End-of-Life Medical Challenges: Some Reflections on Muslim Juridical Approaches

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ABSTRACT

Unprecedented advancement in medical technology and its rapidly growing field of allied sciences indisputably have contributed significantly to the treatment of diseases and even inborn defects. However, they challenge many traditionally cherished age-old conceptions about diseases, natural deformities and even end-of-life care. Victims of accidents and those suffering from irrecoverable chronic diseases are put in life-support in the intensive care of the hospital thereby creating a new kind of life and possibility for terminating such a life. Thus, raising topical issues of bioethical import, such as euthanasia and brain death for both the ethicians and jurists to speculate. Both juridical bodies and individual jurists have come hard on active euthanasia but by and large endorsing medical definition of brain death to be in consonance with Islam. This has led critics to question the legitimacy of such juridical pronouncements on larger ethical and metaphysical grounds and propose methodological framework to remedy the situation. This paper, therefore, by engaging with such a discourse argues for a holistic approach to meet the medical challenges of end-of-life care in line with both ethical and legal ethos of Islamic Shari`ah which in principle does not bifurcate legality from morality.
Keywords: end- of- life care, juridical responses, medical challenges

Introduction

Radical and fast pace of scientific development in the field of highly commercialized medical technologies and the increasing accessibility to medical means of dealing with illness and other psycho-physical affliction have given rise to a new discipline of ethics, namely biomedical ethics. It presupposes that traditional system of ethics across the cultures/ and their classical legal methodologies are deemed as inadequate and even ineffectual to guide the citizenry when dealing with unconventional modern means of treating illnesses, removing defects and duty of care near the end-of-life. The days are gone when the terminally ill patients, either as a result of accidents or latent medical conditions, were spending their last moments of life tenure in this world under the loving care of their next of kin especially in the case of affluent people or those benefiting from free health care services in some countries. Such apparently dead persons of yesterdays is put on life-support and can now linger onto such a mechanical life for years or a cancer patient whose death is inevitable is given a choice of bearing his agony until his forecasted time of death or being administered with lethal injections to accelerate his death. Hence, at micro level, modern medical technology raises the question of ethico-legal legitimacy of ending the life of a patient in permanent state of coma and aiding in the termination of the life a cancer patient who has zero chance of recovery. At macro-level, such modern medical approaches to life and death redefine our traditional concept about the difference between a live and a dead individual, namely the bygone days criteria of cessation of respiratory and cardiac functions as the twin yardstick for distinguishing between a living and dead person. It creates concepts, such as clinical death, terminal and vegetative life etc (Elturk;2014; Kasule,2008, El-Noor;2014, Padela, 2011).

Consequently, such development raises numerous complex ethico-juridical questions, among which two are most perplexing: 1.) Is it worth to prolong the physical life of patients in the states of irrecoverable coma via artificial life support or other medicines? 2.) Is it permissible to the stop the drug for a cancer patient whose death is inevitable?

Accordingly, the answers to the above questions are found in the available juristic legal views dealing with the issue of euthanasia and brain death. Predominantly contemporary jurists equate euthanasia to murder except if the patient is in a state of irreversible coma and generally accepted brain death as legal death if attested by trustworthy physicians. Critics, however, believe that such juristic pronouncements lack profound appreciation of the larger ethico-legal implications of such measures which need further deliberation. The reason is one of methodology as the existing juristic opinions to a large extent have been influenced by superficial understanding of not only the practical working of medical construction of the issues but also have lost sight of the larger Islamic ethical frameworks about life, illness and death. To remedy the situation, the suggested approaches range from maqasid-grounded discourse to that of "theologically rooted" articulation. This study proposes that a tying- of-all the strands together is needed if we intend to construct any Islamic biomedical guidelines which are consistent and contradiction free and abodes on Islamic ethics of the end-of-life care as envisioned by Islam. In doing so, we deliberate the Islamic principles of health and illness, followed by medical challenges to such principles and wind up the analysis with some preliminary remarks about the proposed ethical frameworks with the aim of some suggestions for deeper reflection on issues of end-of life care.

