

## **VACCINATION IN THE CONTEXT OF *AL-MAQASID AL-SHARI'AH* (OBJECTIVES OF DIVINE LAW) AND ISLAMIC MEDICAL JURISPRUDENCE**

**Abul Fadl Mohsin Ebrahim**

*Professor and Senior Academic At the University of KwaZulu – Natal and the Regent Business School,  
Durban, South Africa*

### **ABSTRACT**

The goal of public health is to prevent disease and vaccination fulfils that role by protecting people from contracting serious diseases as well as curtailing the spread of such diseases to others. However, the implementation of the World Health Organization's (WHO) polio vaccination drive is being hampered in some Muslims countries. For example, polio workers are being killed in Pakistan, Afghanistan, Nigeria and Somalia. This article addresses the concerns that Muslims have *vis-à-vis* to vaccination and attempts to dispel them on the basis of *al-Maqasid al-Shari'ah* (objectives of Divine Law) and insights from *al-Fiqh al-Tibbi al-Islami* (Islamic Medical Jurisprudence).

**KEY WORDS:** Objectives of Divine Law, Islamic Jurisprudence, *Qur'an*, *Sunnah*, *Ijma`*, *Qiyas*, Legal Maxims, *Fatwa*, vaccine, immunity, antibodies.

### **INTRODUCTION**

The aim of vaccine is to stimulate our immune system to produce antibodies exactly as it would if we were exposed to the disease. Once a person has been vaccinated, he/she develops immunity to that disease, without having to contract the disease first. Hence, this reality makes vaccine a powerful tool for healthcare. (1)

The *Al-Maqasid al-Shari'ah* (Objectives of Divine Law) are five:

1. preservation religion and morality (*hifz al-din*);
2. preservation of life and health (*hifz al-nafs*);
3. preservation of progeny (*hifz al-nasl*)
4. preservation of intellect/sanity (*hifz al-'aql*); and
5. preservation of wealth (*hifz al-mal*).

Islamic Medical Jurisprudence (*al-Fiqh al-Tibbi al-Islami*) is the extension of the *Shari'ah* in that the *fuqaha'* (Muslim jurists) deliberate upon such biotechnological manipulations which directly impact upon the lives of Muslims in order to reach a solution or a rule (*hukm*) by declaring them to be *wajib* or *fard* (required or obligatory), *mandub* (recommended), *mubah* (permitted, but morally indifferent), *makruh* (discouraged or abominable) and/or *haram* (forbidden or prohibited).

## **VACCINATION AND THE OBJECTIVES OF THE SHARI`AH (DIVINE LAW)**

It is interesting to note that vaccination fulfils all the five objectives of the *Shari`ah*. For example:

1. Insofar as the preservation of religion is concerned, Muslims who are vaccinated against the vaccine-preventable diseases will be in a better position to uphold and put into practice all the *fara`id* (obligatory acts of worship) of their religion.
2. Vaccination initiatives by facilitating universal access to safe vaccines have succeeded in the preservation of the lives of millions of people across the globe, thereby reducing global morbidity and mortality.
3. Parents who opt to have their children vaccinated would have fulfilled the preservation of their progeny by safeguarding them from succumbing to the vaccine-preventable diseases.
4. Preservation of intellect/sanity is achieved through vaccination in that those who implement the vaccination initiatives in their community and country at large will enjoy peace of mind knowing that their community and citizens have been protected from contracting vaccine-preventable diseases.
5. Vaccination actually contributes to the preservation of wealth. It is an extremely cost-effective intervention and makes good economic sense in that it is always better to prevent a disease than to treat it and its resultant complications.

## **SOURCES OF ISLAMIC MEDICAL JURISPRUDENCE**

The sources of Islamic Medical Jurisprudence are categorized under three broad headings:

- Primary Sources
- Secondary Sources
- Tertiary Sources

### **PRIMARY SOURCES**

The primary sources are:(2)

- The *Holy Qur`an*
- The *Sunnah*

These two sources are the embodiment of what is known as the *Shari`ah* (Divine Law).

