

# The Islamic Verdict on ...

Cloning

Human Organ Transplantation

Abortion

Test-tube Babies

Life Support Systems

Life and Death

## Introduction

There have been immense scientific developments by scientists. These have been in the fields of biology, foetal sciences, science of cells, medical biology, genetic engineering, and last but not least animal cloning, as a preface for human cloning. These developments have exceeded all expectations and have been acknowledged with amazement.

These immense scientific developments and their applications, which were achieved through advanced technology, point to the greatness of Allah, His Might, His Wisdom, and the perfection of His creation. These things indicate that Allah is their Creator. They also indicate that they were not created by mere coincidence, because they follow a precise order and specific laws that control and regulate them. In addition, they have characteristics that fit their use and the purpose of their creation. All of this shows that these things could not have been created by coincidence because coincidence does not bring about such concise laws and such precise system. The concise laws and the precise system necessitate the existence of the Creator who is the Organiser, Perfector, Almighty, and All Wise.

Allah says,

“And we created everything according to a precise measure.”

[TMQ Al-Qamar 54:49]

He, the Most Exalted said,

“He has created everything and has measured it exactly according to its due measurements.”

[TMQ Al-Furqan 25:2]

This means that He created everything in a precise way and made it such that it is equipped to fulfil its needs. It was a creation made with wisdom and with exact measure, and it was not a creation without measure. This creation was made out of nothing, because creation (khalq) is making things of nothing, and not made from what already exists. Making something out of existing things is not considered creation.

These scientific developments and their applications were achieved by scientists and made possible by astonishing new advances in technology. This technology relating to humans, animals, plants, or matter

is only a tiny fraction of the many things that exist in this universe, a universe that has many things which remain unknown. It is also part of the laws and systems which control things, and regulate them, and part of the characteristics which Allah has given the creation so that it will facilitate its functions to achieve the things that they were created for.

Allah, the Most Truthful, said

“The knowledge that you were given is only a small fraction.”

[TMQ Al-Isra’ 17:85]

The achievements of the scientists are a small discovery of some of these systems, laws, and characteristics of the universe. There was no creation in what was carried out, because it was not a creation from nothing, rather it was a demonstration of what is already in existence. As science advances, and as scientists make more discoveries, the magnificence of the Creator and His full Might and great Wisdom becomes more and more evident. This increases our strength of belief in Him.

Allah (subhanahu wa ta’ala) says

“We will show them Our signs in the horizons and in themselves

so they will see it is the truth.”

[TMQ Fussilat 41:53]

These astonishing scientific developments which have reached the extent of the cloning of plants and animals and is moving towards cloning humans, has become a fact of life; its presence is clear. The issues that arise need to be examined from the perspective of looking after the affairs and supervision over the society since there are implications upon the lives of Muslims.

These advances are the results of scientific experiments, and science is common and is not specific for a particular culture or viewpoint about life. However, science’s uses and applications are based on a way of life and are specific for each culture. These advances appeared in the Western world first, and were adopted and utilised by the West because they are of a certain benefit. This is based on the fact that the Western world has adopted a viewpoint based the detachment of religion (Deen) from life, and it is the human who makes the legislation for life’s affairs. Sovereignty is to the people, and the people have the intellect and the ability to distinguish the good from the bad and the beneficial from the harmful. In addition, it made seeking the materialistic value, which is expediency (naffiya), to be its criterion in life and made it the only to be considered. It does not give much consideration to any other value, whether they were spiritual, moral, or humanitarian. Any act, which achieves any of the previously mentioned values, is only done when it achieves benefit. If no benefit is seen in the action, it will not be done and it is not given any attention.

Therefore, when the West utilises science and its applications, their only consideration is that it achieves a material value for them, i.e. it achieves benefit, regardless of whether it agrees or disagrees with the spiritual, moral, or humanitarian values. These values are not a criterion for action in their view and they have no consideration in their actions, and their only criterion is the materialistic value, which is manifested by achieving benefit.

This Western view of life has brought great disasters to the world. The two World Wars were a product of this view of life, because they were started to extend their influence, to colonise, to achieve benefits and to steal the wealth of other people.

Adopting this view of life which is based on benefit and freedom and includes personal freedom, has resulted in a sexual frenzy. People have become loose to the point that societies in the West have become like herds of animals. Fornication, adultery, sexual relationships outside wedlock, and homosexuality have become common. All of this is condoned by law, which has resulted in many illegitimate births and many illegitimate children. The rate of these births has exceeded 45% according to statistics that were published in the Western media. This means that about one half of the children in the West are illegitimate, and some of them are in positions of power, leadership, and decision making.

As a result, the spiritual, moral, and humanitarian values have been lost in Western societies. The family unit has been destroyed, chastity has been killed, and honour no longer exists. The large number of births from fornication, adultery, and sexual relationships outside of marriage, led to the legalisation of abortion in many Western countries. This has given the opportunity to women to end their pregnancies especially if they resulted from a relationship outside of marriage. These countries headed by the United States, started to market this to Muslim societies in conjunction with the idea of birth control, as was done in the Population Conference that was held in Cairo and the Women's Conference that was held in Beijing. All of this aims at making the societies in the Islamic world just like the Western societies, so that it kills the values and Islamic morals that remain in these societies, destroys the family, and unleashes the sexual frenzy. This will make it possible for the Western world headed by the United States, to control the Islamic world, and to entrench their concepts, culture, and their viewpoint on life in the societies in the Islamic world.

This view of life is based on Kufr, and it contradicts the Islamic viewpoint totally. In Islam, humans are obliged to run their life's affairs according to the commands and the prohibitions of Allah, and they are required to measure their affairs only according to the Islamic criterion of Halal and Haram. Halal is that which Allah has allowed, and Haram is that which Allah has prohibited. The rules of Halal and Haram are taken from the shari'i sources of the Qur'an and the Sunnah, and what is derived from them of Qiyas and the consensus of the Sahabah. Halal is to be adhered to and Haram is to be avoided, regardless of the benefit and harm or the merit and demerit. This is because what matters is the law of Allah, since it is Allah that legislates and not humans. The role of the human mind is to understand the text and not to legislate the texts or laws.

Although science is common and not particular to a view of life, its products and its applications, are to be used according to the Ahkam Shari'ah. That which is allowed from Shari'ah can be taken and used, and that which is prohibited is to be left out. This is the way that we should view and deal with all things that are the products of science.

It is based on this that we have dealt with the subjects in this booklet. We have measured it with the shari'i texts, and tried to the best of our ability in this regard. Based on the text, we have made it clear what can be taken and what should be avoided regardless of the benefit and harm. This is because true benefit is that which the Wise Legislator considers beneficial. That which is not considered beneficial by the Legislator should be left out. It is prohibited to take it because taking it is in contradiction with the shari'i rule and whoever does it is sinful.