Islamic Ethical Principles of Health Care

Being a comprehensive religion and regarding the life as a preparation phase for the eternal life in the hereafter, Islam prescribes a set of guidelines not only for normal life but also for illness and when a Muslim is at the verge of death. In the Islamic outlook, life, its adversities and dying is deeply spiritual, moralistic and theological. Hence its ethico-legal guidelines not only provide the patient with emotionally strong attitude to face afflictions but also obligate his near relations and Muslim community to care for him/her. Accordingly, some of the salient Islamic principles underlying this are:

1- Facing Afflictions and Illness

In the light of the teaching of the Qur`an and the Sunnah, some of the core Islamic principles about illnesses and afflictions are: first, illness, cure and death are from God: "And when I am ill, it is He who cures me; And who will cause me to die and then bring me to life"( al-Shu`ara: 80-81). Second, illnesses and infirmities as facts of life must be regarded as tests from God and be met with patience and fortitude. The Qur'an lucidly states that God tests the believers with calamities: "Be sure we shall test you with something of fear and hunger, some loss in goods or lives or the fruits (of your toil), but give glad tidings to those who patiently persevere. "(Al-Baqarah: 155-156).

And facing them with patience is a real act of righteousness: "Who say, when afflicted with calamity: "To Allah We belong, and to Him is our return. They are those on whom (Descend) blessings from Allah, and Mercy, and they are the ones that receive guidance" (al-Baqarah: 156-157).Third, according to the Sunnah of the Prophet, in illnesses and calamities there are multiple blessings for Muslims, one of them is expiation of one`s sins (and reward). It also advises Muslims to visit a patient and console him/her by saying: "Have no fear, the ailment

will prove purifying you from sin if God wills it so"(al-Nawawi, 1991, 302; Elturk, 2014). This *hadith* in itself not only enhances one's belief and confidence for his salvation in the hereafte but also has a great psychological effect in relieving the pain suffered by the patient. Underlining the significance of forbearance when bearing pain, the Prophet declared: "No calamity befalls a Muslim but that Allah expiates some of his sins because of it, even though it were the prick he receives from a thorn"(Abu Daud, vol.5, p.262; Elturk,2014).In another *hadith* the Prophet has said: "If Allah wants to do good to somebody, He afflicts him with trials"(Sahih Bukhari,5321).Moreover, Ibn Abbas reports: "I visited the Prophet during his ailments and he was suffering from a high fever. I said, "You have a high fever. Is it because you will have a double reward for it?" He said, "Yes, for no Muslim is afflicted with any harm but that Allah will remove his sins as the leaves of a tree fall down"(Sahih Bukhari.5648). Fourth, it serves as a measure of awaking the belief in the oneness of God and turning to Him for the ease of sufferings: "And when We bestow favour upon man, he turns away and distances himself; but when evil touches him, then he is full of extensive supplication"(Fussilat: 51). Fifth, a patient who is going through severe pain or one whose days are numbered is prohibited to wish for death (Elturk, 2014). For instance, it is reported that when the Prophet found his ailing uncle wishing for death, he said, "O Abbas! O uncle of God's messenger! Do not wish for death. If you do good and live long, your good deeds will multiply. Then that is better for you. If you are not well and your death is delayed, you may seek God's forgiveness. That is better for you. So do not wish for death" (Muastadrak,1998,p.657; Elturk, 2014).Lastly, death is inevitable and cuts across, age, place and time(al- Elturk, 2014). The Qur`an declares: "very soul shall taste death and you will be paid in full only on the Day of Resurrection. Whoever is kept away from the Fire and admitted to the Garden will have triumphed. The present world is only an illusory pleasure" (`Alimran:185).; and "Every soul is certain to taste death: We test you all through the bad and the good, and to Us you will all return" (al-Anbia:35).[1]

