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## Contents

page

Editorial: Wisdom for our Future - Darryl Macer	137
Doubt the <i>Analects</i> : An educational session using the <i>Analects</i> in medical ethics in Japan - Atsushi Asai, Yasuhiro Kadooka, Sakiko Masaki	138
The Issue of Abortion and Mother- Fetus Relations: A study from Buddhist perspectives - Tejasha Kalita and Archana Barua	142
Perspectives of Euthanasia from Terminally Ill Patients: A Philosophical Perspective - Deepa P.	146
Islamic Perceptions of Medication with Special Reference to Ordinary and Extraordinary Means of Medical Treatment - Mohammad Manzoor Malik	149
Roles of The Hague as a Centre for International Law overcoming environmental challenges - Catherine van Zeeland	156
Effects of e-waste on human health and environment - J.Thresa Jeniffer and J. Joannes Sam Mertens	161
Perception of Ethical Issues among Undergraduate Medical Students at a Pakistani Medical University - Zoheb Rafique	163
ABA Elections and Call for Nominations	165
AUSN Masters in Bioethics & Global Public Health	166
ABA Renewal and EJAIB Subscription	168

## Editorial: Wisdom for our Future

A theme of the seven papers in this issue is wisdom for a sustainable future. How can we teach students about bioethics? Asai et al explore the use of the *Analects* of Confucius with quite positive results in Japan. Many words of wisdom are found in ancient literature, which has often survived the test of time because of its utility to humankind's moral development and social futures. Rafique presents the results of a survey of what issues medical students in Pakistan consider to be ethical. There are some interesting issues for the way that we teach, and both approaches can be used in bioethics education.

Catherine van Zeeland presents a review of the many actors in the Hague, the city of International Law, that influence international environmental law. The initial paper was presented at the first AUSN Conference to be held in London late 2013. It is followed by a paper by Jeniffer and Mertens on E-waste, a growing environmental problem, that needs greater control through the application of such environmental principles and laws. The extent to which principles of law are applied in practice is one of the important roles of lawyers across the world.

Malik presents a review of Islamic understandings of the distinction between ordinary and extraordinary life-sustaining treatment. Kalita and Barua describe the tensions between ideology and pragmatism used in Buddhist practices on abortion, in Thailand and Japan.

There is the call for nominations for the Asian Bioethics Association (ABA), whose regular two year term of exchange provides opportunity for more involvement of scholars around the world. In 2015 the Asian Bioethics Association will hold its 15<sup>th</sup> Conference, in Japan. This conference will be an event and training for 9 days with cooperation between ABA, AUSN, Ritsumeikan Asia Pacific University (APU) and Kumamoto University. I look forward to meeting many readers at conferences across the world, and the new campus and environment. As we promote dialogue on identity there are lessons from Asian bioethics, all around the world.

- Darryl Macer

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## Doubt the *Analects*: An educational session using the *Analects* in medical ethics in Japan

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### 1. Introduction: Confucius and the *Analects*

The *Analects* is a collection of the sayings of Confucius, one of the most influential thinkers of Eastern philosophy and a representative of Eastern culture (1). The traditional dates for his birth and death are 551 and 479 BC, and he was born in Lu in eastern China (2). Jaspers (3) regards Confucius, together with Socrates, Gautama Buddha, and Jesus Christ, as the four paradigmatic individuals, based on their influence on all philosophy (1, 4). The *Analects* is highly regarded in the history of philosophy, and have been read by one generation after another for two and a half millennia in the Asian cultural sphere as well as in China.

Confucianism, Buddhism, and Shintoism are deeply rooted in the Japanese psyche, and have influenced behavior and governed Japanese spirituality, especially human relationships, for centuries (5). As in China, the *Analects* have been long read in Japan and have influenced many Japanese; it is the classic of the classics among the Japanese people (6). The *Analects*, as well as Confucius, is well known and very popular in present Japanese society, and books concerning the *Analects* continue to be published (7). It can be said that some of Confucius's sayings constitute valuable mottos regarding a way of life for modern Japanese people.

The key virtue of Confucian ethics is humanity (*ren* in Pinyin, *jen* in Wade-Giles, *jin* in Japanese). It has a variety of translations, such as perfect virtue, kindness, goodness, human-heartedness, and benevolence, and summarizes how a human being should ideally behave towards other human beings. It embraces all the social virtues (2). In the *Analects*, humanity is regarded as a supreme virtue or central principle. It has loyalty and compassion at its core, i.e., following the dictates of one's conscience and being compassionate to others (8, 9). When asked about humanity in the *Analects*, Confucius refers to courtesy, tolerance, good faith, diligence, and kindness as five characteristics for achieving humanity (2). It is also argued that humanity, righteousness, and rule of propriety comprise the most fundamental thoughts and principles of Confucian ethics (1).

The aim of the present paper is to examine the present-day implications and potential utility of the *Analects* in medical ethics education, especially in

Japan. First, we describe current worrisome situations concerning medical ethics and professionalism among healthcare professionals, especially physicians in Japan, and argue that further educational attempts using the *Analects* with healthcare students and professionals may be meaningful. Second, we consider how to teach medical ethics and professionalism using the *Analects* and propose conducting a session called, "Doubt the *Analects*." For healthcare students and professionals to acquire appropriate principles of medical ethics and professionalism, becoming convinced of the significance of Confucius' sayings through initial skepticism is essential. Finally, we describe three hypothetical "Doubt the *Analects*" sessions and deliberate their potential implications.

At the outset, we would like to make it clear that we are not concerned here with the details of Confucian ethics such as the Decree of Heaven, what "Gentleman" (the superior man, a man of virtue, a true gentleman) means in Confucianism, the concepts of the Way, or political statements found in the *Analects*. These themes have already been discussed extensively elsewhere and are not the points in question in our arguments.

### 2. Further educational attempts are necessary in Japan

The Ministry of Health, Labour and Welfare in Japan recently announced that 44 physicians and dentists were subject to administrative disposition in 2012 and 24 in 2013, and that five had their licenses revoked in 2012 and one in 2013 for crimes such as rape and fraud (10, 11). It was also reported that a physician in his fifties was arrested because he raped a woman in her twenties after giving alcohol and possibly sedatives (12). The wrongdoings of medical scientists repeatedly make headlines, including fabrication, falsification, plagiarism, and inappropriate use of national research funds. Such misconduct has been demonstrated by both individual researchers and organizations (13-15).

There is concern that rapid infiltration of commercialism into healthcare might lead healthcare institutions or professionals to prioritize financial benefits over the best interests of patients. It is commonly said in Japan that medicine is a humanitarian profession (*I ha jin-jutsu*), implying that healthcare is socially expected to serve the public regardless of loss or gain by the professionals involved. However, medicine is often criticized nowadays as an arithmetic profession that is aimed at making money. Distrust of medicine and healthcare professionals has continued, with no sign of improvement. At the same time, devoted and conscientious healthcare professionals have faced various and frequent ethical dilemmas in the clinical setting (16). In addition, as life science and technology advances make possible the clinical uses of enhancement rather than treatment, the goals, legitimate boundaries, and central value of medicine become less certain (17). Thus, it is highly necessary for us to consider what true medical ethics is and what defines an appropriate attitude of healthcare professionalism. Similarly, it is more necessary than

ever for us to develop effective education for healthcare students and professionals regarding biomedical ethics and professionalism.

### 3. Why the *Analects*?

Some may ask why the *Analects* is suitable teaching material for current education in medical ethics and professionalism. Others would question why we focus on the sayings of Confucius, who was born 2500 years ago. Present-day healthcare students and professionals might reject the *Analects* or Confucius, claiming that they are very old-fashioned, irrelevant to modern medicine and life science, and have been replaced by contemporary biomedical ethics. We expect some skepticism of the utility and value of the *Analects* in such educational attempts, but in the following, we demonstrate that there are plenty of good reasons for our proposal.

First, as previously mentioned, the *Analects* is highly regarded historically and philosophically, and it is worthwhile for anyone to read it once. Second, the *Analects* is relevant to Japanese medicine and healthcare. Humanity (*jin*) is a central virtue in Confucian philosophy and historically in Japan, there is the public expectation that medicine is a humanitarian profession. Thus, it is fair to say that the spirit of Confucianism has been deeply rooted in Japanese medicine, its ethics, and the public who are potential patients. At the same time, some of Confucius's statements are about ideal relationships among people, which naturally have some impact on what is considered right or wrong, and what is good or bad in human relationships in health care. Furthermore, important principles of contemporary biomedical ethics can be found in the teachings of Confucius in the *Analects* (1).

Third, the ideas and teachings in the *Analects* are not based on teachings and thoughts of gods with consciousness and emotions similar to humans, and this may make the *Analects* more familiar and approachable for Japanese people, who seldom have faith in monotheism. It is said, "The Master did not speak of prodigies, force, disorders, or spirits (chapter 21 of Book 7)" (2), and Confucius said, "If one does not yet understand life, how does one understand death? (chapter 12 of Book 11)" (2). Confucius does not mention either gods or nature, but is strongly concerned with actual people. He repeatedly addresses various perspectives of how people ought to live and act in actual societies (8). Fourth, as mentioned above, Japan has a long history of reading the *Analects*. They were imported from China in the early sixth century and formed the foundation of some parts of the first Japanese Constitutions by Shotoku-taishi. Since then, through its massive acceptance by people, regardless of class, during the Edo Era, the *Analects* have molded the mentality and culture of the Japanese (6, 18). We think that even now, the *Analects* is one of the most popular philosophy books in Japan.

The fifth reason is the impact of simple short sentences on our thoughts and reflection. Unlike long and abstruse philosophical works that include puzzling

passages, Confucius's short and direct sayings are often easy to read, memorize, and remember. For instance, we think that "If by keeping the old warm one can provide understanding of the new, one is fit to be a teacher (chapter 11 of Book 2)" (2), and "Do not inflict on others what you yourself would not wish done to you (Chapter 24 of Book 15)" (2) are among the many perfect examples. His remarks in the *Analects* resonate with those who are living 2500 years later (6). These sayings have considerable influence on our way of thinking and living, similar to the very essence of Kantian ethics, "Act in such a way to treat people as ends and never as means", or that of utilitarianism, "The right thing to do is that which is likely to produce the greatest happiness for the greatest number of people" (19). Whether or not one regards these sayings as useful ethical guidelines in one's actual life depends on an individual's perspective and attitudes, and some might have considered them completely irrelevant to their life when they learned them. Nevertheless, it is possible that those who did not appreciate the worth of Confucius's statements at first may be convinced of their significance later in life. Therefore, it is worthwhile for one to have a chance to study and appreciate the *Analects*.

### 4. Incorporation of the *Analects* into medical ethics education for healthcare students and professionals: "Doubt the *Analects*"

Here we consider the strategy for conveying the messages of Confucius to the hearts of healthcare students and professionals who study medical ethics and professionalism. Attempting to teach the learners what a great scholar thinks is right as established knowledge or "the correct answer" is an undesirable method. Such an attempt might bring about rapid rejection without any appreciation in some learners and superficial memorization without real understanding in others. In either situation, the likely outcome is that nothing is really learned.

Historically in Japan, the *Analects* have often been taught by the learner reading passages aloud in front of a teacher and memorizing them mechanically, without thinking about their meaning or content (*Sodoku*). However, according to Hasegawa, reading the *Analects* aloud imposes on the learner the teacher's opinion that the *Analects* is an unparalleled masterpiece full of edifying teachings of Confucius, and instills respect for the *Analects* without any judgments. He claims that today's students should be liberated from the traditional reading of text aloud and that it is essential for learners to respect the *Analects* spontaneously as an outcome of criticism, confrontation, and struggle (20).

We agree with Hasegawa's position. Books discussing the *Analects* tend to assume the correctness of the sayings in the *Analects* and the wisdom of Confucius. From an educational standpoint, however, the sayings and ideas of Confucius should be treated as targets for intensive discussion among learners, not as final answers. It is claimed that each saying of Confucius has to be examined in terms of its ethical validity and should not be regarded as an unconditional

predisposition or fundamental reason. It is not educationally appropriate for us to claim that something is right because Confucius says so. To make medical ethics education with the *Analects* effective, we should consider whether or not present-day healthcare students and professionals can learn something important or useful to begin with, but not what right answers they can learn. The educator has to question the learners about their responses and opinions regarding the ideas of Confucius. We argue that we should present sayings included in the *Analects* not as affirmative norms, but as one ethical perspective and encourage discussion regarding their appropriateness. Therefore, the long-established custom of reading aloud without thinking is inappropriate. Learners can often memorize many sayings without difficulty, but superficial knowledge without skeptical criticism, close examination, and final conviction in the learner's heart will simply produce a learned fool who does not understand the spirit of Confucius and can't make good use of the knowledge. In Japan, the saying, "a person who has read the *Analects* but does not know them at all (*Rongo yomino Rongo shirazu*)" indicates a sham scholar who understands the theory of the *Analects* but would not act according to it, or an individual who has long read the *Analects*, but does not understand its spirit at all (18). In addition, those who cannot initially be convinced of the ideas of Confucius will lose a precious chance to study the *Analects* deeply unless there is an opportunity to examine them closely and critically. If obedience to the sayings of Confucius is imposed, learners will have the impression that the sayings of the *Analects* are just preaching and presumptuous (17). Such consequences are clearly undesirable.

The basic concept of our proposed educational strategy using the *Analects* is, therefore, "Doubt the *Analects*." It can be argued that educators, as well as those studying medical ethics and professionalism should begin by doubting the ethical validity of Confucius's ideas and sayings. Is his idea right or wrong? If judged right, then what reasons can be given to support his position? The educator and learners have to deliberate until they reach a convincing conclusion. Naturally, some of Confucius's ideas will be judged wrong. Without real understanding, acceptance, and sympathy, the healthcare student or professional would be a learned fool. Those who respect the *Analects* would use them to teach medical ethics and professionalism from an ethically neutral point of view, and critical thinking is essential.

### 5. Hypothetical "Doubt the *Analects*" sessions

This section outlines hypothetical "Doubt the *Analects*" sessions and considers their potential implications. The critical point is that the educator creates clinical scenarios with ethical issues that are highly relevant to the ideas and attitudes of Confucius, and that he or she makes it possible for the learners themselves to critically deliberate the implications of Confucius' thoughts through realistic scenarios. Some criticize the *Analects* for teaching that people have to

be obedient to their elders and for its family-centered approach. Confucius's teachings are also blamed for being rather oppressive or feudalistic (7, 21). Thus, the sayings that appear in the *Analects* and the decisions compatible with them may contradict those based on contemporary individualistic, autonomy-centered approaches. However, these tendencies should not be regarded as a reason to attack or ignore the *Analects*, but treated as a subject for discussion. It is very important for the educator not to unilaterally judge the ethical appropriateness of Confucius's sayings at the beginning. The "Doubt the *Analects*" session for healthcare students and professionals will consist of five parts.

1) The educator presents a chapter from the *Analects* and explains the meaning of the saying and its context.

2) The educator presents a hypothetical clinical scenario by which the learners can deliberate the ethical validity of the ideas of Confucius in a concrete and realistic way.

3) The learners divide into small groups and discuss the ethical appropriateness of the ideas in the given scenario.

4) Representatives of the groups present their arguments and conclusions about the ethicality of the Confucian saying, and exchange opinions with learners in different groups and the educator.

5) The educator summarizes the session by referring to arguments for and against the ideas of Confucius. The necessity of further consideration should be addressed regarding its implications. In addition, we believe that the educator may express his or her own position and arguments concerning the sayings of Confucius.

Through the five steps above, healthcare students and professionals can deliberate the thoughts of Confucius in a critical manner and search for the implications and worth of the *Analects* in the present-day world. The following section describes three sessions, including the sayings of Confucius and relevant hypothetical scenarios.

#### Hypothetical session 1

This session considers Chapter 24 of Book 15. In the chapter, Zigong (one of Confucius's apprentices) asks, "Is there a single word such that one could practice it throughout one's life?" The Master (Confucius) says, "Reciprocity perhaps? Do not inflict on others what you yourself would not wish done to you" (2). The educator presents the following hypothetical scenario: Suppose that a terminal male patient in critical condition is admitted to your hospital. You are designated to take care of him. For some reason, the patient has not been informed of his diagnosis, and neither a further treatment plan nor code status is determined yet. In this situation, on what grounds should you decide his treatment plan? Confucius would tell us not to inflict on others what we ourselves would not wish done to us. The educator asks the learners their opinions about Confucius's idea



in this particular situation. The discussion would focus on the ethical validity of the "Golden Rule." Similar sayings of Jesus Christ and Emmanuel Kant may provide useful information.

#### Hypothetical session 2

This session introduces Chapter 18 of Book 13. In this chapter, the Duke of She tells Master Kong (Confucius), "In my locality there is a certain paragon, for when his father stole a sheep, he, the son, bore witness against him." Master Kong says, "In my locality, those who are upright are different from this. Fathers cover up for their sons and sons cover up for their fathers. Uprightness (honesty) is to be found in this" (2). In this case, the educator presents a hypothetical scenario where the characters in the case would prioritize the interests of their family members or intimate individuals over legal rules or social justice: Suppose that a physician overstates an honest man's physical disabilities in a report for a public office so that the patient obtains more subsidy than due to him and his financial predicament is relieved to some extent. The main question here is what to do in the face of conflict between justice and care/compassion/friendship. Confucius might suggest that we should not condemn the physician's act.

