

The English Translation of the Introduction and Conclusions of

**‘The Impact of Medical
Advancements on Religious Edicts
and Judgeship.’**

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Hatem al-Haj

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Introduction and Conclusions

Introduction

In the Name of Allah. We praise Him and seek His assistance and forgiveness. We seek refuge with Allah from the evils of our selves. Whoever Allah guides cannot be misguided, and whoever Allah misguides cannot be guided. I testify that there is none worthy of worship except Allah, and I testify that Muhammad is His worshipper and Messenger. He relayed from his Lord in the most perfect manner, and clarified for us the rulings of our religion in the various aspects of life to the point that the People of the Book envied us for this. O Allah! Send prayers and peace upon him and his Household and Companions, and those who follow his belief until the Day of Resurrection.

To proceed:

Indeed, there is an undisputable relationship between the sciences of Fiqh and medicine. This is because the subject of medical science is the human body and self, and the body and self are tasked with duties placed upon them by the Shari'ah. Henceforth, the scholars of Fiqh have frequently addressed issues related to medical science and turned to doctors for the purpose of insight so as to ascertain the presence of '*illah* (effective cause) in the individual cases (*Tahqeeq al-Manaat*) .

Medical science is constantly changing, making it necessary that the religious edicts and Fiqh opinions that are based on available medical knowledge also change. It can be said that these Fiqh opinions that change in accordance with the change in available medical knowledge are the clearest example of Fiqh opinions – not the laws of the *Shari'ah* – changing with time, place, and circumstance.

Therefore, it is necessary to have an abundance of Fiqh-based research that focuses on this topic. It is the attempt of this research to review the most important Fiqh edicts that are based on medical knowledge, or have been affected by it.

There is no issue that the scholars of Fiqh have delved into that the entire Ummah as a whole has taken a mistaken position on, nor is there any issue about which the text of the revelation has contradicted a certain scientific fact. Therefore, when we examine Fiqh opinions in light of the most currently available medical knowledge, we simply choose those Fiqh opinions that appear to be most correct according to the most current knowledge even if this goes against the most popular opinion or that of the majority.

Likewise, there is plenty of rich scientific material for many research papers in newly emerged issues which our scholars of the past did not cover in detail since they just came into existence due to advancements in medicine. However, this research will only cover from those newly emerged issues those that have an effect on the changing of a ruling in some issues of Fiqh.

The Importance of Researching and Studying This Topic in Our Times

Changes in the medical field were slow-coming until the early part of the 20th century, when the advancement in science and medical knowledge began to accelerate to the point that these sciences arrived at their present state of flourishing, and our early scholars of Fiqh – may Allah have Mercy upon them – did not have access to the medical knowledge that we now have. Due to this, their edicts differed when it came to the numerous Fiqh rulings that related to medicine and what was known about it at the time, For instance, determining the shortest and

longest limits of the period of pregnancy, the status of hermaphrodites, the different portals of entry into the hollow interior, etc., and from the biggest reasons for their differences on these issues was the lack of awareness on the part of the doctors of their respective eras.

Currently, much of the medical knowledge and practice is based on experiment and certainty, not doubt and conjecture. Thus, the need to revise the various *fiqhi* positions spread out in the fiqh books and that pertain to medicine and its sciences.

Indeed, reconsidering and correcting the Fiqh opinions that are based on outdated medical knowledge is crucial to us in our worship of our Lord and referral to our *Shari'ah*. Likewise, it is important in order to confirm in our minds the infallibility of the revelation and to show that whatever mistakes might be present in some of these opinions are never the result of a mistake in one of its sources: the Book of Allah and Sunnah of His Messenger (peace be upon him).

Why I Chose This Topic

Having studied both Fiqh and medicine, I saw that it was appropriate for me to utilize my doctoral thesis to assist in contributing to this great topic from the topics of Fiqh. I have decided to cover in it the *fiqh* issues in which the chosen position might be affected by advancements in medical science. I do not claim to have compiled a comprehensive collection of these issues, as this is something that cannot be accomplished in a single research paper. Rather, I have attempted to collect some of the important issues from the topics of Fiqh as a whole, such as rituals of worship, customs, dealings and interactions, and judicial rulings.

I saw it fit to title my thesis '*The Effect of Medical Advancements upon the Changing of Religious Edicts and Judgship.*'

Literature Survey

There has not been sufficient research of the Fiqh issues that are affected by advancements in medicine; this topic has not been given the attention it deserves. This is despite the numerous books that have been written that cover the Fiqh issues related to medicine and its sciences.

