

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

**Series of Questions Addressed to the Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Fiqhi Facebook Page**

Answer to the Question

The Islamic Ruling on: Organ Transplant, Autopsy, Mixing (of the sexes)

To: Lotfi Fékih

(Translated)

Question:

Questions to the Amir of Hizb ut Tahrir, Assalamu Alaikum Wa Rahmatullah Wa Barakatuh,

Q 1: In the booklet, "The Shariah Verdict on Cloning – Organ transplants ..." by Sheikh Abdul Qadeem Zallum, may Allah have mercy on him, it says that Hizb ut Tahrir's opinion is that it is forbidden to transfer organs from the dead to the living, regardless of whether these organs save the person from the inevitable death as a heart transplant or if it is the cure of a disease such as cornea transfer. It is understood from this booklet and jurisprudence Document (dosiyah) also that autopsy is Haram.

Islam encourages seeking the cure, even if by a medicine from Haram source, according to my knowledge, for example, alcohol in some medicines.

Q 2: The prohibition of autopsy deprives medical students of knowledge and learning about the human body; how then will they proceed with their work and perform surgeries, for example, if they are ignorant of the human body? The prohibition of autopsy prevents the forensic doctor from knowing the circumstances of the crime, whatever the crime is, and thus cannot give information that may benefit the police to understand the circumstances of the crime and facilitate the resolution of this crime.

I want to get all the Islamic ruling related to mixing and thank you very much.

Lutfi Faqih, a pharmacist in Tunisia

11/11/2018

Answer:

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuh,

Before answering your questions, especially the first and second questions, I would like to point out that the Shar'i rulings are taken from their evidences. The work of the mujtahid when finding out the rulings is to refer to the Shar'i texts to learn the Shariah rules rather than extracting the ruling that the mujtahid sees fit for him or sees a need for it. The purpose of Ijtihad is to exert effort to find out the Shariah ruling not the rational judgement. It is not correct when devising the rulings of Shari'ah to take account of the need, and search for a ruling that suits the needs or desires of the people, because this is the rule of the mind and not the rule of Shariah. The desired research during ijthad is about the Shariah rule; if the Shariah evidence indicates a specific rule in a specific issue, then the rule is what is adopted, and people's needs change to conform to the Shariah rulings and not the opposite. In other words, it is not permissible to convert the Islamic ruling to conform to the needs of the people or what they think is a need. Rather, the needs of the people should be changed to suit the Shariah ruling because the rule of Allah is what should be followed.

Now we come to answer your three questions:

First, as for your question about organ transplants, it is clear that you have seen the evidences that indicate the prohibition of transferring organs from the dead person whose blood is sacred to the living as stated in the cloning booklet. It refers to two evidences for the prohibition of organ transfer from the deceased to the living and they are:

1- No one has the authority over the deceased's body after his death; neither the deceased nor his inheritors have authority over his body after his death, as stated in the Shariah evidences. Therefore, neither the deceased nor the inheritors have the right to donate an organ from body of the deceased because it is not in their possession, nor in their authority.

2- It is not permissible to violate the sanctity of the deceased and to harm him, and likewise it is not permissible to mutilate the body. This is as follows:

a- As for the prohibition of violating and hurting the body of the deceased, "These ahadith show clearly that the dead have a sanctity just like the living body. They also show that violating the sanctity of the dead body and hurting it is like violating the living body and harming it. So, as it is not allowed for anyone to transgress against the living person by cutting his stomach, cutting his neck, taking out his eye, or breaking his bone, similarly it is not allowed to do this to the dead. As it is not allowed to harm the living by cursing, beating, or injuring, it is not allowed to do this to the dead," and from these Hadith:

'Aisha, the mother of the believers, may Allah bless her, narrated that the Prophet of Allah (saw) said, «كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا» **"Breaking the bone of a dead person is just like breaking it when he is alive."** (Narrated by Imam Ahmad, Abu Dawud, and Ibn Habban).

Imam Ahmad narrated that 'Amir ibn Hazm al-Ansari said the Prophet of Allah (peace be upon him) saw me leaning on a grave and said; «لَا تُؤَدِّ صَاحِبَ الْقَبْرِ» **"Do not harm the owner of the grave."**

Imam Muslim and Ahmad narrated on the authority of Abu Hurayrah that the Prophet of Allah (saw) said; «لَأَنْ يَجْلِسَ أَحَدُكُمْ عَلَى جَمْرَةٍ مُتَحَرِّقَةٍ خَيْرٌ لَهُ مِنْ أَنْ يَجْلِسَ عَلَى قَبْرِ» **"For somebody to sit on a burning piece of charcoal and burn himself is better for him than to sit on a grave"**

b- As for the mutilation of the deceased, "To remove the eye of the dead person, or to cut him open to remove his heart, kidney, liver, or lungs, to transfer it to another person who needs it is considered mutilation of the dead body, and Islam has forbidden mutilation.

