Euthanasia

ISLAMIC JURISPRUDENCE AND THE END OF HUMAN LIFE

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Abstract: Death is an inevitable reality but the causes leading to death may vary from individual to individual. In the past, death was considered to be a simple and straightforward phenomenon. The general practitioner would issue the death certificate once he was convinced that there was cessation or absence of spontaneous life in the patient. This meant that the patient had stopped breathing, his heart had stopped beating, there was unresponsiveness, his body had turned cold and finally rigor mortis had set in.

With the successful accomplishment of heart transplants, it became obvious that a process of rethinking on how death could be determined had to be instituted. Cessation of heartbeat is no longer considered evidence of death since the heart is now able to be substituted with that of a just-deceased donor or with that of a baboon or even with a mechanical one. Moreover, modern biomedical innovations like the resuscitator and cardiac pacemaker have made it imperative to establish a set of criteria by which the moment of death could be identified. Diagnosis of brainstem death is relevant to the issue of retrieving viable vital organs, i.e. heart, lung, liver and kidney, for transplantation purposes. The Holy Qur’an emphasizes the universality of death and from its teachings one gathers that the moment of death would be at the time when the soul is separated from the body. However, one has to concede that the Qur’an does not in any way tell us anything about the nature of the soul nor of its location in the human body, hence the dilemma of Muslims insofar as brain death is concerned.

In this paper, an attempt is made to analyse the deliberations of the classical and contemporary Muslim scholars on the end of human life with the aim of determining whether brain stem death could in effect be regarded by Muslims as the end of human life and if not why?

Key words: Islamic Jurisprudence, moment of death, brain stem death, unstable life.
INTRODUCTION

In the past, death was considered to be a simple and straightforward phenomenon. The general practitioner would issue the death certificate as soon as he was convinced that there was cessation or absence of spontaneous life in the patient. However, with the successful accomplishment of heart transplants, it became obvious that a process of rethinking on how death could be determined had to be instituted.

The Qur’an informs us that death occurs when the nafs (the soul) is separated from the body. Thus the moment of death would be at the time when the soul is separated from the body. But one has to concede that the Qur’an does not in any way tell us anything about the nature of the soul nor of its location in the human body, hence the dilemma of Muslims insofar as brain death is concerned.

DELIBERATIONS OF MUSLIM JURISTS ON THE END OF HUMAN LIFE

Muslim scholars have always been concerned about ascertaining the end of human life because of the civil law and religious consequences that follow the pronouncement of death.

Dr. Tawfiq al Wail of the College of Islamic Law and Islamic Studies, University of Kuwait, rightly points out that when a person is pronounced dead certain civil law and religious consequences follow. Some of the former consequences are:  

1. that any Will made by him, up to a maximum limit defined by Islamic Law, becomes effective, and its amount is taken out of his property and added to that of the person mentioned in the Will.
2. that his property is no longer his, for it now belongs to his legal heirs.

The religious consequences pertain to the washing of the deceased; performance of the Prayer for the Dead; burial according to Islamic rites; and condolences that are to be extended to the deceased’s family and relatives.

1 Qur’an 39:42.
2 Al Wa’il Tawfiq. “The Truth About Death and Life in the Qur’an and the Stipulations of Islamic Law” in Human Life Its Inception and End as Viewed by Islam, op.cit. p.452
3 Ibid., p. 453.

THE MOMENT OF DEATH

Muslim jurists in general hold that death is a cessation of spontaneous life, as pointed out earlier. However, recent years have complicated the issue of brain death, mechanical ventilators, life support, and diagnosed brain death. In general, the dilemma. Since the issue of brain death is not clear-cut, there are different opinions. 

Muslim physicians at the Akbar Clinic, Panjab University Hospital, has died may be pronounced dead. However, Muslim physicians in general are cautious when pronouncing death. 

He is of the view that in the field of science it may well be possible to say of such a person. 

Muslim jurists like others die, the soul leaves the body, and the opinion that if death is pronounced due to the soul’s will and...
THE MOMENT OF DEATH

Muslim jurists in general uphold the traditional definition of clinical death which is permanent cessation of heartbeat and respiration. However, as pointed out earlier, advances made in the field of biomedical technology have complicated the issue of determining the moment of death. The mechanical ventilator, for example, helps to keep the organs of the person diagnosed brain dead perfused with blood in order that their organs remain viable for transplantation. The issue of the moment of death to Muslims in general does not only have a moral bearing but it equally poses a legal dilemma. Since the Qur'an and the Prophetic Tradition are silent on this issue, there are differences of opinion among contemporary Muslim scholars on the issue of brain stem death.