Based on this, we have looked at the issues of cloning, organ donation, abortion, test-tube babies, life-support systems, and the issue of life and death. We have tried our best, and we ask Allah Almighty that we have reached the right shari'i verdict. We ask Him also to guide all Muslims to adhere to the shari'i ruling, to honour them with the re-establishment of the Khilafah, and restoring the rule with the Book of Allah (swt) and the Sunnah of His messenger (ﷺ). This is not difficult for Allah (swt).

“O Allah, do not hold us accountable if we forget or make a mistake.”

[TMQ Al-Baqarah 2:286]

5th of the sacred Muharram 1418AH,

12th May 1997 CE.

## **Cloning**

Cloning is to make a duplicate copy of the original living thing such as a plant, animal or human.

Human cloning is to make a duplicate copy of the human himself. A particular human can be duplicated by taking a living cell from that human, taking out the nucleus of that cell, and implanting it in a woman's egg after taking out the nucleus of that egg. This is done in a way similar to fertilisation or artificial insemination, by which the nucleus of the cell that was taken from the body of a particular person, is inserted in the egg that was taken from a woman, by using special chemicals and a specific electric current to combine the nucleus of the cell with the egg. After they are joined together, the egg (that has the cell's nucleus) is implanted in a woman's womb so that it can reproduce, grow, and divide and form a complete foetus which is then born as in a natural birth. This will be a duplicate of the original person from whom was taken the cell whose nucleus was taken and implanted in the woman's egg.

The impregnation in the process of human cloning takes place between the human body cells and not the sexual cells. Every human has millions, even billions of cells in his body. Every cell has 46 chromosomes, which is the genetic substance that carries all inherited characteristics of the person, besides the sexual cells, which come from the testicle of a man and the ovary of a woman. Each cell of the sexual cells in both man and woman has only 23 chromosomes, which is half of the total chromosomes in the body cells.

In natural fertilisation, the spermatozoa of the man which has 23 chromosomes joins with the ovum of the woman which also has 23 chromosomes. Hence, a total of 46 chromosomes are there, half from the man and half from the woman and, therefore, the baby will take from the characteristics of both the man and the woman.

In the cloning procedure the cell, which is taken from the body of a particular person, has 46 chromosomes, which includes all the inherited characteristics of that person. The baby, who is born as a result of the cloning procedure, inherits only the characteristics of the person whose cell's nucleus was used. He will be a genetic duplicate of that person just like making a copy using instant colour photocopying, where you get an exact duplicate.

Natural fertilisation can only occur with a male and a female using the sexual cells. Cloning, on the other hand, can be done with or without a male, by using body cells and not sexual cells. This can be done without a male, by taking a body cell from a female. The nucleus is extracted, which has 46 chromosomes, i.e. all the inherited characteristics. Then this nucleus is implanted in a woman's egg after the egg's own nucleus has been removed. The egg is then implanted in a woman's womb. After implanting this egg in the woman's womb, it starts to reproduce, divide, grow, and become a foetus. Then, it becomes a full being. When it is born, it will be a duplicate of the female from which the cell was taken. Therefore, the cloning process in this case has been done in all of its stages without the need for a male.

In natural fertilisation, the characteristics that are inherited are taken from both the father and the mother. As a result, the children will not be identical. The similarities between the children and the parents, and among the brothers take different forms in terms of the shape, height, profile, colour, mental abilities, and the congenital psychological characteristics.

Inheritance of characteristics in the case of cloning results in the transfer of all the characteristics of the

person whose cell was used, male or female. The newborn will be a duplicate of the original person in terms of height, profile, colour, mental and other congenital psychological characteristics. This means that it inherits all congenital characteristics. However, the gained characteristics are not subject to inheritance. If the cell is taken from a respected scholar, an outstanding mujtahid, or a distinguished physician, the clone will not inherit these characteristics because they were gained and not congenital with that person.

The discovery of the cloning process has uncovered one of the laws that Allah (swt) installed in the cells of the humans and animals. The cloning process has demonstrated that any body cell of humans or animals can produce children, if the nucleus of that cell is extracted and implanted in a woman's egg after removing its own nucleus, just like the male sperm when it fertilises the egg from a female.

This is the reality of human cloning. There is another kind of human cloning which is the foetal cloning. This is done by making a duplicate of the foetus which is formed in the womb of the mother. In this process, a person can make clones of his children during the foetal period. At the start of the formation of the foetus in the mother's womb, doctors can divide the newly formed single cell (zygote) into two cells and even more. Therefore, the process will produce more than one cell that is a duplicate of the original zygote. This will result in twins born out of this foetal cloning, and will be a duplication of the zygote, which they were copied from.

Cloning has already been done with plants and recently in animals. It has not been done with humans yet. So, what is the shari'i ruling on cloning?

The aim of cloning in plants and animals is to improve quality and increase productivity, and to find a natural cure for many common human diseases, especially the acute ones, instead of using chemical drugs which have harmful side effects on man's health.

The improvement in the quality of plants and animals and the increase of productivity is not prohibited from a shari'i perspective, and it is among the things that are allowed. Also, the use of plants and animal cloning to cure human diseases, especially acute ones, is allowed in Islam. It is even recommended because seeking a cure for illness is recommended and manufacturing medicine for curing is recommended as well. Imam Ahmad narrates from Anas, he said; that the Prophet (ﷺ) said, **"Allah (swt) has created the illness and the cure. So seek a cure."** Abu Dawud and Ibn Majah also narrated from Usama bin Sharik, he said; I was with the Messenger (ﷺ) when (Bedouins) came to him and asked: "Oh Prophet, should we seek a cure for our illness?" He said, **"Yes. O servants of Allah, seek a cure. Allah Almighty did not create a disease without creating a cure for it."**

Therefore, it is allowed to use the cloning process to improve the quality of plants and to increase their productivity. It is also allowed to use the cloning process to improve the quality of cows, sheep, camels, horses, and other animals, in order to increase productivity of these animals and to increase their numbers, and to utilise this to cure many of the human diseases especially the acute ones.

This is the ruling concerning cloning plants and animals. As for cloning human beings, assuming it will happen although it has not happened yet, it is as follows:

For foetal cloning, the zygote is formed in the womb of a wife as a result of the husband's sperm and the wife's egg. That zygote is divided into many cells, which can divide and grow. These cells are divided so that each cell becomes a foetus by itself, as a duplicate of the original zygote. Then, if they were to be implanted in the womb of a foreign woman or in the womb of the husband's second wife, these two forms of cloning would be Haram because this would result in mixing of kinship. Then, it would cause loss of kinship, and Islam has prohibited this.

If on the other hand, one or more of these zygotes were implanted in the wife's womb (who was the source of the original cell) then this form of cloning would be Halal. This is because it is a multiplying

of the zygote, which existed in the wife's womb through a medical procedure to bring about identical twins.

This is the rule concerning foetal cloning.