2- Palliative Care for the Patient

Islam not only makes it incumbent upon a person who is related to the patient to take care of him/her but it also strongly urges believers at large to spiritually support him/her by visiting him/her. This ethical duty is enunciated in several textual evidences. First, rendering service to one's parents in the most trying time of their lives when they become old, feeble and afflicted with annoying diseases towards the end of their lives is made next to serving God by the Qur`an. This is by virtue of the Qur'anic verse (Al-Isra: 23-24). Treating an ailing parent with kindness (*ihsan*) in the context of this verse is another keynote principle of the Qur`an which comprehensively covers all the material, psychological and emotional cares which are essential components of bed-care for a patient: "And do good; indeed, God loves the good-doers" (al-Baqarah: 195), and "Verily, God's grace is ever near unto the doers of good!"(al-A`raf: 56). Secondly, several prophetic texts reiterate the same. For instance, one *hadith* makes it obligatory on Muslims to visit the sick: "Allah, the Exalted, will question a person on the Day of Resurrection by asking*:* The person would say: 'O my Lord, how could I visit you and Thou art the Lord of the worlds?'Thereupon Allah would say: 'Did you not know that such and such a servant of Mine was ill but you did not visit him? Did you not realize that if you had visited him you would have found Me with him?"(Sahih Muslim,

[1] Adopted with necessary documentations and modification from Elturk, Mustapha.(2014). *How Do Muslims Deal with the Issue of Death and Dying*, at https://detroitinterfaithcouncil.com/2014/01/07/(accessed 2 March 2017).

2569*).* Ibn Abbas says that the first visit to a sick person is recommended and subsequent visits are voluntary (Omar, 2016). Finally, the Qur'an makes it obligatory on Muslims to extend helping hands to others and to fairly treat their blood relations, the neighbours, and humanity at large (Al-Nisa: 36) even if such assistance affects their economy and financial standing. For instance, the Quran obligates a wealthy person to financially assist the needy and the poor (Al- Dhariat: 19).

Contextualizing the above to the issue of end-of –life care, it is important for children primarily not to shift their burden of taking care of their parents and loved ones to the hospital care givers, by virtue of *silat al-rahim* except in case of medical emergencies. The serenity and comfort of family environment for a patient living his last moments of life cannot be substituted by the palliative sections of the hospitals, not to mention the hefty cost of medical bills, unaffordable by most people and consuming a big chuck of the deceased`s or that of his next of kin`s in the case of the affluent. The Prophet declared: "A Muslim is the brother of a Muslim – he does not wrong him nor does he forsake him when he is in need; whosoever is fulfilling the needs of his brother, Allah is fulfilling his needs; whosoever removes distress from a believer, God removes from him a distress from a distressful aspect of the Day of Resurrection; and whosoever conceals the faults of a Muslim, Allah will conceal his faults on the Day of Resurrection"(Sahih Bukahri, 622). Statistics reveal that a considerable number of people who commit voluntary euthanasia, do it out of sheer desperation and the feeling of worthlessness in the hospital bed(Taqi, 2012, p.228).

3- Medical treatment

While the Qur`an declares that pain and illness are part of God`s test for believing men and women, the Sunnah encourages an ill person to seek medical treatment: "God descends diseases and for each ailment He facilitates cure, therefore you should seek treatment"(al-Musnad, vol.6,p.50), and according to another report, the Prophet has said" … but never seek a cure from a malignant and harmful substance like poison"(Abu Daud, 3870).). Commenting on the word *khabith*, used in this *hadith* which means noxious and malignant, al-Shawkani holds that this implies that any kind of injurious substance should be regarded as *Khabith* and must not be prescribed as medicine to heal the ailment This *hadith* prescribes an important restriction on medication which by implications not only covers hazardous substances as illegitimate but all harmful chemical contents of pharmaceutical drugs which affect vital bodily organs(from which no modern medicine is free).[2]

To practically guide Muslims about the ethico-legal position of Islam on medical intervention to cure, Muslim jurists were divided on the question of its moral legitimacy- because of the apparent contradiction between the Qur`anic exhortation on forbearance and trust in Allah and the Prophetic recommendations to seek medical treatment. Accordingly, the four Sunni schools are unanimous that it is not obligatory to seek medical treatment as the Prophetic text only contains a recommendation and not obligation. However, in detail they hold divergent views. The Shafi`iyyah regard it as recommended unless if non-action would make the death of the patient inevitable. Hanafiyyah holds that it is not obligatory to seek medical treatment

[2] However, a dissenting view may argue that the Prophet prescribed treatment with camel urine for converts from the tribe of `Urainah, hence declaring medical treatment with harmful substances as permissible. Nevertheless, beyond the juristic debate over this issue, which is beyond the scope of this study, as a rule of resolving *hadith* conflict methodology, the report prohibiting things is more in line with the spirit of religious precaution in the context of ethical discourses such as ours.