Bukhari narrated that 'Abdullah ibn Zaid al-Ansari said; «نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ النَّهْبِ وَالْمُتَلِّهِ وَالْمُتَلِّهِ» **"The Prophet of Allah, peace be upon him, prohibited looting and disfiguring."**

Imam Ahmad, Ibn Majah, and Nasa'i narrated from Safwan b. Assal that he said that the Prophet of Allah (saw) sent us on an expedition and said; «سِيرُوا بِاسْمِ اللَّهِ، وَفِي سَبِيلِ اللَّهِ، قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، وَلَا تَمُتُوا وَلَا تَغْدُرُوا وَلَا تَقْتُلُوا وَلِيدًا» **"Go in the name of Allah, and for the sake of Allah. Fight those who disbelieve in Allah. Do not mutilate, betray, or kill children."**

According to the above mentioned evidences, it is very clear that to transfer an organ from the deceased, whose blood is sacred, to the living is forbidden in Shariah.

It is not said that Shariah has permitted treatment with the Haram, such as medication with alcohol, therefore it is permissible to transfer the deceased's organ to the living, even if this transfer is forbidden; this is incorrect because the treatment that is permitted in Shariah is using the Haram and the impure without transgressing or harming others. Ibn Majah extracted from Tariq ibn Suwayd al-Hadrami who said: «قُلْتُ يَا رَسُولَ اللَّهِ إِنَّ بَارِضَنَا أَعْنَابًا نَعْتَصِرُهَا» **"I said: 'O Messenger of Allah, in our land there are grapes which we squeeze (to make wine). Can we drink from it?' He said: 'No.' I repeated the question and said: 'We treat the sick with it.' He said: 'That is not a cure, it is a disease.'"**

This is a prohibition of impurities or haram "alcohol" as medicine; however, the Prophet (saw) permitted the use of impurities "the camel's urine" «أَنَّ نَاسًا مِنْ عَرَبِيَّةٍ اجْتَوَوْا الْمَدِينَةَ فَرَحَّصَ لَهُمْ» "Some people from `Uraina tribe came to Medina and its climate did not suit them, so Allah's Messenger (saw) allowed them to go to the herd of camels (given as Zakat) and they drank their milk and urine (as medicine)" [Bukhari from Anas]

They came to Medina and its climate did not suit them, and they fell ill, so the Prophet (saw) permitted them to use the impurities, the camel's urine as medicine. Also the Prophet (saw) permitted using the Haram in medicine, by wearing silk (for men); Tirmithi and Ahmad extracted and the version is of Tirmithi from Anas: «أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ وَالزُّبَيْرَ بْنَ الْعَوَّامِ شَكِيَا الْقَمَلِ» "That 'Abdur Rahman bin 'Awf and Az-Zubair bin Al-'Awwam complained of lice to the Prophet (saw) during a battle that they participated in. So he permitted them to wear silk shirts. He (Anas) said: "I saw them wearing them."

These two Hadiths are indications (qareena) that the prohibition in the Hadith of Ibn Majah is not definite, i.e. seeking the cure with impurities and the Haram is Makrooh.

These evidences show that Shariah permitted the treatment with impurity and the Haram and classified it as Makrooh, but the treatment of impurity, "the urine of camels" and the Haram of "wearing silk" differs from the treatment by a Haram that includes attacking others. The latter does not fall within the exception, i.e., seeking treatment by the Haram due to its different reality. For example, is it allowed in Shariah to attack a living person and take his kidney from him by force to treat an ill patient who needs a kidney (like what happens in the so-called Third World countries of abducting children or adults in order to extract some of their organs for transplants to patients in the so-called developed countries)? The answer, of course, is that this is Haram and it is not permissible because it violates others. The Haram that can be used in treatment does not include the Haram that involves attacking others, because the evidence of the permissibility of using the Haram for medicine does not apply to it. **Therefore, it is not permissible to get the cure by violating the body of the deceased by transferring his organs to the living person, because this is forbidden because it is considered to be a violation of the body of the deceased, and because the evidence of the exception of the treatment with a Haram does not apply to it.**

Second: As for your question about anatomy and that its prohibition deprives students from knowledge and learning about the human body, how will they resume their work?! And that the prohibition will stop the forensic doctor from knowing the circumstances of the crime and does provides important information that helps the police to explore the facts.

My brother, the Shariah evidences are many on the prohibition of violating the body of the deceased as shown above. Thus, the anatomy of the body of the dead is forbidden in Shariah because it is a violation on the dead regardless of any other considerations. And to make things clearer, I ask you: Is it permissible for students with the pretext of studying medicine and to know about the human body to violate the body of a living person and to perform his dissection without killing him, such as opening his abdomen and exploring his internal organs? Your answer, of course, will be, no it is not permissible because it is violation on the body of this living person; why then does it occur to you that this is permissible with the dead person, and the Prophet (saw) said: «كَسَرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا» "Breaking the bone of a dead person is just like breaking it when he is alive."