As for the cloning of humans, it has not been achieved yet although scientists say that cloning of animals is a step in that direction. Cloning of humans would be done by taking a body cell from the male, extracting its nucleus, merging it with a female's egg after removing the egg's own nucleus. This male nucleus in a female egg would be transferred to a woman's womb to double and grow. Hence, it would become a foetus and then a baby, which is a duplicate of the original male from whose body the cell was taken. Also, cloning could be done among females only without a need for a male. This is done by taking a cell from the body of a female and extracting its nucleus in order to merge it with a female's egg. Then, the egg is transferred to a woman's womb after it is merged with the cell's nucleus, to grow and become a foetus and then a baby, which is a duplicate of the female from which the cell was taken. This is what happened with Dolly, the sheep, where the nucleus was taken from a sheep's breast cell. Then, the elements related to the breast were taken out from this nucleus and the nucleus was placed in a sheep's egg after removing its own nucleus. The cell was placed in the womb of a sheep to multiply and grow, and become a foetus. Dolly, the sheep, was born as an exact duplicate of the first sheep from which the cell was taken.

This cloning of humans, males or females, if done, would be a disaster for the world. This would be the case whether the aim was to improve quality, select the offspring which is smarter, stronger, braver, healthier, or more beautiful, or if the aim was to increase the number in order to increase the population or to make the state stronger. This would be a cause of evil. It is Haram and not allowed. This is because of the following:

1. The production of children in this manner is different from the natural way that Allah has made humans to reproduce their offspring.

Allah says,

“And that He (Allah) created the pairs, male and female. From Nutfah  
(drops of semen – male and female discharges) when it is emitted.”

[TMQ An-Najm 53:45-46]

He also says,

“Was he not a Nutfah (drops of semen) poured forth? Then he became a clot;  
then (Allah) shaped and fashioned (him) in due proportion.

And made him in two sexes, male and female.”

[TMQ Al-Qiyamah 75:37-39]

2. The children who are born out of cloning females, without a male, have no fathers. In addition, they will not have mothers if the egg that was merged with the nucleus of the cell was placed in the womb of a female different from that female whose egg was used in the cloning process. This is the case because the female whose womb was used to implant the egg is no more than a place to house the egg. This will lead to the loss of that human, where he has no father and no mother. This contradicts the saying of Allah ta'ala,

“O mankind! We have created you from a male and a female.”

[TMQ Al-Hujurat 49:13]

and also His saying,

“Call them by the names of their fathers, that is more just in the sight of Allah.”

[TMQ Al-Ahzab 33:5]

3. Loss of kinship. Islam has obligated preserving affinity and maintaining it. Ibn Abbas said that the Prophet of Allah (ﷺ) said, **“Whoever claims relationship by birth to other than his father or belonged to other than those he belongs to, then the curse of Allah, the Angels, and all the people be upon him.”** (Narrated by Ibn Majah). Abi ‘Uthman an-Nahri said that he heard Sa’d and Abu Bakrah each of them saying that they had heard and understood from Muhammad (ﷺ) saying, **“Anyone who makes a claim for somebody other than his father and he knows that he is not his father, then Paradise is forbidden for him.”** (Narrated by Ibn Majah). Abu Hurayrah also narrated that he heard the Prophet of Allah (ﷺ) saying (when the verse of cursing was revealed), **“Any woman who introduced to some people an offspring that does not belong to them, then she has nothing to do with Allah and she will not enter Paradise; and any man who denies his son while looking at him, Allah will not reveal Himself to him and Allah will disgrace him in front of the first and last generations.”** (Narrated by Al-Darimi).

The cloning which aims at producing people who are outstanding in terms of their intelligence, strength, health, and beauty would mean choosing the people with characteristics among the males and the females regardless of if they were married couples or not. As a result, the cells would be taken from the males who had the required characteristics, and the eggs would be taken from selected women and implanted in selected women. This would lead to the kinship being lost and mixed.

4. The production of children through cloning prevents applying many of the shari’i rules, such as the rules of marriage, kinship, alimony, fatherhood, sonship, inheritance, custody, Maharim and ‘Usbat (forbidden degrees of consanguinity) in addition to many other shari’i rules. The affinity would get mixed and would be lost. This goes against the natural way that Allah has created people, in terms of reproduction. This is an evil process and it would change the structure of society.

Therefore, human cloning is Haram from a shari’i perspective and it is not allowed.

Allah ta’ala said quoting the cursed shaytan,

“I will command them to change the creation of Allah.”

[TMQ An-Nisa’ 4:119]

The creation of Allah is the nature (fitra) which Allah has created in people at birth, and the nature (fitra) of reproduction of humans from a male and a female through the fertilisation of the sperm of the male with the egg from the female. The law of Allah is that this process is to be done between a male and a female with a valid contract. It is not the nature (fitra) that reproduction and birth are achieved by cloning. This is in addition to the fact that this would happen between a male and a female who do not have a valid marriage contract that binds them.

### **Human Organ Transplantation**

Organ transplantation here means the transfer of organs from one human to another, such as the transplant of a hand, a kidney, or a heart. The transfer of one organ or more from a person during his

lifetime or after his death to another person has the following shari‘i rules:

#### **A. Transfer of organs during the lifetime of the donor:**

It is allowed for a person during his life to donate an organ or more, with his consent, to another person who needs the donated organ, like the hand or kidney. This is because the person has a legal (shari‘i) authority over his organs. For example, if his hand is severed or his eye removed by another person he can take the diya (blood-money), or he can forgive the person for severing his hand or taking out his eye. The fact that he is allowed to forgive the severance of his hand or removal of his eye means that he can donate the diya. This means that the person owns the diya and, therefore, he owns the organ when he donates its diya. The fact that he owns his organs means that he has the right to act on them. Therefore, that person can donate his organ to somebody who needs it. Allah has allowed forgiveness for qisas and diya. He said,

“But if the relatives (or one of them) of the killed (person) forgive their brother (the killer) something (i.e. not to kill the killer by accepting the blood-money in intentional murders) then the relatives should demand blood-money in a reasonable manner, and the killer must pay with handsome gratitude. This is an alleviation and a mercy from your Lord.”

[TMQ Al-Baqarah 2:178]

#### Conditions for donating organs during the person’s lifetime:

It is a requirement for somebody who is donating an organ during his lifetime that the organ should not be vital for his own life. His life should not depend on it, such as his heart, liver or lungs. This is so, because donating such an organ will cause death to that person, and he will be killing himself. It is not allowed for a person to kill himself, or to consent to somebody else killing him.

Allah said,

“Do not kill yourselves.”

[TMQ An-Nisa’ 4:29]

He also said,

“And do not kill anyone which Allah has prohibited, except for a just cause.”