even if not doing so results in the death of the patient. Malikiyyah considers it only *mubah*(indifferent) unless it certainly cures. Similarly, Hanabilah makes it permissible but maintains that abstaining from it is more meritorious on theological ground of trusting in Allah within Whose power is both illness and its cure. Hanabilah cite two narrations to fortify their stand. First, seventy thousands of my Ummah will enter Paradise without being brought to account; they are the ones who did not ask for *ruqyah* or believe in omens or use cautery and they put their trust in their Lord"(Sahih al-Bukhari, 6472).Second, the *hadith* of the woman. Ibn 'Abbas reports that the Prophet said: "Shall I show you a woman of Paradise?" I said: "Yes, indeed." He said: "A black woman came to the Prophet, peace be upon him, and said: 'I suffer from epileptic fits, and because of these, (at times) my body becomes uncovered. Would you invoke Allah, the Exalted One, to cure me of this disease? ' The Prophet, peace be upon him, said: 'If you wish, you can be patient and you will attain Paradise (for this suffering). But if you prefer, I will pray to Allah, the Exalted, to cure you of it?' The woman said: 'I will be patient,' then added: 'I become uncovered (when I have fits), so invoke Allah for me that I do not become uncovered. So the Prophet, peace be upon him, prayed for her"(Sahih Bukhari, 2345).

In light of the above, while reliance on Allah and supplicating to Him for cure find support from both textual evidences of the Qur`an and Sunnah on which Hanabilah grounded their stand, seeking medical treatment is also allowed on the basis of *hadith* and utilitarian principles of protecting life(one of the *kulliyyat al-khams*) upon which Shafi`iyyah and Malikiyyah based their legal deduction. Contextualising this juristic discourse to the issue of end-of-life hospitalization, critics believe that modern *fatwas* in co-opting the permissible view about medical treatment have failed to adequately apply the juridical stipulation of certainty (*yaqin*) about the claim of clinical efficacy of medical cures via drugs and surgical intervention, which is based on biostatistics (Padela and Qureshi, 2016). In real clinical practice, no medical measure can provide a definitive solution to medical conditions which can even approximate the certainty required by classical *fiqh*. The standard applied by them is "reasonable belief" about decision making on clinical intervention or abstaining from it. Because when an unconscious patient of a fatal road accident is lodged in hospital bed and his respiration and heart beat are artificially sustained, it is not certain that he will resuscitate. Hence, why he should be put on ventilation from the outset? (Ibid).

Others, however, may argue that the classical jurists while setting *yaqin* as a basic criterion for decision making in *fatwa* and *qada* were realistic enough to accept the weight of evidence if it reaches the level of overwhelming probabilities (*ghalabat al-zann*) which holds true for clinical decision making for end-of-life cases in the hospitals. It is countered that ehico-juridical decision making in the near death scenarios are more complex than this which we illustrate in the next section.

End-of-life Medical Challenges

Allah has created humans in the best shape and conferred them with dignity *(karamah*), a unique attribute imbuing them with the inviolability((`*ismah*) of life, body and body parts. Contemporary medical interventions dealing with near end-of-life, however, makes it difficult to maintain the integrity of human *karamah* and *`ismah* (Raquib, 2015; see also Sachedina(2009), Clarke (2009) and Anees(1989; Badawi, 2012). The reason is that when an unconscious body of a victim of an accident is sent to the intensive care of the hospital and is connected to a life-support apparatus, the purpose is to monitor if he gets his consciousness back or otherwise. During this period, clinical procedures, among others, requires pacing medical instruments onto his body and performing other medical inspections. In case, he

awakes then his end-of-life care is assigned to palliative section of the hospital, away from home environment. But in case, he never recovers consciousness, or is rendered semi-conscious, or he is conscious but is paralyzed, several ethical questions with which both the jurists and ethicains must deal would ensue including: 1.) Is there any obligation to care for an unconscious but physically sustained patient? 2.) If we were not certain that he would recover, why we disposed him to the hospital bed at the first place? 3.) During recuperation, is it ethical to shift the burden of family care to nurses or palliative staff? 4.) What if the patient refuses medicine?

