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Doctrine of Necessity (In Islamic Jurispridence)

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Introduction- Islamic law is derived through Islamic jurisprudence, which is basically and principally pillared/sourced on Qur'an, the divine revelation (the words of the Almighty ALLAH) and the Sunnha (Prophetic Traditions) the words and the practice of the Prophet (Peace Be Upon Him) and it is called the basic source of law in Islamic Law. And thereafter the sources seconding to the basic pillars are as Ijma (Consensus) and Qiyas (Qiyas, the application of rule by analogy). There after the Ijti had (Juristic consensus of opinion of the imam's mujtahid,) Istihsan (juristic preference), Maslahah Mursalah (Public Interest), Urf (Custom), Istishab (presumption of existence or non-existence of facts Presumption of Continuity), Sadd al-Dhara'I (Blocking the Means), Ijtihad (exercise of independent reasoning by Imam/ Mujtahid).

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Doctrine of Necessity (In Islamic Jurispridence)

Mr. Jafar Samdani

Introduction

Islamic law is derived through Islamic jurisprudence, which is basically and principally pillared/sourced on Qur'an, the divine revelation (the words of the Almighty ALLAH) and the Sunnha (Prophetic Traditions) the words and the practice of the Prophet (Peace Be Upon Him) and it is called the basic source of law in Islamic Law. And thereafter the sources seconding to the basic pillars are as Ijma (Consensus) and Qiyas (Qiyas, the application of rule by analogy). There after the Ijti had (Juristic consensus of opinion of the imam's mujtahid,) Istihsan (juristic preference), Maslahah Mursalah (Public Interest), Urf (Custom), Istishab (presumption of existence or non-existence of facts Presumption of Continuity), Sadd al-Dhara'I (Blocking the Means), Ijtihad (exercise of independent reasoning by Imam/ Mujtahid).[1]

It is habit of the jurists to draw the juristic classification of the sources of the law in Islamic Jurisprudence saying as

Chief Sources:

A. The Quran.
B. The Sunnah (authentic tradition of the Prophet Muhammed (Peace be upon him)).
C. The Ijma (consensus of opinion)
D. The Qiayas (judgment upon juristic analogy)

Supplementary Sources:

A. Istihsan (deviation, on a certain issue, from the rule of a precedent to another rule for a more relevant legal reason that requires such deviation)
B. Istislah (unprecendented judgment motivated by public interest to which neither the Quran nor the Sunnah explicitly refer)
C. Uraf (the custom and the usage of a particular society, both in speech and in action)[2]

In Other words, two kinds may be articulated as GOD made laws and manmade laws as the first two sources are the GOD made laws and the rest are the Manmade laws, though the in Islamic Law the understanding of the manmade laws are based on GOD made laws but extracted by the jurists and he experts. The GOD made laws are absolute and authoritative one and is the principally provide the bases for all kinds of legal understandings. The GOD made laws are based on the revealed and derived there from and from the authoritativeness of the Beloved Prophet (Peace Be Upon Him) being law giver and interpreter of the laws.

The man made laws are derived from the authority of the ruler (Khalafat) (keen in accordance to the principal articulated in Qur'an and Sunnah). Here it is pertinent to mention that the authority of the Almighty ALLAH is ultimate sovereign and the authority of the Prophet (Peace Be Upon Him) is manifesto sovereign and the authority of the Ruler/Khalafat is vicegerency.[3]

Under the Islamic Jurisprudence, the Legal Order/ Hukam Sharii means the demand of the legislator for an action to be done or not to be done. It has been made with different kinds as

I- Obligation/Farad/Wajab means an action to be undertaken as compulsory
II- Forbidden/prohibited/refrained means an action not to be undertaken as Compulsory
III- Mustahab/Masnoon/Nafila means an action is appreciable, if it is being undertaken and not doing so is not to be blamed/punished.
IV- Mubah/Permissible means an action by the choice to be undertaken
V- Improper means an action is depreciable to be done.[4]