[TMQ Al-Isra’ 17:33]

This includes killing others and also killing oneself. Imam Muslim narrates that Thabit ibn al-Dahak said that the Prophet of Allah (ﷺ) said, “... **and whoever kills himself with a tool, then Allah will punish him with that tool in hellfire.**” Imams Bukhari and Muslim narrated on the authority of Abu Hurayrah that (he said that) the Prophet of Allah (ﷺ) said, “**Any one who throws himself from a mountain so he killed himself, then he is in hellfire.**”

It is not allowed for a person to donate his testicles, even if donating them does not lead to his death. This is so, because the Prophet (ﷺ) disallowed castration which makes a person impotent. Imam Bukhari narrates that ‘Abdullah ibn Mas‘ud said, “We used to go with the Prophet (ﷺ) on expeditions and we did not have our women so we asked him: ‘Can we castrate ourselves?’ He forbade us from doing so.” This same ruling applies to donating one testicle, even if it does not make the person impotent. This is because the sexual cells, the testicle for the male and the ovary for the female, are the cells of the reproductive organs, which produce children. The offspring of the person comes from the sexual cells. In the testicle, there exist the cells that make sperm; it is the factory that makes the sperms.

The testicle is the storage place and the factory that produces the sperms from its cells. This is regardless of if it is still with the original owner or with the person to whom it was transferred. As a result, the children produced by the person who received the testicle, would have the genetically inherited characteristics of the person who donated the testicle, because that testicle would produce the sperms that produce the children. Therefore, these children would inherit the characteristics of the person who donated the testicle, and they would not inherit any of the characteristics from the person who received the testicle. Thus, the person who donated the testicle is considered the father from a biological point of view. Therefore, it is not allowed to donate one testicle, and it is not allowed to donate two testicles. The donation of two testicles leads to impotence of the donor, and the donation of one testicle or two testicles leads to the mix of affinity; and loss. Islam has prohibited this, and it commands that kinship needs to be preserved. It also makes it Haram for a person to relate to someone other than his father. Ibn Majah narrated from ibn Abbas that the Prophet of Allah (ﷺ) said, **“Whoever claims relationship by birth to other than his father or belonged to other than those he belongs to, then the curse of Allah, the Angels, and all the people be upon him.”** Ibn Majah also narrated from Abi ‘Uthman an-Nahri that he heard Sa‘d and Abu Bakrah each of them saying that they had heard and understood from Muhammad (ﷺ) saying, **“Anyone who makes a claim for somebody other than his father and he knows that he is not his father, then Paradise is forbidden for him.”** Islam also made it forbidden for any woman to introduce to some people an offspring that does not belong to them, or for a man to deny his own son. Al-Darimi narrated from Abu Hurayrah that he heard the Prophet of Allah (ﷺ) saying (when the verse of cursing was revealed) **“Any woman who introduced to some people an offspring that does not belong to them, then she has nothing to do with Allah and she will not enter Paradise; and any man who denies his son while looking at him, Allah (swt) will not reveal Himself to him and Allah will disgrace him in front of the first and last generations.”**

## **B. Donating organs after death:**

The rule concerning the donation of organs from a person after his death to another person differs from the rule of donating the organ during the life of the donor. In order to reach the ruling about donating organs just after life ends, first we need to know the rule of who owns the dead body, the rule on the sanctity of the dead person, and the rule of necessity.

As for the rule concerning the ownership of the body after the persons death, we say that the body of the person after his death is not owned by anybody. So when the person dies, everything that he used to own or have authority over is now out of his authority or domain, such as the person’s wealth, body, and spouse. Therefore, the dead person has no control over his body. So he cannot donate any of his organs, and he cannot put it in his will. Therefore, it is not allowed to donate the organ or to put it as part of the will. As for the rule that allows the person to donate part of his money in his will, despite the fact that the money is taken after his death, the Legislator has allowed a person to give away up to a third of his wealth without the permission of the people who will inherit from him. Also, he can give away more than the third with their permission. This shari’i rule concerns only the wealth and cannot be extended to the body. Therefore, it is not allowed for a person to donate an organ after his death. As for the people who will inherit from him, Allah has given them his wealth and did not give them his body. Thus, they cannot donate one of his organs because they do not own his body and they have no authority to act on it. A condition of allowing the organ donation is that the donor and the disposer, should own and have disposition over that which he donates. If the people who inherit the dead person do not have authority of disposal of his body (in terms of donating organs), then others do not have such a right, by default, regardless of their position. Therefore, neither the doctor nor the ruler can decide to transfer one or more organs from a person who died to another person who needs it.

As for the sacredness of the dead body and harming it, Allah (swt) has made the sacredness of the dead equal to that of the living. He made it forbidden to violate the sanctity of the dead body and harm it, as is the case when he is alive. ‘Aisha, the mother of the believers, may Allah bless her, narrated that the Prophet of Allah (ﷺ) said, **“Breaking the bone of a dead person is just like breaking it when he is alive.”** (Narrated by Imam Ahmad, Abu Dawud, and Ibn Habban). Imam Ahmad narrated that

‘Amir ibn Hazm al-Ansari said the Prophet of Allah (ﷺ) saw me leaning on a grave and said, **“Do not harm the owner of the grave.”** Imam Muslim and Ahmad narrated on the authority of Abu Hurayrah that the Prophet of Allah (ﷺ) said, **“For somebody to sit on a burning piece of charcoal and burn himself is better for him than to sit on a grave.”**

These ahadith show clearly that the dead have a sanctity just like the living body. They also show that violating the sanctity of the dead body and hurting it, is like violating the living body and harming it. So, as it is not allowed for anyone to transgress against the living person by cutting his stomach, cutting his neck, taking out his eye, or breaking his bone, similarly it is not allowed to do this to the dead. As it is not allowed to harm the living by cursing, beating, or injuring, it is not allowed to do this to the dead. The difference is that transgressing against the dead body by breaking, cutting or injuring does not require compensation, as is the case with the living. This is the case since the Prophet of Allah (ﷺ) did not hold the person, who broke the bone of a dead body while digging the grave, financially liable. He only commanded him to bury the bone. He told him that to break the bone of the dead is similar to breaking it alive in terms of it being a sin.

To remove the eye of the dead person, or to cut him open to remove his heart, kidney, liver, or lungs, to transfer it to another person who needs it, is considered mutilation of the dead body, and Islam has forbidden mutilation. Bukhari narrated that ‘Abdullah ibn Zaid al-Ansari said, **“The Prophet of Allah peace be upon him prohibited looting and disfiguring.”** Imam Ahmad, Ibn Majah, and Nasa’i narrated from Safwan b. Assal he said that the Prophet of Allah (ﷺ) sent us on an expedition and said, **“Go in the name of Allah, and for the sake of Allah. Fight those who disbelief in Allah. Do not mutilate, betray, or kill children.”** By explaining the ruling of violating the sacredness of the dead and hurting him, it becomes clear that it is forbidden to cut open the dead person, and to take an organ from the dead to give it to somebody else. This is considered a violation of the dead person’s sacredness. This is hurting and disfiguring it. Violating the dead body and mutilating it is certainly forbidden by the Shari‘ah.