These studies and books deal mostly with the Fiqh of medical work or some of the newly emergent matters in the medical field whose *Shar'i* ruling needed to be clarified. As for my work here, it will deal with the Fiqh issues that the later scholars touched upon in their research in which some of them erred due to the deficiency in the medical knowledge available at the time, or those issues in which nobody has erred but that must be looked at again due to the different reality brought about by advancements in medicine. This includes widening the implementation of the rulings of retaliation and the inclusion of *Shar'i* medicinal practices in the structure of the Islamic Judiciary; this falls under *Tahqeeq al-Manaat* (The ascertainment of the presence of the effective cause in individual cases).

My Methodology and Style in this Research

- In my thesis, I followed the method of description when presenting medical facts, which were verified and I adopted the method of analysis when it came to some of the points of dispute in the medical field.
- When presenting Fiqh opinions, I adopted the method of analysis in its different stages, including *Tafsir*, criticism, and derivation of rulings. I undertook this by clarifying the various

opinions and their explanations in light of the relevant texts and other proofs, following by criticism, derivation of rulings, and chosen conclusion.

- Due to the thesis being comparative in nature, I relied on the method of partial surveying in order to collect the various opinions on each issue, and I then followed the method of argumentation by presenting the various opposing Fiqh opinions, and then choosing the strongest of them in light of the textual evidences, as well as the rational ones.

- I have presented the different positions of the four schools of Fiqh whose nobility is agreed upon between *Ahl as-Sunnah*. I have presented the opinion of the respected *Dhahiris* (literalists) when necessary, and likewise those of the independent *mujtahideen* (expert jurists) who do not follow any of the four schools. However, I have relied mostly on the statements of the respected leading scholars of the four schools.

Despite the fact that I am upon the madhhab of Imam Ahmad, I have exerted the utmost effort as a researcher to be just and unbiased and to not have stubborn allegiance except to the revelation and the one who relayed it (blessings and peace be upon him). There is nothing in this paper that I didn't submit to criticism and give and take except for an authentic decisive and un-abrogated text, confirmed unambiguous consensus, or the logical conclusions and things perceptible by the senses that would not be differed over by those with intellect.

- In terms of consideration for authentic sources in verifying the statements of the scholars, I have limited myself to the original books relied upon by the four schools and others, such as:

- o '*al-Mabsut*,' '*Bada'i' as-Sana'i*,' '*Tabyin al-Haqa'iq*,' '*Fath al-Qadir*,' and '*Radd al-Muhtar*' in Hanafi Fiqh

- o '*al-Mudawwanah*,' '*Sharh Mukhtasar Khalil*,' '*Hashiyat ad-Dasuqi*,' '*Mawahib al-Khalil*,' and '*Minah al-Jalil*,' in Maliki Fiqh

- o '*al-Umm*,' '*al-Majmu*,' '*Asna al-Matalib*,' '*Nihayat al-Muhtaj*,' '*Tuhfat al-Muhtaj*,' '*Mughni al-Muhtaj*,' '*Hashiyat al-Bujayrami*,' '*Hashiyat Qalyubi*,' and '*Hashiyat 'Amirah*' in Shafi'i Fiqh

- o '*Mukhtasar al-Khiraqi*,' '*al-Muqni*,' '*al-Mughni*,' *Ibn Muflih's 'al-Furu*,' '*al-Insaf*,' '*al-Qina*,' and '*Muntaha al-Iradat*' in Hambali Fiqh

- o '*al-Muhalla*' in Dhahiri Fiqh

- I have taken care to reference Prophetic statements and narrations to their original sources, including the book and chapter title in order to ease things for the reader. This is in addition to the care that was taken to indicate the status of authenticity if the narration was found outside of the two '*Sahih*'s. Even though this is important to tend to in every aspect of Islamic research, it is especially important when discussing the effects of scientific advancement on edicts and judgments in Islam so that the *Shari'ah* is not blamed for the mistakes of those who are not infallible or weak and baseless narrations.

- When presenting medical facts, I have relied on the well-known trustworthy sources with medical professionals despite the fact that most of them are foreign (i.e. Western) sources. However, westerners are the pioneers of knowledge in this field in our times after the Muslims fell short and limited themselves to consumption and utilization of science and technology without producing it, and to Allah is our complaint.

- As for the style of this research, I tried my best to be brief while also being as clear, accurate, and eloquent as possible without letting the consideration of style supersede the accuracy of the content.

- I presented the texts of the Revelation with their marks of vowelization (*tashkeel*) in order to protect them from mispronunciation. As for anything else, I provided *tashkeel* for whatever was necessary to ensure proper pronunciation.

- I did my best in working with the most correct principles of dictation. Thus, whenever there were two possible methods, I chose the most correct of them.