The Legal value/order under the Islamic jurisprudence is divided in two kinds as

I- Primary Law
II- Declaratory Law

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[1]
I. https://en.wikipedia.org/wiki/Sources_of_sharia#targetText=Among%20Shia%2C%20Usuli%20sc hool%20of,Sunnah%2C%20consensus%20and%20the%20intellect.
II. http://www.legal-tools.org/doc/0528c5/pdf/
III. http://www.legalserviceindia.com/article/l302-Sources-of-Islamic-Law.html
IV. https://free-islamic-course.org/stageone/stageone-module-4/sources-islamic-law.html
V. https://www.ukessays.com/essays/religion/the-four-main-sources-of-islamic-law-religion-essay.php
VI. https://www.jstor.org/stable/25658109?seq=1#page_scan_tab_contents
VII. https://pdfs.semanticscholar.org/c815/1410682021aae4368d4c3c8ed9074b0e7f26.pdf
VIII. http://takafuleexam.com/e-content/TBE- A/content/29175407 IBFIM_Part_A/chapter_A1/A1_page_02.html

[2] http://www.issuesandideasradio.com/downloads/khizr_khan_quran.pdf
[3] (Al-hukam u Shairee by Dr. Tahir ul Qadri).
[4] https://www.islamic-banking.com/knowledge/islamic-jurisprudence-fiqh

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And it has been defined in four (4) different divisions as understood by the jurists including the jurist of the time known as Dr Tahir ul Qadri, the last extracted classification of the Legal Order/ Al-Hukam u Shari[5] after meeting the evaluation from the day one to this date as designed by the jurists and Now the Legal value under the Islamic Jurisprudence after taking its gradual evaluation of understanding is in juxtaposition for due understanding is as

I-	Obligatory	I-	Forbidden
II-	Imperative	II-	Condemned
III-	Mandatory Recommendation	III-	Disapproved
IV-	Directory Recommendation	IV-	Improper
V-	Commendable	V-	Uncommendable

The aim/purposes of the Islamic Law is under the principal of Maslaha (the welfare/public interest)[6] Imam Ghazali defined as, "Maslaha is general purposes in the Divine Law for the preservation of five (5) essentials of human beings as Din (religion) life, intellect, offspring and property.[6] Furtherance herein the Imam Ghazali said that Health is a necessary condition to the preservation of life. Indeed, it is an essential requirement for the establishment of God's law in human life, for it is only healthy human beings that can properly implement this law in human society, "A proper understanding and implementation of religion, from the standpoint of both knowledge and worship, can only be arrived at through physical health and life preservation". Hence, Islam places health as second in importance to faith. The Prophet says: "Second to faith, no one has ever been given a greater blessing than health".[7] In another hadith, the Prophet defines the relative importance of health and wealth: "Wealth is of no harm to a God-fearing person, but to the God-fearing, health is better than wealth". Another hadith gives us the proper perspective of the essential things in life: "Whoever of you gets up in the morning feeling physically healthy, enjoying security and having his food for the day is like one who has the world at his fingertips". By contrast, health places on us a great responsibility, for which we are accountable to God. The Prophet says: "The first thing every servant of God will have to account for on the Day of Judgement is that God will ask him: 'Have I not given you a healthy constitution?'" The Prophet is also quoted as saying: "No one will be allowed to move from his position on the Day of Judgement until he has been asked how he spent his life, how he used his knowledge, how he earned and spent his money, and in what pursuits he used his health".[8] The Classical jurists said that the Maslah is the important legal principal.[9] And some jurists declared it as independent source of law.[10] The Islamic Jurisprudence under the teaching of the Islam gave great importance to human health and life and its systems from different angles covers the health of the human life.[11] As the health and its guidance has been persuaded.[12] The Quranic concept is very much clear signifying the importance to the human health time and again.[13] The Islamic Law and Islamic Jurisprudence gave the great importance to the human health, its safety and security above of all obligations.[14]