The answer to such questions and other incidental matters are found in the juristic deliberations on the legality of "euthanasia" and "brain death". For instance, the Islamic Juridical Council, based in Jiddah (1986), by terming euthanasia as "mercy killing")which conventionally stands for an act which is carried out either to end the suffering of a critically ill patient at his request or that of his relatives, or by
stopping the drugs to a patient with no hope of recovery by a medical practitioner. It refuted the permissibility of the first type, namely taking positive act to end such life of a suffering patient, called active euthanasia by equating it to murder but allowed the unplugging of life-support from a patient with no potential for recovery(passive euthanasia)- contending that there is no obligation to maintain a lifeless body(Resolution 17).
The argument to outlaw active euthanasia are numerous including: First, the Qur`an prohibits suicide: self-perdition [al-Baqarah:195] and killing oneself [al-Nisa:29]. Second, the Prophet sternly warned against it in two instances. In one *hadith*, he described the horrible tormenting of the person committing suicide in hellfire by the same means. In another *hadith*, he also showed his disapproval of the suicidal act of a warrior who, after receiving severe injuries, could not bear the pain and ended his life by his own arrowhead. After his death, the Prophet refused to pray over him and said: "This act obliterated all the reward for his good deeds done in this world"((Sahih Bukhari vol.23,p. 446; Haneef , 2000,p.5). Lastly, the Qur'an emphasizes the principle of saving life, which would also include avoiding any act amounting to hastening death [`Alimran:32]. Accordingly, to the majority of Muslim jurists, neither the patient nor any third party (a physician or near relatives) has the permission to euthanize a long suffering patient. Their main argument is that suicide is prohibited, and so is any act leading to it, which is also true in the case of physician-assisted euthanasia.

Criticising the Academy`s approval of passive euthanasia, Kasule(n.d) maintains that even tolerating unplugging of the life-support from a patient in a vegetative state can be abused by corrupt next of kens or physician. *Sadd-dhari`ah*(blocking the means) demands a blanket prohibition of euthanasia in all its forms.

Abu El-Noor nevertheless, maintains the classical juristic view of preferring trust in God over medical treatment would put a stop to the question of passive euthanasia even from arising, which clinically is termed as "do not resuscitate" or refuse treatment in case of hopeless recovery(Abu El-Noor, 2014). That is the position which the majority of the jurists predominantly advocate. This has been the case, in spite of their dispute over the emerging problem of clinical declaration of such a life worthless to maintain by medical criterion, namely, "brain death" (Haneef, 2015).

Brain death is a medical criterion of decaling a patient as dead. It was defined as cessation of brain function wholly and irreversibly by Harvard University in 1968 (Bedrin and Aksoy,2011,p.272). At global level, it repudiated the traditional criteria of death, namely termination of respiratory and circulatory system and by 1985 the U.S and 37 other nations accepted it as legal death with all its moral and legal ramifications(Faroque,1986,p.19). In the

context of Muslim countries, the juridical responses has been three-fold: 1) It is tantamount to legal death;2) It is only a dying state,3) It is not death at all(Padela and Qureshi, 2016).
The most controversial opinion with far-reaching implications among the above views is the first which represents the juridical response of the OIC affiliated Islamic Juridical Council(1987),which is the most influential opinions in terms of setting the motion for policy recommendations for the Muslim nations. The Council`s main argument is that although the Qur`an declares death as inevitable(`Alimran:185) and also states that its occurrence is marked by the separation of soul from the body(al-Qiyamah:26), it does not specifically delineates its exact moment. Accordingly, medical science today determines it with more precision and thus acceptable (Padela *et al*, 2011,p.3). Therefore, a patient can be considered dead if a specialist physician after standard examination finds that: 1.) the vital function of his brain has irreversible been ceased;2). and his brain cells have started to degenerate(Ibid,p.4).
It further held that, if the patient can be kept alive only by a respirator, then the person is biologically dead but when the machine is switched off resulting in stoppage of the breathing, then he is dead legally"(*Majallat al- Majma'al-Fiqh al-Islami,2007).*

Supporting this, Al-Bar maintains that the decision of diagnosing brain death is always a medical one and the ensuing ending of resuscitative measures should not be left to the family. It is a medical decision. Similarly if the treating physician finds a certain modality of treatment is useless or going to increase the suffering of the patient, that modality of treatment should not be enforced from the start. Simply that means withholding"(al-Bar, n.d.,p.12) To him, although euthanasia is not allowed but maintaining a lifeless body or treating patient with useless medication do not amount to euthanasia but to avoid harm, is a permissible act in conformity with the principle of non-maleficence.(ibid). However, al-Bar concedes that accepting brain death as legal death may be ethically complicated. For instance, in Suadi Arabia since the adoption of brain death as the sole criterion for legal death, the recourse to cadaveric transplantation has rapidly increased (Padela *et al*, 2011,p.4).