### **The *Holy Qur`an***

The *Holy Qur`an* is the Sacred Scripture of Muslims which is regarded to be the verbatim Word of Allah (SWT) revealed to the Prophet Muhammad ﷺ over a period of approximately 23 years. It embodies the Divine Commandments which encompass all facets of human life and Muslims are required to uphold and implement these Divine Injunctions. This is evident from the following citation:

*“The hukm (jurisdiction) rests with none but Allah.” (Al-An`am, 6:57)*

From the above citation, it is evident that within the Islamic system, Allah (SWT) is regarded to be the only Law-Giver (*al-Shari`*) and that in Him (SWT) alone rests the supreme legislative

power. (3) What then does the Absolute Law Giver tells us about saving lives? Allah (SWT) categorically states in this regard the following imperative:

“... and if any one saved a life, it would be as if he saved the life of all humankind.”  
(*Al-Ma'idah*, 5:32)

In light of the Qur'anic imperative to save life, one can therefore conclusively maintain that vaccination does not in any way violate this Divine Injunction. Vaccine is not a cure, but none can deny the fact that the immunization schedule fulfils the role of the Qur'anic imperative to save human life against killer diseases like polio, diphtheria, tuberculosis, pertussis (whooping cough), measles and tetanus.

### **The Sunnah**

*Sunnah* is regarded as *wahyun khafi* (minor revelation) and includes all that has been reported on the authority of Prophet Muhammad (SAAS) and as such incorporates his authentic sayings (*sunnah qawliyyah*), his (SAAS) actions and personal habits (*sunnah fi'liyyah*), and finally, his tacit approval and explicit disapproval (*sunnah taqririyah*). (4)

By virtue of the fact that Allah I chose to reveal the *Holy Qur'an* to Prophet Muhammad (SAAS), it, therefore, becomes binding upon Muslims to follow his explanations and interpretations of the Divine Commandments. In other words, Prophet Muhammad (SAAS) explained, interpreted and demonstrated how the Divine Law ought to be applied. (5) The *Holy Qur'an* substantiates this as follows:

“And We have sent down the Reminder (Message) to you (O Muhammad) so that you can make clear to humankind what has been sent down to them so that hopefully they will reflect.” (*Al-Nahl*, 16:44)

The *Sunnah* serves to complement the *Holy Qur'an* in the absence of a categorical Qur'anic statement on a particular issue in question.

Prophet Muhammad (SAAS) is reported to have said:

“A strong believer is better and dearer to Allah than a weak one, and both are good.” (6)

In above *hadith*, goodness is acknowledged in both the weak *mu'min* (believer) as well as in the strong one because *iman* (Faith) is a common feature in both of them. However, in the above *hadith*, mention is made that Allah values the one who is stronger. It could safely be inferred that the reason for this is that the stronger believer would be more active and energetic in engaging in noble deeds and in the discharge of the *fara'id* (obligatory acts of worship).

Moreover, Prophet Muhammad (SAAS) is also reported to have said:

“Everyone of you is a protector and guardian of those under his immediate charge and is responsible for the action of those persons committed to his charge. A ruler is a steward (and is accountable for those who are place under his charge). A man is a steward in

respect of the family members in his household and a woman is a steward in respect of her husband's house and children. In short, everyone of you is a steward and is accountable for those placed under his care." (7)

In light of the above Prophetic sayings, one can safely deduce that parents are also enjoined to look after the health welfare of their children. Having their children vaccinated will provide them the opportunity to lead a healthier and fuller life. Hence, it is their obligation to ensure that their children are vaccinated against polio and other diseases so that they could be safeguarded from the vaccine-preventable diseases and be in a position to fulfill their obligations as conscientious believers and citizens.

Samira Shackle sums up the fate of polio victims in Pakistan with the following words, "Unable to support themselves, many people disabled by polio beg at the side of the traffic-filled roads in Pakistan's big cities." (8)

## **SECONDARY SOURCES**

The secondary sources are: (9)

- *Ijma`* (Consensus of Juristic Opinion)
- *Qiyas* (Analogical Deduction)

### ***Ijma`* (Consensus of Juristic Opinion)**

*Ijma`* is derived from the root verb *jama`a* which means to collect or bring together. (10) As a legal term, it is defined as agreement of the jurists among the followers of Prophet Muhammad ﷺ in a particular age on a question of law. (11) In practice, Muslim jurists congregate and deliberate upon any particular problematic issue which affect Muslims and try to resolve it by agreeing and uniting in opinion. (12)

A current example of consensus of Muslim jurists on the issue of vaccination against polio was the recent two-day conference (04-05 June 2013) held in Islamabad on the theme 'Polio Eradication in the Light of Islam' which was jointly organised by International Islamic University Islamabad (IIUI), Pakistan, and the Al-Azhar University, Cairo, Egypt. The religious scholars from Pakistan and other countries declared in a resolution adopted at the end of the conference "that parents who refuse to have their children vaccinated against polio commit a sin and such refusals are against the teachings of Islam." They also condemned the killings of polio workers.