### **Case of duress:**

The case of duress is the case where Allah allows the person who is in dire need because he has no food, and his life is threatened, to eat of whatever he finds of food; food which is otherwise forbidden such as dead meat, blood, flesh of swine, and other things. So will it be allowed in this case to transfer an organ from a dead person to a living person to save his life where his life depends on the transfer of such an organ to him? To answer this question, we need to know the rule concerning duress, so that we can know the rule of transferring organs from a person who is dead to one who needs it. As for the rule of duress, Allah (swt) has allowed the person who is in dire need and has no food, and his life is threatened, to eat from what he finds of the food that Allah has otherwise prohibited, so that he can save his life. He is allowed to eat dead meat, blood, swine and other things prohibited by Allah.

Allah said,

“He has forbidden you Al-Maytah (meat of a dead animal), blood, flesh of swine, and any animal which is slaughtered as a sacrifice for other than Allah. But if one is forced by necessity without willful disobedience and not transgressing, then there is no sin on him.” [TMQ Al-Baqarah 2:173]

So the person who is in dire need can eat of what he finds from these prohibited foods that which is enough to keep him alive. If he does not eat from what is prohibited and dies, he is sinful, and he has killed himself.

Allah (swt) said,

“And do not kill yourselves.”

Based on what was mentioned of the rule of duress, can the same rule be applied to transferring organs from a person who is dead to another person who is in need of it to save his life by, the rule of analogy?

The answer for this needs to be examined. The condition to apply the rule of analogy in this matter requires that the 'illah (legal reason) in the subject being analogized (Maqis), transferring organs in this case, be common with the 'illah of the subject which analogy is being derived from (Maqis 'Alayhi), which is the case of duress for the one who does not have food. This has to be either in the essence ('Ayn) or in the type (Jins). This is so, because analogy is to extend the ruling of an original case to that of a branch case, using the 'illah of the original. If the 'illah of the branch is not common to that in the origin then the 'illah of the origin will not be existant in the branch and accordingly the ruling of the origin can't be extended to the branch.

For the case of organ transfer, these organs are either essential ones, by which the life can be saved to the best of knowledge such as the heart, liver, kidneys, or lungs, or non-essential organs which include the eyes, the second kidney for the one who has a working kidney, the hand, the leg, and the like.

For the non-essential organs which life does not depend on, the 'illah of the original case, which is saving the life, is not present here. Hence, the ruling of duress does not apply. So it is not allowed to transfer the eye, second kidney for one who has a working one, hand, or leg from a dead person to a living one in need of it.

In the case of essential organs, by which life can be saved to the best of knowledge there are two cases: First, the 'illah, which is saving the life, is not certainly existent, like the case of eating the forbidden for necessity. Eating from what is prohibited of food will certainly save the life. On the other hand, transferring the heart, liver, lungs, or kidneys does not certainly save the life of the person to whom they were transferred. Saving the life may occur and it may not occur. Numerous incidents have occurred when organs were transferred which prove this. So, the 'illah here is not complete.

The second case relates to another condition for qiyas (analogy): the desired (Far'ah) case has to be void of any outweighing objection that contradicts the outcome of the 'illah of the analogy. In this case of transferring organs, a clear outweighing objection is present which contradicts the result of the 'illah of the qiyas. This objection is the forbidding of violating the sanctity of the dead body, hurting, or mutilating it. This outweighing text contradicts using the 'illah to permit transferring organs.

Based on these two cases, it is not allowed to transfer essential organs, by which life can be saved, such as the heart, liver, kidneys, or lungs from a dead person who has a protected blood, whether he is a Muslim, a Dhimmi (a citizen of the Islamic State), Mu'ahid (from people who have a treaty with the Islamic State) or Musta'min (any individual entering the State via permit), to another person whose life depends on transferring these organs.

### **Abortion (ijhadh)**

Abortion is one of the problems of societies in the Western world. Abortion has become widely used as a result of corruption in these societies, and the increasing illegitimate births that have resulted from the countless occurrences of fornication and adulterous sexual relationships outside marriage. These illegitimate births have reached 45% of the total births according to statistics published by Western sources. This percentage varies according to time and place such that it reaches 70% in some of these countries.

These illegitimate births have resulted from the unconstrained sexual desire existing in the Western societies, arising from adopting the 'aqeedah of separating life from the Deen leading to the idea of

liberties such as personal freedom. This freedom permits the human to enjoy all kinds of pleasure in life, to the point that fornication, adultery, and relationships outside marriage become widespread and condoned by the law. This leads Western societies to become like herds of animals as a result of this freedom and the unleashing of their sexual instincts.

The large number of illegitimate births, which account for half of the children in Western societies being illegitimate, led many of these countries to issue new laws to allow women who want to end their pregnancies to do so, especially those resulting from fornication, adultery, or a relationship outside marriage. This is so because in Western societies, it is the mother who has to look after the children born as a result of fornication, adultery, and relationships outside marriage.

As part of what they market to us from their culture, the Kafir countries in the Western world, headed by the United States, started to market the legalisation of abortion. By this, they want to spread corruption among Muslims in order to destroy the family and whatever is left of the Islamic values and morals in the societies of the Islamic world.

This is the reality of the matter in the Western societies. As for the societies in the Islamic world, abortion is not widespread there because fornication, adultery, and relationships outside marriage are not common. When abortion is used, it is mostly used to save the life of the mother.

As for the reality of abortion and the shari'i verdict on it:

Abortion linguistically means to remove the foetus from the womb. When it is said that the camel has aborted, it means that it got rid of its foetus before completing the term. The Muslim jurists have defined abortion as getting rid of the foetus before completion of the duration of pregnancy. Other terms are also used to lead to the same meaning such as imlas, isqat, ilqa, and ikhraj.

Abortion can result from an action taken willingly by a woman, such as taking a special medicine, carrying a heavy load, strong physical activities, or by requesting that a doctor perform an abortion. It can also result from a violent action by others. Also, it can happen spontaneously without the woman's will.

Abortion can occur either after the Ruh (soul) is given to the foetus or before that. If abortion occurs after the Ruh is given to the foetus, all Muslim jurists agree that it is forbidden regardless of whether it happens by the mother, father, doctor, or by an attack by somebody else. This is so because it is an attack on a human soul, which has a life and is protected by the Shari'ah. It is a crime that requires the diya (blood-money) which is equal to ghurrah (the diya on a slave, male or female). This value is one tenth of the diya of a complete born human.

Allah said,

“And kill not anyone whom Allah has forbidden, except for a just cause.”

[TMQ Al-Isra' 17:33]

Imams Bukhari and Muslim narrated from Abu Hurayrah that “...the Prophet of Allah (ﷺ) has judged on a foetus for a woman from Bani Lahyan, which was aborted, to pay a ghurrah, a slave male or female...” Ghurrah is paid when the foetus has signs of human organs, such as a finger, a hand, a foot, a nail, or an eye. Based on this, aborting the foetus which has the Ruh given to it is forbidden according to all Muslim jurists without any disagreement.

