

Medical Ethics in Fiqh (Jurisprudence)

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Abstract

Medical Fiqh and medical ethics are two dependent knowledge, and in relation to each other and considering them needless of each other, especially in areas of applied ethics, including medical ethics, will lead to the emergence of imperfect, weak and none wisely positions. Therefore, for the exact consideration of medical ethics issues one must carefully take the advantage of both knowledge using Special areas of jurisprudence and ethics. In Islamic culture, Fiqh and medicine are in close relationship with each other. Doctors, constantly face with new events that each one of them has its own special Islamic mandate and any decision making, is subject to the full information about that case. Since Islam is a dynamic and immortal religion, some of these cases such as organ transplantation, artificial insemination, leasing uterus, the use of organs of persons who have had brain death and alike need to obtain Islamic order as well as to be evaluated and finalized based on ethical codes that will sometimes be according to and in other time different from Islamic order. Medical Jurisprudence and medical ethics have independent territories with the same purposes; however each of them has its own independent territory, identity and constitution. It is necessary for our medical community to be familiar with fiqh foundations and medical ethics, gain the issues of each field from its Professional resources, and solve the current and potential issues according to the guideline of eligible references.

Keywords: Fiqh (Jurisprudence), ethics, medical, Islamic ethics, applied ethics

Responsibilities of Doctors from the Ethical and Legal Point of View

Medicine is a very sacred and full of responsibility profession because it deals with physical and mental health of the most honorable of the creatures. If a person causes health for another one, gives him relaxation and saves him from death, according to the Holy Koran, as if he has given life to all human beings and if due to fault or mistake he causes danger for a patient, this verse will be applied for him: Whosoever kills a human being except (as punishment) for murder or for spreading corruption in the land it shall be like killing all humanity (Maaida, 32). Therefore, they have a heavy burden to bear; and duties of medicine is the subject of Islamic jurisprudence; although it is related to the doctors and they have been considered among the medical ethics but in fact they are among the Islamic jurisprudence and discussion and comment about them is within the competence of jurists and experts in the fields of theology and religious sciences. In this regard doctors should refer to Jurists and practical treatises; and close cooperation of these two classes of the society certainly will be useful and necessary. Otherwise, doctors will be responsible and punishable by giving patients' rights. Responsibility means "being asked and questioned" and its dictionary meaning is "guarantee, commitment, punishment" (Dehkhoda, 1373, p. 3), in legal terms "it is legal obligation of the person for meeting the loss that he has caused to him, whether the loss is due to his fault or due to his action" (JafariLangroudi, 1380, p. 642). According to the risk theory, anyone who does a thing and creates a dangerous environment for others, then the one who benefits this environment should compensate for the losses due to it (Katoozian, 1364, p23). According to this theory, it is not necessary for the individual to commit a fault, once that his action leads to damage, it should be compensated. Based on the fault theory, if the individual in performing a damaging and harmful task commits a fault and mistake,

he will be considered responsible. The existence of causality between the fault and the damage incurred is the reason that can justify the responsibility of the person in relation to the Blemish fix (Katoozian, 1374, p. 173).