That's why the health principal articulated in Islamic System is more curable and heathy towards human health.[15]

Herein under, I would to draw the kind attention towards the Doctrine of necessity under Islamic Jurisprudence as even obligatory demand from a follower is ordered to be suspended in serious need for the human health and Security till the normalization. Tantamount that wherever, whenever is need to suspend even the obligation for the safety of the human health & security, the obligation would be suspended

[5] Al Hukam u Shari By Dr. Tahir ul Qadri

[6] Opwis, Felicitas (2007). Abbas Amanat; Frank Griffel (eds.). Islamic Law and Legal Change: The Concept of Maslaha in Classical and Contemporary Legal Theory. Shari'a: Islamic Law in the Contemporary Context (Kindle ed.). Stanford University Press

[7] http://www.thepenmagazine.net/the-value-of-health/
https://www.slideshare.net/drzargari/health-as-a-human-right-in-islam part-2
https://islamqa.info/ar/answers/137035/%D8%B4%D8%B1%D9%88%D8%B7-%D8%A7%D8%A8%D8%A7%D8%AD%D8%A9-%D8%A7%D9%84%D9%85%D8%AD%D8%B1%D9%85-%D8%B9%D9%86%D8%AF-%D8%A7%D9%84%D8%B6%D8%B1%D9%88%D8%B1%D8%A9

[8] http://applications.emro.who.int/dsaf/dsa217.pdf

[9] Duderija, Adis (2014). Adis Duderija (ed.). Contemporary Muslim Reformist Thought and Maqāṣid cum Maṣlaḥa Approaches to Islamic Law: An Introduction. Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination. Springer.
Gleave, R.M. (2012). "Maḳāṣid al-Sharīʿa". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). Encyclopaedia of Islam (2nd ed.). Brill. doi:10.1163/1573-3912_islam_SIM_8809.

[10] Duderija, Adis (2014). Adis Duderija (ed.). Contemporary Muslim Reformist Thought and Maqāṣid cum Maṣlaḥa Approaches to Islamic Law: An Introduction. Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination. Springer.
Opwis, Felicitas (2007). Abbas Amanat; Frank Griffel (eds.). Islamic Law and Legal Change: The Concept of Maslaha in Classical and Contemporary Legal Theory. Shari'a: Islamic Law in the Contemporary Context (Kindle ed.). Stanford University Press.

[11] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3702073/
https://www.researchgate.net/publication/247158039_Health_and_Islam

[12] https://www.soundvision.com/article/health-guidelines-from-quran-and -sunnah

[13] http://www.quranreading.com/blog/islam-and-health/

[14] http://www.thedeenshow.com/health-in-islam-1-3/

[15] https://tribune.com.pk/story/865353/20-health-tips-from-islamic-teachings/
http://www.islamicinsights.com/religion/clergy-corner/health-and-wellness-in-islam.html

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and the human health & security would be preferred as a principal. Let's the legal refreezes to be considered within the prospective of the doctrine of the necessity in this regard under the Islamic Jurisprudence as in Qur'an at difference places, it has been declared that

ثم عليه إن الله غفور رحيم (14) [النحل (115)]

عليكم الميتة والدم ولحم الخنزير وما أهل لغير الله فمن اضطر غير باغ ولا عاد فلا ا إنما حرم

He has only forbidden you carrion, blood, the flesh of swine and (the animal) on which the name of other than Allah is invoked at the time of slaughter. But he who is faced with a survival condition (forced by necessity), neither defying (Allah's injunctions seeking taste of lust), nor transgressing (the limit of necessity), then Allah is surely Most Forgiving, Ever-Merciful. (Quraan an-Nahl, 16 : 115)[16]

ن اضطر غير باغ فلا اثم عليه (2) [البقرة (173)]