#### Hypothetical session 3

This session uses Chapter 14 of Book 8. In this chapter, Confucius says, "If one is not in a certain office, one does not plan the governance involved in the office" (2). The chapter has no background information or dialogue. The educator presents the following hypothetical scenario: There is a critically ill and dying female patient. You, the first year resident, together with your supervisor, are in charge of her. There is no hope of recovery despite every possible intervention. The patient's condition deteriorates into a deep coma and her family waits for her passing in sorrow. Then you find that your supervisor tries to decrease the dose of oxygen supplied to her so that she passes away sooner without telling anyone. In this situation, what should you do? Confucius might suggest that the first year resident, who is not in the position to decide the final treatment plan for her, should not question or challenge the senior physician's decisions. The educator asks the learners their opinions about Confucius's idea in this particular situation.

### **6. Conclusions**

In this paper, we proposed using the *Analects*, the sayings of Confucius, as an educational tool for teaching medical ethics and professionalism to healthcare students and professionals. The "Doubt the *Analects*" approach can be used not only for the sayings of Confucius, but for many famous sayings in ethics and philosophy. The crucial point of the approach is that the learners arrive at their final convictions through doubts and critical thinking. It can also be argued that educational approaches using historical sayings or maxims are suitable for busy healthcare students who have to learn a lot of medical

information or professionals in the first line. Reading a whole book about ethics or philosophy may be impossible for them. Therefore, we expect that the "Doubt the *Analects*" sessions that encourage discussion and mutual communication between the educator and learners is an effective way to teach medical ethics and professionalism. In conclusion, the most important consideration for ethics education is that we do not produce a healthcare professional "who has read the *Analects* but does not know them at all (*Rongo yomino Rongo shirazu*)."

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## The Issue of Abortion and Mother- Fetus Relations: A study from Buddhist perspectives

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### Abstract

Buddhism is a religion which is a great supporter of non-violence. But so far as the issue of abortion is concerned, the act of violence is always found to be associated with it. An important point to be noted here is that the Buddha taught an ethic of personal responsibility, in which one assumes full responsibility for one's actions and the results of those actions. In this system, individuals exercise freedom of choice in ethical decision-making, with the knowledge that wholesome actions result in happiness and unwholesome actions result in unhappiness unless purified through some type of mitigating spiritual practice.<sup>1</sup> The issue of abortion is something, which is related to a mother and the fetus carried by her. That is why it is very difficult to come to a definite view so far as the problem of abortion is concerned. This paper however tries to see the problem of abortion in terms of Buddhism and its moral point of view.

### Buddhism and Abortion

According to Buddhism life is a continuum, Buddhism also believes that each life as an embodied individual has a clear beginning and end. From the earliest times Buddhist sources have been quite clear that individual human life begins at conception, a view widely shared in contemporary Buddhist societies. The ancient authorities, of course, had an imperfect knowledge of embryology, particularly concerning conception, but their understanding of fetal development as a gradual process with a definite starting point was not very different from that of modern science. Interpreting the traditional teachings in the light of modern scientific discoveries such as ovulation, the view of most traditional Buddhists today is that fertilization is the point at which individual human life commences. As a consequence of this they regard abortion as contrary to the First Precept.<sup>2</sup>

Here one question arises. What is the First Precept, according to Buddhism? In Pali, the first precept is *Pānatipata veramani sikkhapadam samadiyami*; "I undertake the training rule to abstain from taking life." According to Theravadin teacher Bikkhu Bodhi, the word *pāna* refers to breathing, or any living being that has breath and consciousness. This includes people and all animal life, including insects though not directly extending this to plant-life. The word *atipata* means "striking down." This refers to killing or destroying, but it can also mean injuring or torturing. Theravada Buddhists say that a violation of the first precepts involves five factors. First, there is a living being. Second, there is the perception that the being is a living being. Third, there is the volition thought of killing. Fourth, the killing is carried out. Fifth, the being dies. It is important to understand that the violation of the precept arises in the mind, with the recognition of a living being and the willful thought of killing that being. Also, ordering someone else to do the actual killing does not mitigate responsibility for it. Further, a killing that is premeditated is a graver offense than a killing that is impulsive, such as in self-defense.<sup>3</sup>

Traditional Buddhism believes that life is precious and if it is taken deliberately or death occurs due of negligence, then it becomes equal to murder and that is why it is a sin. The traditional Buddhists believe that the action of abortion is a deliberate way of destroying a life. As per the theory of rebirth, the individual human life begins at conception and it should get same moral respect like that of an adult human being<sup>4</sup>.

### Act of killing and Abortion

According to the teachings of the Buddha, an act of killing is wrong when:

- the thing killed must be a living being
- you, the killer, must know or be aware that it is a living being
- you must have the intention to kill it
- there must be an effort to kill
- the being must be killed as the result

If we analyse the act of abortion, with the help of the conditions given by the Buddha we will find:

- When a baby is conceived, a living being is created and that satisfies the first condition. Although Buddhists believe that beings live in a cycle of birth death and rebirth, they regard the moment of conception as the beginning of the life of an embodied individual.

- After a few weeks the woman becomes aware of its existence and that meets the second condition.

- If she decides she wants an abortion that provides an intention to kill.

<sup>1</sup> Tsomo K.L, "Pro-life, Pro-choice: Buddhism and Reproductive Ethics", <http://www.fnsa.org/fall98/tsomo1.html>, accessed date 12/06/12

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<sup>4</sup> Keown Damien, 2004, "Science and Technology news", <http://www.beecoop.co.uk/cms/sites/teacher.beecoop.co.uk/files/faithact43info.pdf>, accessed date, 10/09/11

- When she seeks an abortion that meets the fourth condition of making an effort to kill.
- Finally the being is killed because of that action.

It implies that according to Buddhism, the act of abortion is considered to be wrong and it is equal to murder.

### **Buddhism and various factors of abortion**

Usually it is found in Buddhism that the Buddhists take the responsibility of everything they do. It was already mentioned that consequences of their action will also be according to their acts. The decision to abort is therefore a highly personal one, and one that requires careful and compassionate exploration of the ethical issues involved, and a willingness to carry the burden of whatever happens as a result of this decision. But so far as the ethical consequences of the act of abortion is concerned, it is also dependent on the motive and the intention behind this act. There are various factors of abortion. The analysis of those factors with the help of Buddhism is given below:

1. Buddhists face a difficult position when abortion becomes medically necessary to save the life of the mother. In such cases the moral status of an abortion will depend on the intentions of the act of abortion. If the decision is taken compassionately, and after long and careful thought then although the action may be wrong, the moral harm done will be reduced by the good intentions involved in the action. If because of the pregnancy mother's life is in danger, in that case in order to save the life of the mother that pregnancy must have to be terminated. Otherwise the death of the mother will be equal to the murder and it will be the killing of a more potential person.

2. Another factor, which leads to abortion, is on medical grounds, like some defects carry by the fetus. Defects may be both mental and physical. Under such circumstances, even the physicians may prefer abortion. Otherwise it may be the case that after turning out the baby will have to suffer from some incurable disease for the whole lifetime. That disease or defect can be either physical or mental. Traditional Buddhist thinking does not deal with these cases, but it has been argued by some modern Buddhists that if the child would be so severely handicapped that it would undergo great suffering, in these cases, abortion is permissible. One important point, which can be mentioned here, is that, according to traditional Buddhism also ignorance (avidya) is the root cause of suffering. So this suffering is to be removed, ignorance or avidya is to be removed with the help of knowledge (vidya). With the help of proper knowledge, the actual reason behind the suffering can be found out. As with the help of the modern medical technology, the various defects of the fetus can already be determined, so it is better to end the suffering or take the help of the abortion to prevent one human being to suffer for the whole life time. The Dalai Lama in this context has said, "Of course, abortion, from a Buddhist viewpoint, is an act of killing and is negative, generally speaking. But it depends on the circumstances. If the unborn child will be retarded or if the birth will create serious problems

for the parent, these are cases where there can be an exception. I think abortion should be approved or disapproved according to each circumstance."<sup>5</sup>

3. There are many cases of sex-selective abortion in different part of the globe. But it is strongly criticized by Buddhism. Though Buddhism has accepted abortion under certain unavoidable circumstances, but it never accept abortions for such inhuman reason. Buddhists believe that abortion at anytime is killing and unwholesome action because "a being waiting to be born" transmits or one person's own karmic energy to be born as a new person is somehow overruled by abortion. Sex-selective abortion leads to serious karmic consequences, since it seems to involve in hurting of a girl, because of the preference for a boy. Parents are to love their child or fetus. But sex-selective abortion is a clear case of hatred for their fetus. In this kind of case, abortion is a clear case of violence. That is why sex-selective abortion is totally unacceptable in Buddhism.<sup>6</sup> In Buddhism, the instances of sex-selective abortion are almost negative. One of the Buddhist countries of the world is China. But female infanticide has existed in China for a long time. The One Child per Family policy has added to this problem in China. The One Child Policy was introduced by the Chinese Government in 1979 with the intention of keeping the population within sustainable limits even in the face of natural disasters and poor harvests, and improving the quality of life for the Chinese population as a whole. Under the policy, parents who have more than one child may have their wages reduced and be denied some social services. Despite the egalitarian nature of Chinese society, many parents believe that having a son is a vital element of providing for their old age. Therefore in extreme cases, a baby is killed if it is not of the preferred sex, because of the pressure not to have more than one child. But there are some ways to tackling the issue. The Chinese Government have acknowledged the problem and introduced laws to deal with it. The Chinese Government has made some law. 1. Marriage law prohibits female infanticide. 2. Women's Protection Law prohibits infanticide and bans discrimination against women who choose to keep female babies. 3. Maternal Health Care Law forbids the use of technological advances, such as ultra-sound machines, to establish the sex of fetuses, so as not to pre-determine the fate of female infants or encourage selective abortion.<sup>7</sup> It is really very shocking to know that a country, which follows a religion like Buddhism, which is the strong follower of non-violence use to involve in sex-selective abortion.

<sup>5</sup> Dalai Lama, New York Times, 28/11/1993, <http://www.nytimes.com/1993/11/28/magazine/the-dalai-lama.html?pagewanted=all&src=pm>, accessed date 12/03/2010

<sup>6</sup> Thochonglachi D, Tun. H.M, 2010, "Female Infanticide and Buddhism", <http://www.scribd.com/doc/23039453/Female-Infanticide-and-Buddhism-Ethics>, accessed date 28/09/2011

<sup>7</sup> BBC - Ethics - Abortion: Female infanticide, [http://www.bbc.co.uk/ethics/abortion/medical/infanticide\\_1.shtml](http://www.bbc.co.uk/ethics/abortion/medical/infanticide_1.shtml), accessed on 09/09/10

### Fetus and Abortion

It is already discussed about the intention, motive, karma and consequences (karmaphal) of the one, who use to do abortion. Here specifically the name of the mother can be mentioned. But according Buddhism the fetus is also a human being as Buddhists believe that the life begins from time of conception. The fetus suffers bad karma because its soul is deprived of the opportunities that an earthly existence would have given it to earn good karma, and is returned immediately to the cycle of birth, death and rebirth. Thus abortion hinders its spiritual progress. So from this practical angle also abortion is something which is found to be acceptable in certain exceptional situations from a pragmatic point of view that keeps room for some concessions for the householders, although monks have to accept and follow moral dictums unconditionally. In this larger background this article now wants to re-visit abortion issue in the context of a Buddhist country like Thailand.

### Abortion Issue in a Buddhist country: Thailand

Thailand is a country, which follows Buddhism. In Thailand generally abortion is considered to be an illegal act. But an important point to be noted here is that in Thailand prostitution is regarded as an acceptable and legal profession and the pragmatic considerations remain decisive here. Many poor girls have taken this profession as their means of livelihood. With the help of it they can run their family smoothly. Usually most of them use contraceptives, as the use of contraceptive is a lesser evil religiously, than that of abortion, although the possibility remains that sometimes contraceptives do not work and a girl becomes pregnant accidentally so that she will abort the fetus. In this kind of cases, if a girl wants to become a mother, she cannot carry the fetus to the term, as the peculiar nature of her profession does not permit her the luxury of being a mother and looking after the child when situation for her is harsh and she remains the only bread earner for the family. Because of some such considerations many girls in Thailand are compelled to take the help of abortion.

But as abortion on general demand is officially illegal in Thailand, many cases of abortion that happen in Thailand are done in an illegal and a secretive manner. In this regard, one shocking instance that was taken place in Thailand can be mentioned here. In 2010, in a Buddhist temple, there was a discovery of more than 2,000 fetuses stored at a Bangkok temple that has made front-page news across Thailand.<sup>8</sup> As most abortion is illegal in Thailand, the case has cast a spotlight on a massive backstreet industry and sparked national debate about the country's current abortion laws, which date from the 1950s. With abortion routinely recognized as a "sin" in Theravada Buddhism, religion has played a significant social and political role

in this debate.<sup>9</sup> Though various discussions on this issue have been made, but the main question raised here is that of the law system of Thailand.<sup>10</sup> It is seen in the case of Thailand that the law of Thailand has two opposite extreme points. One the one side, they have made abortion illegal and on the other side they have made prostitution legal. So the law of Thailand needs to be renewed and the health of those girls, who are involved in the profession of prostitution, should be taken care of. Because illegal abortion are to be done in some unauthorized medical clinic, where proper medical aids and proper hygienic methods may not be available. In this case, to do abortion becomes dangerous for the health of the woman. From the angle of the woman, it is become unjustifiable and immoral.

### Japan and Mizoko Kuyo

A parallel case can be referred to in the context of a Buddhist country like Japan in which abortion being legal women are free to do abort under good medical practitioner. Even the Buddhist spirit remains as is evident in the particular ritual which is known as "Mizoko Kuyo". In Japan, many woman who have had an abortion use to offer a prayer to Jizo, the God of lost travelers and children. They believe that Jizo will steward the child until it is reborn in another incarnation. In this respect, they organize a function called mizoko kuyo, a memorable service for the aborted child. The ritual includes elements of folk religion and Shinto (the ancient indigenous religion characterized by veneration of nature spirits and of ancestors) and Bodhisattvas. In this context William R. Lafleur writes, "...within the Japanese Buddhist community the discussion of abortion is now limited largely to criticisms of those temples and temple-like organizations which employ the notion of 'foetal retribution' to coerce the 'parents' of an aborted fetus into performing rituals that memorialize the fetus, remove its 'grudges,' and facilitate its rebirth or its Buddhahood. Many Buddhists find repugnant such types of manipulation of parental guilt - especially when expressed in the notion that a fetus in limbo will wreak vengeance (tatari) on parents who neglect to memorialize it."<sup>11</sup> But irrespective of its criticism, it must have to say that mizoko kuyo has kept the care and love of a woman toward her child or fetus alive. Here it can be said that in this respect Buddhism have similarity with the modern feminist theory of care.

<sup>9</sup> Seth Mydans, (November 21, 2010), "Thailand Confronts Its Issues With Abortion" <http://www.nytimes.com/2010/11/22/world/asia/22iht-thai.html> accessed on 27.02.2011

<sup>10</sup> Doksone T, 2010, "2,000 Fetuses Found At Thai Buddhist Temple", *World: The Internet Newspaper: News Blogs Video Community*, [http://www.huffingtonpost.com/2010/11/19/2000-fetuses-found-at-tha\\_n\\_785893.html#](http://www.huffingtonpost.com/2010/11/19/2000-fetuses-found-at-tha_n_785893.html#) accessed on 02/09/11

<sup>11</sup> William R. Lafleur, *Contestation and Consensus: the Morality of Abortion in Japan*, Philosophy East and West Vol. 40, 1990

<sup>8</sup> Anniken Celina Grinvoll, "Thai perspectives on abortion", *EJAIB 19 (November 2010), 198-200.*



### The ethics of care and abortion

The Ethics of Care is another influential version of virtue ethics. Developed mainly by feminist writers, such as Annette Baier, this account of virtue ethics is motivated by the thought that men think in masculine terms such as justice and autonomy, whereas women think in feminine terms such as caring. These theorists call for a change in how we view morality and the virtues, shifting towards virtues exemplified by women, such as taking care of others, patience, the ability to nurture, self-sacrifice, etc. These virtues have been marginalized because society has not adequately valued the contributions of women. Writings in this area do not always explicitly make a connection with virtue ethics. There is much in their discussions, however, of specific virtues and their relation to social practices and moral education, etc., which is central to virtue ethics.<sup>12</sup> It is believed in care ethics that the issue of abortion is just not like other issues. This is an issue, which is related to a mother and the fetus she uses to carry. It is believed in care ethics that like a mother-child relation, mother-fetus relation is also deeply related to the feeling of care and love. A deep emotional feeling of mother is always present in the case of abortion. So whatever decision a woman uses to take in the case of abortion should be by taking into consideration of the care element. Because of certain factors, a woman may have to take the help of abortion, but the feeling of motherhood should not be died from her heart.