At this juncture, it is important to note that once consensus of Muslim jurists/scholars had been reached, their deliberations *ipso facto* shift from the realm of probability to that of certainty. (13)

In other words, the consensus of Muslim jurists arrive on after their incisive deliberations on the issue of vaccination against polio, for example, does not remain at the level of opinion (*zann*). It automatically gets elevated to the position of a *hujjah* (a decisive verdict), thereby making it unlawful for Muslims to disregard it. (14)

### **Qiyas (Analogical Deduction)**

*Qiyas* is derived from the root verb *qayasa*, which means to measure. (15) As a juridical term, it is defined as a process of deduction by which the law of a text is applied to another case which, though not covered by the language of the text is covered by the reason of the text on the basis of the *`illah* (effective cause). (16) For example, *Sayyiduna* Anas (RA) reported that a person came to the *al-Masjid al-Nabawi* (the Prophet's (SAA) Mosque) and asked Prophet Muhammad (SAAS), "Should I tie my camel and have *tawakkul* (trust in Allah (SWT) for her protection) or should I leave her untied and have *tawakkul*?" Prophet Muhammad (SAAS) replied, "Tie her and have *tawakkul*." (17)

*Tawakkul* in essence implies to diligently apply one's mind and then opt to do what Allah I expects one to do and thereafter leave the results to Allah's (SWT) Will. *Tawakkul* comes from one's conviction in *qada wa qadar* (predetermination), i.e., "what Allah (SWT) has written for a person must come to pass".

In the context of vaccination too, a parent may also rightfully question whether he should have his child vaccinated and have *tawakkul* (trust in Allah (SWT) for the protection of his child) or should he leave him unvaccinated and have *tawakkul*? The answer, it may be presumed, would be the same, "Vaccinate your child and then place your *tawakkul* in Allah (SWT). The two scenarios are varied, but the *`illah* (effective cause) is similar in the sense that not tying the camel could end in the owner losing his camel, while not vaccinating the child may also end in the parent "losing" his child depending on the disease that his child contracts.

### **Tertiary Sources**

The tertiary sources are:

- *Al-Qawa'id al-Fiqhiyyah* (Legal Maxims)
- *Al-Fatwa* (Formal Legal Opinion)
- 

### **Legal Maxims**

Legal maxims are theoretical abstracts, usually in the form of short statements, that are expressive, often in a few words, of the goals and objectives of the *Shari'ah*. The actual wordings of the maxims are occasionally taken from the *Holy Qur'an* or *Hadith*, but are more often the work of leading jurists. (18)

It needs to be noted that some of the maxims are basically a reiteration of some of the broad principles that are found either in the *Holy Qur'an* or *Hadith* compilations. For example, the maxim "necessity makes the unlawful lawful" (*al-daruratu tubihu al-mahzurah*) can be used as justification for the use of vaccine which contain porcine derivatives like gelatin.

Likewise, the maxim "lesser of the two evils" (*akhaffu al-dararayn*) may justify vaccinating children despite the risk of their experiencing side effects of the vaccines compared to grater harm of contracting any of the vaccine-preventable diseases.

### **Fatwa (Formal Legal Opinion)**

*Fatwa* is derived from the root verb *fatiya*, which means to be youthful, to furnish with information and to expound. (19) Its evolution as a legal term emanates from two citations in the *Holy Qur'an*, where the word is used in its 10<sup>th</sup> and 4<sup>th</sup> verbal forms:

“*They ask you for a (fatwa) legal decision (yastaftunak). Say: Allah directs (thus) (yuftikum) about those who leave no descendants or ascendants.....*” (Al-Nisa’, 4:176)

*Fatwa* is defined as a formal legal opinion given by an expert in Islamic Law. (20) An expert in Islamic Law is known as a *mufti*, an inquirer (i.e. one who seeks the legal opinion of a *mufti*) is known as a *mustafti*, and the act of issuing *fatwa* is known as *ifta'*.