- Even though the practice of the scholars is more beloved to us, the current and easiest custom in writing is to underline important points rather than to place lines over them. This is what I did in my thesis based on this custom. For each biographical entry, I underlined the name or nickname by which the subject of the biography was known.

- I used the terminology of the scholars, such as ‘for us’ or ‘I say’ in order to imitate them in light of the words of the poet:

‘Imitate them, for if you cannot be like them * Then imitation of the noble ones is a victory’

Likewise, using the same style from the first of this Ummah to its last preserves the ability of its generations to effectively communicate. As for using the plural tense when referring to themselves, the scholars did this out of humility and not to inflate their own status. Thus, instead of attributing the opinion to themselves as individuals, they would attribute them to the scholars of their school or those who hold a similar opinion.

- I included a glossary of important words and phrases, but did not utilize it whenever the word or phrase in question was used. Rather, it was used whenever the word or phrase was the subject of discussion, and this glossary includes some important terms as well.

- Indeed, the factor of worship in this research was not absent from my consideration. This research is unlike other studies in humanities, as this research is in comparative Fiqh, Fiqh is one of the branches of humanities, in the sense that the *Shari’ah* is humane in its goals. However, it is different from them in the sense that it is of a divine source.

The one who studies this noble knowledge must take into consideration the scientific method of research without ignoring the aspect of belief and worship. It helps to keep in mind that the primary goal of this knowledge and these studies is to obtain the Pleasure of Allah, after which, will come the objective of human benefit, in addition to its other goals.

Another point to mention here is that the texts of the revelation are never to be criticized if they are known to be authentic. Rather, the analytical method – *Tafsir* and derivation – is what should be used with these texts. As for the opinions of the scholars, the aforementioned methods apply to them in addition to the method of criticism, so long as the opinion in question is not one upon which there is an established consensus. In such a case, no criticism or devaluation is acceptable.

- In summation, I gathered all of the issues related to the topic of this paper; I presented the opinions of the scholars of Fiqh regarding them, discussed them and chose those that are most in accordance with the evidences. Finally, I have presented the latest related medical information available and the effect this would have in accepting, rejecting, or choosing between some of the opinions concluded by the jurists by way of their independent reasoning.

The Outline of the Paper

I divided this paper into an introduction, a foreword, four sections, and a conclusion in which I summarized the most important points of the research.

As for the introduction, it includes an explanation of the subject of the research, the reason I chose it, the scientific method utilized therein, and how it is divided up. Likewise, I mentioned whatever books have been previously written regarding this subject.

In the foreword, I clarified the relationship between the sciences of Fiqh and medicine. Afterwards, I discussed the issue that this research focuses on, which is the permissibility – rather, the obligation – of changing a religious edict in accordance with a change in either the reality in which the scholar of Fiqh is issuing such a judgment or the sources upon which he is relying when doing such.

VII

In the first section, I mentioned some of the Fiqh-related issues whose edicts and judgments have changed due to advancements in medicine specifically in the area of worship. I divided his section into three parts:

1. Purification
 - a. Circumcision for both genders
 - b. Water heated by the sun
 - c. The menstrual period - its description, its shortest and longest limits, when it starts and ends, the menstruation of the pregnant woman, and the least and highest limits of the period of purity.
 - d. Postpartum period – its description, when it begins, the extent to which it can last, when blood accompanying a miscarriage is considered part of a postpartum period, and the situation of a woman who gives birth to twins with a long intermission – is she considered in postpartum period after each individual birth?
2. Funerals
 - a. The signs of death; brain death
 - b. Preserving the honor of the dead and the effect of this on practices sometimes carried out upon the Muslim when he dies, such as the mutilation or cutting open of the stomach in the course of transporting of the corpse or in order to know the cause of death, among other reasons
3. Fasting
 - a. Nullifiers of the fast

As for the second section, it contains some issues for which edicts have been changed due to advancements in medicine specifically in the area of customs; and it is divided into three parts:

1. Food and drink
 - a. The ruling on feeding dead meat and impure substances to animals
 - b. The ruling on smoking
2. Masturbation
3. Medical treatment
 - a. The ruling on medical treatment
 - b. The ruling on treating one who is in a continuous vegetative state

The third section contains some of the issues for which religious edicts have changed due to advancement in medicine specifically in the area of transactions and interaction, and I divided this into two parts:

1. Marriage and waiting periods, and under it are some issues relating to pregnancy and waiting periods:
 - a. Shortest limit of pregnancy
 - b. Longest limit of pregnancy
 - c. Pregnancy from two different fluids (fathers)
 - d. The waiting period of she whose menstrual flow has ceased before the age of barrenness, or had long lapses between her periods, and the waiting period of the woman with prolonged bleeding.
2. Preventative factors and inheritance
 - a. Puberty and its signs
 - b. Hermaphrodites and their types