### Conclusion

So it is seen that so far as the problem of abortion is concerned, Buddhism also keeps provision for a pragmatic approach to life related issues even though non-violence and non-killing remains the central core of Buddhist ethics. Some such pragmatic deviations from the rule is allowed at times considering many other factors and over all this kind of pragmatic and human centric approach to ethics has made Buddhism a wholly acceptable religion to many countries including Thailand and Japan.

With its pragmatic concern and compassionate consideration for saving the life of the mother or in some exceptional circumstances, like the case in Thailand, to meet the demands of a poverty-ridden society that is forced to accept prostitution as a profession and a source of livelihood for some, sometimes considerations are made for some kind of lesser evil in order to avoid greater evil in the long run. Even then a ritual of public repentance demonstrates one's prime commitment to the Law of Dharma and one remains repentant for not being able to remaining firm on the path of *dharma*, due to one's own human limitations. Buddhist rituals of the *mizoko kuyo* seeks forgiveness for this temporary lapse in the Dharma. In principle all Buddhists are thus committed to the

wrongness of killing and violence, including abortion and related matters.

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## Perspectives of Euthanasia from Terminally Ill Patients: A Philosophical Perspective

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### Abstract

At the outset my paper is intended to discuss the concept of 'Euthanasia' especially in the light of 'beneficence'. The concept of benefit or beneficence here is to unpack the act of doing good or to benefit others. The act of doing good is to flesh out the underlying concept of not doing harm to the patients throughout their treatment time. The term 'benefit' mentioned in my paper attempts to espouse the important concepts in the field of medical ethics and envisages the rules and principles followed according to the prescribed duty of the physician. Benefit of the patient is one of the moral maxims that have to be followed right from the maxims of the Hippocratic Oath which is an imperative in the field of medical profession. Accordingly, physician's important duty is to give maximum benefit to their patients; such as saving life, prolonged life and death. The point is in the lines of the philosopher Hippocrates where he mentions the duty of the physician, "to come for the benefit to the sick"<sup>13</sup>. In the normal paradigm professionals entering in the field of medical science have the responsibility to prevent harm and promote good to his/her patients. Hence, the professionals in the concerning field presume that they are working *a priori* on the principles of Hippocrates in promoting the benefit and the interest of the patients.

There is always a cursory of anomaly involved in questioning the chastity of the physicians pertaining to euthanasia. The moral dilemma involved in bridging the rift between the actual benefit of the patient from the physician perspective and the actual benefit of the patient according to his embodiment and embeddedness is attempted to address in a judicious manner. This paper attempts to discuss the beneficence of terminally ill patients where the dilemma between physicians view to benefit patients by eliminating pain and suffering from the terminally ill patient life on the one side and the patients benefit to choose death (voluntary euthanasia) because of the intolerable pain on the other side. The yardstick used to measure the ethical standards of these two groups is analyzed from philosophical perspective especially in the ethical spectacles of Joseph Fletcher. According to the Divine right theory life or sanctity of life, 'life is the gift of god and it is worth living' but sometimes a particular person to continue life is a worse prospect than immediate death. Hence, the term 'beneficence' is analyzed from a

broader spectrum of the physician and the patient in understanding its legitimacy and coherence.

**Key Words:** Euthanasia, Benefit or Beneficence, Prolonging Life, Terminally ill.

### Introduction

This paper tries to explore the concept of benefit in the light of euthanasia, concerning patient's situation in matters of life prolonging circumstances. 'Euthanasia' is generally defined as ending the life of suffering patient without pain or shortening the life with the help of the physician. It always leads to a dilemma to decide whether euthanasia is wrong as well as right. This is one of the burning issues in the present day society, where few countries are in favour of legalising euthanasia, while countries like India are against it. Apart from the discussions pertaining to legalize euthanasia, it also opens the gate to have deliberations from the perspectives of social and ethical issues.

At the outset my paper is intended to discuss on the concepts of 'euthanasia' especially in the lights of 'beneficence'. The concept of benefit or beneficence is to the act of doing good or to benefit others. Benefit is one of the ethical codes of medical profession. The term benefit was introduced from the ancient times. The ethical code for medical ethics was derived from the standards of Hippocratic Oath. The rationale of the oath is to have the maximum benefit of the patient in any of the life saving situations. Hippocratic Oath proclaims that, "I will apply dietetic measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice".<sup>14</sup> Benefit of the patient is one of the moral maxims that have to be followed right from the maxims of the Hippocratic Oath which is an imperative in the field of medical profession. Accordingly, physician's important duty is to give maximum benefit to their patients; such as saving life, prolonged life and death. The point attempted to nail the coffin here is in the lines of the philosopher Hippocrates where he mentions about the duty of the physician as, "to come for the benefit to the sick".<sup>13</sup>

Even in Indian Medical Oath one can find traces of ethical principle according to the benefit of the patient. Ethical principles have been followed in the field of medicine since ancient time in India. One can find the seeds of medical ethics in Indian soil right from the Indus Valley Civilization, which can be conveyed through the ancient literature such as *Vedas, Manusmruthy, Agnivesa Charaka Samhita, Sushruta Samhita and Kautilya's Arthasasthra*. In Charaka Samhita one can find plenty of arguments in favor of the patients and against the practice of euthanasia confirming the benefit of the patient as the ultimate perspective. It was stated that, "*Thou shalt be free from envy, not cause other's death, and pray for the welfare of all creatures. Day and night, thou shalt be engaged in the relief of the patients, thou shalt not desert a patient, not commit adultery, be drunkard, neither sinful, nor associate with abettors of crimes. A person known*

<sup>13</sup> Hippocratic Oath, James F.C. *Who Should Decide Paternalism in Health Care*, New York: Oxford University Press, 1982, p.32

<sup>14</sup> Paul Carrick, *Medical Ethics Ancient World*, Washington DC: Georgetown University Press, 2001, p-84

to the patient shall while enter a patient's household shall not be made public".<sup>15</sup> However, the connotation of the term euthanasia differs from the context it is used in the contemporary situation. The *raison d'être* behind both the traditional fields of medicine and the contemporary situation is to protect the interest of the patient not by harming in any form but by prescribing certain ethical codes to the doctor. In the normal paradigm professionals entering in the field of medical science have the responsibility to prevent harm and promote good to his/her patients. Hence, the professionals in the concerning field presume that they are working *apriori* on the principles of Hippocrates in promoting the benefit and the interest of the patients.

It was mentioned earlier that benefit or beneficence is one of the important ethical principles in the medical profession. Benefit is defined as both doing good and not doing harm. It is both positive and negative as beneficence and non-maleficence, while the former is concerned about doing good, whereas the latter is about not doing harm. Hippocratic Oath has mentioned benefit as *primum non nocere* meaning first of all or at least do no harm. This is the physician's duty towards his/her patient and patient also trust their physicians. The meaning of the vow 'do not harm' is that the physician will not do harm unless it is outweighed by the good consequences of the act that causes harm. Hence, beneficence is the obligation to do good overall. Here, the meaning of doing good and not doing harm is also the same that of benefit for the sick. A benefit of the sick is to prevent and remove evil and promote good.

According to Frankena benefit or beneficence is the principle of utility. It is the act to practice "greatest possible balance of good over evil in the universe" (William K Frankena, *Ethics Second Edition*, New Delhi: PHI Learning PVT Ltd, 2011, p-45.) In his view that we ought to do good and to prevent or avoid the harm. Frankena categories benefit in four divisions. It is non-maleficence and beneficence the former is "one ought not to inflict pain or harm. And later is one ought to prevent harm or evil, and one ought to promote good".<sup>16</sup> This is the basic obligation of doing good or balancing good over the evil. This principle of good over evil is the ideal of utility.

Accordingly, benefit or beneficence is the duty of the physician for the benefit of the sick. The physician's duty shows that trustworthiness to explicit or implicit promises, commitments and contracts. The health care professionals follow these rules to prevent or remove harm of the patient. Benefit is the cardinal ethical principle sacred to medicine. The major role of medicine is to relieve pain and cure disease. It is to improve the quality of life of the terminally ill patient's most importantly it helps in relieving from the horrible pain. The principle of beneficence reflects an interest in

the common pursuit of the good life and mutual human sympathies. Philippa Foot's argument about benefit is "other things being equal, the obligation not to harm people is more stringent than the obligation to benefit people".<sup>17</sup> Immanuel Kant opines 'benefit' through duty that a physician's duty is not to harm. On the other hand "we do not have a duty to benefit all other people; apart from everything else it is incoherent to talk of duty which is impossible to fulfill".<sup>17</sup> Thereby, benefit is the duty of the physician to help the patients not to harm.

In the case of patients who are both terminally ill and in great pain, it is often only possible to control the pain effectively if analgesics are given in quantities, where the toxicity of the drugs inevitably further curtails the lives of the patients. Thus the patients die sooner than they would have if the pain were not controlled. Now, of course, doctors do not want the drugs to kill their patients. They would like to be able to control the pain without any increased morbidity. They do not then aim at their patients' deaths, either as a means or as an end; it is a side-effect of the treatment but it is still an effect. If it is justified, it is justified not because the death is a side-effect rather than a direct effect, but rather because, in these circumstances, hastening death is a price worth paying for the relief of pain. It's not the fact that the side-effect is unwanted that makes it permissible, but rather that the total package of consequences including unwanted side-effects is morally preferable to the alternative. This can be seen very clearly if we imagine an alternative case in which premature death is a consequence of effective pain control. Suppose a patient were suffering from a condition (if there is one) that subjected him to terrible pain for two years, but thereafter, if appropriate treatment had been given during the two years, he could be expected to make a complete recovery. The pain is as bad as or worse than in the case of the terminal patients. The only way to control the pain is to give drugs that would have as a side-effect the effect of killing him shortly after the two years had elapsed. Here I think we can see that although the morbidity of the drug is still a side-effect, if doctors were to administer it in such circumstances, they could not plausibly evade responsibility for the patient's premature death.

The beneficence claiming that, furthering the well-being of individuals also supports permitting euthanasia. In some circumstances, continuing to live can inflict more pain and suffering, than death. There are also cases in which the ending of human life is not only morally right, but an act of humanity. I refer to cases of absolutely incurable, fatal, and agonizing disease or condition, where death is certain and necessarily attended by the excruciating pain. Given that each individual has a different conception of what is good and valuable, there will be no single objective standard to define when life is burdensome enough to be ended.

Euthanasia is defined as easy death or good death. In short 'euthanasia' involves shortening the life of the

<sup>15</sup> Nagesh Kumar, R. G., *Text Book of Forensic Medicine and Toxicology*, Delhi: Jay pee Brothers Medical Publishers (Ptd), 1997, p. 31.

<sup>16</sup> James F Childress, *Who Should Decide? Paternalism in Health Care*, Oxford: Oxford University Press, 1982, p. 29.

<sup>17</sup> Raanan Gillon, *Philosophical Medical Ethics*, New York: John Wiley and Sons, 1985, p. 81.

patients' by doctors.<sup>18</sup> Euthanasia is defined as "the act or practice of killing or permitting the death of hopelessly sick or injured individual... in a relatively painless way for reasons of mercy" (*Merriam-Webster's collegiate dictionary* (10<sup>th</sup> Ed) (Springfield, MA: Merriam- Webster cited on Moral Philosophy (3<sup>rd</sup> Ed) Cited by Emmett Barcalow, *Moral Philosophy*, Australia: Thomson Publication, 2003.p. 236) Literally the term euthanasia was mentioned in the ancient time. Hippocratic oath mentions about euthanasia as "I will give no deadly medicine to any one if he asked, or suggest any such counsel; and in like manner I will not give to a women a pessary to produce abortion" (Paul Carrick, *Medical Ethics in the Ancient World*, Washington DC: Georgetown University Press,2001, p-147). One such example about the administration of a form of euthanasia in ancient Greece is Socrates death of hemlock. It was mentioned clearly by Paul Carrick in his book on *Medical Ethics in the Ancient World*: "When quick-acting and relatively painless drugs such as hemlock were first developed by the Greeks in the fifth century B.C., which allowed the individual to quit life in an efficient and blood-less manner, the linguistic result was that these forms of suicide were sometimes described as instances of euthanasia".<sup>19</sup> Pythagoras perspective about euthanasia was a sinful of the God divine. In his view euthanasia is result of past sinful life and he believed that God only the right to take the life. According to his school of thought, "*Vicissitudes of moral existence including the traumas of painful death were divine recompense for past sins. Therefore resort to euthanasia was considering a violation of divine law because it cut short the appointed time of the soul's captivity with the human body*".<sup>20</sup> The above indicates a form of euthanasia though different from contemporary situation was practiced even in pre-Socratic period. However, from their perspective also euthanasia was wrong and physician wants to give maximum benefit to his/her patient. It has been shown that the concepts against euthanasia and giving benefit to the patient previously existed and disagree with the practice of euthanasia. In 1872 Dr. S. D Williams published in his essay stated "*Euthanasia came to be used in the modern sense of the act of painlessly putting to death those of suffering from terminal condition*".<sup>21</sup>

In the 20<sup>th</sup> century, lots of organizations are formed to help the terminally ill patients. The Hemlock Society which is the national right-to-die organization was founded in Santa Monica by Derek Humphrey in 1980. The aim of this institution includes providing information to the dying persons and also supporting legislation permitting to the physician-assisted suicide. In this

society it is estimated that there are more than 60,000 registered members. After Second World War in USA, the scientific and medical technology has well developed and the life expectancy rate increased. In the 1970s USA<sup>22</sup> faced a problem where the normal average life expectancy increased from forty seven years to seventy one. Resulting in the increase in the number of elderly people who suffered from incurable diseases. These elderly people preferred euthanasia as one of the options available to them in ending their sufferings. This led to the attention of the doctors to the debate on legalising euthanasia. This debate along with the emergence of bioethics rendered more attention to the issues pertaining to euthanasia and ushered the ideology of the people around the world.

### Conclusion

It is not that life is not worth living because of distress, illness, physical or mental handicaps etc. Every life has some worth - there is no such thing as life is not worth living. The people who are suffering from painful and terminally ill, such circumstances as 'blessed release' will be considered as merciful death or euthanasia. In this concept euthanasia will become a benefit to the patient. Killing or promotion to die is wrong but the patients in particular painful situation will create a dilemmatic condition in the application of euthanasia. Scarcity of medicine also sometimes promotes euthanasia to the patient. If my life is so terrible that no one would wish to live as I do, then since it is my life its value to me consists precisely in doing with it what I choose, regardless of whether what I choose is to live on in great suffering or to end it in my own way rather than in your own way.

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## Islamic Perceptions of Medication with Special Reference to Ordinary and Extraordinary Means of Medical Treatment

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### Abstract

This study attempts an exposition of different perceptions of the obligation to medical treatment that have emerged from the Islamic theological understanding and how they contribute to diversity of options and flexibility in clinical practice. Particularly, an attempt is made to formulate an Islamic perspective on *ordinary* and *extraordinary* means of medical treatment. This distinction is of practical significance in clinical practice, and not only its right understanding is important to publically funded healthcare authorities, guardians of the patients, health and life insurance institutions, and employers who provide health care coverage to their employees, but also to lawyers and justice administration functionaries to deal with relevant litigations. The distinction is made regarding terminally ill patients and non-terminally ill patients separately. The essential factors that matter in making the distinction between ordinary and extraordinary means of treatment are: (1) patient capacity, (2) expert advice, and (3) nature of medication. Regarding terminally ill patients, medical treatment can become extraordinary because of (1) patient capacity and (2) nature of medication. In both these case the deciding condition applies: the expert advice taken from a group of physicians. In regards to non-terminally ill patients, extraordinary medical treatment includes three cases: (1) treatment that is known to be useless and futile, (2) treatment that endangers the life or cause more harm than what it removes, and (3) useful treatment, but the patient is unable to bear the cost.

**Key words:** medication, bioethics, extraordinary medical treatment, medical ethics

### Introduction

Deciding on medical treatment becomes sometimes complicated because of the quality of available medical treatment and multifaceted considerations related to patients, their financial strength, and the nature of the diseases they suffer from. Making an adequate distinction between ordinary and extraordinary means

of medical treatment is one of such difficult dilemmas. This distinction is significant in clinical practice. And its right understanding is not only important to administrators of public healthcare, guardians of minor or incapacitated patients, health and life insurance companies, and employers who provide health care coverage to their employees, but also to lawyers and justice administration functionaries in dealing with relevant litigations. Therefore, an Islamic stance on the issue is attempted in this study. The underpinnings of this discourse are necessarily rooted in the ways Muslims perceive importance of obligation to medical treatment -- as multiple perceptions from the basic theological sources: the Quran and the Sunnah. These multiple perceptions of obligation to medical treatment allow flexibility in clinical practice and, at the same time, help formulating an applicable distinction of ordinary and extraordinary means of medical treatment.

In the subsequent sections, I will explore the position of the Quran and the Sunnah on the subject of medication; different perceptions of obligation to medication that have emerged from these sources from the early times to the present; and, finally, how by deriving on the aforesaid sources and perceptions, formulating the distinction between ordinary and extraordinary means of medical treatment is possible.