In the case where the foetus is aborted before the Ruh is given, there is a difference of opinion among the Muslim jurists about its shari'i rule. Some of them allowed it and others prohibited it depending on the stage of pregnancy. It is our opinion that if abortion occurs after 40 or 42 days into the pregnancy,

and at the time of the start of foetal formation, it will be prohibited. The ruling is similar to the one after the Ruh is given. As a result, diya needs to be paid which is equal to one tenth of the value of the complete born human. This is the case because when the foetal formation starts, and some of the organs start to grow, such as the hand, foot, eye, or the nail, then it becomes certain that the foetus is on its way to becoming a complete human being. In this case, the rule in the previously mentioned hadith applies. It was narrated by Imam Bukhari that Abu Hurayrah said, "...the Prophet of Allah peace be upon him has judged on a foetus for a woman from Bani Lahyan, which was aborted, to pay a ghurrah, a slave male or female..." Also, Imam Muslim narrates from ibn Mas'ud that he said that he heard the Messenger of Allah (ﷺ) saying, **"When 42 nights have passed on the nutfah (mixed male and female discharge of semen), Allah sends an angel to form it. He creates its hearing, vision, skin, flesh, and bones. Then, the angel says, O Allah! male or female? Then it will be ordered..."** In another narration, **"40 nights"** was mentioned instead of 42. The hadith indicates that formation starts and the organs start to show after 40 or 42 nights. Therefore, an attack on this foetus is an attack on a being that has a human life in it, which is sacred and protected by Shari'ah. This will be called wa'd. Allah has prohibited this.

He said,

"And when the female (infant) buried alive shall be questioned.

For what crime was she killed?"

[TMQ At-Takwir 81:8]

Therefore, it is prohibited to abort the pregnancy by the mother, father, or doctor. Anyone who commits such an act, is committing a sin and a crime; he needs to pay a diya for the aborted foetus, which is equal to that of a male or a female slave, or one tenth of a complete born human, as reported in the authentic hadith.

As for aborting the foetus before the completion of 40 days of pregnancy, it is Islamically permitted, and there is no punishment for that. This is because it has not yet become a foetus, and it is still a nutfa. The hadith of aborting the foetus does not apply to it. Aborting the nutfa before becoming a foetus is like the 'azl which is used to avoid pregnancy. 'Azl is done by the male who does not want the female to become pregnant by him. 'Azl is to discharge the sperm outside the women's vagina, and this will result in not utilising the sperm and, hence, its death. Also, this results in not utilising the woman's egg. As a result, the sperm will not meet the egg, and pregnancy will not occur. It was permitted by the Prophet of Allah (ﷺ) who was asked by a man who had intercourse with his female slave and he did not want her to get pregnant by him; the Prophet (ﷺ) told him, **"make 'azl if you want."** Jabir ibn 'Abdullah narrated that a man came to the Messenger of Allah (ﷺ) and said, "I have a female slave who is our servant and helper in the palm trees, and I have a sexual relationship with her, and I detest that she becomes pregnant." The Prophet (ﷺ) said, **"you can perform azl if you want, and she will get what is destined for her."** The Prophet called azl the hidden wa'd in the hadith narrated by Judamah. Imam Muslim and Ahmad narrated on the authority of Judamah al-Asadiyyah, daughter of Wahb, who said, "I was with the Prophet of Allah (ﷺ) among other people.... and they asked him about 'Azl, and he said, **"it is the hidden wa'd; she is the questioned female who was buried alive."** In the book Lisan al-Arab, it says: "In the hadith, (the Prophet) made it unlawful to bury females (daughters) alive, which means to kill them. In the hadith of 'azl, (the Prophet says) **"it is the hidden wa'd"**, and in another hadith **"this is the little wa'd."** He made 'azl like wa'd, but it is hidden because the one who does it intends to avoid having a baby; that is why he called it the little wa'd since wa'd of living girls is the big wa'd."

Besides, the companions, may Allah be pleased with them, used to practice 'azl when they wanted to avoid pregnancy during the time of the Prophet (ﷺ) with his knowledge and he did not prohibit them. Jabir ibn 'Abdullah narrated that: **"We were practising 'azl during the time of the Messenger of**

Allah (ﷺ), and the Qur'an was being revealed..." (agreed upon). Imam Muslim has another narration: "We were practicing 'azl during the time of the Prophet of Allah (ﷺ) and he knew and he did not prohibit us."

#### When it is allowed to abort the foetus:

It is allowed to abort the foetus in the early stages of formation, or after the Ruh is given to the foetus, if competent doctors decide that if the foetus remains in the woman's womb, it will lead to the death of the mother and the foetus. In this case, it is allowed to abort the foetus, and save the life of the mother. Saving lives is something that Islam calls for. This aborting is considered as a treatment, and the Messenger of Allah (ﷺ) commanded people to seek treatment and cure.

#### Imlas:

Imlas is to abort the pregnancy through an attack on the pregnant woman. It is a sin and a crime. A diya needs to be paid, which is a ghurrah, a male or a female slave. The value of the ghurrah is one tenth of the diya of a complete born person. It is narrated in the two books of Sahih, Bukhari and Muslim, that 'Umar ibn al-Khattab had consulted the companions in the case of imlas of a woman who was hit on her stomach which resulted in aborting her foetus.

Al-Mughirah ibn Shu'bah said "that the Prophet of Allah (ﷺ) has decreed in this case with a ghurrah which is a male or female slave." Muhammad ibn Maslamah seconded his narration (agreed upon).

#### **Test-tube babies**

The process of fertilisation between the sperm and the egg by using test-tubes is a medical treatment to allow the sperm of the husband to meet the egg of the wife outside the woman's womb. Hence, natural fertilisation will happen. Then, the egg is placed in the woman's womb through a medical process, so that pregnancy can occur naturally in the womb.

Natural fertilisation usually happens in the womb according to the way Allah (swt) has created people. In some cases, fertilisation cannot happen in this natural way. For example, when the fallopian tube is closed or damaged and it is not possible to open it or correct the damage, or when the husband's sperm is weak or cannot reach the egg, and it can't be treated by strengthening the sperm or by getting the sperm to reach the egg. Any of this will prevent the couple from reproducing. However, Islam has commanded Muslims to reproduce and encouraged them to do so. Therefore, if fertilisation cannot be done in the natural way, it can be done by having the fertilisation process take place outside the natural place by getting the sperm of the husband to meet the egg of the wife in a tube under similar circumstances as in the womb. Then, the fertilised egg is transferred to its natural place in the wife's womb so that pregnancy and then birth will proceed naturally.

This is a medical procedure to treat the above condition, and it is allowed by Shari'ah since it achieves something that Islam has commanded and encouraged which is reproduction. It is a main aim of marriage. Anas narrated that the Messenger of Allah (ﷺ) said, "Marry the affectionate who is prolific; I will be boasting about your number to the Prophets on the Day of Judgement." Also, 'Abdullah ibn 'Umar narrated that the Prophet of Allah (ﷺ) said, "Marry the mothers of children (i.e. who can have children); I will be proud of you on the Day of Judgement." Both were narrated by Imam Ahmad.