VIII

In the fourth section, I presented the issue of judicial rulings and the Shar'i role of medicine, and this is divided into two parts:

1. Judicial rulings - this part contains a discussion of the acceptable evidences in establishing a plea in the Islamic judicial rulings and the role of forensic medicine in indictment along with confession, testimony and oaths, and other independent and supportive evidences. This includes a practical example of the significance of using physical evidence as proof, and I chose as an example on this the issue of the establishment of parenthood by way of DNA testing.
 2. Injuries, retaliation, and prescribed punishments
 - a. Implementing retaliation by way of doctors and surgeons, and the effect this has on exacting revenge
 - b. The effect of the advances in embryology on the differences between the scholars of Fiqh in regards to when the soul is blown into the body, and the subsequent applicable rulings of miscarriage and abortion
- In my conclusion, I have mentioned the main points of the research.

And I provided seven indices:

1. Qur'anic verses
2. Prophetic narrations
3. Significant personalities
4. Glossary of words and phrases
5. References
6. Tables and graphs
7. Topics

And praise be to Allah for His bounty and blessing, and may Allah send prayers and peace upon our leader Muhammad, his Household, and his Companions

Conclusion

- 1- My certainty has increased in the infallibility and the miracle of the Quran and authentic Sunnah. There is no surprise in that since they are the revelations of the creator of the universe, so His universal signs and revealed word will never contradict one another, but rather corroborate each other.
- 2- My certainty has increased in the infallibility of the ummah as a whole, and that it never agreed on an error. The established consensus shall never be found to be mistaken, for there will always be a party of the nation of Muhammad on the truth, prevailing. However, the reporting of Ijma' (consensus) does not necessarily mean the occurrence of a valid consensus, when a controversy is found to have existed. Sometimes, a certain position becomes so popular that it would be thought by some to be a consensus when in fact it is not.
- 3- My certainty has increased in the greatness of our juridical heritage, and that the Shari'a alone is befitting to rule over the people. It is ever capable of addressing any new matters.
- 4- My certainty has increased in the greatness of our jurists, their righteousness, and that they tried all they can in pursuing the truth.
- 5- My certainty has increased in that the infallibility of this goodly nation as a whole may never be limited in one madhhab (school) or Imam (grand scholar). It is incumbent upon us – while paying due respect to the schools of the *mujtahedeen* (expert jurists) – to seek the truth that is in accordance with the proof in any reliable madhhab (school). We should never constrain that which is vast, and limit Islam into one *madhahab*, for the direct consequence of this is the attribution of error to Islam when the madhhab is found to be wrong.
- 6- My certainty has increased in the importance of verification when citing the transmitted reports and tackling them so as to not incorporate in the religion that which is foreign to it, which could result in the attribution of error to it.
- 7- Unsurprisingly, the advancement of medical sciences and practice did not bring forth anything that contradicts a clear authentic revealed text or an established consensus.

It became clear to me that:

- 1- Due to the fact that the sciences of fiqh and medicine are concerned with the welfare of the human being, they are interdependent to an extent known by those who are versed in either one. This is because the subject-matter of medicine is the human body, which is tasked by the religious duties. The rulings of those duties are the subject-matter of fiqh.
- 2- The followers of Sunnah don't neglect the mental axioms or those things perceptible by the senses. In fact, they reinterpret the manifest implications of the text when they contradict them. They also use them in judging the authenticity of transmitted reports.
- 3- The fatwa (edict by a scholar) – not the *hukm* (Allah's ruling) – may change from time to time and place to place. That is not just by the mere change of time and place, but rather because they are vehicles in which various new events, customs and conditions exist. The fatwa may then change according to certain guidelines detailed in the research. Tackling this enormously difficult task is only attainable by those who are well grounded in knowledge.
- 4- The advancement in medical sciences proved wrong some judgments of some of our jurists - may Allah have mercy on them. They did all they can during their time to ascertain the presence of the effective causes of the various rulings in the individual cases that confronted them, so as to guide the people in the various realities in the light of the Quran and Sunnah. May Allah

reward them immensely on behalf of this *ummah*. However, the Quran and Sunnah are infallible and the judgments of the jurists – who are but human beings – are not. There is no shame then for them to err, consequent to the erring of the physicians of their times, for they asked – as required of them – those endowed with the knowledge of medicine in their times. It is shameful, however, that the mistake be confirmed and we act too proud to correct it.