### Sources and Applied Methods in Islamic Ethico-Juristic Studies

In face of changing circumstances and advances in medical science, Muslims seek guidance (*hidÉyah*) from the Quran, which is foremost a book of guidance: "... guidance unto those who ward off (evil)".<sup>23</sup> Along with the Quran, the Sunnah is the second source: "... Obey Allah and obey the Messenger and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger..."<sup>24</sup> Beside the Quran and the Sunnah, there are other additional sources such as *ijma`* (consensus), *qiyas* (analogical deduction), *Istihsan* (juristic preference), *al-maslaha al-mursalah* (public interest), *istidlal* (textual indication), *Urf* (common practice), etc. However, different schools of Islamic jurisprudence do disagree on inclusion and exclusion of some of these sources or understand them differently in terms of their scope and referents; yet, without any disagreement, they are unanimous on accepting the first two sources. The common agreeable authorities among all sects and schools of Islam in their theologies and jurisprudences are the Quran and the Sunnah alone. Therefore, the door of taking decisions by making intellectual effort (*ijtihad*) is always open for learned Muslims by turning to the Quran and the Sunnah, especially when new issues emerge that require resolution from Islamic perspective.

The ethical, juristic, and doctrinal guidance from these two sources has manifested in a bulk of classics of Islamic studies known to Muslims as *turÉth*. Islamic *turÉth* is itself sometimes diversified with dimensions

<sup>23</sup> The Quran, 2:2.

<sup>24</sup> The Quran, 4: 59.

diverging in conclusions and converging in one or other way to the primary sources of Islam i.e. the Quran and the Sunnah. The rest of the sources are based on *ijtihād* of different sects and schools of Muslims. Regarding the first source, the Quran, the important matter is understanding it by using sound approach and valid methods; whereas, the Sunnah requires both verification of the authenticity of the reports and comprehension of their contents. There is a meaningful difference between *ĀdĒth* and the Sunnah though they are very often used interchangeably. The Sunnah is an established path or practice; whereas, *ĀdĒth* is everything that is reported on any subject from the Messenger, including his sayings, deeds, approvals, and descriptions of his personality. Some of the narrations are abrogated or specific to particular persons or contexts. The various *ĀdĒth* (Prophetic narrations) on any subject have led to difference of opinion on various subjects. However, the main ideal pursuit is to find what could be called as the Sunnah for the practical purposes; and the most important categories of the Sunnah are those which either proves obligation (*wujĒb*) or prohibition (*Īrmah*). Very closely connected to this methodological discourse is the consideration that scholars give to the higher intentions of *SharĒĤah* or *maqĒĪd SharĒĤah*. There are specific objectives and aims which Islamic *sharĒĤah* wants to safeguard. Al-GhazĒĪĒ (d. 505/1111) in *al MustafĒĪ*, Ibn 'Abd al SalĒm (d. 660/1262) in *QawĒĪd al ĀĪkĒm*, *Al-ShĒĪbĒ* (d. 790/1388) in *al-MuwĒfaqĒt*, to mention a few leading scholars, have raised the question: what is the end, or the objective of the *SharĒĤah*? The essential *maĒĪlĪ* are five: life, intellect, faith, lineage, and property.<sup>25</sup>

### Quranic Approach to Health Care and Medication

The Quranic approach to health care and medical treatment is based on its clear statements (verses: *āyāt*). A comprehensive study would show that the Quran touches the subject in five ways.

Firstly, the actual healer, according to the Quran, is Allah himself, though means (*asbĒb*) of medication are not prohibited. The Quran states: "Whatever of good reaches you, is from Allah..."<sup>26</sup> and "If God touches thee with affliction, none can remove it- but He: ..."<sup>27</sup> The Quran tells the story of the Prophet Ibrahim in which he says, "... And when I was sick, he (Allah) was the one who healed me".<sup>28</sup> The story of the Prophet AyyĒb (Job) provides evidence for both divine favor in healing and resorting to appropriate means in pursuing cure.<sup>29</sup>

Secondly, the Quran, as the word of Allah, has power of healing. The Quran states "O Mankind: There has come to you a direction from your Lord and a

healing for the (disease) in your hearts ..."<sup>30</sup> This verse would mean that diseases are not just physical ones, but they can be spiritual, mental, and psychological. The Quranic worldview and its teachings on ethics, self purification and behavior provide what could be used in healing patients who suffer from many diseases that are non-physical; for example, those patients who are suffering from anxiety, despair, hopelessness, rage, excessive anger, jealousy, negative thinking, and some forms of minor depression, etc. However, the Quran proclaims its healing power in general sense that includes both physical and non-physical disease as it states: "And We send down of the Quran that which is a healing and a mercy to those who believe"<sup>31</sup> and "... Say unto them (O MuĀammad): For those who believe it is a guidance and a healing..."<sup>32</sup> This could be well illustrated by the Prophetic traditions (*ĀdĪth*) that speak of the healing power of the Quran in curing the physical ailments. For example, one of the companions of the Prophet healed a chief of a tribe, who was bitten by a snake or stung by a scorpion, by reciting *SĒrat-al-FĒtiĤa*, the first chapter of the Quran.<sup>33</sup>

Thirdly, the Quran considers substances of having healing power. The Quran clearly mentions honey: "...There comes forth from their bellies, a drink of varying colour wherein is healing for men..."<sup>34</sup> This verse shows that healing could be done by using proper substances.

Fourthly, the Quran sets forth guidance on maintaining health. According to Imam Ibn al-Qayyim, the basic principles of medicine are three: prevention, maintaining good health, and removing harmful substances from a person's body. And these principles are mentioned in the Quran. Regarding prevention, Allah allows a sick person to perform *tayammum* (the Islamic act of dry ablution using sand or dust, which may be performed in place of ritual washing), so preventing the sick person from using water, which may harm him<sup>35</sup>; regarding maintaining good health, a traveler and ill are allowed to break their fast during *RamadĒn*, for protection of their health, otherwise the combination of fasting and the difficulties of travel can weaken them and affect their health adversely<sup>36</sup>; and regarding removing harmful substances from a person's body, Allah allowed shaving a person's head in *ĪrĒm* (for *xajj* or *ĤUmrah*) for the removal of harmful things, an exception to the general prohibition of doing so.<sup>37 38</sup>

<sup>30</sup> The Quran, 10: 57.

<sup>31</sup> The Quran, 17:82.

<sup>32</sup> The Quran, 41:44.

<sup>33</sup> See MuĀammad Ibn IsmĒĤĒĪ AbĒ ĤAbd AllĒĤ al-BukĤĒrĒ, *ŌalĒĪ al-BukĤĒrĒ*, (DĒr Ibn KathĒr, al-YamĒmah - BeirĒt - 1407 - 1987, Bk. 71: Medicine, No:7.632

<sup>34</sup> The Quran, Quran, 16: 69.

<sup>35</sup> See The Quran, Quran, 4: 42 and 5 :6.

<sup>36</sup> See The Quran, Quran, 2:185.

<sup>37</sup> See The Quran, Quran, 2:196.

<sup>38</sup> MuĀammad Ibn AbĒ Bakr AyyĒb al-ZarĤĒ, ZĒd al-MaĤĒd fĒ Hady Khayr al-ĤĪbĒd, (MuĤsasatal-RisĒlah, BeirĒt, 1407 - 1986), vol. 1, p.164.

<sup>25</sup> See: Mohammad Hashim Kamali, *Maqasid al-Shariah Made Simple* (The International Institute of Islamic Thought, Herndon, 2009).

<sup>26</sup> The Quran, 4:79.

<sup>27</sup> The Quran, 6: 17.

<sup>28</sup> The Quran, 26:80.

<sup>29</sup> See The Quran, 38: 41-44.

Lastly, the Quran gives very high importance to sanctity of life and provides clear injunctions that are relevant to contemporary issues in bioethics such as euthanasia, abortion, PVS, and physician-assisted suicide. These guidelines include: prohibition of killing, consenting to self-destruction, suicide, and collaborating on accomplishing prohibited acts. Regarding the prohibition of killing, the Quran prohibits unjustified killing: "And do not kill anyone whose killing Allah has forbidden, except for a just cause..."<sup>39</sup> In addition, intentional killing of a human being is highly prohibited: "And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him".<sup>40</sup> Similarly, self-killing is prohibited: "... And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you."<sup>41</sup> Equally, the Quran prohibits helping and collaborating on conducting sinful acts: "And do not help each other in sin and aggression".<sup>42</sup>

### Prophetic Traditions (The Sunnah) on Health Care and Medication

The Sunnah or *xadith* - traditions of the Prophet Muhammad (May peace be upon him) - deal with medication in three ways.

The first type of the Prophetic traditions encourages and in a recommendable fashion suggests opting for medical treatment. For example, the Prophet said, "...seek medicine, for Allah has not created a disease except that He Has created its cure..."<sup>43</sup>; "There is no disease that Allah has created, except that He also has created its treatment"<sup>44</sup>; "... So you seek medical treatment and do not seek it unlawful"<sup>45</sup>; "Every disease is curable. If a drug is appropriate (effective) for a disease, then it will recover with the permission of Allah"<sup>46</sup>; "It is not God sent down a disease but also sent down the cure"<sup>47</sup>; and "Verily, Allah does not send down a disease but also the medicine. The drug was known to the person who can know it and not known by those who could not tell."<sup>48</sup> In addition, there is, in many chapters in the canons of *xadith* that are related to the Prophetic traditions on the subject of medicine, mention of many substances, fruits, and items praised for their

medicinal effects and therefore recommended for healing. Among these various stuffs are *Al-'Ed al-HindÉ*' (i.e. Qist / Costus/ Indian incense)<sup>49</sup>; black cumin<sup>50</sup>; and *At-Talbina*,<sup>51</sup> etc. Following this further, on the subject of quarantine when epidemics outbreak, the prophetic tradition states: "If you hear of an outbreak of plague in a land, do not enter it; but if the plague breaks out in a place while you are in it, do not leave that place."<sup>52</sup>

The second type of tradition speaks about the *tawakkul* (reliance upon God). For example, "Whoever seeks treatment by cauterization, or with *Ruqyah* (incantation), then he has absolved himself of *tawakkul* (reliance upon Allah)."<sup>53</sup> The Prophet also said that seventy thousand men of his *Ummah*, who neither practice charm, not take omens, nor do they cauterize, but they repose their trust in their Lord, would enter paradise without rendering account.<sup>54</sup> However, as mentioned earlier, medication is allowed and encouraged and so is *Ruqyah* (incantation) allowed and proven as stated in the prophetic traditions. To suffice, "The Prophet used to treat some of his wives by passing his right hand over the place of ailment and used to say, "O Allah, the Lord of the people! Remove the trouble and heal the patient, for You are the Healer. No healing is of any avail but yours; healing that will leave behind no ailment".<sup>55</sup> Furthermore, medication is part of the destiny one will come across as AbÉ KhizÉmah narrated: "I said, 'O Messenger of Allah, the *Ruqyah* (divine remedies - Islamic supplication formula) that we use, the medicine we take and the prevention we seek, does all this change Allah's appointed destiny? He said, 'They are in fact a part of Allah's appointed destiny'.<sup>56</sup>

The third type of tradition, on the other hand, allow abstaining from medication, as NÓ'ishah (may Allah be pleased with her) narrates about an incident before the demise of the Prophet (peace and blessings of Allah be upon him). She states: "We put medicine in one side of his mouth, but he started waving us not to insert the medicine into his mouth. We said: He dislikes the medicine as a patient usually does. But when he came to his senses he said: Did I not forbid you to put medicine (by force) in the side of my mouth...."<sup>57</sup> Ata' b. Abi Rabih narrates: *Ibn Abbas said to me: "May I show you a woman of Paradise? I said: Yes. He said: Here is*

<sup>39</sup> The Quran, Quran, 17: 33.

<sup>40</sup> The Quran, Quran, 4: 93.

<sup>41</sup> The Quran, Quran, 4:29.

<sup>42</sup> The Quran, Quran, 5:2.

<sup>43</sup> Muáammad Ibn NÉsÉ AbÉ NÉsÉ al-TrmidhÉ, Sunan al-TirmÉdhÉ, (DÉr IlyÉ' al-TurÉth al-NArabÉ - BeirÉt), Bk. Medicine, Number:2038

<sup>44</sup> al-BukhÉrÉ, ØaáÉÍ al-BukhÉrÉ,, Book 71, Number: 582

<sup>45</sup> AbÉ dÉwÉd al-SijistÉnÉ, Sunan AbÉ dÉwÉd, Bk. Medicine, Number:3874

<sup>46</sup> AbÉ NAbd Al-Raáman Áímad Ibn ShuÑayb al-NasÉ'É, Sunan NasÉ'É, Bk. Medicine, Number:7514

<sup>47</sup> Áímad Ibn xanbal AbÉ NAbd AlÍÉh al-ShaybÉnÉ, Musnad al-ImÉm Áímad Ibn xanbal, (Mu'ssasat Qurúubah - Egypt), Number: 4183

<sup>48</sup> Narrated by Áímad, Ibn Majah, and al-Hakim, he menshahihkannya and agreed by the Adh-Dzahabi. Al-Bushiri menshahihkan this hadeeth in` zawa his id. See Al-Arnauth takhrij over Zadul Ma'ad, 4/12-13.

<sup>49</sup> al-BukhÉrÉ, ØaáÉÍ al-BukhÉrÉ, Bk. 71: Medicine, No:5692 and BukharÉ, Bk. 71: Medicine, No: 7.596

<sup>50</sup> Ibid., Bk. 71: Medicine, No:7.591

<sup>51</sup> Ibid., Bk. 71: Medicine, No: 7.595

<sup>52</sup> Ibid., Bk. 71: Medicine, No: 7.624

<sup>53</sup> al-TrmidhÉ, Sunan al-TirmÉdhÉ, Bk. Medicine, Number: 2055

<sup>54</sup> See, Muslim Ibn al-xjjÉj AbÉ al-xusayn al-QushayrÉ al-NaysÉbÉrÉ, ØaáÉÍ Muslim, (DÉr IlyÉ' al-TurÉth al-NArabÉ - BeirÉt), Bk. Faith (Kitab Al-Iman), Number :0423 and al-BukhÉrÉ, ØaáÉÍ al-BukhÉrÉ, Bk. 71: Medicine, No: 7.606

<sup>55</sup> al-BukhÉrÉ, ØaáÉÍ al-BukhÉrÉ, Bk. 71: Medicine, No: 7.639 and No: 7.638

<sup>56</sup> al-TrmidhÉ, Sunan al-TirmÉdhÉ, Bk. Medicine, Number: 2065

<sup>57</sup> al-BukhÉrÉ, ØaáÉÍ al-BukhÉrÉ, Bk. 71: Medicine, No: 612

this dark-complexioned woman. She came to Allah's Apostle (may peace be upon him) and said: I am suffering from falling sickness and I become naked; supplicate Allah for me, whereupon he (the Holy Prophet) said: Show endurance as you can do and there would be Paradise for you and, if you desire, I supplicate Allah that He may cure you. She said: I am prepared to show endurance (but the unbearable trouble is) that I become naked, so supplicate Allah that He should not let me become naked, so he supplicated for her".<sup>58</sup>

The trends and approaches to medication in the first two sources of Islam provide a rich matrix to rethink and resolve the emerging issues in bioethics. Likewise, the potentiality of these trends in deriving less strict and more flexible orientations can lead to formulation of flexible juristic and ethical normative guidelines in clinical practice, counseling, and provide space for the patient autonomy to exercise discretion in respect to patient's own capacities and capabilities.

Comprehending the guidance on medical treatment from the basic sources of Islam has throughout history culminated into different perceptions as present in classics of Islamic jurisprudence. These perceptions furthermore substantiate the trend on the subject which evades rigidity and encourages flexibility. The following section of the paper will explore the opinions of the jurists and contemporary juristic thought on the subject.

#### Islamic Medical Jurisprudence: Different Perceptions from *Ijtihād*

The opinions on obligation to medical treatment in the works of Islamic jurisprudence are varied, held by their opponents due to their methodological preferences while making *ijtihād*. Muslim jurists are unanimous in upholding permissibility (*ibÉha*) of medical treatment. Some jurists, while deliberating on the theological evidences, have formulated positions on medical treatment, relying considerably on the nature of diseases and medical conditions of patients; hence, different opinions are made on the issue, culminating in formulation of normative positions. However, a single normative position has a tendency of reducing the whole issue of obligation to medication to a single guiding principle that may not fit in the holistic view based on various evidences from the Quran and the Sunnah on the subject. Ibn Taymiyyah (1263–1328 CE) has rightly appropriated it, as he states that the scholars have disputed on medication whether it is *mubÉh* (permissible), *mustálab* (recommended) or *wÉjib* (obligatory), when in fact, the correct view is that medication is of types, some of the types are *muáarram* (prohibited) and *mÉkrÉh* (disapproved) and some are *mustálab*, and *wÉjib*.<sup>59</sup>

The jurists including some mystics have divided in

two groups on the subject of medical treatment: opponents and proponents.