Disagreeing with the adoption of medical definition of death as the main determining test for declaring a patient death, Kasule(n.d) maintains: "brain death in medicine is a matter of degree, whole, lower and higher brain death all of which are still debatable as far as they do not define the exact time of death (which within the will of God). Therefore, one cannot with certainty subscribe to it"(p.5).

Concurring with Kasule, other researchers like Aasimi *et al*, advance the view that the standard setting verdict by the Council pertaining to brain death not only has ignored the traditional signs of death as delineated by the classical jurists[3] but also does not reflect deeply on the Western medical definition of brain death when adopting it whole sale. The verdict in question has failed to detail several issues including: first, while medical discourse on brain death has triggered debate about whole brain death and brain stem cell death and other levels of brain failures among medical experts and ethicians, the Council has adopted a less rigorous test. Similarly its *qiyas*(equation)between the life of a brain death patient and that of a beheaded victim is problematic as in the latter case, the person has lost his whole brain but medical test of brain death does not concern itself with the question of total brain failure. Second, it also has not addressed itself to the question of quantifying the irreversibility of

[3] Classical scholars set the following sings as the marker of departure of soul from body: cessation of breathing; sweating of the forehead; separation of feet from their arthroses; loss of feet reflexes in terms of pulling up and down; loosening of joints between arms and hands; bending of the nose towards right or left, and twists; disappearance of skin wrinkles; smoothening of facial wrinkles; caving in of temples; shrinking of men`s testicles; coldness of body; turning of feet and nose to blue; sharpening of the eyes; aloofness of lips; loss of the elderly`s eye blackness. For details, see Bedir and Aksoy, p.291.

brain functions as cases of brain death patients returning to life are clinical realities.[4] Third, the council`s stipulation that brain death is a conclusive evidence of the patient`s death when it starts degeneration is unrealistic because standard brain death test is not concerned with such an additional sign. Finally, the Council also does not address the most fundamental question in this context as to whether physician`s attestation of death has the effect of his declaration pertaining to the departure of the soul from the body as well?(Padela,p.4-6).

Juxtaposing the medical definition of death with that of classical diagnostics which makes it certain even to the nicked eyes that a patient has deceased, Bedir and Krawietz believe that at the heart of ethical debate regarding clinical definition of death with its multiple implications for the deceased, his relatives and medical care givers lies the question of "who determines the moment of death", which Muslims believe to be within the province of God`s Knowledge and Power(Krawietz 2003; Bedir and Aksoy,2011,p.293).

To conclude, medical intervention to save life under normal circumstances is good and a welcome development. But when it artificially extends the apparent signs of life, such as respiration and blood circulation raises some ethico-juridical questions the disposal of which needs more rigorous analysis if Muslims need to arrive at a consensus based and ethically more convincing juridical pronouncement. As to what should be the approach, we turn to the discourse in the next section.

Proposed Ethical Approaches

From the foregoing, it is clear that modern clinical intervention nowadays is the last avenue where people with access to it breathe their last. Under normal circumstances, end-of-life is such a crucial stage from an Islamic vantage point that any Muslim with a meagre sense of wishing to make his transit from this transient world to that of the eternal abode in a compete state of *iman*(constant senses of loyalty to God and His Shari`ah) if still sober would be able to utter Shahadatain, ask forgiveness and forgives, and write a will if so wishes. However, all these would be out of question in the case of those who are suddenly rendered unconscious (excused from such near-death protocols as God intends to be the case). But the ethical complexity arises in other clinical scenarios where a conscious but a suffering patient spends these last moments in the intensive care. As we noted, such interventions even if necessary(*darurah)* poses a complex case of balancing between Islamic theology of pain and dying, ethics of caring and forbearing pains, and doubt about "certainty of clinical intervention to forestall death"((Padela and Qureshi, 2016). Hence, some Muslim bioethicians like Osman Bakar suggest that it is pertinent for Muslim theologians and jurists to find a launching path anchored in Islamic vision of near end-of-life for assimilating modern medical technological issues to guide patients, policy makers and health providers Islam(Bakar,2008, p.13).