5- In addition to proving some rulings right or wrong, the advancements in the medical field might result in the change of the fatwa in certain matters in the realm of means and procedures. . For instance, in earlier times scholars would use *qiyafah* (physical similarities between the child and the parent) to establish paternity. Now, the DNA tests are indisputably a lot more accurate. Likewise, some of things that were difficult to execute in earlier times are now easy. For instance, the consummation of the retaliation rights by using surgeons would widen the spectrum of possibilities in the applications of this ruling. The advancement in medicine may bring about some new realities that would call for updating some established rulings in the books of fiqh. For example, with the presence of the modern life support machines the need arises to update the signs of death.

6- There are some cases where it is thought or propagated that the fatwa should change as a result of the advances in medical sciences, while the reality is counter to that. Many times the advancement in medical sciences is has no impact on the issue of disagreement or may not completely bring the controversy between the jurists to an end.

7- The physicians may differ in their judgment. The jurists have to verify what they hear for the sake of their fatwa's accuracy. This is particularly so in matters of public interest, even though it is important even in individual cases. Most certainly, fiqh preceded medicine in ranking the strengths of evidences. Now, modern medicine considers the opinion of the expert only as weak evidence. It is then imperative to double check with the physicians to verify the strength of the proofs upon which they base their judgments. It may be of benefit to invite debate between them.

8- There are several narrations pertaining to female circumcision. There is no doubt that some of them are in the authentic collections, albeit not clear in indicating the obligation of the matter or encouraging it. There are some reports upon which the people of knowledge disagreed, and that section is clearer in establishing the legality of female circumcision. However, the ahadeeth pertaining to sunan *al-fitrah* (the etiquettes of grooming) that mentioned circumcision may not be limited to men only, since it is established that the word "*khitan*" (circumcision) was used to refer to both male and female circumcision as obviously understood from the hadeeth of "when the *khitan* touches the *khitan*." Based on that, what appeared stronger to me is that female circumcision is recommended.

9- The extent of the *sunni khitan* (circumcision) is the cutting of the clitoral hood, not the clitoris itself. There are no studies, meeting the scientific standards, which proved the harm in cutting the clitoral hood alone, or even with partial cutting of a small part of the clitoris. The studies, however, did prove the harm in the total excision of the clitoris and all of the more aggressive practices of the *bid'ey khitan* (innovated circumcision). It is incumbent upon the devout to fight such practices.

10- Islam protects the woman's right in sexual enjoyment. It also forbids any mutilation of her body, and makes the practitioner who mutilates her sex organs liable for the diyah (entire blood-money.)

11- We must regulate the practice of female circumcision and that could be done only by commissioning the physicians alone to this job, and they are the ones qualified to do it. Critically importantly, they should be made aware of the correct practice and its extent.

12- Concerning the use of water heated by the sun, what appeared stronger to me is the absolute permissibility of its use in ritual purification. That is not because its harmlessness was

established, but rather because of the extreme weakness of the transmitted reports about it, as well as the lack of medical evidence on its harms.

13- Concerning menstruation, modern medicine can help in distinguishing the various stages of the menstrual cycle through the measurement of the blood hormones. The use of such technologies would help in removing the confusion from many cases where it is difficult for the woman to sort out the menstrual blood from prolonged bleeding or identify the beginning of her period.

14- Concerning the youngest age of menarche (the beginning of menstruation,) what appeared to me to be stronger is that menstruation may take place at any age prior to age ten, but will not be legally consequential until the girl reaches age ten.

15- Concerning the maximum age for menstruation (menopause), it appeared stronger to me that no limit should be set in the case of the presence of trustworthy physicians, and the woman should be recommended to consult the physician if the nature of her menstruation changed at her old age, or if the menstruation lasted beyond fifty five years of age. In case the trustworthy physicians are lacking, the woman should be advised to consider her blood menstrual as long as its nature did not change, and there were no long lapses between her periods. That is until age fifty five, and once she reaches that age, she should be more careful in verifying that it is in fact menstrual blood, and not pathological bleeding. When she reaches age sixty, then the blood is not menstrual except in very rare cases, and no consideration is given to rarities.

16- Concerning the menstrual cycle, I have clarified that the natural human disposition is that it occurs once every lunar month. The period of the cycle may decrease or increase to the extent that it would be considered medically abnormal. However, it remains to be legally valid as long as it does not happen more frequently than twice a month.

17- As for the longest duration of purity between two menstrual periods, the jurists unanimously do not set an upper limit for that.

18- The physicians agreed with the juridical position that upholds that the least amount/duration of the menstruation is the flow of a drop of blood.