Opponents are comprised of two groups. The first group is outrightly against medical treatment; some extremist *sÉfÉ* (mystics) belong to this group.<sup>60</sup> Their justification follows from the popular concept of *tawakkul* (reliance upon Allah), believing that God ultimately holds power to heal and harm, and they drive on some Prophetic traditions which are understood, in an unholistic manner any literally, discouraging any obligation to medical treatment. However, the more reliable account that could be attributed to sufis is that permissibility of medication is not contrary to *tawakkul* and reliance upon Allah.<sup>61</sup> On the other hand, there are juristic opinions that although treat medical treatment permissible, yet they prefer avoiding it. In Hanbili School of jurisprudence, avoiding medication is treated as the best option (*afáal*) to practice.<sup>62</sup> Al-MurÉzÉ also states that medication is permitted (*RukhÁah*) and avoiding it is the best option<sup>63</sup>; Imam Nawawi prefers the similar view.<sup>64</sup> As a matter of fact, there are reports that some of the disciples of the Prophet (ØáiÉbah) and the generation after the Sahabah (TÉbiÑÉn) abstained from medication such as AbÉ Bakar, AbÉ Drada, Ubay Ibn KaÑab and Abu Dhar;<sup>65</sup> and their abstention was not disputed or "criticized by their contemporaries".<sup>66</sup> The second group is of jurists who oppose medication in case the patient believes that it is medication alone – without Allah's permission-- that will heal him. Some *xanafÉ* scholars hold this position.<sup>67</sup>

Proponents hold four positions: (1) *mubÉh* (permissible) (2) *mustálab* and *mandÉb* (recommended) (3) *mákrÉh* (disapproved) and (4) *wájib* (obligatory). Permissibility (IbÉl) of medication is held

<sup>60</sup> Muslim, ØáiÉl MuslÉm bÉ SharÁl al-NawawÉ, vol9, p33., vol.14, p191, Zayn al-DÉn AbÉ al-Faáal Ñabd al-RaáÉm Ibn al-xusaynÉ al-ÑirÉqÉ TarÁu al-TathrÉb fÉ SharÁl al-TqrÉb, vol.8, p184. JamÉl al-DÉn AbÉ al-Faraj 'Abd al-RaáÉm al-JawzÉ, TalbÉs IblÉs, (DÉr al-Fikir, BeirÉt, 2001), vol.1, p351

<sup>61</sup> Álmad Ibn Ghunaym Ibn sÉlim al-NairÉwÉ al-MÉlikÉ, Al-FawÉkih al-DawÉnÉ ÑalÉ RisÉlat Ibn AbÉ Zayd al-QayrawÉnÉ, (DÉr al-Fikr - BeirÉt- 1415) vol.2 p.294

<sup>62</sup> ManÉr Ibn yÉnus Ibn 'IdrÉs al-BahÉtÉ, KashshÉf al-QinÉÑ Ñan Matan al-IqnÉÑ, (DÉr al-Fikr - BeirÉt - 1402), vol.2, p85

<sup>63</sup> Shams al-DÉn AbÉ al-'Awn Muáammad al-xanbalÉ, GhidhÉ' al-AlbÉb fÉ SharÁl manÐÉmat al-ÓdÉb, (Egypt, 1993), vol.1, p.349

<sup>64</sup> Álmad Ñabd al-xalÉm Ibn TaymÉyyah al-xarrÉnÉ, MajmÉÑ al-FatÉwÉ libn Taymiyyah, Ri'ÉsatIdÉratal-BaáÉth al-Ñilmiyyah wa al-IftÉ' - al-IdÉratal-ÑÉmmah li al-UabÑ - al-RiyÉl, vol. 21, p564. 'Abd AllÉh Muáammad Ibn MuflÍ al-Mqdasi, ÓdÉb al-SharÑiyyah, (Mu'assat al-RisÉlah, 1999)vol.2, p358, al-BahÉtÉ, KashshÉf al-QinÉÑ Ñan Matan al-IqnÉÑ,vol.2, p76, Ibn TaymÉyyah, MajmÉÑ al-FatÉwÉ, vol.5, p95.

<sup>65</sup> Muáammad Ibn 'AlÉ Ibn 'Atiyyah al-xÉrthÉ, QÉt al-QulÉb fÉ Mu'Émalat al-MÍbÉb, vol.2, p36, AbÉ xÉmid Muáammad Ibn Muáammad al-GhazÉli, IlyÉ' 'UlÉm al-DÉn, (DÉr al-MÑrifah, BeirÉt), vol.4, p286.

<sup>66</sup> Ibn Taymiyyah, MajmÉÑ al-FatÉwÉ, vol.5, p.440.

<sup>67</sup> Fakhr al-DÉn NuthmÉn Ibn ÑAlÉ al-ZaylaÑÉ al-xanaf, TabyÉn al-xaqÉ'iq SharÁl Kanz al-DaqÉ'iq (DÉr al-Kutub al-IsÉmiyyah- BeirÉt, 1313H), vol6, p23 -33

<sup>58</sup> al-BukhÉrÉ, ØáiÉl al-BukhÉrÉ., Book 032, Number 6245: Muslim, ØalÍ Muslim Book 32, Virtues

<sup>59</sup> Shaykh al-'IlÉm AbÉ al-ÑabbÉs TaqÉyyu al-DÉn Álmad Ibn Ñabd al-xalÉm Ibn TaymÉyyah, MajmÉÑ al-FatÉwÉ libn Taymiyyah ,vol.18, p12



by the majority of scholars of *xanafÿyyah*, *MÉlikiyah*, and *HanÉbilah* schools of Islamic jurisprudence.<sup>68</sup> The overriding opinion (*rÉjah*) regarding medication is permission (*jawÉz*) and consensus (*ijmaÑ*) of SaÍEbaÍ and TabÑÈn is reported in favor of it.<sup>69</sup> Among Hanfi scholars, Imam KÉsÈni and ShÉfaÑiyah School of jurisprudence treat medication *mustaÍab* and *mandÉb*.<sup>70</sup> Some of the scholars of the first three centuries of Islam (*salf*)<sup>71</sup> and *MÉlikiyah* School of jurisprudence treat medication *makrÉh* if the medication is yet to be discovered.<sup>72</sup> Those who consider medication *wajib* (obligatory) comprise of two groups. The first group considers medication absolutely obligatory; they are some of the scholars of *xanbalites* school of jurisprudence. This view is supported by one of the opinions of ImÉM AÍmad<sup>73</sup>. The second group believes that medication is obligatory if a person knows that he will not live without it. This view is held by some scholars of *ShÉfaÑiyah* and *Hanbaliyyah* schools of jurisprudence; *ibn Taymiyyah* holds the similar position.<sup>74</sup>

The traditional scholarship of Islamic jurisprudence as briefed above presents many perceptions of obligation to medical treatment, emerging basically from the original sources of Islam. The contemporary scholarship on the issue is clearer than the traditional discourse, especially in delineating classification of levels of obligation and their corresponding types of diseases with helpful conceptual content in understanding the nature of diseases under consideration.

### Contemporary Islamic Approach to Medication

The contemporary approaches to bioethics in Islamic writings are based on the aforementioned discourse in Islamic jurisprudence and reconsideration of the first two sources of Islam. The topics included in the traditional works of Islamic jurisprudence do not have separate chapters on bioethical matters. However, the sub-branch of Islamic jurisprudence to which scholars contribute independently or institutions

in an organized form called as *fatwa* has been meeting the challenges. In addition, independent scholars have written exclusive works on the subject. Juristic organizations and bodies have produced unanimous resolutions on the matters pertaining to bioethical issues. The professional organizations have also drafted codes. In terms of methods, a comprehensive study of these writings demonstrates that the contemporary writings on Islamic bioethics rely on five sources: (1) principles of Islamic jurisprudence (*UsÉl al-fiqh*), (2) higher intentions of Islamic law (*maqÉsid al-SharÉÑah*), (3) maxims of Islamic law (*QawÉÑid al-fiqhiyyah*). In addition, different from the traditional way of developing legal and moral positions, the writings on Islamic bioethics lay a great emphasis on (4) expert advice (clinicians) and (5) intentionality and capacities (of clinicians, patients, and guardians), allowing space for what has come to be known as "patient autonomy".

The jurisprudential discourse on medical treatment has culminated into some decisiveness in the contemporary time. Though different perceptions of medical treatment still matter to help in solving some issues that clinicians and patients face at times; however, the important issue is to decide when medical treatment becomes obligatory (*wÉjib*). Knowing this is important to many concerned people such as public policy experts, physicians, patients, guardians of the patients, insurance companies, employers, lawyers, etc. A very comprehensive statement worthy of consideration is the resolution of Islamic Fiqh Academy, *MajmaÑu al-fiq al-IslÉmi*, on the medication that was made in its seventh session in Jeddah on 7-12, 11, 1412 h. as follows: The medication is permissible because of its justification from the Quran, both statements and acts of the Prophet (Sunnah), and for the reason that it guards the self of a person, which is one of the basic objectives of the *SharÉÑah*. The injunctions regarding medication differ according to patients. The medication becomes obligatory (*wajib*) in cases where not giving medication could cause death, disability or the loss of a limb, or where the sickness is bound to spread if not treated, as in contagious diseases. Medication becomes encouraged (*mandÉb*) in cases where not giving medication may weaken a person physically, and it is not as bad as the cases that are under preceding obligatory (*wajib*) type. It becomes optional or permissible (*mubāh*) in cases which are not covered in the two preceding categories: *wajib* and *mandÉb*. It is discouraged or disliked (*makrūh*) in cases where the treatment could lead to complications that are worse than the original disease that is considered to be cured.<sup>75</sup> In these categories, it seems that decision making on medical treatment is solely based on the patient autonomy. However, in certain cases patient autonomy and consent is disregarded against the greater good of public. Authorities have right to force medication in certain situations such as in case of contagious disease, or in case of giving of vaccines or

<sup>68</sup> Al- BayrÉtÉ, Al-BidÉyah Mña al-ÑinÉyah, vol.10, p66, DardÉ BahÉmish, Al-Shríu al-ØagÉr, vol.2, p494, Ibn Muflíi, Al-MubdiÑ, vol.2, p212

<sup>69</sup> ÑAIÉ Ibn AÍmad Ibn SaÑÉd Ibn xazm al-ZÉhirÉ AbÉ MuÍammad, MarÉtib al-ijmÉÑ FÉ al-ÑIbÉdÉt wa al-MuÑÉmalÉt wa al-ÑtiqÉdÉt, (DÉR al-Kutub al-ÑIlmÉyyah – BeirÉt)

<sup>70</sup> ÑAIÉ al-DÈn al-KÉsÈnÉ, BadÉ'iÑu al-ØanÉ'iÑ fÉ TartÉb al-SharÉ'iÑ, ( DÉR al-kuttÉb al-ÑArbaÉ - BeirÉt - 1982,) vol.5, p127, , al-NawawÉ, Al-MajmÉÑ, ( DÉR al-Fikr - BeirÉt – 1997,) vol.5, p106.

<sup>71</sup> , MuÍammad Ibn AÍmad Ibn JuzzÉ al-kalbÉ al-GharnÉiÉ, Al-QawÉnÈn al-Fiqhiyyah, p 269, Zayn al-dÈn Ibn nujaym al-xanafÉ, Al-BaÍru al-RÉ'iq SharÍu kanz al-DaqÉ'iq, ( DÉR al-MaÑrifah - BeirÉt,) vol.8, p208

<sup>72</sup> Al-Qabas Sharaf al-Muwíi', 103.

<sup>73</sup> Ibn Taymiyyah, MajmÉÑ al-FatÉwÉ, vol.21, p564.,\_ al-MardÉwÉ, Al-InÍÉf, vol.2, p463.

<sup>74</sup> AÍmad SaÍÉmah al- QlyÉbÉ wa AÍmad al-Barlasi ÑUmayrah, xÉshÉyatā wa ÑUmayrah, (Dār al-fikir – beirÉt), vol.1, p.344, Ibn Taymiyyah, MajmÉÑ al-FatÉwÉ, vol.18, p.12, al-MardÉwÉ Al-InÍÉf, vol.2, p.463.

<sup>75</sup> Resolution and recommendations of the Islamic Fiqh Academy, Resolution no:67, pp147, Ibn Taymiyyah, MajmÉÑ al-FatÉwÉ, vol. 18, p.12

inoculations. In an emergency, where lives are at stake, treatment does not depend on obtaining permission of patients.<sup>76</sup> Furthermore, the medication of terminally ill patients should be in accordance to the *expert advice of the doctors*, the *availability of medication in time and place* and the *circumstances of the patient*.<sup>77</sup>

The abovementioned discourse on medication, which follows from the Quran and the Sunnah, shapes into guidelines and norms in the jurisprudential heritage of Islam and into resolutions of jurisprudential bodies in our contemporary time is still in need of further development to address the modern-day bioethical concepts, distinctions, and issues. One of such important issues is the distinction between ordinary and extraordinary means of medical treatment.

### Ordinary and Extraordinary Medical Treatment: Classification

Ordinary and extraordinary means of medical treatment distinction is important because of its usefulness in many medical issues. If, in some cases, medical treatment is obligatory in Islamic sense, as described above, then it needs to be demonstrated whether such obligation is *absolute* or *conditional*. Patients as individuals need to know it to make choices on medication. In addition, countries where access to medical treatment is right of a citizen, the public policy needs to be clear on what treatment is ordinary and what is extraordinary. In the corporate sector, the insurance companies also need to know which treatments they need to cover as ordinary and which they are not obliged to cover as extraordinary. In the similar manner, in a paternalistic model when right to refuse treatment may apply and when a surrogate's interest in approving or refusing medical treatment could be justified and considered in good faith, having a definite understanding of the issue becomes indispensable. Therefore, the question arises: is it possible to make a distinction between ordinary and extraordinary means of medical treatment on Islamic lines; and if so, what should be the basis for the distinction? In order to understand the issue, the below classification is followed:

1. Ordinary and Extraordinary distinction in regards to terminally ill patients
2. Ordinary and Extraordinary distinction in regards to non-terminally ill patients

### Islamic Concept of Obligation (*taklĒf*)

Islamic concepts of obligation (*taklĒf*) is always qualified by some conditions and capacities that vary in respect to various duties and responsibilities. It is a concept which applies to all obligations. The central point to the obligations (*taklĒf*) which comes with duty (*adĒ*) is that the person who is addressed with any obligation should be *mukallaf*: a *mukallaf* is a person who should have the capacity (*ahliyyah*) to carry out the duty. The concept of capacity (*ahliyyah*) is also understood as capability (*isġĪĒĤah*). The classics of

Islamic jurisprudence are clear on the subject of capacity (*ahliyyah*) with details regarding performing rituals, transactions, contracts and other various matters. However, on many ethical matters this concept has received insignificant treatment; obligation to medical treatment is one of such issues.

Therefore, construction of the right concept of obligation (*taklĒf*) regarding medical treatment is in need of adequate formulations. The aforementioned classification of obligation to medical treatment as stated in the resolution of *MajmaĤu al-fiqh al-IslĒmi* is made in relevance to the nature of diseases. How a patient's own capacities and relevant circumstances and conditions affect the general rules brings the whole subject under a new scrutiny where general principles are subject to change on case by case basis by giving a patient due consideration as the subject who has influence on decision making. This line of thinking gives considerable weight to both the means of medical treatment and the patient in the process of deciding the obligation to medical treatment, generally, and, particularly, in determining extraordinary means of medical treatment.

Methodologically, the abovementioned concepts are to be understood adequately for the purpose of formulating the distinction between ordinary and extraordinary means of medical treatment, and to do so in a sophisticated manner, it requires comprehensive study of the writings on the relevant issues including *fatwas*, codes, independent researches, organized resolutions on various medical issues that touch obligation to medication, patient consent and autonomy, nature of medication, and overall understanding of the issue from the evidences in the Quran and the Sunnah.

The study of relevant fatwas, cases, and statements that are available to me show that there are two factors which can lead to the formulation of the distinction between ordinary and extraordinary means of medical treatment. They are (1) patient capacity and (2) nature of medication. Along with these two factor, the determining factor is (3) expert advice. It is the experts who are right authority to judge patient capacity and nature of medication.

### Terminally Ill Patients and the Distinction

Regarding terminally ill patients, medical treatment can become extraordinary in certain instances; therefore, the patient would not be obliged to opt for medical treatment. The cases which come under this category, as the study of statements and fatwas on the relevant cases show, can be classified into two classifications: medication can be extraordinary, thus non-obligatory, because of (1) patient capacity and (2) nature of medication. In both these case *expert advice* taken from a group of physicians applies as the condition that would decide on the presence or absence of the capacity of the patient and the nature of the medication that may be under consideration.