To actualize the above, the approaches thus far are: first, using *maqasid of the Shari`ah(*the spirit of the law*)* in terms of preservation of religion, life, intellect and wealth as an alternative framework to address such biomedical issues in order to overcome the limitation of mainstream literal methods. This approach has the advantage of balancing the benefit and harms emanating from medical interventions towards the end-of-life so as to

[4] For some reported cases, see *List of Brain Dead Patients Who've Recovered.(2017).at* http://kgov.com/brain-dead-patients-who-have-recovered(accessed 30 June 2017).

arrive at ethically consistent juridical rulings. Second, rereading the values listed as the purposes of the law by stressing the overriding role of the preservation of spiritual objectives of the Shari`ah as embodied in the topmost priority of preserving religion over other sub-categories in the hierarchy of the *maqasid* and paying attention to the spiritual dimension of other meta principal *maslahah*, such as life, intellect etc, as maintained by the majority of the *maqasid* protagonists. Third, by drawing on larger Islamic eschatological principles, such as human purification (*tazakiyah*) and salvation of the soul (*falah*) rather than juristic use of legal maxima and other literal methods of deduction, it would be possible to formulate more ethically sound policy guidelines to deal with end-of-life issues(Raquib, 2015). Finally, while approving the use of *maqasid* as a useful ethical framework, another approach advocates theologically-rooted method to the end-of-life health care. It criticizes monolithic thinking as a singular frame of reference to deal with biomedical issues of such ramification as narrow and inadequate to take into account the multiple complex ethical questions including: 1.)How the *maqasid* of preserving of human physical life(to prevent harm) in a case of surgical intervention justifies its cost for the patient as a result of which he is unable to perform his daily prayers for a considerable amount of time? 2) As most of clinical interventions are a matter of imaginary forecast about saving life, how we justify their costs in term of disrupting other four *daririyyat*? 3) How *maqasid* approach takes care of worldly considerations in clinical decision-making, such as socio and economic worth of the patient to be provided with health care services or not? To these advocates, the solution lies on grounding the ethics of end-of-life health care on theological aspect of God-man relationship which provides a holistic ethical framework for ethical thinking of end-of-life care. Such a theory maintains that when human *karamah* together with its emerging notion of inviolability of human body(its integrity as a whole and parts) which even after death is kept in perspective, many clinical practices of intruding on such values, such as unnecessarily placing of instruments on the patient`s body, subjecting him to unessential punctures and surgeries, and other procedures fatal to his *ismah(*inviolabilit*y)* and *karamah* could be overcome especially if they cause disruption in a patient`s worship of God((Padela and Qureshi, 2016,10).

Some Reflections

From the foregoing, one may observe that contemporary biomedical issues, such as end-of-life care being a complex issue by its very nature requires a multidisciplinary approach. That is why Islamic juridical bodies when deliberating on euthanasia and brain death combine their knowledge of *fiqh* with technical views of the experts from medicine. Accordingly, from that aspect the existing juridical approach can be described as sound and appropriate. Nevertheless, the foregone analysis reveal that by and large what has been neglected is the interdisciplinary deliberation of such issues from a holistic Islamic point of view where their juridical, theological and moral ramifications are not sufficiently considered but treated rather in a segmented way. For instance, the juridical verdict by Islamic Juristic Council on brain death does not profoundly reflect upon metaphysical truth about separation of soul from body in connection to its approval of brain death as a definitive physical evidence of death.