The shar'i ruling is more deserving to be followed, and it is not permissible to change it for any of the arguments.

As for the teaching of medical students and their knowledge of the human body, the permissible means are many. Moreover, the Muslims must develop the modern methods so that students can better identify the human body without resorting to autopsy, for example,

the development of computer programs that enable students to deal electronically with the three dimensions of the human body organs... etc., or any means of imaging from outside the body to see inside or so on, using the means of modern technology. This is knowing that I have been informed by some medical students that they did not benefit much from the lesson of autopsy, especially that the dissected bodies are placed in substances that affect the nature of muscles and blood vessels and very different from the nature of the living body.

This is similar to exploring the truth of the crime, it is not correct to resort to carrying out an autopsy of the deceased body because this is forbidden by Allah (swt), just as it is not allowed to torture the accused in order to explore the truth of the crime. The solution is to search for means and methods permissible to search and clarify the facts, and not in violation of the Shariah's command and the violation of the deceased body, whose honour is in his burial.

Third: As for your question about mixing, it is an unspecified question. You are asking for "all the Shar'i rulings concerning mixing"!! It would have been better to ask for something specific so that we would answer it. However, I will provide you with some of our previous answers to the subject of mixing, perhaps they will cover some of the aspects you are asking about. If you have a specific issue that is not mentioned in the answers below, then mention it.

- **The answer to a question on 28/02/2010 stated:**

"The presence of men and women in the Islamic life is approved by the Prophet (saw), and the Shariah evidence that regulates the Shariah transactions between men and women. All of this is clearly shown, and more than one answer was issued in this matter, and we hoped that the subject is not be ambiguous.

However, in this question, I will further clarify this, Allah willing, in the hope that there will be no ambiguity in this matter:

*Public life means the presence of men and women in public places that do not require permission, and there are Shariah rules governing men and women in it.

*Private life means the places where permission is needed for entry, like the houses, and there are Shariah rules governing men and women in it.

The private life "houses" is clear, and there is no need for further clarification. Women live there with their mahrams and not with foreigners, unless there is a text about a particular case such as Silat ar-rahm. It is permissible that male relatives visit female relatives, if they are not mahram, like a male cousin visiting a female relative during Eid holidays, and of course without being alone (Khalwa), and without exposing the Awra, for example if he goes with his father or uncle for Silat ar-rahm even though she is not a mahram.

* As for public life, if there is a need for a meeting of men and women that is approved by Shariah, this meeting may take place in the form stipulated by Shariah, and we say in the form stipulated by Shariah because there are Shariah rules organizing meetings as follows:

1- The separation of men's lines from the women's is obliged if the Shariah sees there is a necessity for the meeting between them, if it is for one purpose for those meetings, such as the presence of men and women to pray, to attend a lesson of knowledge, or a talk in the Dawah, or for a general action of the Dawah activity. In these situations, men may be present with women with the separation of lines, and these are sometimes called public life with special rules; that is, there is a specific way for the presence of men and women.

2-It is not necessary (obligation) to separate the lines in the public life if there is a need approved by Shariah for the presence of men and women for it, if the meetings were for different purposes for those meeting, such as the presence of men and women in the market, on the street, in a public park or on public buses. These are two types:

A) The various purposes cannot be performed except by mixing, that is, mixing, being next to each other and talking, such as selling and buying in the market, and in this type mixing is permissible.

B) The various purposes are performed without mixing, i.e. without mixing being next to each other and talking, such as public buses, public parks and walking in the street. In this set up, the presence of men and women is aloud without mixing, without being next to each other and talking, but presence in the same area, with each has their purpose and objective, without talking together, like walking in the street, parks, riding public buses.

* As you see, the Ahkam of the presence of men and women are clearly defined in private life and public life:

The private life, the "house" that needs permission to enter, and public life that does not require permission to enter, and from this public life that requires separation of lines and what does not need separation, as well as in the public life, mixing may be allowed, including being next to each other and talking and includes mixing that does not permit being next to each other and talking, but it is permissible only to be present in the same vicinity without talking ..." End

