

SOME ISSUES PERTAINING TO HIV/AIDS: AN ISLAMIC LEGAL DISCOURSE

Abul Fadl Mohsin Ebrahim, Ph.D.

*Professor Emeritus, University of KwaZulu-Natal and Senior Academic, Regent Business School,
Durban, South Africa*

ABSTRACT

It is distressing to note that according to the World Health Organization (WHO), an estimated 36 million people have died since the first cases were reported in 1981 and 1.6 million people died of HIV/AIDS in 2012. What is even more shocking is that an estimated 3.34 million children worldwide, most of whom reside in sub-Saharan Africa, are living with HIV were infected by their HIV-positive mothers during pregnancy, childbirth or breastfeeding (AIDS.gov). Villages, towns and countries are fast being deprived of their most valuable asset - their human population. In order to apprise humanity of the gravity of the problem of HIV/AIDS, the United Nations (UN) declared December 1 of every year as World AIDS Day. In this article, some issues pertaining to HIV/AIDS, namely, premeditated attempt to spread HIV/AIDS; HIV antibody testing before the conclusion of *nikah* (Islamic marriage contract); contracting HIV/AIDS within matrimony; interaction with HIV/AIDS patients; HIV/AIDS patients' right to be treated; and visiting HIV/AIDS patients are discussed.

KEY WORDS: HIV/AIDS, antibody testing, *nikah*, antiretroviral drugs, legal maxim, *qadi*, *al-maslahah*, *Shari'ah*, *Glorious Qur'an*, *Hadith*.

INTRODUCTION

Humankind has made tremendous strides towards enhancing the quality of life, yet we are faced with some serious challenges which threaten our very existence on this planet. Some of these challenges are the resurgence of malaria and the deadly ebola on the African continent and the greatest scourge of all is the escalation of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). The rapid spread of HIV/AIDS and the accompanying fear of its impact on health care resources, man-power in industry and on the family have compelled the world to seriously consider ways and means by which this scourge could be combated. While one has to admit that millions of dollars have already been spent in every nook and corner of the globe with the aim of educating and encouraging people to implement preventative measures to safeguard themselves against contracting HIV/AIDS, it is unfortunate that the more intensified the efforts, the more HIV/AIDS seems to spread. Moreover, some HIV-positive patients have deliberately infected their sexual partners as a form of revenge for their contracting HIV. Furthermore, in various parts of the

world, people who have been diagnosed HIV-positive have suffered discrimination in one form or another, denied fair treatment and due to the high cost of antiretroviral drugs, many third world countries have not been able to supply their ailing population with these drugs. These realities have prompted many countries to come up with policies to safeguard the rights of HIV-positive patients.

PREMEDITATED ATTEMPTS TO SPREAD HIV/AIDS

Professor Malik Badri, a prominent Muslim psychologist, gives us an insight into the condition of HIV-positive patients:

Most people with HIV may feel fit, going about their business without any health complaint while the virus is slowly but surely destroying their immune system.... As is known, in all virus illnesses, there is a time lag between the virus and the appearance of the disease. This time lag is called the incubation period.... In case of the HIV, however, this incubation period may continue for an average of eight to ten years, though it may be as short as six months for some debilitated patients who may also suffer from other sexually transmitted diseases and viral infections (Badri, 1998:6-7).

From the above, it is important to note that HIV cannot be classified as a terminal illness until the symptoms of full blown AIDS manifest in the patient, making it difficult for that person to lead a normal life and deterioration of his/her life becomes imminent (El-Gindy, 1995:36).

A Kuwait based organization, namely, the Islamic Organization for Medical Sciences, in collaboration with the Kuwait Ministry of Health, the Jeddah *Fiqh* Council and the World Health Organization's East Mediterranean Regional Office, held its Seventh Islamic Medical Seminar on the theme "AIDS-Related Social Problems – An Islamic Perspective" in Kuwait from 6-8 December 2006. At the end of the seminar, Muslim jurists resolved that the intentional transmission of HIV contravenes Islamic norms, it is a sinful act as well as a legal offence and punishment ought to be meted out to the aggressor in proportion to the effect of his/her action on the individuals and society as a whole. The following punishments are envisaged:

- (a) If the intention is to spread the disease among a wider section of the community, the punishment would be in conformity with the following Qur'anic injunction: *"The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace In This world, and a heavy punishment is theirs In the Hereafter."* (Al-Ma'idah, 5:33).

- (b) If an HIV-positive person sexually assaults another person with the intention of infecting that person and that person eventually dies of full-blown AIDS, then the death penalty would be effected upon the perpetrator of that particular crime.
- (c) In the event that the victim of the sexual assault contracts HIV, but does not die in the near future, then the *qadi* (Muslim judge) would exercise his discretion in imposing a deterrent punishment upon the aggressor. Eventually when the victim dies, his/her heirs would have the right to demand a ransom.
- (d) If the aggressor intended to target a specific person for the transmission of HIV, but somehow that person is not infected, then it would be left to the *qadi* to impose a deterrent penalty upon the aggressor (El-Gindy, 1995:35).

