ultimate decision should be with the consent of husband and wife as marriage is a very sacred union in Islam. In Islamic Law the status of woman is equal

to a man ,and therefore both are required to exercise their free will to reach any such decision as after all both are equally responsible for the better upbringing of their children.

Artificial Insemination & In vitro fertilization in Islamic Law

In Khyber Pakhtunkhwa, an issueless couple is always under constant fear of ‘collapse’ of their marital relationship as well as a large social pressure (Inhorn, M. C., 2006). In Muslim countries the In vitro fertilization (IVF) Technology is on its flourish owing to its great success rate. IVF Technology found its entry in the Muslim World with the clinics opening in Egypt, Saudi Arabia and Jordan working on this mid1980-s.the Egypt’s renowned University’s Grand Sheikh issued the first Decree, a widely authoritative Fatwa on March 23,1980 on it. This Decree has been upheld by all other Scholars in this regard since 1980 and has received universal acceptance and popularity in the Muslim world. The main arguments of this stand point in the context of medically assisted conception are; if a woman is having an infertility problem, artificial insemination is allowed with the husband being the donor and, the child born as a result of this procedure is considered to be the legitimate offspring to that couple. In vitro fertilization of eggs taken out from a woman with the sperms taken from her husband and, crossed in an outer medium and then transferred back to the wife is permitted. The medium for the process must be *Halal*. A third party intruding its sperm for carrying out the process is not allowed. The involvement of a third “person” shall be considered *Zina* or adultery. A child’s adoption that is the product of this later type of activity is also forbidden. A woman who delivers such a child is to be considered its mother. The said child is considered to be an illegitimate or legit child. In case the marriage has been terminated owing to a divorce, medically assisted conception cannot take place with the divorced wife even if the sperms are taken from the former husband. It is thus the marriage that gives primarily legitimacy to the activity.

A large bulk of sperms can be taken from husband and frozen for future use and can be injected to the same wife but the sum is the property of the couple alone, therefore, cannot be used by any other or sold. Again the stock to be used only as far as marriage subsists. Surrogacy is forbidden in all its forms. Only a well-qualified physician can assist the

whole activity and all its permitted varieties. If he practices beyond these permissions, his earning is forbidden and his practice is illicit.

Thus, it becomes pretty clear in the “Al Azhar’s” *fatwa*, that any conception that is not the result of a legal marriage shall be considered *Zina* or Adultery that is strongly forbidden in Islam.

There is a point that third person’s donation does not involve any sexual “body contact” of adulterous nature, or possibility of the desire to have engaged in an extra marital affair, it is therefore not considered a form of adultery by most of the Islamic legal scholars. It, however, is the introduction of a third person in the sacred relationship of a husband, and wife. This process involves the entry of a man’s sperms and a woman’s egg in to a place in which they do not belong. The other reason for rejection of such liaison is the potential for incest among off-springs belonging to unknown donors.

Law & Practice on Artificial Insemination & Contraception in Pakistan

In Pakistan we have a well-developed population control policy. We have a good population growth rate. Family control measures were initiated in Pakistan on a small scale in its first five years National Developmental Plan (1955-1960) by organizations volunteering in the public interest (Pakistan Bureau of Statistics, 2015). The service centers which have spread across the country are providing aid in contraception. Some of them are; Family Welfare Centers, Reproductive Health Services Centers, Regional training institutes; Mobile Service Units in the NGO Sector Greenstar Social Marketing of Pakistan (GSM), and Rahnuma Family Planning Association of Pakistan (FPAP) are working in this field.

International Stance

Women’s right to duly exercise their reproductive freedom to the exclusion of all is the core concept of Human Rights (Simelela, N., 2006). Likewise, a woman is entitled to have access to fertility regulations method and “the right to enjoy of the highest attainable standards in physical and mental health”, as guaranteed by the International Covenant on Economic, Social and Cultural Rights

(Craven, M., 1995). During the last four decades organized family planning initiatives have become increasingly common worldwide (Roudi-Fahimi, F., 2004). Such initiatives and programs have been introduced with the aim of controlling population and ensuring better life standards to the world residents.

The international community through the ICPD; United Nation's International Conference on Population and Development 1994 and, the 2000 Millennium Development Summit has called for universal deliberations on family planning. The recommendations of the Action Plan were welcomed by Islamic countries but with the reservation that these would be taken home for discussion from Islamic perspective before ensuring any implementation. The ICPD's framework is a comprehensive, workable framework that focuses on the health right development of women and children and a cheap and speedy access to the full range of birth control methods by everyone. The Action Plan, with regard to implementation of its recommendations declares it to be the sovereign right of every country, consistent with its national laws and development priorities, keeping in view full respect for the various religious and ethical values and cultural background of its people, and in conformity with universally recognized international human rights standards.

Conclusion

Our religion has an admirable capability to decide any human matter, howsoever, advanced in its inception and howsoever, complicated in its outlook. The need is to sensitize our society on Islamic point of view on these matters. Only then we can confidently adopt or reject modern scientific developments in health. We have our own family planning beliefs, body sanctity beliefs, body purity and dignity beliefs. These shall be respected at every cost for the better of both worlds.

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