I hope it will be enough.) **End**

- **The answer to a question on 6/2/2011 states:**

"...but in the army there will be women nursing staff to treat the wounded in the war. it is stated that the Prophet (saw) allowed women to be in the battle for nursing and treatment, so the meeting in the case of treatment is permissible. Bukhari narrated in "Al-Adab Al-Mufrad" and "At-Tareekh As-Sagheer", by a *sanad* (chain of transmission) corrected by Al-Albani on the authority of Mahmoud ibn Labeed, he said: **«لَمَّا أُصِيبَ أَحْمَلُ سَعْدٍ يَوْمَ الْخَنْدَقِ فَتَقَلَّ، حَوْلَهُ عِنْدَ امْرَأَةٍ يُقَالُ: كَيْفَ أَصْبَحْتَ؟ وَكَيْفَ أَصْبَحْتَ؟ كَيْفَ أَصْبَحْتَ؟ وَإِذَا أَصْبَحَ: كَيْفَ أَصْبَحْتَ؟»** لها: رُفَيْدَةَ، وَكَانَتْ تُدَاوِي الْجُرْحَى، فَكَانَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا مَرَّ بِهِ يَقُولُ: كَيْفَ أَمْسَيْتَ؟ وَإِذَا أَصْبَحَ: كَيْفَ أَصْبَحْتَ؟ **"When Sa'd's eye was gravely wounded in the Battle of the Ditch, they moved him to the house of a woman called Rufayda who used to treat the wounded. When the Prophet, may Allah bless him and grant him peace, passed by him, he would inquire, 'How are you this evening?' and in the morning, 'How are you this morning?' and he would tell him."**

Rufaidah is a woman from the tribe of Aslam who was treating the wounded.

Mixing (ikhtilat) is as mentioned above; any meeting of foreign men and women for no need recognized by the Shariah, which is not met except by a meeting, which is in this case, it is for no need, which is not permissible, but if the meeting was for a need allowed by the Shariah, a need that is only met through a meeting, then it will be allowed.

There are evidences that allow meeting for specific needs according to Shariah, whether in the private life or the public life, for example in the private life with relatives, there are Sariah evidences that permit the *Silat ar-rahm*, food and visit the ill. And in the public life to treat the wounded in wars, and going to markets, prayer in mosques, attendance of knowledge councils, and Hajj (pilgrimage); **all according to the Shariah rules in terms of separating classes such as mosques and public lectures, or without separation, such as in the market and pilgrimage.**

Silat ar-rahm (maintain the relationship between kith and kin): It is allowed not only for mahram relatives but also for non-maharam relatives like female cousin(for male relative) Revise Silat ar-rahm in "The Social System in Islam Book". Therefore, it is permissible for relatives to visit each other in the Eid holidays or in occasions, and sit together, but for Silat ar-raham, i.e. **to ask about their health, circumstances, visit the ill, and help them in their needs etc.** But not to sit together to play a game, for example, " or go out together for a picnic, and sit together in the garden chatting . This is not permissible) End

Thus, the visit of relatives to each other, and sitting together, men and women is permissible as long as it for Silat ar-rahm; that is, to sit together as the relationship necessitates; if sitting turns to talking about matters other than Silat ar-rahm, then women sit in a room and men sit in a separate room. It is also permissible for them when to sit together

for food, and when they finish, the women sit in a room and the men in a separate room ﴿فَإِذَا طَعِمْتُمْ فَانْتَشِرُوا وَلَا مُسْتَأْنِسِينَ لِحَدِيثٍ﴾ There are evidences on Silat Ar-rahm and food, not to mention that women, cover their Awrah, and her mahram or husband is present, as in the social system.” **End**

- **The answer to a question on 06/06/2016 stated:**

A- Mixing (ikhtilat) (i.e., meeting of foreign men and women) is Haram if it is not for necessary meeting approved by the Shariah. However, if there is a need for a meeting approved by Shariah that requires a meeting, then it is permissible.

B- There are evidences that allow meeting for specific needs according to Shariah, whether in the private life or the public life, for example in the private life with relatives, there are Shariah evidences that permit the Silat ar-rahm, food and visit the ill. And in the public life to treat the wounded in wars, and going to markets, prayer in mosques, attendance of knowledge councils, and Hajj (pilgrimage); **all according to the Shariah rules in terms of separating classes such as mosques and public lectures, or without separation, such as in the market and pilgrimage**

C- Silat ar-rahm (maintaining the relationship between kith and kin): It is allowed not only for mahram relatives but also for non-maharam relatives like female cousin (for male relative). Revise Silat ar-rahm in “The Social System in Islam” book. Therefore, it is permissible for relatives to visit each other in the Eid holidays or in occasions, and sit together, but for Silat ar-rahm, i.e. to ask about their health, circumstances, visit the ill, and help them in their needs etc. But not to sit together to play a game, for example, or go out together for a picnic, and sit together in the garden chatting. This is not permissible.) **End**

I hope these answers to your three questions are sufficient.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

23 Rabii' Al-Akhar 1440 AH

30/12/2018 CE

The link to the answer from the Ameer's Facebook page:

https://web.facebook.com/AmeerhtAtabinKhalil/posts/975129106017494?_tn_=_K-R

The link to the answer from the Ameer's page on Google Plus:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/e8z6JzfiP6c>