The Relationship of Medical Jurisprudence and Medical Ethics

In Islamic culture, jurisprudence and medicine are in close relationship with each other (Azizi, 1370, pp. 2-6). Physicians constantly face with new events that each one of them has its own command of religion and any decision making is conditioned to use the complete information on that event. In this case, if practical treatises are not accountable, then duties and the solution for the problem should be asked from the comprehensively qualified jurist (Mohagheg-e-Daamaad, 1389, p. 28). Despite the passage of more than fourteen centuries from the appearance of Islam, religious scholars believe that knowledge of the law, always respond to new issues, because Islam is a dynamic and immortal religion (Mazandaraani, 2000, pp. 61-62; Nouri, 1287, pp. 3-9). According to Imam Sadiq (AS) God revealed Quran so that it meets all the needs and He has never left the questions of His servants unanswered (Gaeni, 1424, p. 73). Mousavi Khomeini emphasizes the dynamic nature of the Islamic jurisprudence and says: Time and space are two determining elements in Ijtihad. A problem that apparently bore a verdict in the past times, may gain a new order in relationships governing the politics, society and economy of a system. Fully qualified jurist using the jurisprudence resources and taking the special time and space situation into account will be able to respond the new issues and express their Islamic orders. Also he has said: jurisprudence is a real and complete theory of management of human being and society from the cradle to the grave “from birth to death” (Khomeini, 1367, p. 98). Most of the believers in Islam have also accepted the Islamic jurisprudence is in harmony with human nature and changes in the time (Karami, 1395, p. 23) studies the difficulties of human lives and offers solutions to them that are not involved in hardship and severity (Goreishi, 1388, pp. 21-24). According to AyattollahGolpaigaani “every Muslim should try to behave according to Moral and religious teachings of Islam so that to become prosperous himself and to add the reputation of the Islamic community” (Golpaigaani, 1413, p.495). Based on the report from one of the western medical ethics prestigious journals, a group of medical societies in non-Muslim developing countries has come to the conclusion that it is necessary for doctors and medical service providers, to be familiar with the education of different Islamic religions so as to be able to remain loyal and committed for moral duties of the medical profession (Padel et.al, 2011). Also, Western scholars in recent decades, have paid special attention to medical ethics, and they establish specialty field of study with the same title in reputable universities and hold different national and international scientific sessions in this regard (Saduk et.al, 2009, Kaplan and Saduk, 2010, p.95). In this regard, one of the winners of the Nobel Prize for literature has said: Morality higher than law and law is human being’s attempt to legalize some part of the ethics, while moral is so loud and high; and we attempt to understand the ethics and offer it in the form of regulation. Sometimes this attempt is associated with success and in other times it is not (Soldznistin, 1364, p.141).

The Role and Position of Medical Ethics in Jurisprudence

Medical ethics and medical jurisprudence are not completely different topics from each other, although in some special topics of medical profession they offer different point of view. Now, to clarify the position of jurisprudence topics in medical affairs and decision makings a famous example about medical practices is offered and the viewpoints of jurisprudence and ethics in this regard are studied: in relation to the prevalence of plastic surgery and doubts about its religious validity, some theories especially in recent decades have been made by jurists; “opinions of jurists and sharia followers are different in various aspects and this differences (somehow) are due to their different readings of the religious texts and it is these perceptions that express and describe the reasons for sanction or permission to commit beauty and or the sanction levels”. (Alhoseini, 2008M, p. 91). According to the texts, and ways in which these texts have been noted, different opinions in discussing the correctness of cosmetic and restorative surgeries have been made; and in order to cohesion of the discussion they are considered in the form of three general views: opponents believe: any cosmetic operation that necessarily includes the surgery is changes in divine creation and is forbidden; in this regard, some jurists have mentioned: “if cosmetic operation is for the purpose of

beautiffulness, then it is forbidden; but if based on documentary evidence it is to help the body parts perform their duties, then it will be allowable.... (RayoshsheikhYousof –al –Badri, quoted from Alhoseini, 2008 M, p.92). Proponents: the majority of Shia jurists believe in the validity of plastic surgery including corrective and cosmetic one and only in relation to some cases and conditions in which they consider the religious reasons and news, they have discussed in details. Believers in isolation who are against the plastic surgeries “especially followers of Sunna” have separated corrective surgery (necessary) from cosmetic surgery (non-essential) and have considered the first and the second as legitimate and non-legitimate, respectively.

Principles of Medical Ethics in Fiqh

In order to make decisions in the field of medical ethics of Islamic Jurisprudence the following four principles are separately expressed:

The Principle of Respect for Autonomy

Among the affairs that are effective in human sovereignty on self-determination, is his Inherent dignity. The principle of human dignity in all schools of the divine and the human has been considered with different approaches and has become the base for the contemporary human rights (Tabatabai and sheriff Hormozi, 1390, p. 7). In the divine Book “Koran” and Biography the Prophet and the Imams (AS) that are our most important Jurisprudential resources valuable foundations about human dignity have been offered and different Koranic verses Indicate the human dignity, and the most famous among them is the verse 70 of AsraSura: “Indeed we have honored the children of Adam and carried them over land and sea, provided them with good things for their sustenance, and exalted them over many of our creatures”. Most commentators have emphasized this verse and have considered the human beings to have the inherent and developmental dignity; and the inherent dignity is from God. From the perspective of Islam option and freedom that is the human beings’ values and points of differences with other creatures, have been imparted to him by God and in such freedoms intellectual elements are completely involved and human being is never free in relation to his irrational deeds and thoughts. There is a logical relationship between the freedom of will and option of the man and his power of reason and diagnosis that are also considered among the differences of human beings with other creatures; and human being – in favor of enjoying the freedom –is responsible for his own selective destiny. The central message is that no one else has the right to intervene in dignity and supervision of others, because purpose of this principle is the people and their values (Khagani et.al, p. 76). It seems that Corresponding to this principle is in Islamic law and jurisprudence such as “The principle of self-mastery” or “The rule of the monarchy.” That based on them, people have mastery over their wealth and lives and themselves are their own masters in this regard. Also, according to the principle of “lack of Vilayat” in jurisprudence and Islamic law no man has the dominance right over another individual, unless the contrary is proved. The said principle is indicative of independence, autonomy and freedom of each wise and mature human being in decision makings whose origin is divine revelation and its scope is limited so that based on the Jurists Legal Decisions in some cases such as euthanasia and suicide the mentioned principle cannot be invoked and considered it as allowable. (Tabatabaee and Alamolhoda, 1391, p.4).