إنما حرم عليكم الميتة والدم ولحم الخنزير وما اهل لغير الله فم

He has made unlawful for you only the dead animals and blood and the flesh of swine and the animal over which, whilst sacrificing, the name of someone other than Allah has been invoked. But he who is forced by necessity and is neither disobedient nor transgressing will not incur any sin on himself (if he eats that much which is required to survive). Allah is, indeed, Most Forgiving, Ever-Merciful. (Qur'an al-Baqarah, 2 : 173)[17]

قد فصل لكم ما حرم عليكم إلا ما اضطررتم إليه (12)[الأنعام 119]

Whilst He has spelled out to you in detail (all) those things which He has forbidden to you except when (under the unavoidable circumstances) you are forced (to eat the bare necessity just as a life-saving measure. (Quraan al-An'ām, 6 : 119)[18] فمن [(3) المائدة] (13)

اضطر في مخمصة غير متجانف لاثم فإن الله غفور رحيم

Then if someone gets into a survival situation (and is forced by) ravenous hunger (and intense thirst i.e., driven by dire necessity, provided) he is not prone to sinning (i.e., eats what is forbidden without being wilfully inclined to sin), then Allah is indeed Most Forgiving, Ever-Merciful. (Quraan al-Mā'idah, 5 : 3)[19]

It has been made clear like crystal that the Human health and safety is needed by the law mandatorily and all the applicable laws may be suspended to save and safe the human health and security.[20 & 21]

It is very much significant to keep always in consideration that the principally the obligations and the Forbidden under the Islamic Legal Order (Value) shall be suspended/repeal its compliance and practice in case of serious need and necessity. And the need and necessity has been defined by the jurists and it has been elaborated already above, wherein Imam Ghazali defined it very well and once again herein the Need/necessity mean, "To obtain the benefit and restrain the loss" and "An action, which deserve the human health and Security of life while protecting the Aims of Islamic value/order". And the Aims have been identified therein as: -

A- Din
B- Life
C- Sound mind
D- Offspring
E- Property

An action, which requires for the protection of the above five (5) shall be considered as Need/Necessity under the Legal value/order, which is appreciable in Islamic jurisprudence and Islamic Law and losing them is not depreciable in Islamic Jurisprudence and Islamic law, herein it is very much clear that what need means in Islamic value/order. AS it has been derived as a main Principal by the jurists under the Islamic Jurisprudence to be followed and complied fully in accordance is as said by Almighty ALLAH

فمن اضطر غير باغ ولا عاد فلا اثم عليه إن الله غفور رحيم

But he who is faced with a survival condition (forced by necessity), neither defying (Allah's injunctions seeking taste of lust), nor transgressing (the limit of necessity), then Allah is surely Most Forgiving, Ever-Merciful.[22]

And after the need is over in protecting the aims, the obligation and forbidden shall be complied and practiced as it was limited in its scope for suspension in case of need. Again it has been principled by the jurists as فإضطره بصيغة المجهول أي

means serious & material pressure to do with two kinds, eternal fear and external threat. The principal in Islamic jurisprudence and Islamic Law is with the change of the time and space, the legal value/order shall be varied in principal. Which is flexibility in Islamic Jurisprudence towards the humanity and humanism and herein-from the Doctrine of Necessity is invoked and derived.

Under the versus of the holey Qiraan as mentioned above are permitting the deserving measure

[16] http://www.irfan-ul-quran.com/english/An-Nahl/
[17] http://www.irfan-ul-quran.com/english/Al-Baqarah/
[18] http://www.irfan-ul-quran.com/english/Al-Anam/119/
[19] http://www.irfan-ul-quran.com/english/Al-Maidah/3/
[20] Brown, Jonathan A. C. (2009). "Maṣlaḥah". In John L. Esposito (ed.). The Oxford Encyclopedia of the Islamic World. Oxford: Oxford University Press.
[21] Gleave, R.M. (2012). "Maḳāṣid al-Sharī'a". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). Encyclopaedia of Islam (2nd ed.). Brill. doi:10.1163/1573-3912_islam_SIM_8809
[22] http://www.irfan-ul-quran.com/english/Al-Maidah/3/
[23] https://www.almaany.com/en/dict/ar-en/%EF%82%A7-%D9%81%D8%A5%D8%B6%D8%B7%D8%B1%D9%87-%D8%A8%D8%B5%D9%8A%D8%BA%D8%A9-%D8%A7%D9%84%D9%85%D8%AC%D9%87%D9%88%D9%84-%D8%A3%D9%8A-%D8%A7%D9%84%D8%AC%D9%8A/