HIV ANTI-BODY TESTING BEFORE *NIKAH* (ISLAMIC MARRIAGE CONTRACT) IS EFFECTED

It would perfectly be in order for a Muslim male and female to be tested for HIV antibody prior to entering into the Islamic marriage contract on the basis of the legal maxim, namely, *al-maslahah* (public good), bearing in mind that the main avenue for the transmission of HIV is through sexual intercourse (El-Gindy, 1995:22). However, those intending to undergo this particular test must bear in mind that there is a window period of four to six weeks before the onset of HIV infection and the appearance of detectable antibodies to the virus. Antibodies are produced from about three weeks after infection and usually become detectable by four to six weeks after infection. It would therefore be preferable for all those Muslims who have transgressed the commandment of Almighty Allah by indulging in illicit sexual relations (prior to marriage) to have the test done after three months for everyone who is infected with HIV (99%) will have antibodies detected by three months after being infected (Public Health -Seattle & King County).

In the event that one of the couple intending to enter into the marriage contract is found to be HIV-positive, the other person may either choose to go on with the marriage or to abandon the idea altogether.

On the hand, if the uninfected person resolves to go on with the marriage with his/her infected wife/husband-to-be, then they must use of condoms during sexual relations after marriage so as to reduce the risk of infecting the other partner and to frustrate the risk of pregnancy. However, if both of them happen to be HIV-positive, then it is the view of the writer of this article that either one or both could resort to being sterilized to prevent pregnancy from occurring due to the fact that HIV can most certainly be transmitted from mother-to-baby, especially during pregnancy and natural delivery. The legal maxim, namely, *ikhtiyar akhaffa dararayn* (choosing the lesser of the two evils) would justify their being sterilized for the sake of safeguarding them from having to care for an additional HIV-infected being.

CONTRACTING HIV/AIDS WITHIN MATRIMONY

There are basically three avenues by which a married couple runs the risk of being infected with HIV: (a) infidelity on the part of one of them; (b) sharing of infected needles if one of

them happens to be a drug addict and (c) if one of them receives blood transfusion from contaminated blood. Illicit sexual intercourse and indulging in drugs are both censured by Islam. Therefore, if one of the couple is tested positive for HIV antibody which has been contracted either by an adulterous affair or the sharing of contaminated needles with other drug users, then the marital partner who had been aggrieved by the irresponsible lifestyle of his/her partner has the option to resort to divorce or have the marriage annulled (El-Gindy, 1995:35). It is important to note that adultery is ground for divorce irrespective whether the unfaithful partner is infected with HIV or not. However, if the marital partner contracts HIV through blood transfusion then the uninfected partner has the option to stay within the marriage or to opt out of it. If both of them are determined to save their marriage then they ought to take precautionary measures when engaging in marital relations so as to safeguard the uninfected partner from contracting the virus.

INTERACTION WITH HIV/AIDS PATIENTS

Muslims should not ostracize HIV-positive and AIDS patients on the basis of the following Qur'anic imperative:

“Let not the hatred of others to you make you sway to injustice. be just: that is next to piety: and fear Allah. for Allah is well-acquainted with all that ye do.” (Al-Ma'idah, 5:8).

In other words, Muslims must acknowledge the fact that irrespective of how HIV was contracted, these patients need the loving care of their family members and the people around them.

RIGHT TO PROFESSIONAL COUNSELLING

It is equally important for HIV-positive and AIDS patients to have access to professional counselling. However, such counselling should not be restricted to making them cope with the disease, but should also include an element of Islamic ethos, instilling in them hope of the mercy of Almighty Allah. Prophet Muhammad (peace and blessings of Almighty Allah be upon him) encouraged Muslims to sincerely advise each other as is evident from the following *Hadith* (Prophetic Tradition): “Religion is sincere advice.” (*Sunan Abi Dawud*). Hence, every effort should be made to encourage them to strengthen their bond with their Creator by observing the *fara'id* (obligatory acts of worship) and to find inner peace through *tawbah nasuhah* (sincere repentance).

RIGHT TO BE TREATED

HIV-positive patients cannot be refused access to medical care. They should therefore be given both moral and financial support to be in a position to gain access to antiretroviral therapy (ARVT). This can be inferred from the following *Hadith*:

“The believers in their love and sympathy for one another are like one body; when one part of it is affected with pain, the whole of it responds in terms of wakefulness and fever.” (*Nuzhat al-Muttaqin, Sharh Riyad al-Salihin*)

A pertinent question that may be asked is whether *Zakah* (obligatory charity) could be given to Muslim HIV-positive patients so that they may have access to ARVT? In reply to this question, it is necessary on our part to establish whether the Muslim HIV-positive patients are entitled to receive *Zakah*. According to the *Glorious Qur'an (Al-Tawbah, 9:60)*, there are eight categories of people who may benefit from *Zakah*: (1) the poor; (2) the needy; (3) those employed to administer (the funds); (4) those whose hearts have been recently reconciled; (5) those in bondage (including prisoners of war); (6) those in debt; (7) those who are in the way of Almighty Allah; and (8) the wayfarers.