The Principle of Profitability and Goodwill

Perhaps the principle of profitability and legal rule is unprecedented in our jurisprudence, but we believe that good will is an innate issue; this means that it is an attitude and moral behavior that has its root in the structure of human existence and not an indoctrinate issue arising from social needs and alike; and consequently, like all other ethical rules it enjoys stability and universality and as Martyred Motahhari says: “ if we don’t consider benevolence as being innate, then relativity comes to ethical precepts and it experience changes together with the changes in social conditions and factors and even psychological ones” (Motahhari, the former, p. 467). Certainly, when the principle of benefit and benevolence is viewed from this perspective that the source of this principle is the divine revelation and wisdom is also fully compatible with it, then ““The internal sense of commitment” which is the driving force of the effectiveness of this ethical principle, will be provided. Internal sense of commitment is a measure that according to some writers is missing in all non-divine moral views and without it and even with the presence of other criteria, moral society is not created. The principle of profitability in Islam is a very broad concept and certainly in the

field of medical ethics it requires strict attention to profitability in the execution of the projects and researches and medical and non - medical experiments on subjects. In addition, in many verses and traditions being good to others has been ordered, in some Koranic verses God orders people to charity and goodness to and cooperation with others. For example “verily God has enjoined justice, the doing of good, and the giving of gifts to your relatives; and forbidden indecency, impropriety and oppression. He warns you so that you may remember”(Al-Nahl, 90). According to this principle, in some Koranic verses God orders to goodness and righteousness and good cooperation. The word beneficence is a bless word that includes financial, mental, cultural and emotional services and justice and charity have attractions when they are together; otherwise, dry provisions, do not heal hearts and tend to justice and charity is innate (Geraati, 1386, p. 444). The principle of responsibility against others that has been emphasized in traditions, is another branch of the principle of profitability and preventing harm to others and it means that as long as human being has social life and enjoys its gifts and blessings, he should also benefit others and in collective life feel responsibility against them.

The Principle of not being the Cause of Loss for Others

In Islam there is a law named “La zarar and La zarar” for the purpose of protecting the rights of all human beings and regulation of social and individual relationships and protecting disputes and disruption of public order. In this way, Islam has been the first founder and defender of human rights in the world, because the origin of human right is human nature and that, the creator of this nature is aware of HIS creature better than and more than any other reference. “La zarar” rule is known as one of the legal rules that has been effective in many of the fields of law and legal, political, social, and medical issues as well as in new achievements in biological sciences. This rule is of great importance, to the extent that most of Islamic thinkers have mentioned it as the secrets of harmony of Islam with advances of and developments in the cultures. Motahhari writes: “one of the ways that has given mobility and adaptability to the life and keeps it forever, is a series of rules and laws that have been legislated in religion itself and their functions are to control and amend other rules. Jurists call these laws “Hakemeh” laws; such as the laws of “Haraj” and “Lazarar” that rule over the whole jurisprudence. In fact, compared with other rules and regulations, Islam has the “right to veto” to such rules (Motahhari, Previous, pp. 135-136). The origins and the proofs of this rule in jurisprudences are mainly several traditions that have been quoted by specialists and common people. Of course, in order to prove this rule jurists have also used the koranic reasons, Ijmaa, and wisdom. Therefore, in addition to legal documentation, this principle bears Strong intellectual reasons, too; and in fact “the reference of this rule is among the intellectual independencies that are the affairs that the wisdom itself reaches to them without the religious order” Mohagheg-e-daamaad, previous, p.131). In primary orders of Islam this principle i.e. lack of public loss has not been observed and also in social relationship among the people any harmful act is also forbidden. Lazarar Rule in jurisprudence is considered as the secondary reason in case of damage for someone and it can limit the circle of primary reasons; and also it is indicative of a general policy in legislation of primary orders. (the same, p.151). Also, principles such as Goodness and altruism and benevolence can be the ethical aspects of the principle of “La zarar” (Qari Seiyed Fatemi, 1381, p.7). This rule works in most of the political and social issues. The importance of this rule is to the extent that most of Islamic thinkers consider it as the secret of Islam’s harmony with advances and cultural developments (professor Motahhari, 1378, p.135). The origin of this rule in jurisprudence is mainly the several traditions that theologians and laity have narrated it, of course in order to prove the “La Zarar” rule, jurists have cited Quran, Sunnah, consensus and reason, that is, all four sources cited in jurisprudence. Therefore, this principle is also among the independencies of wisdom. Loss means lack of and lose the each one of Blessings of life, life, property, honor and anything that we benefit from them and Zerar means “to cause loss”. Islamic orders including duty-related and situational ones are based on negating the general loss; and in primary Islamic orders this principle i.e. lack of public loss, has generally been observed and also in social relationships of the individuals, any “loss causing task” is forbidden. La zarar rule in jurisprudence can be secondary reasons in case of personal losses and also can limit the circle of primary reasons. It is also indicative of a general policy in legislation of primary orders (Mohageg-e-daamaad, 1382, p.150). According to this rule, any act including medical or non-medical that causes loss to the others is forbidden and is considered contrary to medical ethics and is punishable.