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as in case of absence of water the legal value/order of ablution or bath shall be repealed/suspended with Tayamam (تيمم) and during the journey there is favour/reduction in Salat (صلاة) and Fasting (صيام), Haaj (حج) and Zakaat (زكوة) shall not be applicable over incompetent.

Furtherance there from shall be considered under the same principal of Doctrine of Necessity as opening the secrets of the human body for a medical practitioner for due procurement to be undertaken, Defence shall be a right even at the cost to injure the attacker, postpartum in case of investigation, synthetically reproduction, Transplantation, birth control, test-tube baby and likewise others needs and sometimes.[24][25][26][27][28][29]

2 فإذا أكل الميتة فليس له أن يأكل حتى يشبع، بل يأكل بقدر ما يحصل به قيام بدنه من غير شبع

والباغي هو الذي يريد أكل الميتة مع أنه يمكنه أن يستغني عنها بغيرها، والعادي هو الذي يأكل ما يزيد على دفع

3ضرورته

إني يغلب على ظني أني لا أجد شيئاً أمامي وأنا أريد أن أمشي في الصحراء، فله أن يأكل حتى الشبع، أو أن يحمل

4منها، وذلك لأنه إذا منع فقد لا يجد في طريقه شيئاً فيهلك

أنا لا أدري هل أجد شيئاً أم لا، أما إذا كان يغلب على ظنه أنه يجد أو يتيقن أنه يجد الطعام عند حاجته بعد ذلك فليس

5له أن يأكل فوق حاجته

6 فالطبيب إذا أراد أن يكشف موضعاً من بدن المرأة يحتاج إلى علاج فإنه يقدر هذا بقدره ولا يزيد، فإذا كان الداء

بوجهها فليس له أن يكشف شعرها بل يكتفي بكشف الوجه، وكذلك الشاهد ينظر من المرأة ما يحتاج إليه فقط ولا يزيد.

The crux of the abovementioned explanations means that in saving the life and security in coercive and forced time, the forbidden is permitted to utilize till the need is over, which is called the Doctrine of necessity in Islamic jurisprudence.

مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ

مِنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ

The one who disbelieves after having believed, except someone who is coercively forced to do so, and at heart remains contented with belief (as before), but (of course) he who (adopts) disbelief (afresh) wholeheartedly with an open mind, on them is a wrath from Allah and for them is a fierce torment. (Quraan an-Nahl, 16: 106)[30]

No flexibility would be there as Almighty ALLAH gave through Qur'an to humanity in the name of the health and security of human life as the believe on the ultimate oneness on ALMIGHTY ALLAH is the core and main demand from the believer/follower and it may be suspended in dare need of the security of human life remaining intact by heart.

When the principal from the main source of the Islamic jurisprudence, the Qur'an says that the prudent/ need/ necessity in coercive and forced time in saving life, shall prevail over the obligation or forbidden as highlighted and envisaged therein, which enlightened the subject like crystal with the words as: غير باغ ولا عاد فلا إثم عليه فمن اضطر [31] But he who is forced by coercively being neither disobedient nor transgressing will not incur any sin on himself (if he eats that much which is required to survive). Allah is, indeed, Most Forgiving, Ever-Merciful, and it projects the human health, life and security is most honourable. That in coercive and forced need/necessity (coercive and forced one), the need/necessity shall prevail, it has been defined by the jurists under the Islamic jurisprudence as: تبيح المحظورات الضرورات means coercive necessity permits the forbidden [32]and another principal is لا محظور مع الاضطرار no forbidden for coercive need facer [33] ما أبيح للضرورة يقدر بقدرها permission is to beat the coercive need (not thereafter)[34].