19- The longest duration of menstruation: Menstruation - in the sense of the flow of the dark blood which has an odor and is known by women, and which results from the breakdown and fall of the uterine inner lining - may continue without end. The revealed texts indicated that, since they did not refer every woman to the distinction (between the menstrual blood and the prolonged bleeding). This is also what medicine affirms. The solution of the problem, in my opinion, is to distinguish between two types of menstruation: The natural one that is legally consequential, and that usually lasts as long as six to seven days as in the Islamic fiqh as well as medical science. The second type of menstruation is the pathological one, which may last up to months. The majority of physicians agree that if the menstruation lasted more than ten days, it is considered pathological, and it needs evaluation and treatment. They also agree that it is not completely normal between seven to ten days. If there was a scholar who set the upper limit for the legally consequential menstruation at seven days, it would have been a strong position, yet no one did set the limit at less than ten days, thus it becomes a consensus.

20- The least duration of purity between two menstrual periods: It appeared to me that the position of the majority of fifteen days being the lower limit for this period is the closest to correctness.

21- There is no upper limit for the duration of purity between two menstrual periods. This may be due to disease or other reasons. The physicians help may be invoked in treating such cases and determining the reason behind the cessation of menstruation. This issue is not problematic except in the topics pertaining to the *'iddah* (waiting period.)

22- Medical help must be sought to end the confusion of the one confused about her period as well as the first-timer, so long as this is possible.

23- If the yellowish or turbid discharge was connected to the menstrual period and immediately after it, and they were different from the usual discharges that happen to the woman, then they are part of the period. It may also be prudent for the woman to seek help from the physician in the distinction.

24- The jurist's good understanding of the nature of the menstrual period will enable him to make learned judgments pertaining to the issues of menstruation. The advancement of medicine will not bring to an end all of the problems in this chapter. For instance, in some cases, the breakdown and fall of the inner uterine lining may continue without end. This is menstruation according to the medical sciences, but not so according to fiqh. Also, the physician may rule that a six year old girl has had a menstrual period, and the fiqh refuses to impose on her the duties of Islam that become all incumbent upon one who reached puberty. In addition, many women do not have the ability to consult physicians.

25- The default human nature is that the pregnant woman will not menstruate, and any deviation from this is a rare exception, thus not legally consequential. It may be acceptable to say that the bleeding that immediately precedes labor (by up to two days), and is caused by it, may take the ruling of postnatal bleeding. Such is the position of the *Hanbalis*.

26- Confirming that the flow of blood is in fact postpartum (postnatal) bleeding is done by a trustworthy physician confirming that what the woman delivered was in fact a fetus that was aborted. In the case of the lack of such physician, we may refer to what the jurists stated about this, which is that it is confirmed upon the recognition of some human features, even if subtle, in the aborted flesh that will make us comfortable it was in fact a fetus.

27- The longest duration of postnatal bleeding: Modern medicine affirms that the uterus may continue to expel its remaining discharges for a period of up to six to eight weeks. Based on that, the position that is more in agreement with the modern medical science is that the longest period of legally consequential postnatal bleeding is sixty days.

28- Postpartum bleeding from giving birth to twins: What appeared to me is the strength of the position that every delivery is followed by postnatal bleeding. It is the agreement of physicians that the blood that flows after each delivery is caused by it, and not pathological. As for the rulings pertaining to the waiting period, it ends only upon the last delivery by consensus.

29- Brain death: most scholars permit taking a patient off life support upon his brain death. That is the correct position, for seeking treatment is not always obligatory. As for the controversy considering the equation of brain death to death, there is no doubt that every group of the scholars had valid evidence, and I could not reach certainty with regard to choosing one position over the other. There may be an exit out of the need to make that ruling about the brain dead for the utilization of his organs. That is to transfer the brain dead patient to the operating room and then take him off the life support and wait until his heart stops, and then, he would be ruled dead by agreement. At that time, the organs needed, including the heart may be transferred.

30- Dissection of dead bodies: What appeared stronger to me is the position of the majority allowing dissection. The need for this has become great with the advancements in the medical practice. There are conditions for this permissibility, such as the presence of the need, and the lack of alternatives, as well as the respectful treatment of the bodies being dissected.

31- Fasting: the opinion that appeared stronger in my view is the opinion of scholars that limit the *jawf* (hollow interior) to whom the reaching of objects nullifies the fast to the *jawf* that is capable of breaking food down. In addition to breaking the fast by anything that is similar to eating in form (like swallowing non-nutritive substances,) the fast will be broken by the reaching of any nutritive substances to the stomach, small intestines, as well as the large intestines, or directly to

the blood if that substance is of any benefit to the body such as fluids, salts, and glucose. This is because such acts are similar to eating in effect.