### Patient Capacity

Medication can become extraordinary, thus non-obligatory, if patients lack certain capacities. Various

<sup>76</sup> MajmaĤu al-fiqh al-IslĒmi, p. 147

<sup>77</sup> Majallatu al-MajmĤi al-Fiqhi al-IslĒmi, Vol. 6, 3/1791.

statements of Muslim scholars on withholding, withdrawing, and suspending medical treatment from terminally ill patients include mention of certain capacities, and judging their absence or presence is determined by "expert advice". To illustrate this, for example, Mufti Ali Gomma's fatwa regarding euthanasia is helpful in discerning nature of extraordinary means of medical treatment. In light of his statement, using life sustaining medical equipment with patients with no hope to recover and without any progress made on restoring their health becomes extraordinary, precisely when the patients are "clinically dead"; however, he qualifies such a decision with expert advice taken from physicians.<sup>78</sup> Muzammil Siddiqi of the Fiqh Council of North America supports stopping medication when a patient is in terminal condition with no hope of recovery and switching off the life support machine with due consultation and care when expert advice from medical experts determine so.<sup>79</sup> Islamic Medical Association of North America (IMANA) supports discontinuing life support except nutrition and hydration when a patient is in a "vegetative state".<sup>80</sup>

The Council of Islamic Jurisprudence (*Majma'Nu al-fiq al-Islami*) issued a resolution on discontinuing, on advice of specialist and experienced doctors, life support systems when patient's brain functions cease completely even if some of the patient's organs like the heart are kept functional by artificial means.<sup>81</sup> On the issue of resuscitation, the Standing Committee for Academic Research and Issuing Fatwas (*Fatwa'É al-Lajnah al-DÉ'imah*) endorsed "Do Not Resuscitate" (DNR) in several cases including when the patient's condition is not fit for resuscitation; when patient's sickness is chronic and untreatable, and death is inevitable; if the patient is incapacitated, or is in a persistent vegetative state and chronically ill, or in the case of cancer in its advanced stages, or chronic heart and lung disease, with repeated stoppages of the heart and lungs; if there is any indication in the patient of brain injury that cannot be treated; and if reviving the heart and lungs is of no benefit and not appropriate because of a certain situation. Most of these cases are conditioned with "expert advice", three trustworthy specialist doctors.<sup>82</sup>

### Nature of Medication

Some means of medical treatment can become extraordinary because of the nature of medical treatment itself: by examining the quality, usefulness, and effectiveness of the means of medical treatment. In this case, categorizing medical treatment as extraordinary depends primarily on the expert advice

taken from a group of physicians or medical committees. For example, *The Islamic Code of Medical Ethics*, in its Article Sixty-Two allows "the termination of a treatment when its continuation is confirmed, by the medical committee concerned, to be useless, and this includes artificial respirators, in as much as allowed by existing laws and regulations" and "declining to begin a treatment that is confirmed to be useless".<sup>83</sup> Sheikh Yousuf al-QaradÉwi holds that a physician can suspend useless medical treatment for the sake of the patient's comfort and the relief of his family.<sup>84</sup> Sheikh Muhammed Salih Al-Munajjid holds the view that if there is no certainty that treatment will be of benefit, and indeed it is likely to cause suffering to the patient, then there is nothing at all wrong with not giving the treatment.<sup>85</sup> Furthermore, the Islamic Code of Medical Ethics states that "If it is scientifically certain that life cannot be restored, then it is futile to diligently keep the patient in a vegetative state by heroic measures, or to preserve the patient by deep freezing or other artificial methods".<sup>86</sup>

### Non-Terminally Ill Patients and the Distinction

In regards to non-terminally ill patients, the concept of ordinary and extraordinary means of medical treatment has not been given any adequate treatment in the current bioethics; however, it is possible to formulate the concept of extraordinary means of medical treatment on Islamic lines. Medical treatments which are known useless, their harm is more than the diseases in question, or are deceptive in their effects, and which while being free from these defects are not possible because of the financial incapacity of the patients are extraordinary. Some of these types of treatment are even treated not only in extraordinary ways but also prohibited by statements made by some Islamic scholars in fatwa literature. There are three types of means of medical treatment, as they seem to me, which deserve to be categorized as extraordinary in respect to non-terminally ill patients. They are: (1) treatment that is known to be useless and futile; (2) treatment that may endanger the life or cause more harm than what it removes; and (3) treatment is useful, but the patient is unable to bear the cost.

### Useless and Futile Treatment

The means of medical treatment that are known to be useless and futile are extraordinary. Therefore, because of the nature of the medication, such medication would not be obligatory for a Muslim patient in case the obligation to medical treatment falls within the obligatory (*wajib*) category; this decision has to be based on the advice of expert physicians, as the research shows that expert advice has decisive

<sup>78</sup> Goma, "Ethics of Euthanasia."

<sup>79</sup> Muzammil Siddiqi, "Is Euthanasia Allowed in IslÉm?," <http://www.Islamonline.net>.

<sup>80</sup> IMANA Ethics Committee, "Islamic Medical Ethics: The Imana Perspective," *Journal of Islamic Medical Association* July 37(2005): 33-42.

<sup>81</sup> *MajallÉt Majma' al-Fiqh*, 2, no. 3: 807.

<sup>82</sup> Standing Committee for Academic Research and Issuing Fatwas, *Fataawa Al-Lajnah Al-Daa'imah* (25/80).

<sup>83</sup> *The International Islamic Code for Medical and Health Ethics*

<sup>84</sup> Ibid.

<sup>85</sup> Sheikh Muhammed Salih Al-Munajjid, "Ruling on Medical Treatment," <http://www.al-IslÉmÉqa.com/en/ref/2438>.

<sup>86</sup> *The International Islamic Code for Medical and Health Ethics*

importance in almost all cases in which treatment is withheld or discontinued. This position is further supported by the legal maxim: *Al-YaqĒnu IĒ yazĒlu bi-al-Shakki*, certainty is not dispelled by doubt. If there is certainty that the medical treatment will not cure the patient, doubting otherwise will not turn that medical treatment into ordinary.

### Life Endangering and Harmful Treatment

Those means of medication are extraordinary if they cause danger to life or cause more harm than they could possibly remove. The legal maxims state: no injury or countering injury (*la darar wa-la dirar*); "harm must be eliminated but not by means of another harm" (*ad-dararu yuzalu wa lakin la bi-darar*); "harm is not eliminated by another harm" (*al-ġararu la yuzĒlu bi al-ġarar*); and "harm is not eliminated by the similar harm" (*al-ġararu IĒ yuzĒlu bi-mithliĒ*). However, "a greater harm is eliminated by means of a lesser harm" (*al-ġararu al-Ashaddu yuzĒlu bi al-ġarari al-akĥaff*).

### Unbearable, over- costly Medication

The very important component of any obligation in Islam is the capacity or *taklĒf* of a patient. This capacity could be broken down into many subcomponents relevant to various religious obligations. Regarding sickness and disease, if a patient is not in position to pay the expenses of medication, in that case the patient does not have any obligation to medication. The Prophetic tradition states that "...if I forbid you to do something, then keep away from it. And if I order you to do something, then do of it as much as you can."<sup>87</sup> However, Islam encourages donating to those who are needy. Even *zakah* could be spent on such cases. For example, al-Shaykh Ibn 'UthaymĒn in *MajmĒĒ al-Fataawa* while answering the question, "Is it permissible to give *zakh* to those who are suffering from kidney failure?" responds, "...A person's need for medical treatment is a real need, so if we find someone who needs medical treatment but does not have enough money to pay for treatment, there is nothing wrong with giving *zakh* to him, because the aim of *zakh* is to meet people's needs."<sup>88</sup>

### Conclusion

I attempted to show the importance of medical treatment from the primary sources of Islam: the Quran and the Sunnah, and, furthermore, how this issue is debated by Muslim jurists in the classics of Islamic jurisprudence. Connecting the traditional discourse to the latest development in Islamic jurisprudence, I showed that medical treatment becomes obligatory (*wĒjib*) if its abandonment leads to the fatality of the life or an organ or its inability or the disease transmits to others such as communicable diseases. Deriving on this concept of obligation, the researcher discussed the distinction of ordinary and extraordinary means of medical treatment. The researcher showed that the distinction can be made in two ways regarding

terminally ill patients and non-terminally ill patients. The factors that lead to the distinction between ordinary and extraordinary treatment are: (1) patient capacity (2) expert advice, and (3) nature of medication. Regarding terminally ill patients, medical treatment can become extraordinary if it is (1) extraordinary because of patient capacity and (2) extraordinary because of nature of medication. In both these case the condition applies and that is expert advice taken from a group of physicians. In regards to non- terminally ill patients, the three types of extraordinary means of medical treatment are very prominent: (1) treatment that is known to be useless and futile, (2) treatment that may endanger the life or cause more harm than what it removes, and (3) treatment is useful, but the patient is unable to bear the cost.

## Roles of The Hague as a Centre for International Law overcoming environmental challenges

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### Roles of The Hague as a Centre for International Law overcoming Environmental Challenges

"*Ad hoc tribunals can settle particular disputes; but the function of the established 'principal judicial organ of the United Nations' must include not only the settlement of disputes but also the scientific development of general international law ... There is therefore nothing strange in the ICJ fulfilling a similar function for the international community.*" (Judge Sir Robert Jennings, "The Role of the International Court of Justice in the Development of International Environmental Protection Law", *Review of European Community and International Environmental Law*, Vol. 1, 1992, p. 242.)

### Introduction

This paper was presented at an international conference titled '*Humans and Nature: Love and Hate? World Views of Nature Workshop*' held in London on Saturday 9<sup>th</sup> November 2013 at Norwood Hall, and aims to give a brief overview of the various international institutions and tribunals that The Hague hosts. The focus will be on the Principal Judicial Organ of the UN which is housed in The Hague, namely the International Court of Justice (ICJ). Relevant case-law with regards to international environmental law before the ICJ will be touched upon. The organisations that have a primary focus on environmental policy and law will be listed and discussed. After that, the organisations with a different primary focus will be scrutinised.

The Hague is well-known to be the centre for

<sup>87</sup> Bukhari Volume 9, Book 92, Number 391.

<sup>88</sup> <http://www.islam-qa.com/en/ref/105328>



International Law, and the City of Peace, Justice and Security. It is home to countless international organisations and tribunals. For example, some of the larger more renowned international organisations that The Hague houses are the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Tribunal for Lebanon (STL)/ the Special Court for Sierra Leone (SCSL), the Permanent Court of Arbitration (PCA), the International Court of Justice (ICJ), the European Patent Office (EPO), The Hague Conference on Private International Law (HCCH) and the Organisation for the Prohibition of Chemical Weapons (OPCW) (winner of the 2013 Nobel Peace Prize). The Hague is the City of Peace, Justice and Security for a number of reasons. It is known to the legal community as the Legal Capital of the World with the ICJ as the main occupant of the Peace Palace.

The Netherlands is also the birth place of Hugo Grotius (Delft, 10 April 1583 – Rostock, 28 Augustus 1645), Father of the 'The Law of the Sea' and the great work '*Mare Liberum*', who laid the foundations of Public International Law in the 17<sup>th</sup> Century.

As the focus of the conference was the environment, the focus of this paper is international environmental law (IEL) in international tribunals. This specific area of international law deals with some of the key challenges the world will be facing in the coming decades, notably where it concerns climate change and water management. The efforts in The Hague could contribute to strengthening the effectiveness of IEL and international law in the field of sustainable development, and in that way contribute to tackling those key environmental challenges.

#### International Tribunals

There are only a handful of tribunals which deal with IEL, namely the ICJ<sup>89</sup>, the International Tribunal for the Law of the Sea<sup>90</sup> (ITLOS) located in Hamburg, Germany, various arbitral tribunals and the UN Compensation Commission<sup>91</sup> (UNCC) located in Geneva, Switzerland. My paper will focus on some relevant case-law before the ICJ as this court is based in The Hague.

The head of the ICJ, Judge Peter Tomka, addressed the UN General Assembly on 31<sup>st</sup> October 2013 highlighting the work of the court tackling cases over the 2012 – 2013 period.<sup>92</sup> "During the last 12 months, the International Court of Justice has continued to fulfil its role as the forum of choice of the international community of States for the peaceful settlement of every kind of international dispute over which it has jurisdiction."<sup>93</sup> 11 contentious cases have been dealt with over the past year. The Hague-based body, otherwise known as the 'World Court', held public

hearings and was at the time deliberating three cases; a maritime dispute involving Peru and Chile, an interpretation of a 1962 judgment in the case concerning the Temple of Preah Vihear between Cambodia and Thailand, and the case concerning whaling in the Antarctic between Australia and Japan, with New Zealand intervening. The Court also delivered two judgments in 2013, the first in a territorial and maritime dispute involving Nicaragua and Colombia, and the second in the frontier dispute between Burkina Faso and Niger. In addition, the ICJ delivered six Orders in other cases.

There have been a handful of cases heard and Advisory Opinions decided upon before the ICJ with respect to IEL. The ICJ produced many landmark judgments in the field of IEL, notably in the Nuclear Tests cases (Australia v. France and New Zealand v. France)<sup>94</sup> and the case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)<sup>95</sup>. More recently, the Paper mills on the river Uruguay dispute between Argentina and Uruguay<sup>96</sup> and the Whaling in the Antarctic case between Australia and Japan<sup>97</sup>. The aerial herbicide spraying dispute between Ecuador and Colombia, pursuant to Ecuador's request, was removed from the court's list by order on 13<sup>th</sup> September 2013.<sup>98</sup>

It is the writer's opinion that a request for an Advisory Opinion on the Legality of the Threat or Use of Chemical Weapons, perhaps requested by the UN General Assembly (UNGA), is imminent. In 2004 the Court, at the request of the UNGA, issued an Advisory Opinion<sup>99</sup> to the effect that the trajectory of the wall separating the Palestinian lands violated international law, amongst other things, because it deprived the Palestinians of their access to water. This is but one example of the many areas of IEL the case-law and advisory opinions of the ICJ has touched upon. All ICJ judgments and Advisory Opinions (and summaries thereof) are available online at <http://www.icj-cij.org/docket/index.php?p1=3>.

#### **Hague based organisations and International Environmental Law<sup>100</sup>**

Organisations focusing on environmental issues

At the moment, only some of the organisations and

<sup>94</sup> *Nuclear Tests* (Australia v. France; New Zealand v. France), Judgment, ICJ Reports 1973

<sup>95</sup> *Gabčíkovo-Nagymaros project* (Hungary/Slovakia), Judgment, ICJ Reports 1997

<sup>96</sup> *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgment, ICJ Reports 2010

<sup>97</sup> *Australia v. Japan: New Zealand intervening* (Australia v. Japan), Judgment, ICJ Reports 2014

<sup>98</sup> <http://www.icj-cij.org/docket/files/138/17528.pdf>

<sup>99</sup> See 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory', Advisory Opinion, I.C.J. Reports 2004

<sup>100</sup> The contents of this section of my paper has been largely provided by the following piece of research: Douma, W. 'Feasibility Study for The Hague Environmental Law Facility', Institute for Environmental Law Facility, May 2009, [http://www.envirosecurity.org/helf/ESPACE\\_VOL\\_1.pdf](http://www.envirosecurity.org/helf/ESPACE_VOL_1.pdf), p. 13-18

<sup>89</sup> <http://www.icj-cij.org/homepage/>

<sup>90</sup> <http://www.itlos.org/index.php?id=2&L=0>

<sup>91</sup> <http://www.uncc.ch/>

<sup>92</sup> <http://www.icj-cij.org/presscom/files/0/17670.pdf>

<sup>93</sup>

centres in or near The Hague focus primarily on environmental law and policy issues. Examples of such organisations are the newly founded European Climate Foundation (ECF), the UNEP's Global Programme of Action (GPA) Coordination Office for the Protection of the Marine Environment, the Red Cross/Red Crescent Centre on Climate Change and Disaster Preparedness, the Institute for Environmental Security (IES) and the Dutch Ministry of Housing, Spatial Planning and the Environment (VROM). Furthermore, there is the Delft based UNESCO-IHE Institute for Water Education founded in 2003.

The **ECF**<sup>101</sup> aims at facilitating the reduction of greenhouse gas emissions in Europe through the re-granting of funds to activities and projects in a variety of areas. The ECF staff has extensive knowledge of policy and legal aspects of international and European climate change actions and the hurdles ahead where the shaping of a post-2012 climate change regime is concerned.

The **UNEP/GPA Coordination Office**<sup>102</sup> supports states in the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. It develops conceptual and practical guidance for decision makers at the national and/or regional level dealing with actions to prevent, reduce, control and/or eliminate marine degradation from land-based activities. The legal officer deals with all aspects of IEL aiming at the implementation of UNEP's environmental programmes.

The **Red Cross/Red Crescent Centre on Climate Change and Disaster Preparedness**<sup>103</sup> (RC/RC Climate Centre) promotes understanding of the risks of climate change, through programme coordination, technical advice and financial assistance provision and information and documentation dissemination.

As an international non-profit NGO, the **IES**<sup>104</sup> aims at increasing political attention to environmental security and to contribute to solving environmental problems on field level and in conflict zones. The organisation carries out programmes mainstreaming environmental and sustainable development factors into European foreign and security policy.

The **UNESCO-IHE Institute for Water Education's**<sup>105</sup> mandate is to strengthen and mobilise the global educational and knowledge base for integrated water resources management and contribute to meeting the water-related capacity building needs of developing countries and countries in transition. International water law ranks among the issues dealt with.