Hence, going by the hierarchy of authoritative sources of ethico- legal guidance in Islam, none of its aspects can be neglected as Islamic system of life is an integrated whole. The theological principles, classical Islamic methodology, ethics and etiquettes of handling illness and care for the patient, rationalized synchronization of Islamic ethico-legal injunctions to safeguard human wellbeing, all need to be synthetically negotiated if we are desirous of proposing an ethically consistent, spiritually rich and practically functional

framework for an Islamic ethics of end-of life care**.** Therefore, to achieve this, approaching such issues, among others, requires: First, considering metaphysical dimension in terms of belief that pains, affliction and stress which are facts of life, and death happens when and as God wills it. Psychologically, such a conviction goes along away in serving as the strongest psychotherapy for a patient to cope with his predicament which no modern palliative care can offer. Similarly, the fact that human beings are God`s special creatures, dignified, sacrosanct and are here to be in a constant state of servitude to God even if ill and infirm so as to attain salvation in the next life are core ethical values which greatly help in charting a code of end-of-life care which is truly humanistic and deeply spiritualized to take care of highly commercialized and machine-based clinical interaction with patients on the verge of death. Nevertheless, overemphasising on theologically rooted approach may prove fatalistic as some people with no secular education living in some far-flung mountainous areas may refuse medical treatment in its entirety- bringing more stress on family members and themselves though feeling ethically justified. Contemporary examples can be of a cancer patient who can refuse medical treatment, thus committing euthanasia passively today.

Secondly, the classical ruling that seeking medical treatment is not obligatory and if one dies without resorting to it will not be sinning, tremendously boosts the emotional wellbeing of a patient with no access to exorbitant modern health care facilities, which at time has the propensity to pressure of unnecessary and complicated surgical intervention under the pretext of saving life.[1]

Thirdly, the spiritualized and hierarchically balanced use of *maqasid* of the *Shari`ah but* not its undisciplined, materialistic use no doubt significantly contribute to equilibrating the decision on clinical intervention and its continuation or otherwise in most difficult cases , such as those patients in vegetative states of irreversible coma. However, purely pragmatic materialistic consideration of saving life is incapable of taking care of the spiritual/ religious *maslahah* of patients toward the end-of-life. For example, a patient by undergoing an invasive surgery and its post-recovery hospitalization will not only be unable to fulfil his daily prayers but also be burdened with huge amount of debt in consequence of medical cost of the surgery of and hospitalization which if cannot fulfil would be of serious consequences for him in the hereafter. Similarly withholding or not withholding treatment to a patient cannot be noble in all cases as it is more often influenced by other worldly considerations, such as the patient`s ability to pay the bill and his utility to family and society(Padela and Qureshi, 2016,8).

Finally, in order to sustain the distinctive feature of Islamic ethico-legal judgment making at the methodological level, the three-tier hierarchical placement of sources of authority is necessary. Topmost is the position of God-servant relationship as the apex of any discussion of human issues and its paradigmatic role in term of primacy in the methodology of formulating any Islamic ethico-legal judgment about things in the science of Islamic jurisprudence. Neglecting this doctrinal aspect of using the sources of law and religious guidance is bound to yield not only instances of disconnect between Islamic ethics and juridical rulings on modern issue such as end-of-lie decision making but also to result in flowed argument by trying to deflate and at times twist the supremacy of God-declared dominion over human biomedical decision making. Second comes the legislative place of the Prophetic edicts and practices which are nothing but commentaries and annotations to what is revealed by God- broadly encompassing both confirmatory and initiating Sunnah(*taqriri and insha`i*). Lastly, human rationale argumentations *(ijtihad*), both classical and modern, to

contextualize what is enacted by God and His messenger in human situations cannot be dismissed as trivial.

Accordingly, any juridical deliberation of biomedical issues should take into account not only the thematic aspect of the problems in terms of theological, moral and juristic content but give due credence to the hierarchal use of religious sources and juristic theories to avoid falling into the tarp of secularised adoption of medical novelties.

Conclusion

From the foregoing, it can be concluded that medical technology continues to innovate and evolve, the prime target of which is human life and the factors which affect human health and causes it to fail and deteriorate. Technological ways of dealing with human health though useful nevertheless come with their own ethical and juridical challenges, and trigger questions with which not only ethicians but clergy and Muslim scholars and jurists grapple. Ethics of end-of-life care invoke the most complex questions of all as it redefines many Muslims` age-old beliefs about life, illness, facing frailty and sickness, and finally dying. Segmental approaches to answer these ethico-legal questions can yield relativists morality, ethically fluid guidance, and theologically disconnected outlook and methodologically discordant system of legal construction. In the paper, we presented some reflections which we hope could add to the body of the existing analysis for future deeper and more extensive ethical discourses.

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