32- Filth eating animals and feeding corpses to livestock: the ruling that makes prohibited eating filth eating animals and feeding corpses to animals is the stronger opinion in my view and that is due to manifest implications of the prohibition in the Quran. The modern medical sciences have clarified some of the wisdoms of this prohibition. Even with upholding the position that makes permissible any substance after its complete transformation (from filthy to pure, through processing or naturally), the transformation here is incomplete. That is because the processing done to change those corpses into fodder will not rid them from all harmful substances, even if it changed their color, taste and smell.

33- Smoking: it was clear to me after reviewing the opinions of earlier scholars in the eleventh and twelve century that their differences on the ruling of smoking were based on the establishment vs. denial of harm. So, whoever allowed it or considered it only disliked claimed the lack of harm, or that harm, if existent, is limited to some smokers not all. Medicine has proved that its grave harm does not only afflict the smoker alone, but those around him as well.

34. Masturbation: Since there is no authentic and clear evidence on the prohibition, the default ruling is its permissibility, yet it is disliked for those who do it for no need because it is something noble and virtuous people would avoid. On the other hand for those who do it for a need, there is no harm. There are ways that should be heeded to and followed for protecting one's self and controlling the desires and they take precedence to what we have mentioned, better, and are more worthy to be followed by the noble people. Of those arrangements are prophetic advices, which no one forgoes except the foolish.

35. Medical treatment: the stronger view is that obligation is the default ruling of seeking medical treatment from harmful diseases with safe medicines; even though the five categories or rulings are applicable to seeking different kinds of treatment. The majority of contemporary scholars have agreed on the obligation of seeking medical treatment under certain circumstances, such as emergency cases where the life of the person affected is in danger or cases of contagious diseases. There is no doubt that the medical treatment that our jurists spoke of is different than what is being practiced today. The medicine today is definitively known in some cases to be effective in treating certain diseases with Allah's permission the same way it is definitively known that fire burns wood and knives cut meat. Based on the previous, one cannot imagine that in the religion of "no harm" the default ruling of seeking medical treatment would be anything other than obligation, after knowing that the medicine is most probably beneficial, sometimes that knowledge approaches certainty.

36. Minimum length of Pregnancy: The setting of six months as the limit for the shortest pregnancy based on the two verses that address pregnancy and breastfeeding is a clever deduction from subtle evidence. Yet, the two verses do not indicate with any measure of certainty that a newborn delivered prior to that will never live. As for the consensus, it is true that more than one scholar reported it, and we know of no scholars who disagreed with that position. Yet, what is apparent is that they stated that the newborn that is born before six months will have no stable life (*hayah mustaqirrah*) since the cause of death existed in him since birth. Therefore, the six months are the shortest period of pregnancy after which the newborn may live without medical intervention. Thus, if the woman delivers a newborn after six months from her marriage have lapsed, then the paternity of the husband is confirmed without consulting the physician. Yet, if she delivers him before that and he lived upon medical intervention, the physicians may be consulted to determine the condition of the newborn and whether his age at birth was less than six months from the time of conception.

37. The Maximum length of Pregnancy: Modern medicine does not know of any cases of pregnancy longer than forty five weeks and that is not imaginable based on modern medical sciences. The truth that should be followed, with the lack of any definitive textual evidence, is that the longest pregnancy does not surpass ten months. It is prudent, though, for the law to make the period one year, as indicated by Muhammad ibn Abdul-Hakam (may Allah bestow mercy on him). Based upon this conclusion, the fatwa will need to change concerning several issues in the chapters of attribution of paternity, public imprecation (*li'an*), carrying out the punishment for fornication based on pregnancy (according to those who hold that position), and delaying the punishments for the sake of pregnancy when it is claimed, and endowments and bequests for the unborn fetus, beside many others.

38. Pregnancy from two seminal fluids (two fathers): modern medicine has confirmed the view of those who say pregnancy can't be from two seminal fluids.

39. The waiting period for the one whose periods ceased before the age of menopause: If we confirmed that her womb is free of pregnancy, using modern medical techniques, it would be acceptable for her to wait three months for her *'iddah* (waiting period) like the young and the one who reaches menopause.

40. Minimum age of puberty: what became apparent to me is that, medically, there is no specific age for the start of puberty, every case should be considered individually by looking for the signs of puberty. If the signs appeared, even before the time the jurists set for the beginning of it, it is to be considered natural puberty, but may only be legally consequential after age ten.