Antiretroviral therapy can result in draining family resources, rendering the entire family destitute. Thus in order to avoid this, it would be in order to give *Zakah* to HIV-positive patients who fall under category (1) above, i.e., the poor. Another lot of HIV-positive Muslims could also fall under category (6) above, i.e., those in debt as a result of the high cost of antiretroviral therapy. Assisting them to gain access to ARVT would considerably enhance their quality of life, enabling them to observe the *fara'id* (obligatory acts of worship).

VISITING AND PRAYING FOR HIV/AIDS PATIENTS

Prophet Muhammad (may the peace and blessings of Almighty Allah be upon him) encouraged Muslims to visit the sick and to pray for them. Muslims should address them with the same words as they would when visiting any other patient: “Do not worry, Allah-willing (your sickness) will be an expiation of your sins.” (*Sahih al-Bukhari*). Even the du'a' (supplication) they would make for them would be the same for any other sick patient: “Take away the disease O Lord of the people! Cure him/her as You are the One Who cures. There is no cure but Yours, a cure that leaves no disease.” (*Sahih al-Bukhari*).

CONCLUSION

There are basically four avenues by which HIV/AIDS may be transmitted from one person to another: (1) sexual contract; (2) mother-to-baby (MTB); (3) transfusion with contaminated blood; and (4) sharing of contaminated needles and syringes by drug addicts and accidental of blood by health workers.

The Islamic solution to the problem of HIV/AIDS is to go to the root of the problem and Islamic teachings advocate: (a) vigorous promotion of chastity before marriage; (b) upholding of sexual fidelity at all cost during marriage; (c) screening of blood donors; and (d) collaboration amongst social and cultural organizations to encourage people to uphold sexual morality and to create a drug free society.

Individuals ought to be made aware of the fact that in most cases their irresponsible behaviour could make them susceptible to contracting HIV/AIDS. The *Glorious Qur'an* warns:

“And do not destroy yourselves, for indeed Allah has been to you Most Merciful” (Al-Ma'idah, 4:29)

Prophet Muhammad (may the blessings and peace of Almighty Allah be upon him), in an attempt to remind us not to voluntarily expose our body to any type of injury or harm, states: “Your body has a right over you.” (*Sahih al-Bukhari*)

What a tragedy that the vast majority of people who are actively involved in the mammoth fight against HIV/AIDS overlook the fact that HIV/AIDS is also an ethical and moral problem. Given the fact that the main avenue for the spread of HIV/AIDS is through secretions of the sexual organs, it is imperative that the focus should be on sexual activity and its regulation thereof.

Adultery, fornication and same sex relations are all regarded as crimes and the *Shari'ah* (Divine Law) has laid down punitive laws which are enforced upon perpetrators of such crimes and those who wilfully go about infecting others with HIV. Moreover, the *Glorious Qur'an* censures the intake of khamr (intoxicants which incorporates both alcoholic drinks and drugs), thereby closing the avenue for the transmission of HIV through sharing of contaminated syringes.

Finally, it should be borne in mind that it would be unbecoming of Muslims to discriminate against their counterparts who are HIV-positive. They are duty-bound to visit them and to pray for them, nay even to assist them financially for their ARVT. Above all, they should remind them that Almighty Allah is Most Forgiving and should encourage them to strengthen their bond with their Creator and to seek inner peace through sincere repentance.

BIBLIOGRAPHY

Asad, Muhammad. 1980. *The Message of the Qur'an*. Gibraltar. Dar al-Andalus Limited.

Badri, Malik. 1998. *The Aids Dilemma – A Progeny of Modernity*. Durban. The Islamic Medical Association of South Africa.

El-Gindy, Ahmed Raja. 1995. *Islamic Vision For Social Problems of AIDS – Summary and Recommendations of the Meeting*. Kuwait. International Organization for Medical Sciences.

Khan, Muhammad Muhsin. *Sahih al-Bukhari*. N.D.. English. trans. Chicago. Kazi Publications.

Public Health – Seattle & King County. 2003. HIV/AIDS Program HIV Infogram: Update on the HIV Antibody Test Window Period. [Online]. Available from: <http://www.metrokc.gov/health/infograms/hivantibody0903.htm>. [19 May 2014].

Al-Sijistani, Abu Dawud Sulayman ibn al-As`ab. N.D. *Sunan Abi Dawud*. Beirut. Dar Ihya`al Sunnah al-Nabawiyah.