The **Ministry of Housing, Spatial Planning and the Environment**<sup>106</sup> (VROM) is responsible for co-ordinating environmental policy at government level. VROM actively participates in the field of international

environmental legal cooperation through several initiatives and programmes, for instance by providing assistance to Eastern European environmental projects or being among the first to adopt a formal strategy for the implementation of the Kyoto Protocol flexible mechanisms. None of the organisations discussed in this section deal exclusively with international environmental law, but each of them touches upon IEL in different ways. For all of the organisations mentioned above, there is valuable expertise present in or near The Hague where IEL and/or related issues of sustainable development are concerned.

#### Organisations not focusing primarily on environmental issues

Studying the statutes and other information on the remaining organisations and centres revealed that many Hague based organisations dealing primarily with issues ranging from war crimes to unrepresented nations and people, chemical weapons and international coordination of prosecution all deal with the environmental aspects of these topics to some extent. Some organisations carry out similar tasks. These will be presented under the headings judicial, education and research, criminal law, Dutch governmental organisations, other International Organisations, NGOs and others respectively.

#### *Judicial*

In the field of dispute settlement, The Hague in the first place is the seat of the ICJ, the principal judicial organ of the United Nations. Some of the ICJ's landmark judgments in the field of IEL were already discussed above. The ICJ also established a seven member Chamber for Environmental Matters in 1993, which was never called upon and therefore not reconstituted after 2006.<sup>107</sup>

The **Permanent Court of Arbitration**<sup>108</sup> (PCA) promotes international arbitration as dispute settlement mechanism for – amongst other things – international environmental matters. Important cases of environmental nature were negotiated under the auspices of the PCA, such as the famous MOX Plant Case<sup>109</sup>. Interestingly enough, the PCA also drafts dispute settlement clauses for environmental agreements – the negotiations of which are currently being facilitated by United Nations convention secretariats – as well as for emissions trading contracts.

The **International Criminal Court**<sup>110</sup> (ICC) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, and war crimes. Although the Court is primarily of criminal law nature, crimes against humanity and war crimes sometimes have environmental implications. According to the Rome Statute the Court has jurisdiction over war crimes that cause “widespread, long-term and severe damage to the natural environment.” At the moment of writing,

<sup>101</sup> <http://europeanclimate.org/>

<sup>102</sup> <http://www.gpa.unep.org/>

<sup>103</sup> <http://www.climatecentre.org/>

<sup>104</sup> <http://www.envirosecurity.org/>

<sup>105</sup> <https://www.unesco-ihe.org/>

<sup>106</sup> <http://www.government.nl/ministries/ienm>

<sup>107</sup> <http://www.icj-cij.org/court/index.php?p1=1&p2=4>

<sup>108</sup> [http://www.pca-cpa.org/showpage.asp?pag\\_id=363](http://www.pca-cpa.org/showpage.asp?pag_id=363)

<sup>109</sup> <http://www.itlos.org/index.php?id=102>

<sup>110</sup> [http://www.icc-cpi.int/EN\\_Menu/icc/Pages/default.aspx](http://www.icc-cpi.int/EN_Menu/icc/Pages/default.aspx)

the ICC has not dealt with any case with an environmental protection component. At the national level, the following two organisations were investigated.

The Dutch **Council of State**<sup>111</sup> is the constitutionally established advisory body to the government that needs to be consulted on proposed legislation, including also environmental legislation. It also encompasses the highest administrative court. In both functions, it frequently deals with matters of IEL and of European environmental law.

The **Supreme Court** of the Netherlands<sup>112</sup> deals less frequently with IEL. It can examine whether environmental laws are properly applied by lower courts and in that respect issues of IEL sometimes can play a role. The president of the Supreme Court appoints judges on an ad-hoc basis to attend the meetings of the network of environmental law judges.

#### *Education and research*

The **Institute of Social Studies**<sup>113</sup> (ISS) is an institute of higher education on social and economic change with focus on development processes. Its curriculum includes sustainable development issues, in which the Economics of Sustainable Development Staff Group has special competency.

The **T.M.C. Asser Institute**<sup>114</sup> is an independent academic and inter-university institute. It represents all law faculties in The Netherlands for international law. International law encompasses public international law, private international law and European Union law. Next to fundamental research and post-graduate education, it organises training courses and provides consultancy activities and facilitates scientific research on IEL issues.

The **Netherlands Institute of International Relations - 'Clingendael'**<sup>115</sup> – is a non-profit foundation on international affairs and policy. The Clingendael International 16 Energy Programme (CIEP) is an independent forum for governments, nongovernmental organisations, the private sector, the media, politicians and stakeholders on developments in the energy sector. CIEP supports these activities by organising events and training courses on energy issues, including environmental aspects such as climate change and energy and sustainable development. Then there is Clingendael European Studies Programme (CESP), which develops, unites and disseminates topical expertise on European Union policy issues, including its external relations.

Also here numerous activities deal with environmental policy and law issues with a global dimension such as climate changes and chemicals. The **Peace Palace Library**<sup>116</sup>, operated by the

**Carnegie Foundation**<sup>117</sup>, has an extensive collection on international environmental law.

At the **Grotius Centre for International Legal Studies**<sup>118</sup> a variety of activities and programs is offered dealing with all aspects of international law, including international environmental law and international law on sustainable development.

#### *Criminal law*

Environmental crime is one of the areas of competence of **Eurojust**<sup>119</sup>, in line with the new approach of the European Union in the fight against environmental and maritime pollution. Nevertheless, the activity of Eurojust with regard to environmental crime so far has not been developed deeply. The only decision of Eurojust referring to environmental crime is the *Prestige Case*<sup>120</sup>. This might change in the near future: according to the declaration of the Prosecutors General on the annual Eurojustice Conference, held in Slovenia on 25 and 26 October 2007, the fight against environmental crime is one of the future priorities of Eurojust.

**Europol**<sup>121</sup> deals amongst other things with criminal aspects of environmental law, as the explicit mentioning of environmental crime in the 2006 EU Organised Crime Report clearly demonstrates. According to the report, illicit trafficking of illegal waste is the main source of organised environmental crime.

The **International Association of Prosecutors**<sup>122</sup> has so far not dealt with issues of IEL or environmental crimes. Nonetheless, if The Hague becomes an international platform for environmental law, on account of the rising number of environmental crimes and due to the connections and the capacities the organisation enjoys, related activities may develop.

The **International Criminal Law Network**<sup>123</sup> is not yet operating in the field of environmental crime but could benefit from The Hague as a platform for international and European environmental law and might get more involved in the field of environmental protection.

#### *Other International Organisations*

The **Organisation for the Prohibition of Chemical Weapons**<sup>124</sup> (OPCW) is an independent international organisation that provides support and assistance to the destruction and non-proliferation of chemical weapons. The link between its objectives and environmental protection appears in several points of its statute. The OPCW has a database of national legislation on environmental issues.

<sup>117</sup> <http://www.denhaag.nl/en/residents/to/Carnegie-Foundation.htm>

<sup>118</sup> <http://www.grotiuscentre.org/>

<sup>119</sup> <http://www.eurojust.europa.eu/Pages/home.aspx>

<sup>120</sup>

[http://www.cedre.fr/fr/publication/colloque/obs/3\\_prestige.pdf](http://www.cedre.fr/fr/publication/colloque/obs/3_prestige.pdf)

<sup>121</sup> <https://www.europol.europa.eu/>

<sup>122</sup> <http://www.iap-association.org/>

<sup>123</sup> <http://www.haguejusticeportal.net/index.php?id=1974>

<sup>124</sup> <http://www.opcw.org/>

<sup>111</sup> <http://www.raadvanstate.nl/the-council-of-state.html>

<sup>112</sup> <http://www.rechtspraak.nl/organisatie/hoge-raad/supreme-court/Pages/default.aspx>

<sup>113</sup> <http://www.iss.nl/>

<sup>114</sup> <http://www.asser.nl/>

<sup>115</sup> <http://www.clingendael.nl/>

<sup>116</sup> <http://www.peacepalacelibrary.nl/>

### Dutch governmental organisations

The Hague is the administrative capital of one of the largest provinces of the Netherlands, the **Province of Zuid-Holland**<sup>125</sup>. Environmental considerations play a great role in the planning of the province's activities. It also participates in international projects related to the protection of environment, most recently in a regional initiative on the mitigation of greenhouse gas emissions at the regional level.

The **City of The Hague**<sup>126</sup> actively promotes environmental protection, for instance as a participant of the Eurocities project or as a promoter of policies of selective waste collection and sustainable building and by taking measures to reduce pollution from traffic.

### Various other organisations

**CEDAR**<sup>127</sup> is an international forum for the implementation of economic, social and cultural rights and cooperates with development and human rights organisations in Africa, Asia and Latin America. CEDAR is a board member of the Alliance for the University of Peace (UPEACE<sup>128</sup>), which supports several projects in environmental law.

The **Unrepresented Nations and People Organisation**<sup>129</sup> (UNPO) is a democratic membership organisation aiming to protect its founding nations' human rights, preserve their environments and to find non-violent solutions to conflicts that affect them. UNPO's focus to date has been to campaign and raise awareness of environmental issues. Its activities frequently involve bringing international attention to instances where environmental law is being contravened or implemented ineffectively.

Finally, the **Shell**<sup>130</sup> group has one of its main offices in The Hague. A key player of energy markets worldwide, Shell also pays particular attention on sustainability issues and the protection of environment in relation to its activities. Such a commitment is confirmed by the periodical release of a Sustainability Report which highlights the company activities in the energy sector with a particular focus on sustainability. Shell also carries out projects aimed at the promotion of renewable energy.

### Future of International Environmental Law

It is the writer's opinion that there will be significant advances in IEL in The Hague. There may be a special role for The Hague as the Legal Capital of the World if, indeed, one of the functions of being that capital is to further consistency within and the effectiveness of implementation, especially the monitoring, compliance and enforcement of international law, in this case of course international law in the field of the environment.

Some key principles are common to cases on IEL, namely that of State Responsibility. A state has a responsibility to protect other states from injurious acts originating within its jurisdiction. A Tribunal may apply as the appropriate law, domestic as well as international, in resolving a dispute as in the *Trail smelter case*<sup>131</sup>. The *Lake Lanoux Arbitration*<sup>132</sup> is further endorsement that a state has a responsibility to protect other states from injurious acts perpetrated from within its territory. A state is responsible for the injurious consequences of acts which have taken place within its territory as highlighted in the *Gut Dam Arbitration*<sup>133</sup>. So in the event of the breach of an environmental obligation, the traditional rules regarding State responsibility would apply. Yet these rules are only of limited assistance in the environmental field. It is the generally non-reciprocal character of international environmental obligations which render it difficult to meet the requirement of breach of an obligation owed to another State. However both the *Trail Smelter Arbitration* between the United States and Canada<sup>134</sup> and the *Gabcikovo-Nagymaros Dam* dispute between Hungary and Slovakia<sup>135</sup> saw the application of traditional rules on State responsibility because of the bilateral character of the dispute and of the obligations thereunder. Had it proceeded to the merits, the ICJ case brought in 1974 against France by Australia and New Zealand regarding French atmospheric nuclear testing in the South Pacific would have likewise largely fit within this bilateral model.<sup>136</sup>

The Security Council devoted a special session in April 2007 to climate change. The Nobel Peace Prize in 2007 was also awarded to Al Gore and the International Panel on Climate Change (IPCC)<sup>137</sup>. The OPCW was more recently awarded the Nobel Peace Prize in 2013<sup>138</sup>. This is the clearest form of international recognition of the vital link between environmental security and peace. However, the role and rule of international law will have to be considerably strengthened to maintain environmental security as a condition for and an element of peace and justice.

<sup>131</sup> Trail Arbitration (United States v. Canada) (1931-41)

<sup>132</sup> Lake Lanoux Arbitration (France v. Spain) (1957)

<sup>133</sup> *The Gut Dam Arbitration* ( US v. Canada)(1969) 16 NILR

<sup>134</sup> Trail Arbitration (United States v. Canada) (1931-41)

<sup>135</sup> Gabcikovo-Nagymaros project (Hungary v. Slovakia), Judgment, ICJ Reports 1997, p.7

<sup>136</sup> Nuclear Tests (Australia v France), Interim Protection, Order of 22 June 1973, ICJ Reports 1973, p.99; Judgment, ICJ

Report 1994, p 253; Nuclear Tests ( New Zealand v France), Interim Protection, Order of 22 June 1973, ICJ Report 1973, p 135; Judgment, ICJ Report 1994, p 457.

<sup>137</sup> [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2007/](http://www.nobelprize.org/nobel_prizes/peace/laureates/2007/)

<sup>138</sup> [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2013/](http://www.nobelprize.org/nobel_prizes/peace/laureates/2013/)

<sup>125</sup> <http://www.zuid-holland.nl/foreign-visitors.htm>

<sup>126</sup> <http://www.denhaag.nl/en.htm>

<sup>127</sup>

<http://www.envirosecurity.org/actionguide/view.php?r=228&m=organisations>

<sup>128</sup> <http://www.upeace.nl/>

<sup>129</sup> <http://www.unpo.org/>

<sup>130</sup> <http://www.shell.com/>

International cooperation is necessary to deal with increasing water shortages, to prevent further global warming, to adapt to inevitably occurring climate change, and to stop the overfishing which depletes fish stocks in the seas and oceans as they all require precise and binding agreements between governments sharing a river basin, a coastal sea, a tropical rainforest complex, and with all governments of course, sharing the global atmosphere.

Can the assembled legal expertise in the courts and academic institutions in The Hague present that overarching perspective ensuring non-violation of the objectives and requirements of the other international environmental conventions? What if countries fail to honour their commitments under these conventions and inflict considerable harm upon other countries? Is there a human right to a safe and clean environment? How can the various conflict prevention and dispute settlement mechanisms, such as mediation, conciliation, arbitration and resorting to the courts be optimally structured as to their relative strengths and weaknesses? Is there any merit in trying to bring a case before the Chamber of Environmental Matters of the ICJ, which has not yet seen a single case? Should the ICC expand its statutory role in addressing crimes against the environment?

### Conclusion

This review has first established that a number of organisations exist that deal primarily with international environmental policy and thus also with international environmental law in the Hague. Secondly, other organisations were investigated which do not have environmental policy as their main focus. Several types of organisations were distinguished, notably dispute settlement bodies, education and research facilities, and organisations dealing with enforcement issues notably in the field of criminal law. The multidisciplinary aspect of the organisations and centres based in or near The Hague are in line with the overarching concept of sustainable development, which encompasses integrating environment and development policies. The potential of expertise in The Hague in the field of enforcement and compliance with international environmental law is very high. Courts, tribunals, organisations and regional agencies have been set up to avoid and solve dispute settlement and to regulate on relevant environmental matters. Another potential strength of The Hague is the significant part of training and educational activities currently carried over by several institutes and centres. The Hague is a multicultural centre which hosts expertise and capacities in many fields of international law. This activity does not always reflect matters of IEL although the need and the potential for collaboration in this respect is essential. Together, the multitude of existing organisations in and near The Hague, be it those focusing primarily on environmental law and policy or those with a different focus but with links to environmental issues, can form a firm basis for strengthening the position of The Hague in the area of IEL.

## Effects of e-waste on human health and environment

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### Abstract

Electronic waste encompassing a range of obsolete electronic devices such as computers, telecommunication devices, home appliances, recording devices and automobile components is ever growing resulting in the deterioration of environmental quality. Countries like India suffer not only due to the generation of their own electronic wastes but also from the dumping of such wastes from developed countries. The consumers find it convenient to buy a new computer rather than to upgrading the old one due to the changing configuration and technology. The components of electronic wastes result in toxicity and carcinogenicity. Some of them include lead, mercury, cadmium, tin, copper, silicon, beryllium, aluminum and Poly chlorinated Biphenyls. The types of devices contributing to electronic waste generation and the toxic effects of their components are discussed.

**Keywords:** Electronic waste, Toxicity, Human health and Environment

### Introduction

Electronic waste, otherwise known as e-waste or e-scrap can be defined as loosely discarded, surplus, obsolete, or broken electrical or electronic devices. Disposal of e-wastes including obsolete electronic equipment like computers, monitors, printers, televisions, and cell phones is considered to be a growing problem as they contain hazardous substances. They tend to be highly toxic to humans, plants, and animals, and have been known to contaminate water, air, and not only that, they cause serious health and pollution problems. They cannot be discarded through the trash, but rather must be disposed of like household hazardous waste or at a special e-waste recycling center.

Rapid changes in technology, changes in media and falling prices have resulted in an alarming rate of electronic waste (Prashant, 2008). About 50 million tons of e-waste is produced each year and USA discards 30 million computers each year while Europe discards 100 million phones each year. The US Environmental Protection Agency estimates that only 15-20% of e-waste is recycled, and the rest of these electronics go directly into landfills and incinerators. According to an UNEP report in, "Recycling - from E-Waste to Resources" the amount of e-waste being produced, including mobile phones and computers, could rise by 500 percent over the next decade in countries like India. The United States is the world leader in producing electronic waste about 3 million



tons each year. China already produces about 2.3 million tons (2010 estimate) domestically, second only to the United States. Despite having banned e-waste imports, China remains a major e-waste dumping ground for developed countries. In addition, developing countries like India and parts of Africa have become toxic dump-yards of e-waste.