Muslim physicians like Dr Ahmad Shawqi Ibrahim, a consultant in Internal Diseases, Al-Saba Hospital, Kuwait, and Dr Ahmad al Qadi of the Akbar Clinic, Panama City, hold the view that the person whose brain stem has died may be pronounced dead.4 On the other hand, we find that there are Muslim physicians like Dr Hassan Hathout, a former staff member of the Faculty of Medicine, University of Kuwait, now residing in the USA, who is cautious when pronouncing death upon a person whose brain stem has died. He is of the view that with the progress being made in the field of medical science it may well be possible, in the near or distant future, to save the life of such a person.5

Muslim jurists like Mujahid al Islam Qasmi state that once the brain stem dies, the soul leaves the body.6 Likewise, Dr Muhammad Na'im Yasan of the College of Islamic Law and Islamic Studies, University of Kuwait, is of the opinion that if damage to the brain is total and it (the brain) fails to respond to the soul's will and all other organs irrevocably fail, then the soul departs.

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5 "Report on the Fifth Session" in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 516.

from the body by the will of Allah.\textsuperscript{7} There are other Muslim religious scholars who hold the view that it would not be in order to deem a person dead who has been diagnosed brain dead and base their stance on the Islamic juridical principles (i) “what is known to be certain cannot be cancelled on the basis of what is suspected” and (ii) “the natural thing is for what has been, to continue until a change is proved to have taken place.”\textsuperscript{8} Principle (iii) can be substantiated by the stance of Imam al-Nawawi of the Shafi'i school of Islamic jurisprudence who suggests that death must be ascertained beyond any doubt.\textsuperscript{9}

The Religious Rulings Committee, Kuwait Ministry of Endowment, Kuwait, resolved on December 14, 1981 that a person cannot be considered dead when his brain has died as long as his respiration and circulation systems are functioning, even if that life continues through mechanical aid.\textsuperscript{10}

At this juncture, it may be appropriate to note that the stance of contemporary Muslim scholars who are against endorsing brain stem death as the end of human life is based upon the view of the classical Muslim jurists who never recognized the mind or awareness as the source of life but maintained that it is the body which is involved in determining life and death, because it is the body that actually moves.\textsuperscript{11}

**ISLAMIC JURIDICAL RESOLUTIONS ON BRAIN STEM DEATH**

A decade ago, at the conclusion of the Seminar on Human Life: Its Inception and End as Viewed by Islam, held at the Kuwait Hilton Hotel in January 1985, it was resolved that once a human being is ascertained to have reached the stage of brain stem death, that person is to be considered to have withdrawn from life. However, careful measures need to be undertaken in order for the death to apply immediately upon the patient’s need to be postponed until all the necessary medical professionals agree that when death has occurred, the patient is no longer under the care of medical specialists, it can be pronounced final.

The Council of the Organization of the Islamic Conference adopted the resolution of October 1986, resolving that brain death is applicable under the conditions that the cardio-respiratory arrest is irreversible; and (ii) the physicians confirm that the patient entered the state of comatose when he may be weaned off the support equipment of his body, like the heart, lungs, and the life-support equipment.

The Council of the Arab League during its meeting in Cairo, Egypt, is of the view that the administering treatment and cardio-respiratory apparatus is pronounced on such cases that it is upon switching off the machine.


\textsuperscript{7} Al Wa’il, Tawfiq. "The Truth About Death and Life in The Qur’an and The Stipulations of Islamic Law” in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 454.

\textsuperscript{8} Yasin, Muhammad Na’im, “The End of Human Life in the Light of the Opinions of Muslim Scholars and Medical Findings” in Human Life Its Inception and End as Viewed by Islam, op. cit., pp. 389-390.

\textsuperscript{9} “The Truth About Death And Life In The Qur’an and The Stipulations of Islamic Law” in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 445.


from life. However, caution was expressed that additional detailed study ought to be undertaken in order to determine which rulings for the dead would apply immediately upon brain stem death diagnosis and which ones should be postponed until all major systems of the body come to a stop. But, it was agreed that when death of the brain stem is certified by a report of a committee of medical specialists, it would be lawful to remove resuscitation equipment.\textsuperscript{12}

The Council of the Islamic Jurisprudence Academy of the Organisation of the Islamic Conference, during its third session held in Amman, Jordan in October 1986, resolved that the Islamic legal rules for the dead become applicable under the following criteria: (i) a person who suffers cardio-respiratory arrest and the physicians confirm that such an arrest is irreversible; and (ii) a person whose brain activity has ceased and the physicians confirm that such a cessation is irreversible and that the brain has entered the state of decomposition. Under such circumstances the patient may be weaned off the intensive care equipment even though some organs of his body, like the heart, continue to function artificially with the help of the life-support equipment.

The Council of the Islamic Jurisprudence Academy of Muslim World League during its tenth session held in Mecca, Saudi Arabia in October 1987 resolved that the patient who is on life-support equipment may be taken off the equipment if three expert physicians confirm that there is no form of brain activity in his brain and that damage to his brain is irreversible. However, according to Islamic legal ruling, death will only be pronounced on such a person after respiration and heartbeat finally cease upon switching off the equipment.\textsuperscript{13}

\textit{Shaykh} Jad al Haqq\textsuperscript{\textdegree}Ali Jad al Haqq, Rector of Al Azhar University, Cairo, Egypt, is of the view that it is not unethical for the specialist administering treatment to the patient on the life-support to disconnect such cardio-respiratory apparatus which assists breathing and heartbeat if he is convinced that the patient is dying.\textsuperscript{14}

\textsuperscript{12} From the recommendations of the Seminar as published in \textit{Human Life Its Inception and End as Viewed by Islam}, op. cit., p. 629.