The Principle of Justice

Seeking for just is among the innate human tasks that every human being possesses common sense and free from sensual whims always tends towards it. From the view point of Koran Adl (justice) is one of the Almighty God's attributes; divine justice bears a real concept and it is a real thing. On the other hand, justice and seeking for just is of human and social quality and habit which has its origin the human natures. Therefore, the progressive principle of justice is not only one of the fundamental rules and principles of Islam, but also the most critical humanitarian principle, and in addition to the many verses and traditions, independent wisdom also emphasizes its necessity and importance. Shiite's and Motazely' fundamentalists are committed to the rational goodness and obscenity and the consider justice and injustice as its clearest examples. They have also considered perception or rational judgment as an independent issue in this regard. In some traditions justice is considered one of the armies of wisdom. An example is the famous tradition known as armies of the wisdom and ignorance from Imam JafarSaadeq (A): He says "learn about the wisdom and ignorance forces for the purpose of being guided." (Kolaini, vol.1, p.23).in his several writings, martyred professor AllamaMotaharihas considered various cases of interaction between Justice and the secondary rules and for example, he has referred to the role of justice in legal system, the criteria for judgments, and scales taking the advantage of justice as a scale and rule for inference. Imam Khomeini has considered the justice as a scale for religion and interprets it as: "this is not the case that what the religion has said is justice, rather whatever is justice, religion says it." (Motahari, previous, p.215). Therefore, medical ethics in Islamic jurisprudence is on the basis of the mentioned principles; and and physicians are required to observe them.

Conclusion

Two expensive legal and ethical heritages in interact with each other as a pure and unique reference and source meet the most complex ethical and philosophical questions in the world today and in the scientific and the academic community of the world. Thus, for the exact consideration of issues of medical ethics one should carefully use both knowledge without the phlegm of special areas for jurisprudence and ethics. In Islamic culture, law and medicine are closely related to each other. Any decision making by the doctors, is subject to have legal and ethical information; and they must ask comprehensively qualified jurist about the task and its solution, and consider the criteria respect for self-determination and independence, benefit, not causing loss, and justice as frontispiece for their actions. laws and legal regulations in the field of medicine and health, such as education, treatment and research and details associated with them, form the field of medical jurisprudence. But medical ethics which mean ethics in the medical practices although like jurisprudence have two areas i.e. theoretical and practical, studies All issues related to the medical profession from the beginning of the education and even arrangements for entering it to any activity in the life of the doctor. But in terms of having to abide by the code of ethics or leaving them and other cases, it is different from medical jurisprudence. Thus, although medical jurisprudence and medical ethics are similar in most cases and have independent areas with the same purpose, each one of them has its own area, identity and constitution. Despite their differences, since both of them are valuable knowledge in medical jurisprudence and medical ethics they are considered as complements to each other and with these valuable capitals our medical society can gain success in its sacred profession.

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