In the case where treatment is attempted to make the fertilisation happen in the natural way, and that does not work, then it is possible to have the fertilisation in another place, other than the natural place. The egg fertilised by the husband's sperm is returned to its natural place in the womb of the wife, so a normal pregnancy can proceed. This procedure is recommended since it achieves reproduction which

Islam calls for.

Usually, this procedure of achieving fertilisation is not used unless the procedure to achieve fertilisation in the natural way has been tried and has failed.

For this procedure to be allowed, the fertilisation in the tube has to occur between the sperm of the husband and the egg of the wife, and the egg after its fertilisation in the tube has to be placed in the womb of the wife. It is forbidden to place the egg in another woman's womb, i.e. surrogate mother. It is also forbidden for the fertilisation in the tube to be between the sperm of the husband and the egg of another woman other than his wife, even if the egg is placed in the wife's womb. It is also forbidden to have the fertilisation happen between the sperm of a male other than the husband and the egg of the wife, even if the egg was placed in the wife's womb. These three forms of fertilisation are forbidden from a shari'i point of view because they result in a mix and loss of kinship. This is forbidden in Islam.

Abu Hurayrah narrated that he heard the Prophet of Allah (ﷺ) saying (when the verse of cursing was revealed), **“Any woman who introduced to some people an offspring that does not belong to them, then she has nothing to do with Allah and she will not enter Paradise; and any man who denies his son while looking at him, he will not see Allah and Allah will disgrace him in front of the first and last generations.”** Ibn Abbas said that the Prophet of Allah (ﷺ) said, **“Whoever claims relationship by birth to other than his father or belonged to other than those he belongs to, then the curse of Allah, the Angels, and all the people be upon him.”** These three forms are similar to getting pregnant and giving birth by fornication or adultery except that there is no intercourse involved. Therefore the prescribed punishment for fornication and adultery is not applied on the woman and the man involved; however, the punishment for such a deed is left to the judge and falls under ta'zeer (punishment for a disobedient act which does not fall under hudood).

### The Use of Life Support Systems

The shari'i verdict concerning the use of life support systems and when to remove them depends on the shari'i ruling about seeking medical treatment. Is it obligatory to seek medical treatment? Is it recommended, allowed or not recommended? In order to extract the shari'i verdict, we need to get a clear understanding of the evidence. Bukhari narrated from Abu Hurayrah who said: “The Prophet of Allah (ﷺ) said, **“Allah has not created a disease unless it has a cure.”** Muslim narrated from Jabir ibn ‘Abdullah that the Prophet (ﷺ) said, **“For every disease, there is a cure. When the cure of the disease is reached to, he (the sick) will be cured by Allah's will.”** In the book of Musnad of Ahmad, it is narrated from ibn Mas'ud, **“Allah has not created a disease unless it has a cure; some will know it (the cure) and others will not.”**

These three ahadith indicate that Allah has given the illness and the cure for it, and He informed us that for every illness there is a cure. If the cure is reached to, then the illness will be cured by the will of Allah; some people will know this and some people will not. These ahadith say that for each illness there is a cure, and thus encourage the seeking of treatment which will lead to curing the illness by the will of Allah. The disease is from Him, the medicine is from Him, and the cure is also from Him, and not from the medicine. Allah (swt) has put in the medicine the ability to cure the disease. This direction from the Legislator is an indication and not an obligation.

Imam Ahmad reported that Anas said that the Prophet of Allah (ﷺ) said, **“Allah almighty has created the illness and the cure, so seek to cure yourselves.”** Abu Dawud and Ibn Majah narrated from Usama ibn Sharik that he was with the Prophet of Allah (ﷺ) when some people came from the desert and asked him: “Should we seek treatment from illness?” He said, **“Yes, O servants of Allah, seek treatment, Allah did not put out an illness except that he put a cure for it.”** In the first Hadith, the Prophet (ﷺ) commanded people to seek treatment, and in the second hadith he (ﷺ) directed the people from the desert to seek treatment since Allah has given the illness and the cure. The address in the two ahadith came in the form of a command, and the command indicates a request.

Such a request does not mean an obligation except when it is decisive. To be decisive, a command will need another indication to give it that meaning. There is no such indication in the two ahadith to tell us that the command is an obligation. In the first three ahadith, only information and direction are given, which indicate that the command for treatment is not an obligation. In addition, there are other ahadith which indicate that it is allowed not to seek treatment; this indicates that the command to seek treatment in the two ahadith does not denote an obligation. Imam Muslim narrated on the authority of ‘Imran ibn Husayn that the Prophet (ﷺ) said, **“Seventy thousand from my Ummah will enter Paradise without accounting.”** They asked, “Who are they?” He said, **“They are those who do not use ruqya (incantation), tatayur (omens), iktiwa’ (cauterisation), and they depend on their Lord.”** Imam Bukhari narrated that ibn Abbas said, “This black woman came to the Prophet (ﷺ) and said “I am an epileptic and when it happens to me, I get uncovered, ask Allah to cure me.” He said, **“If you want to be patient (with this illness), you will get Paradise and, if you wish, I can ask Allah to treat you.”** She said “I will be patient.” Then she said, “I get uncovered; ask Allah for me not to be uncovered.” He asked Allah for her.’ These two ahadith indicate that it is allowed not to seek treatment. In the first hadith, he said that among the people who will enter Paradise without accounting are those who do not do *istirqa’*, or *iktiwa’*, which means they do not seek treatment, and leave the matter to their Lord and depend totally on him. *Istirqa’* and *iktiwa’* are forms of treatment.

The Prophet (ﷺ) encouraged treatment with *istirqa’*, and the angel Jibril made *istirqa’* to him. He also said, **“Cure is in three things; cupping, a drink of honey, and ironing by fire...”**

If the shari’i verdict on using such equipment is recommended, then keeping the person on it until all his organs stop functioning is not an obligation because using it, to start with, is not an obligation. If the doctors find that the brain is dead, then they can turn off the equipment. This is because when the brain is dead, then life will not come back. The fact that some of the organs are functioning will not bring life back and they too will stop functioning soon.

Based on this, the verdict of using life support systems is the recommendation, especially when doctors decide that there is a need for them. It is allowed to remove the equipment after the brain dies, and the doctor does not commit a sin by removing them. He does not have any responsibility for that.

## Life and Death

Life is the opposite of death. Life phenomenon are manifested by comprehension, will, feeling, movement, breathing, growing and eating.

Death is the opposite of life. In *Lisan al-Arab* it is said that, “Death is the opposite of life.” Since death is the opposite of life, then it manifests itself in the opposite phenomenon of life. It manifests itself in not being able to comprehend, absence of will, lack of feeling, movement and breathing, and the termination of both growth and eating.