\textsuperscript{13} Resolution No. (5) of the Third Session of the Council of the Islamic Jurisprudence Academy in \textit{Organisation of the Islamic Conference's Islamic Jurisprudence Academy - Resolutions and Recommendations}. Jeddah, Maabi\textsuperscript{\textdegree}Shirkat Dar al\textsuperscript{\textdegree}ilm li al Tiba\textsuperscript{\textdegree}ah wa al Nashr. 1985-1989, p. 30.

\textsuperscript{14} Jad al Haqq\textsuperscript{\textdegree}Ali Jad al Haqq. \textit{Qadaya Islamiyyah Mu\textsuperscript{\textdegree}asarah - Al Fiqh al Islami Murunatu\textsuperscript{\textdegree}ah wa Ta\textsuperscript{\textdegree}awwurah}. Cairo. Maba\textsuperscript{\textdegree}ah al Azhariyyah. 1989, p. 249.
Muslim scholars are divided on the issue of retrieving organs from brain stem dead patients for transplantation purposes. Some of them cautiously suggest that further research ought to be undertaken in this domain. There are others who express subtle permissibility, while others deem it non-permissible, and yet others go a step further and equate it to an act of murder.

The Council of Islamic Jurisprudence Academy of Organisation of the Islamic Conference during its fourth session held in Jeddah, Saudi Arabia in February 1988, resolved that it is permissible to transplant the organ from a dead person to a living recipient on the condition that such a procedure has been authorised by the deceased or by his heirs after his death. The Council during the same session also noted that death may take two forms: (a) when all functions of the brain come to a complete stop and no medical cure can reverse the situation; and (b) when the heart and respiration come to a stop and no medical cure can reverse the situation. From this it may be implied, although not categorically stated, that it is permissible to retrieve organs from brain stem dead patients for transplantation purposes.

In the recommendations adopted at the conclusion of the Seminar on Human Life: Its Inception and End as Viewed by Islam, Kuwait, 1985, no mention was made about the permissibility of retrieving organs from brain stem dead patients, hence it remains an unresolved issue. Likewise, since the Council of Islamic Jurisprudence Academy of the Muslim World League, in its tenth session resolved that a person who is diagnosed brain dead can only be pronounced dead when respiration and heartbeat cease after switching off the life-support equipment. This ipso facto implies that retrieving organs from brain stem dead patients is not permissible within the dictates of Islamic Law.  


CONCLUSION

The question that needs to be addressed is whether it would be an act of murder to retrieve a vital organ from a brain stem dead patient for transplantation purposes. Dr Muhammad Sulayman al Ashqar, an expert in the field of Islamic jurisprudence, Kuwait, argues that a brain stem dead person should be considered to be virtually dead and is to be treated as dead as far as permissibility to disconnect the resuscitation equipment or to remove his organ for transplantation purposes is concerned. In other words, therefore, he likens brain stem death to the attainment of unstable life. Muslim jurists hold unstable life to be the stage right before the body becomes lifeless, i.e., the process of spirit or soul departure. During this stage, the person has no eyesight, is unable to talk and cannot engage in voluntary motion. Dr ‘Abd Allah Muhammad ‘Abd Allah, counsellor, Higher Court of Appeal, Kuwait, points out that scholars belonging to the Shafi’i school of Islamic jurisprudence are of the view that if a murderer has caused his victim to reach the stage of unstable life, which is also termed as the stage of the slaughtered or slain, and then another criminal attacks the same victim, then only the first criminal will be punished for murder, while the second criminal will be chastised for violating the sanctity of the dead.

Moreover, another issue that needs to be addressed is whether the physician’s act in retrieving organs from the dead for transplantation purposes constitutes violation of the sanctity of the dead. The Council of the Islamic Jurisprudence Academy of the Organisation of the Islamic Conference resolved, during a fourth session held in Jeddah in February 1988, that it is allowed to transplant an organ from a dead person if it is essential to keep the beneficiary alive, or if it will assist in restoring a basic function of the beneficiary’s body, provided that such a procedure has been authorised by the deceased or by his heirs after his death or with the

17 Al Ashqar, Muhammad Sulayman. “The End of Life” in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 408.
19 ’Abd Allah, Muhammad ’Abd Allah. The End of Human Life” in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 370.
permission of the concerned authorities if the deceased has not been identified or has no heirs.\textsuperscript{20}

Finally, in order to allay fears that retrieving organs from brain stem dead patients would not in effect constitute an act of murder, attention is drawn to the recommendation made at the conclusion of the Kuwait Seminar (January 1985) which categorically states: “Muslim jurists are inclined to the view that when it is ascertained that a human being has reached the stage of brain stem death, he is considered to have withdrawn from life…”\textsuperscript{21}


\textsuperscript{21} From the recommendations of the Seminar as published in Human Life Its Inception and End as Viewed by Islam, op. cit., p. 629.