### Components

Substances found in large quantities in e-waste include epoxy resins, fiber glass, PCBs, PVC (Poly Vinyl Chlorides), thermosetting plastics, lead, tin, copper, silicon, beryllium, carbon, iron and aluminum.

Cadmium, mercury and thallium are found in small amounts. There are numerous elements found in trace amounts and they include americium, antimony, arsenic, barium, bismuth, boron, cobalt, europium, gallium, germanium, gold, indium, lithium, manganese, nickel, niobium, palladium, platinum, rhodium, ruthenium, selenium, silver, tantalum, terbium, thorium, titanium, vanadium, and yttrium. Out of these substances, some may have hazardous and harmful effects on the society and some may not. Some electrical and electronic equipment may contain various fractions of valuable materials also.

Table 1: Various toxicants of e-waste with their sources and health effects.

Toxicants	Sources	Health effects
Lead	Solder in printed circuit boards, glass panels and gaskets in computer monitors	<ul style="list-style-type: none"> <li>• Damage to central and peripheral nervous systems, blood and kidney.</li> <li>• Affects brain development in children.</li> </ul>
Cadmium	Chip resistors and semiconductors	<ul style="list-style-type: none"> <li>• Irreversible damage to human health.</li> <li>• Accumulates in kidney and liver.</li> <li>• Causes damage to nerves.</li> <li>• Teratogenicity.</li> </ul>
Mercury	Relays and switches, printed circuit boards	<ul style="list-style-type: none"> <li>• Chronic damage to the brain.</li> <li>• Respiratory and skin disorders in fishes due to bioaccumulation.</li> </ul>
Hexavalent chromium	Corrosion protection of untreated and galvanized steel plates, decorator or hardner for steel housings	<ul style="list-style-type: none"> <li>• Causes Asthmatic bronchitis and DNA damage.</li> </ul>
Plastics	Cabling and computer housing	Burning produces dioxin which causes <ul style="list-style-type: none"> <li>• Reproductive and developmental problems;</li> <li>• Damage to immune system and regulatory hormones.</li> </ul>
Brominated flame retardants	Plastic housing of electronic equipment and circuit boards.	<ul style="list-style-type: none"> <li>• Disrupt the functions of hormones.</li> </ul>
Barium	Front panel of CRTs	<ul style="list-style-type: none"> <li>• Muscle weakness and damage to heart, liver and spleen.</li> </ul>
Beryllium	Motherboard	<ul style="list-style-type: none"> <li>• Causes lung cancer.</li> <li>• Inhalation of fumes and dust causes chronic beryllium disease or beryllicosis.</li> <li>• Skin diseases such as warts.</li> </ul>

### Hazardous substances

Americium is the radioactive source in smoke alarms and it is said to be carcinogenic. Mercury is found in fluorescent tubes, tilt switches and flat screen monitors. It causes health problems like sensory impairment, dermatitis, memory loss and muscle weakness (Table 1). In animals it may cause death, reduced fertility, slow growth and development. Sulphur which is found in lead acid batteries may have adverse effects on humans like liver, kidney and heart damages and eye and throat irritation. Its environmental effects include creation of sulphuric acid when released into the atmosphere. Cadmium is found in light-sensitive resistors, corrosion resistant alloys

and nickel-cadmium batteries. These nickel cadmium rechargeable batteries contain between 6 and 18% cadmium. If not properly recycled, it may leach into the soil, harming microorganisms and disrupting the soil ecosystem. The inhalation of cadmium can cause severe damage to the lungs and may also cause kidney damage.

### Non-hazardous substances

Tin is generally a non-hazardous substance which is used in solders and coatings on component leads. Copper is commonly used in copper wire and printed circuit board tracks. Aluminum is used almost in all electronic goods using more than a few watts of

power. Iron is used in steel chassis, cases and fixings. The other non-hazardous substances present in electronic wastes include germanium, silicon, nickel (nickel-cadmium batteries), lithium (lithium-ion batteries), zinc, and gold.

### Impacts of E-waste

Disposal of e-waste has become an alarming problem faced by many regions across the globe. Landfilled computer wastes produce contaminated leachates which eventually pollute ground water. Acids and sludge obtained from melting computer chips, if disposed on the ground cause acidification of soil. Incineration of e-waste produces toxic fumes and gases which pollute the surrounding air. Uncontrolled fires arise at landfills and this has become a frequent occurrence in many countries. When exposed to fire, metals and other chemical substances, such as the extremely toxic dioxins and furans (TCDD tetrachloro dibenzo-dioxin, PCDDs-polychlorinated dibenzo-dioxins, PBDDs-polybrominated dibenzo-dioxin and PCDFs poly chlorinated dibenzo furans) from halogenated flame retardant products and PCB containing condensers can be emitted. The most dangerous form of burning e-waste is the open-air burning of plastics in order to recover copper and other metals. The toxic fall-out from open air burning affects the local environment and broader global air currents, depositing highly toxic byproducts in many places throughout the world.

Electronic wastes can cause widespread environmental damage due to the use of toxic materials in the manufacture of electronic goods (Mehra, 2004). If the CRT (Cathode Ray Tube) is crushed and burned, it emits toxic fumes into air (Ramachandra and Saira, 2004). Most of the electronic products contain several rechargeable battery types and almost all of them contain toxic substances that can contaminate the environment when burned in incinerators or disposed off in landfills. The cadmium from one mobile phone battery is enough to pollute 600 m<sup>3</sup> of water (Trick, 2002). The quantity of cadmium in landfill sites is significantly increasing and a considerable amount of toxic contamination is caused by the long-term effect of cadmium leaking in to the surrounding soil (Envocare, 2001). Due to the highly flammable nature of plastics, the printed wiring board and housings of electronic products contain brominated flame retardants, a number of which are causing damages to human health and the environment.

### Conclusion

The growth of e-waste has significant social and economic impacts. The increase in the purchase of electrical and electronic appliances, consumption rates and higher obsolescence rate leads to increased generation of e-waste. There has to be an increasing trend in the reduction in the use of hazardous substances. The toxic substances have to be replaced with safe substitutes. Environmentally sound

technologies for e-waste treatment and management can be adopted.

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## Perception of Ethical Issues among Undergraduate Medical Students at a Pakistani Medical University

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### Abstract

**Objective:** To determine the perception of undergraduate medical students regarding different ethical issues encountered in medical field.

**Materials and Methods:** The 3<sup>rd</sup> year MBBS students at LUMHS were given the pre-designed and self-report questionnaire and were requested to take part in the study. Total 100 Students of 3<sup>rd</sup> Year MBBS were given the questionnaire in June 2014. Out of 100 Students 91 completed the questionnaire.

**Results:** The results of this study shows that majority of undergraduate students have understood bioethics. The students were taught bioethics in their initial two years of MBBS and now majority of them are practicing medical ethics in their ward postings and clinical rotations.

**Conclusion:** The responses of the questionnaire indicate that students do have awareness about bioethics and majority of them are practicing it and have knowledge about it. The curriculum can be further modified to fill the gaps in the knowledge among students to improve future practices.

### Introduction

There is growing public concern regarding ethical conduct of the healthcare professionals and providers. This is reflected as complaints regarding poor ethical conduct and also the increasing use of legal proceedings against healthcare practitioners (1). The

foundation of Western biomedical ethics was laid at Hippocrates School around (400-300 BC), and since then this field has revolutionized. The core issues in bioethics and medical ethics are the ethics of doctor patient relationship, confidentiality of patients; need to obtain the informed consent, encompassing moral issues in the field of medicine and biomedical sciences (2). In Pakistan, bioethics was started in the year 1998 at Aga Khan University Karachi and was incorporated in undergraduate curriculum and syllabus of community health sciences (3). In our university Liaquat University of Medical and Health Sciences Jamshoro (LUMHS), biomedical ethics teaching was started in the year 2007 and was included in MBBS and BDS undergraduate curriculum (4). The present infrastructure in the medical colleges and universities is insufficient to deal with the ethical issues and very few institutes are having bioethics curriculum. Therefore it is very necessary to assess the attitudes and knowledge of undergraduate medical students who are at their initial stages of the ethical practice. Keeping this thing in mind the present study was attempted to assess the perception of undergraduate medical students about the common ethical issues which are encountered in the field of medicine.

### Methods

To assess the perception of undergraduate medical students at LUMHS Jamshoro regarding different ethical issues, a self-report questionnaire was given to 3<sup>rd</sup> year MBBS Students. A total of 91 students out of 100 participated in the study and completed the questionnaire and returned it. There are total 363 students enrolled in this batch. The questionnaire was distributed among the students after each group completed their pharmacology practical class. It took 5 working days to complete this study and 20 students were randomly selected on each day. The students have studied biomedical ethics in their 1st and 2nd year of MBBS course. The respondents were asked to answer the questions in either 'yes' or 'no' regarding all the options given against different ethical issues. The data was collected in the month of June 2014. All the students consented to participate in this study. The students took a total of 10 to 15 minutes to complete this questionnaire.

### Results

A total number of 91 undergraduate MBBS students participated in this study (36 male and 55 female). Table 1 shows the responses of the undergraduate students to the questionnaire.

### Discussion

The role of medical ethics has become a legal, moral and medical need for all stages of clinical practice. Even in those areas where highly satisfactory knowledge is recognized, it cannot be assumed that it is due to the curriculum coverage. Probably there is some cultural osmosis, media effects and peer learning, that had transgressed into minds of the medical students. The fact remains that gaps in their

attitude and knowledge could easily be attributed to the deficiencies in the curriculum. The content, mode of training, duration in biomedical ethics requires standardized module for evaluating the knowledge and attitudes of the students. Doctors face ethical issues almost every day during their routine clinical practices. Ability to identify, comprehend and resolve the ethical issues is core competency, which must be part of all medical trainings including under graduate, and post graduate medical curricula. There are many reports addressing the importance of integrating legal and ethical issues into medical curricula. The teaching of ethics should be strategized in a direction, in accordance to the needs of particular society, in which it could be relevant (5). In this study, the possible options given were either 'Yes' or 'No' for the twelve questions given in questionnaire. As I earlier mentioned that the students were of 3<sup>rd</sup> year MBBS and they were taught bioethics in the initial two years of their MBBS.

Table 1: The perception of undergraduate MBBS students regarding different ethical issues

Statement	Responses (1) Yes	(2) No
1. Do you practice medical ethics?	(1) 81	(2) 10
2. Do you know about informed consent?	(1) 91	(2) 0
3. Do you know the difference between written and verbal consent?	(1) 91	(2) 0
4. Is it very essential that physician/doctor takes an informed consent in the clinical practice?	(1) 79	(2) 12
5. Do you agree that doctor may proceed with the surgical procedures without informed consent from patients?	(1) 07	(2) 84
6. Can the doctor/researcher use patients as research subjects without informed consent for life saving research?	(1) 41	(2) 50
7. Do you agree that necessary medical treatment can be done against the wishes of patients?	(1) 62	(2) 29
8. Do you agree that doctor should disclose the information to the relatives of patient if necessary?	(1) 79	(2) 12
9. Do you agree that importance should be given to the opinion of patients before deciding any treatment?	(1) 76	(2) 15
10. Do you agree that patient should be informed about any error/mistake made by the doctor?	(1) 66	(2) 25
11. Do you agree that it is necessary to discuss the cost involved before taking informed consent for any procedure?	(1) 72	(2) 19
12. Do you agree that it is ethical for a doctor/physician to accept a gift of any type from a pharmaceutical company representative?	(1) 29	(2) 62

In first question the students were asked about their practice of medical ethics and in response 81 students (89%) agreed that they do practice medical ethics and 10 students (11%) responded with 'no'. In 3<sup>rd</sup> year ward postings, students are taught history taking and general physical examination. When the students were asked about informed consent, 100% percent students responded with 'yes' and agreed that they know about informed consent. It is because informed consent is taught in detail in bioethics course. Students were also asked about the difference between written and verbal consent, and 91 (100%) students responded with 'yes' and no any student disagreed. In one question students were asked about necessity of taking informed consent in clinical practice, and in response 79 students (87%) said 'yes' and only 12 students (13%) replied with 'no'. The students were asked if doctor/surgeon without taking informed consent from patients proceeds with any surgical procedure, only 7 (7.7%) students agreed with 'yes', while 84 students (92.3%) said 'no' and disagreed. In one question students were asked if a researcher doing life saving research can use research subjects or patients without informed consent, 41 students (45%) said 'yes' and 50 students (55%) replied with 'no'. When asked about doing necessary medical treatment against the wishes of patients, 62 students (68%) agreed and only 29 students (32%) disagreed.

In one question it was asked from the students that do they agree that doctors can disclose the information to the relatives of the patient if necessary, 79 students (87%) agreed and said 'yes' and only 12 students (13%) disagreed. The response to this question is due to the fact that we have different culture from modern USA for example. As a generalization, in the west people as a whole are more autonomous and they have free liberty to decide every thing about themselves, while in our eastern culture and especially in a society like Pakistan, we are family bound and although we can enjoy the right of informed consent, majority of people are poor and illiterate and hence they involve their families in decision making, and due to social constrains women also give the right of their informed consent to the family.

When asked about giving importance to the opinion of patient before deciding any treatment, 76 students (84%) agreed and only 15 students (16%) disagreed. In one of the question students were asked about the disclosure of medical error/mistake by the doctor to the patient, 66 students (73%) agreed and 25 students (27%) disagreed. The responses of the students indicate their comprehensive learning of bioethics. The bioethics is taught to them through a lot of hard work and it is included in their final assessment also through short essay questions. Due to the exam pressure the students have to learn the subject and whether they will practice medical ethics in their future or not, depends on their personal moral values.

In one question, students were asked about the necessity of discussing cost involved before taking informed consent from the patients for any procedure,

72 students (79%) agreed with 'yes' and 19 students (21%) disagreed with 'no'. In the last question the students were asked about the acceptance of gifts from the representatives of the pharmaceutical company, only 29 students (32%) agreed that it is ethical to accept gifts and 62 students (68%) disagreed. The results of this study show the perception of undergraduate medical students at LUMHS Jamshoro.

### Conclusion

The bioethics curriculum needs to be robust and comprehensive, and it should strive to develop the type of graduates who in addition to being competent and technically skilled, also should be well versed in the philosophy and history of medical ethics and bioethics, and also be ethical in their thinking as well as practice, especially in context of a developing country such as Pakistan where the health indicators are worst in the region and the clinical practices are not effectively monitored to ensure the quality of care. On the basis of the results of this study it is concluded that majority of 3<sup>rd</sup> year MBBS students are aware of bioethics and have not forgotten it. It is a very good sign that student do practice bioethics in their ward postings and are sensitive about different ethical issues. However, the curriculum can be further modified and revised to cover the contemporary issues encountered in modern medical care.

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### Call for Nominations for Asian Bioethics Association Board membership from the ABA secretariat

Please send the nominations for ABA board positions by 11 October 2014 to the ABA secretariat at [asianbioethics@yahoo.co.nz](mailto:asianbioethics@yahoo.co.nz) The person nominated must accept the nomination in order to stand for election, which will be held by secret email ballot in October 2014; and should be able to be announced at the ABA General Meeting on 2 November 2014 in Beppu, Japan during ABC15.

All persons who vote (and are on the Board and nominated

and nominating) should be ABA members for 2014. The fees can be paid during ABC15 for both 2014 and 2015 ABA Membership, and the Membership form is attached. The fee can be paid in cash, JPY7,000 during ABC15 for each year. Thank you for your support.

In the case that only one candidate is nominated and accepts for a board position they will enter that position uncontested. Please note a person can hold a particular position of Vice-President for a maximum of 2 consecutive terms. Previous ABA Board members can be nominated after they have been off the Board, although ABA often tries to have new faces on the ABA Board.

For reference the constitutional article:

“Officers of the Association shall be the President, seven vice-presidents (one from each of China, India, Indonesia, Japan, Korea, the Pacific, Pakistan, South Asia (East of Afghanistan), South East Asia (East of Bangladesh), Taiwan, West Asia (West of India), and Asian Ethnic and Religious Minorities, and a General Secretary. They are nominated and/or elected by members of the Association. The President can serve a maximum of two years in office. The Other Officers should stand re-election every two years.”

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**Immediate Past-President:** Prof. (Ms.) Anoja Fernando (Sri Lanka) will change to Prof. Aamir Jafarey (Pakistan) when his term is complete after these elections

**Vice President for Asian Ethnic and Religious Minorities:** Dr. Jasdev Rai, Sikh Human Rights Group [Standing for Re-election]

**Vice President for China: OPEN** [The term of Prof. (Ms.) Ruipeng Lei is ending]

**Vice President for India:** [So far an nomination have been received for Prof. M. Selvanayagam] [The term of Sr. Daphne Furtado is ending]

**Vice President for Indonesia:** Prof. Umar Anggara Jenie [Standing for Re-election]

**Vice President for Japan: OPEN** [The term of Prof. (Ms.) Miyako Takagi is ending]

**Vice President for Korea: OPEN** [The term of Prof. Bang Ook Jun is ending]

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