*Muftis* are usually consulted by members of the Muslim community to give their legal opinions on the new developments in the fields of economics, politics, science, technology and even on bioethical matters pertaining to family planning, abortion, cloning, euthanasia, organ transplantation, and vaccination, etc. It is to be noted, however, that the *fatwa* of a particular *mufti* is not binding and hence one has the option to approach another *mufti* for a second opinion. Moreover, one ought to realize that there exist a number of conflicting *fatawa* (sing. *fatwa*), for example, on vaccination. Negative *fatawa* on vaccination have undoubtedly led to the perpetration of violence against polio health workers in Nigeria and Pakistan. After these incidents there has been a global surge of positive *fatawa* on vaccination.

### **TOWARDS DISPELLING SOME MUSLIM CONCERNS**

In what follows, three issues pertaining to vaccination are discussed in an attempt to allay the reservations that some Muslims may have *vis-a-vis* vaccination:

#### **Merit of Immunization before Onset of Diseases**

*Shaykh `Abd al-Aziz bin `Abd Allah bin Baz* who was the Grand *Mufti* of the Kingdom of Saudi Arabia from 1993 until his demise in 1999 was asked about the permissibility of resorting to being vaccinated before the onset of diseases? He explained that there was nothing wrong in doing that if one feared that the disease could occur because of an imminent outbreak of an epidemic or other factors that could cause the onset of diseases. He also pointed out that there was nothing wrong if people were given medicines to ward off the disease. He justified that by quoting a *sahih* (authentic) *hadith* of Prophet Muhammad (SAAS), “Whoever eats seven Madinan dates in the morning will not be harmed by witchcraft or poison.” In other words then, by eating those dates one would be warding off a problem before it occurred. Likewise, seeking to be vaccinated from certain diseases would be a form of protection from these diseases. (21)

#### **Vaccine Side Effects**

Another question that was posed to *Shaykh `Abd al-Aziz bin `Abd Allah bin Baz* was about the Islamic perspective on immunizations or vaccinations in view of the existence of evidence which proved that they could be harmful to the human body? He replied by stating that these drawbacks in the form of short-lived fever and other side effects needed to be overlooked on the basis of the greater harm that could ensue in the form of death or contraction of other harmful diseases. He then gave the analogy of the intense pain that Muslim boys undergo during and after circumcision that would be outweighed by the greater benefit in the form of

religious interest of purity (*taharah*) and other worldly benefit that would follow as a result of having been circumcised. He then alludes to the legal maxim “lesser of the two evils” as justification for the need to be vaccinated despite the side effects that would follow. However, he cautioned that if it were to be proven that the harmful effects of a certain specific vaccine far outweighed its efficacy in warding off the disease it would then be prudent on the part of Muslims not to be vaccinated with that particular vaccine. The justification for that would be the legal maxim coined from the *hadith* of Prophet Muhammad ﷺ: “There should be no harm nor reciprocation of harm in Islam” (*la darara wa la dirara fi al-Islam*). (22)

### **Porcine Derived Components in Vaccines**

The *Holy Qur'an* categorically forbids Muslims from consuming pork:

*“Say (O Muhammad): “I find not In the Message received by me by revelation any (meat) forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth, or the flesh of swine,- for it is an abomination - or, what is impious, (meat) on which a name has been invoked, other than Allah’s. But (even so), if a person is forced by necessity, without wilful disobedience, nor transgressing due limits,- Thy Lord is Oft-forgiving, Most Merciful.”*

In view of the above verse, Muslims in general are uncomfortable when they come to learn that porcine elements are used in the manufacturing process of two Rota Virus vaccines, namely, Rotateq (MSD) and Rotarix (GSK), and that likewise there is a negligible amount of trypsin derived from porcine origin in the Oral Polio Vaccine (OPV).

However, it is important for Muslims to note that in 1995 more than one hundred Muslim legal scholars participated in a Seminar convened in Kuwait by the Islamic Organization for Medical Sciences on the topic: “The Judicially Prohibited and Impure Substances in Foodstuff and Drugs.” At the conclusion of that Seminar a number of recommendations were adopted by the participants, which also included their consensus on “transformation of pork products into gelatin alters them sufficiently to make it permissible for observant Muslims to receive vaccines containing pork gelatin and to take medicines packaged in gelatin capsules.”(23)

### **CONCLUSION**

Over the years, vaccines have succeeded in preventing countless cases of infectious diseases and their complications resulting in reduction of disabilities and millions of lives were saved. Hence, it has been pointed out that vaccination fulfils all the five objectives of the *Shari'ah* which pertain to the preservations of religion, life, progeny, intellect/sanity and wealth. The three concerns which Muslims have *vis-à-vis* vaccination were all addressed leaving no room for any controversy.