41. Maximum age of puberty: what became apparent to me is setting the upper limit at fifteen years of age; it is the position of the majority of scholars and it is the closest to correctness. This is based on the textual as well as the logical evidence, since at that age, the very vast majority of children would have reached puberty, and no consideration is to be given to rarities. ,

42. Hermaphrodite: for the determination of the sex of the child with ambiguous genitalia, and in the presence of trustworthy physicians, the newborn or child must be shown to the physician who will determine its type. The doctor should consider in identifying the sex several factors in addition to the chromosomal type, such as the external genitalia and the feasibility of treatment He should also be sympathetic to the social issues. Most importantly, the physician should never be separated from the jurists and should not make a decision on such issues without them. It is important at the level of the society at large, for the fiqh assemblies and boards of scholars to assume their role in this issue and clarify in detail the rulings thereof in light of the modern sciences. In the case of the lack of competent physicians, the recommendation would be to raise the one with completely ambiguous genitalia as a female until they may be shown to the physicians, if that was ever possible.

43. The Assembly of Jurisprudence in Mecca decided that those who have both female and male organs/signs should be decided based on what is prevailing of his features and qualities. If they are found to be male, the physicians should medically remove what would doubt his manhood. If they are found to be female, they should remove what would doubt her womanhood.

44. Utilization of corroborative evidence: what became apparent to me is that the proofs testify to the permissibility of the use of corroborative evidence, except in the prescribed punishments and retaliation. That is particularly true in settling disputes between people. Justice may not be served without their use and the judiciary will have no respect and will not be feared. This is because the types of crimes have become numerous and their tools are countless, and becoming more abundant on daily basis. It is not acceptable then, that we limit the evidence considered by the courts to certain ones and tie the hands of the judges. On the other hand, for retaliation (*qisas*) and prescribed punishments (*hudood*) we should use the corroborative evidence to press the offender to admit. If the corroborative evidence is definite and there is no evidence

on the crime of those mentioned in the revealed text or acted upon by the companions, the prescribed punishment should be avoided due to the doubt (created by the controversy over the use of such types of evidence). Yet, *ta'zeer* (punishment left to the judge's discretion) would then be warranted. As for drinking alcohol, doubtless corroborative evidence may be used whether it was of those used by the predecessors, or equal to them in certainty or stronger. That is so because of the great danger in drinking on the society and because of the confirmed practice of this by the companions. For theft, the thief is held financially liable if the victim's money was found in his possession and he also must be punished by a deterring punishment, which should be less than the prescribed one (*hadd*). In terms of retaliation, when the murder is established through corroborative evidence, the offender should be liable for the *diyah* (blood-money), and that is for the respect of the sanctity of life. Appropriate *ta'zeer* (punishment by the judge) is warranted when the evidence is strong, out of respect for the right of the victim and society.

45. DNA testing: is a way to prove the identity as well as the kinship with great precision; it should be used where *qiyafah* (establishing paternity through physical similarities) was used, and that is by the analogy of the superior. However, its use should not be limited only to that, but it should be used in applications where *qiyafah* may not be used due to the huge difference between them.

46. Fulfilling the rights to retaliation: the advancement in medical sciences does not prove one school of thought to be correct over the other in this case because they were based on different realities at their respective times. Currently, the advancement of surgical practices allows us to apply the retaliation principles to most of the wounds on the body and face except for the wounds that penetrate the hollow interior of the body, the compounded fracture of bones, and wounds reaching the brain coverings or the brain itself, and that is all for the great danger involved. In terms of effecting the loss of beneficial faculties (like vision and walking), contemporary medicine may have restricted the possibility to carry out such punishments because the physicians don't see the ability to do so with precision except with the eye sight. In terms of amputating limbs away from the joints, the contemporary medical practices are able to carry out the retaliation with a reasonable degree of precision and equity, in general, and that is all that is required according to the correct view. Thus, it widened the spectrum of application of the retaliation principles with regard to all kinds of amputation away from the joints that are deemed safe (not leading to more complications) by the experts. Contemporary medicine widens the spectrum as well in the retaliation from the breaking of bones of the limbs, not those of the skull, chest, upper thigh and back due to the involved danger.

47. Abortion and the beginning of human life: The soul is breathed into the body after one hundred and twenty days according to the consensus of scholars. Thus, the advancement of medical science will not greatly impact the fatwa, even though it may change our understanding of the stages of embryogenesis, and it may also give strength to the manifest meaning of the hadeeth or hudhaifah, which is reported by Muslim over the manifest meaning of the hadeeth of Ibn Mas'ood, according to al-Bukhari's narration. The latter hadeeth must be understood in light of its narration in Muslim. Yet, the advancement of these sciences and the recognition by the contemporary scholars of the truth about the various stages of embryogenesis has resulted in having more reservation against the permissibility of abortion. It is obvious that contemporary scholars are more conservative than the earlier ones in this regard.

All praise be to Allah and His blessings and peace be on His last Messenger.