[24] https://www.islamweb.net/ar/fatwa/27833/تبيح-المحظورات-معنى-الضرورات
[25] https://al-maktaba.org/book/32440/25#p5
[26] http://islamport.com/w/usl/Web/4874/59.htm
[27] https://halakat.taimiah.org/index.aspx?function=Printable&id=5626&node=17786
[28] http://afaqattaiseer.net/vb/showthread.php?t=361
[29] https://khaledalsabt.com/explanations
[30] http://www.irfan-ul-quran.com/english/An-Nahl/ http://www.quran7m.com/searchResults/016106.html
[31] http://www.irfan-ul-quran.com/english/Al-Baqarah/
[32] https://www.alukah.net/sharia/0/85960/
[33] https://halakat.taimiah.org/index.aspx?function=Printable&id=5626&node=17786
[34] https://www.alukah.net/sharia/0/85960/

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The base of the mentioned explanatory principals is on the saying of the Beloved Prophet Muhammad (Peace Be Upon Him)لا ضرر ولا ضرار"as Neither harm nor reciprocation, which has been narrated in the book of Iba-e-Majha 2nd vellum page 784 Hadeeth No: - 2341 [35] and another place the beloved Prophet (Peace be Upon Him) responded as narrated therein book of Musnad of Imam Ahmad Hadeeth No:- 22246 over the question facing the coercive and forced need option-less but to eat dead as,تحتفئوا بقلاً فشأنكم بها إذا لم تصطبحوا ولم تغتبقوا ولم"[36] that if don't turn up, and don't betake and don't observe anything more than you can do it mean just beating the coercive need is allowed not more than that in any manner whatsoever. Furtherance hereto it has been explained and said, "A need/necessity mean someone has been pushed coercively and forcibly option-less to do a dislike or self-injuring and it may be by external effects or internal".[37] And Abdul Majid Deryia Abadi said that, "need/necessity mean in a dare need/prudent, one may use the forbidden, while feeling failure to die or unable to take obligation and in that case denying to use of forbidden shall be considered as sin".[38] and same has been said while adding the words to use till the fear of dying is over [39] and added the same [40] and in it has been added in case of refusal to obey the principal of need/prudent/necessity shall be sinner (as the suicide is forbidden in Islam) and in case death shall be a forbidden death [41] and It has been added that the limit of need/prudent/necessity shall not be crossed[42]. The coercive and forced need/prudent/necessity has been divided in five kinds and defined when this principal shall be applicable[43]. and Imam Ahmad Raza Khan said that in case of failure to undertake the compliance it and dies, shall be forbidden death [44]. The principal of forbidden or obligation shall be held in absence and shall be uplifted till the need/prudent/necessity is over or fear to death is over. Hereunder is the principal derived by the jurists are as رمع الضرورة بقدر ما تحتاجه الضرورة كل محظو[45]. Meant that every forbidden is permissible to the need. The jurists permitted in this regard "to use the bone for transplantation for human health with the bones of the animals even" [46] and "sometimes under special and recommended circumstances even to use the alcohol, blood and urine" [47] and imam shabaani "permitted for medication horse meat and camel urine" [48] and Imama Abu hanifa said that تمامه في الحبر حتى لو تعين م الحرا مدفعاً للهلاك يحل كالمية والخمر عند الضرور[49]"in case of safety from death in using the dead meat or alcohol, then it shall be permissible to that extend" and it has been extracted therefrom the principals as said by Imam Shaami إنما مات هذه المحر لأن تناول م فيما وراءها يبا ح عند الضرور ة كما في الـ مخمصة لقيام المحر يبا ح عند الضر [50] "if certainty to use the forbidden to cure, while unavailability of admissible" and the same is derived as, if someone is away from the availability of permissible drink/food and he has fear of death in case not drinking the forbidden, which is available, the forbidden/haraam shall be permitted to drink till saving the life" as في التداو ي بالمحرم (إلى) قيل يرخص إذا علم يعلم دواء آخر كما رخص الخصر للعطشان وعليه الفتوى اختلف اء آخر شامي ففي النهاية من الذخيرة and [51] فيه الشفاء ولم يجوز أن علم فيه شفاء ولم يعلم دواء آخر شامي [52] "Certainty of presumption for procurement from haram/forbidden is permissible when others are not reachable"