## BIBLIOGRAPHY

Centers for Disease Control and Prevention. Vaccines: The Basics. Available from: <http://www.cdc.gov/vaccines/vpd-vac/vpd-vac-basics.htm>. Accessed: March 29, 2014.

Islahi, Amin Ahsan (1979). *Islamic Law – Concept and Codification*. English trans. by S.A. Rauf. Lahore. Islamic Publications Ltd., p. 30.

Rahim, Abdur. N.D. *Muhammadian Jurisprudence*. Lahore. Mansoor Book House, p. 44.  
Hassan, Hussain Hamid. 1997. *An Introduction to the Study of Islamic Law*. Islamabad. Leaf Publications, p. 21.

Iqbal, Afzal. 1974. *Culture of Islam*. Lahore. M. Ashraf Dar, p. 163

Al-Bukhari, Muhammad Ibn Isma`IL. N.D. *Sahih al-Bukhari*. Cairo. Dar al-Sha`b.  
Al-Naysaburi, Muslim Ibn al-Hajjaj. *Sahih Muslim*. Kitab al-Qadr. Cairo. Dar al-Sha`b. Vol. 5, pp. 520-521.

Shackle, Samira. *New Statesman*, The Struggle for a Polio-free Pakistan. What is behind the sudden upsurge of violence towards polio vaccinators in Pakistan? Available from: <http://www.newstatesman.com/politics/2013/06/struggle-polio-free-pakistan>. Accessed: March 28, 2014.

*Islamic Law – Concept and Codification*, op. cit., p. 31.

Wehr, Hans. 1976. Ed. J.M. Cowan. *A Dictionary of Modern Written Arabic*. New York. Spoken Languages Services Inc., p. 134.

*Muhammadian Jurisprudence*, op. cit., p. 97.

Hallaq, Wael B. “Consensus” in *the Oxford Encyclopedia of the Modern Islamic World*. John L. Esposito. Chief Editor. New York. Oxford University Press. 1995. Vol. 1, p. 312.

Ghani, Asma. No to polio vaccine a sin. *The Nation*. Available from: <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/islamabad/26-Jun-2013/no-to-polio-vaccine-a-sin>. Accessed: March 23, 2014).

*Islamic Law – Concept and Codification*, op. cit., p. 71.

*A Dictionary of Modern Written Arabic*, op. cit., p. 804.

*Muhammadian Jurisprudence*, op. cit., p. 117.

Al-Tirmidhi, Abu ` [Isa Muhammad Ibn `Isa Ibn Sawrah. 1394 AH/1974. *Sunan al-Tirmidhi*. Madinat al-Munawwarah. Maktabat al-Salafiyyah. Vol. 3. Hadith no. 2455.

For a detailed account on this subject see Kamali, Mohammad Hashim. *Qawa'id al-Fiqh: The Legal Maxims of Islamic Law* on website <http://aml.org.uk/journal/3.2/Kamali%20-%20Qawaid%20al-Fiqh.pdf>.

*A Dictionary of Modern Written Arabic*, op. cit., p. 696.

Masud, Muhammad Khalid. "Concepts of Fatwa in *the Oxford Encyclopedia of the Modern Islamic World*, op. cit. Vol. 2, p. 9.

SalafiTalk.Net. Fatwaa on Vaccines. Available from:

<http://www.salafitalk.net/st/viewmessages.cfm?Forum=6&Topic=1597>. Accessed: March 25, 2014.

Bidah.com. Fatwaa on Vaccines. Available from:

<http://www.salafitalk.net/st/viewmessages.cfm?Forum=6&Topic=1597>. Accessed: March 26, 2014.

See Johns Bloomberg School of Public Health. Religious Leaders Approval of Use of Vaccines Containing Porcine Gelatin. Available from: <http://www.vaccinesafety.edu/Porcine-vaccineapproval.htm>. Accessed: March 25, 2014.