There are verses and ahadith which indicate that a person dies when the *Ruh* is extracted from the body, and his soul is taken by his Lord. Allah says,

“It is Allah who takes away the souls at the time of their death, and those that die not during their sleep. He keeps those (souls) for which He has ordered death and sends the rest for a term appointed.”  
[TMQ Az-Zumur 39:42]

Imam Muslim narrates on the authority of Umm Salamah that the Prophet (ﷺ) said, **“When the *Ruh* is taken, it is followed by the sight.”** The nature of the soul and the *Ruh* are not known except to Allah (swt). The extraction and the return of both to Allah are part of the unseen and do not fall under experimentation. It will, however, show some signs on the body indicate death.

Even though the verses and the ahadith indicate that life comes to an end by extracting the *Ruh* and

taking the soul, they do not give the precise moment when life ends. All that was mentioned is that when the Ruh is extracted, it is followed by human sight, as was mentioned in the previous hadith. In a similar narration, the Prophet (ﷺ) said, **“If you attend to people who are dying, close their eyes, because sight follows the Ruh.”** (Narrated by Ahmad on authority of Shaddad ibn Aus.)

Therefore, the precise moment of death will require investigating the manat (subject matter) to know if someone has died and his life came to an end. This will require expertise and knowledge.

Doctors, before the advances in science, medical technology and life support systems, used to consider that when the heart stops to beat, it indicates that the person is dead and his life has come to an end. At the present time, they no longer take that opinion, and they say that if the heart stops to function, this does not necessarily indicate that the person is dead. It is possible for a person to be alive, even when the heart stops functioning. Open heart surgery requires that the heart stops. The doctors say that what indicates death and the end of life is the death of the brainstem. It is the organ that connects the brain to the rest of the body parts and hence the outside world. It is through it that all feelings reach the brain, and through it all signals are transmitted from the brain to do certain tasks. It is the last part of the brain that stops to function. The death of the brain and the brain surface (cortex) occurs before the death of the brainstem. When the brainstem dies, the human dies and his life comes to a complete stop, even if his heart and lungs are still functioning in a natural manner or through a life support system. It is possible for the brain to die before the heart in the case of a direct hit on the brain, or if the brain is bleeding, or if the brainstem was cut. In case of illness, the heart will stop and die before the brain stops and dies. Incidents happen that puzzle doctors, where the brain stops while the other organs remain functioning. A case was reported in Finland where a woman, who had been in a coma for two and a half months as a result of a brain haemorrhage, gave birth. It is strange that the woman died two days after giving birth to her baby. While unconscious, she was breathing by machines, fed by tubes, and she was given a transfusion once a week for 10 weeks. She gave birth to a normal baby in good health and with normal weight.

This is the doctors' perspective on the issue. As for the jurists, they do not judge a person to be dead unless it is certain that he is dead. They mention some signs which indicate that the person is dead, such as no breathing, separation of lips, gazing of eyes, collapse of temples, tilting of nose, separation of forearms, and the flaccidness of feet.

If there is doubt about death, such as in the case of a heart attack, or shock, or when person is in a coma due to any reason, then people must wait until they are sure that he is dead by seeing the signs of death, or a change in his odour.

In our opinion, it is most likely that death can only be known as a certainty after seeing its signs as the jurists mentioned. This is because when a person is alive, we are certain of that life, and we cannot judge that life is finished with an unsure judgement. Certainty can only be changed with certainty, and doubting cannot be enough. This is because the origin remains as it is until and unless it is abolished, cancelled with certainty. Death is the opposite of life, and the signs of death, which are the opposite of the signs of life, should show. Some of these are the absence of comprehension, awareness, feeling, movement, and the stopping of breathing and eating.

Therefore, the opinion of the doctors on the death of the brainstem to indicate death, and that he is clinically dead, even if some of his organs are functioning and there is still life in him, that opinion is not the same as the shari'i opinion. The shari'i opinion depends upon the death of the brainstem and all the major organs, such as the heart, lungs, and liver. A person is not considered dead from a shari'i perspective until and unless all his major organs stop functioning and all signs of life come to an end.

The following two kinds of people have special shari'i rules; the person whose brainstem is dead with his major organs still functioning, and the doctors consider him as clinically dead, and the person who reaches the death pang, whose condition the scholars describe as that of the slaughtered without sight,

speech, or voluntary motion. Although people give up on the continuation of this person's life, that person has certain shari'i rules, some of them are:

**1. He does not inherit from somebody, and nobody will inherit from him while he is in that condition.**

He does not inherit from somebody else because he has lost the stable life, which has awareness and voluntary motion. A condition for a person to inherit is that he should have a stable life. However, inheritance will not be distributed until it becomes certain that he is dead.

Therefore, the foetus does not inherit until and unless it is born with signs indicating that it has a stable life, such as crying after birth or yawning. Jabir ibn 'Abdullah and al-Miswar ibn Makhramah narrated that the Prophet (ﷺ) said, **"A baby does not inherit unless he comes out crying."** (Narrated by Ibn Majah.)

As for the rule that others do not inherit from him and that his wealth is not divided while he is under this condition, this is because a condition for the transfer of the inheritance to the people who inherit from him is that his death be certain. The one whose brainstem is dead, and some of his other organs are still functioning or the one who reached the death pang and the slaughtered movement, there is some life left in him and his death is not certain. Therefore, his inheritance is not distributed until after it is certain that he is dead.

**2. Criminal act against him:**

A. If a person attacked another one and severed his brainstem, or got him to the death pang and the movement of the slaughtered, and it became certain that he would die, then, if a second person came and finished him off, then the killer would be the first one. This is because he had got him to the condition where there was no hope in him living. Therefore, he would be punished accordingly. Qisas (equal punishment by killing the killer) would take place.

The second person is not considered a killer, and qisas will not be applied on him, but there will be a ta'zeer punishment for him because he attacked the sanctity of a human being.

If the first person did not get him to the condition of a slaughtered person, but inflicted a serious injury on him, and he still had a stable life remaining such as awareness, feeling, and voluntary motion, and the second person came and finished him then the second person would be considered the killer and qisas would be applied on him. As for the first one, he would not be considered a killer, but he would be punished for his attack. He would need to pay diya for whatever he damaged of that person's body.

If the Khaleefah is the one attacked, or made to reach the death pang and the condition of the slaughtered, then another Khaleefah is not to be appointed except after it becomes certain that he is dead. This was the case during the life of the companions, may Allah be pleased with them, Abu Bakr and 'Umar. The companions did not give Bay'ah to 'Umar until they were certain that Abu Bakr was dead. The people of Shura did not start the process of selecting a Khaleefah among them till after they were certain that 'Umar had died. In the case of the death pang, or the condition of the slaughtered, then he can appoint if the Ummah asks him and he is able to do so, as was the case with Abu Bakr and 'Umar.

Finished by the Will of Allah

on 5th of the sacred Muharram 1418 AH.

12th May 1997 CE.