The beloved Holy Prophet (Pace be Upon Him) answered when he was questioned about treatment as, " تَدَاوَوْا عِبَادَ اللَّهِ فَإِنَّ اللَّهَ سُبْحَانَهُ لَمْ يَضَعْ دَاءً إِلاَّ وَضَعَ مَعَهُ شِفَاءً إِلاَّ الْهَرَمَ "[53]

'Yes, O worshipers of Allah! Use remedies. For indeed Allah did not make a disease but He made a cure for it'- or - 'a remedy, except for old age.' The jurists seriously consider the new developments in medications towards the procurement and safety of human health as enriched by the experts of the relevant subjects even through the inadmissible/forbidden/haram for the greater interest.

[35] http://www.islamtoday.net/fatawa/quesshow-60-177540.htm
[36] http://www.islamtoday.net/fatawa/quesshow-60-177540.htm
[37] https://www.almaany.com/ar/dict/ar-ar/
[38] تفسير ماجدى البقره 173
[39] خذائن العرفان البقره 173
[40] تفسير نمونه البقره 173
[41] نورالعرفان البقره 173
[42] فى ظلال القران البقره 173
[43] شرح الاشباه والنظائر حواله فتح القدير
[44] صفحه 300 امام احمد رضا خان بريلوى III ملفوظات
[45] https://al-maktaba.org/book/32440/25
http://islamport.com/w/usl/Web/4874/59.htm
[46] الفتاوى الهنديه جلد 4 صفحه 3
[47] الفتاوى الهنديه جلد 4 صفحه 316
[48] الشعبانى 150
[49] الدر المختار جلد 4 صفحه 398
[50] الدر المختار جلد 1 صفحه 194
[51] الهدايه
[52] بداية شامي مجلد 1 صفحة 194
[53] Jami` at-Tirmidhi, Vol. 4, Book of Medicine, Hadith 2038, https://muflihun.com/tirmidhi/28

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Based on the doctrine of necessity under the Islamic Jurisprudence, the jurists permitted the forbidden in the greater interest of the human being honouring the alive as ب شق بطنها من الأيسر ويخرج ولدها حَامل ماتت ولدها حي يضطر[54] if the pregnant died having the alive fetus, the minimum surgery shall be undertaken to have fetus out. And there are vide number of the examples and the precedents permitted the prohibited or forbidden or haram to use in saving the human life by the jurists under the Islamic Jurisprudence.[55]

Those are some examples reflecting that the Islamic jurisprudence projects the Legal value/order for the safety of human health and security of life above all the obligations. The legal system provided by the Islamic Law over the Doctrine of Necessity particularly and significantly is very much clear that how 1400 years before codified, which is still covering the shield and providing the safety, care, honor and dignity. Surprising that it has the flexibility in the name of the humanity under the Doctrine of Necessity in Islamic Jurisprudence.[56]

[54] http://www.marqoom.org/kotob/view/adorAlmokhtarWaHasyatEbnAbdeen/894 4257/894 صفحه 3ج مع تقريرات الرافعي 1-14
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[55] http://www.maktabatalfeker.com/book.php?id=6756
https://ar.wikisource.org/wiki/%D8%A7%D9%84%D8%B7%D8%A8_%D8%A7%D9%84%D9%86%D8%A8%D9%88%D9%8A

[56] https://www.almeshkat.net/fatwa/1151

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