

Title: Pulling the plug - An Islamic Perspective of the  
Withdrawal of Life-Sustaining Treatment (WLST)

Name: Siddiq Diwan

Student Number: 1502672

Supervised by: Dr Gary Bunt

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# DECLARATION SHEET

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This sheet MUST be signed and included within the thesis

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Signed: S.Diwan (student)

Date: 28/09/2017

## STATEMENT 1

This thesis is the result of my own investigations, except where otherwise stated. Where correction services have been used the extent and nature of the correction is clearly marked in a footnote(s). Other sources are acknowledged by footnotes giving explicit references. A bibliography is appended.

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I hereby give consent for my thesis, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organisations.

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# Acknowledgement

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All praise and gracious thanks are due to Allāh, the most compassionate, who has inspired and enabled me to undertake this dissertation, and may the choicest of greetings and warmest of salutations be upon my master the noblest of all creation sent down as a mercy to humankind Muhammad PBUH.

Following the Hadith of the Prophet Muhammad PBUH who said, “He who does not thank people cannot truly thank Allāh”, I would like to thank the following individuals for their continued support and guidance during the gestation and birth of this research.

To my parents Abdullah and Salimah whose unconditional love for me brightened up many a dark day. To my caring wife Khadija who continuously inspired me, and who has had to go through difficult times during my study period. Last but not the least, to my beloved children, Maryam and Ibrahim, who are the joy of my life; whose sight always took the edge out of difficult days.

A special thanks to all my colleagues at MFT for their academic input in this research.

# Transliteration and Conventions

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The transliteration system that has been used is the one by the *International Journal of Middle East Studies* and is called the 'IJMES System'.<sup>1</sup>

All Arabic words have been italicized other than proper names, names of places, the word Qur'an and Sunnah and words that have become a part of the English language such as 'Islam'.

I have tried to minimise the usage of Arabic word and give their English equivalents. However, as the English translation is not universally accepted I have placed the Arabic terms in parenthesis.

I have abbreviated the translation of the salutation on the Prophet as Muslims are required to recite the salutation every time his name is mentioned.

# Religious texts

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For translations of the Qur'anic verses I have used the following as my standard translation that are available from The Quranic Arabic Corpus website:

*The Quran: Arabic Text with Corresponding English Meanings (Sahih International)*  
Almunatada Alislami, Abul Qasim Publishing House (1997).

However, I have also relied on the following and adapted the meaning when I deemed it more suitable:

*The Meaning of the Glorious Koran (Mohammed Marmaduke Pickthall)*  
Reprinted by Plume (1997). First published 1930.

*The Holy Quran: Translation and Commentary (Yusuf Ali)*  
Reprinted by Islamic Vision (2001). First published 1934.

*The Noble Quran in the English Language (Mohsin Khan)*  
King Fahd Printing Complex, Madinah, Saudi Arabia (1996).

For translations of the Ḥadīths I have used the following as my standard translations available from Sunnah.com:

Ṣaḥīḥ al-Bukhāri by Dr. M. Muhsin Khan

Ṣaḥīḥ Muslim by Abdul Hamid Siddiqui

Jami` at-Tirmidhi by Abu Khaliyl

Sunan ibn Majah and Sunan Abi Dāwūd by Nasiruddin Al-Khattab

However, I have adapted them when I thought another word was more suitable.

# Abstract

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The aim of this dissertation is to investigate the Islamic perspective on Withdrawal of Life-Sustaining Treatment (WLST).

This has been accomplished by analysing and evaluating the primary and secondary sources of Islamic law. A special focus has been factoring within the scope of this study the *maqāṣid* (Goals of Shari'a) and *qawā'id* (juristic maxims) approach. The findings of this study have helped synthesise an Islamic approach and perspective on WLST that can help improve clinical effectiveness, enhance the patient experience and does not compromise the safety, values and beliefs of the patient.

# Chapter One - Introduction

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## 1 The Aim

“Imām, is it permissible to withdraw treatment?”

“Imām is it permissible to switch off the machine?”

“Imām, is it sinful to consent to a DNAR (Do Not Attempt resuscitation) order?”

In my professional capacity as a chaplain, in one of the largest hospitals in the UK,<sup>2</sup> these are some of the most challenging questions I have been asked by many a family whose loved one is dependent on Life-Sustaining Treatment (LST). I have therefore embarked on a research journey aiming to answer these questions from an Islamic perspective. I have therefore called this dissertation: An Islamic perspective on the Withdrawal of Life-Sustaining Treatment (WLST).

### 1.1 The Islamic mindset

This question is borne of a particular mindset. This mindset is that Islam is believed to be a way of life for many Muslims, encompassing all facets of human activity including the physical, mental, spiritual, social and economic aspects of life.<sup>3</sup> The desire to adhere to and practice the laws and regulations of Islam is of fundamental concern to those of this mindset. Hence when confronted with a situation in life many Muslims will seek Islamic guidance.<sup>4</sup> Healthcare is no exception, and many will consult with their religious leader or Imām before initiating or withdrawing a clinical intervention.<sup>5</sup>

### 1.2 The Experiential Evolution of this research

Many chaplains and Imāms<sup>6</sup> working in health care face similar situations and may be asked to be advocates by patients.<sup>7</sup> From my position as Imām, due to an increase in withdrawal of treatment decisions having to be made, especially in the Paediatric Intensive Care Unit (PICU), I have strongly felt the need to clarify the Islamic perspective. At times the opinion of the patient, carers and

scholars can be at odds with the clinicians leading to bitter disputes that sometimes end up in a court of law.

In the case of *Central Manchester NHS Foundation Trust v Patient A (2015)*, a child was admitted to A&E having suffocated on a piece of a fruit. Sadly, the child failed to respond to treatment and was diagnosed as brain stem dead. This, however, did not convince the father to consent to the withdrawal of the ventilator. The case had to be taken to court where the judge noted that, “One of the questions posed by the father here was whether brain stem death is synonymous with clinical/legal death. The father certainly does not consider the two to be equivalent. This seems to me at least as rooted in his Muslim beliefs as in his basic paternal instinct.”<sup>8</sup>

The father and I had had many discussions on this topic, and he had found it very difficult to reconcile the clinical position and his understanding of the Islamic position on WLST.

In another case of *Central Manchester NHS Foundation Trust v Patient A and others (2015)* (Withdrawal of life support), the judge was asked to decide on the withdrawal of mechanical ventilation from two identical male twins suffering from a progressive neuro-degenerative disorder. The clinicians had unanimously decided on WLST, but the parents had refused to consent. The judge had pointed out that,

“Both parents are of the Islamic faith and the father appropriately stresses to me the contents of a document, the original of which is in Arabic script but of which a translation has been supplied to me.”<sup>9</sup>

The document referred to is the second resolution on removal of life support instruments from the human body of the Islamic Fiqh Council of the Muslim World League held in 1987.<sup>10</sup> This document and others of a similar kind seem to suggest that it would be against Islamic principles to consent to WLST when there is a hope of life.<sup>11</sup>

The parents and I had had over six sessions of discussions including three with six separate Muslim consultants respectively. The parent's perception was that consenting to WLST would be tantamount to murder and hence gravely sinful.

The cases of Charlie Gard, Alfie Evans and Isaiah Haastrup have been some of the highest profile cases in the UK. This scenario presents itself almost weekly in hospitals throughout the country and demonstrates a dire need for a further research needed on this sensitive subject.<sup>12</sup>

All these cases have raised the public interest in this matter and has focused attention on the need to discuss this more extensively with patients, clinicians, ethicists, faith leaders and legal representatives.<sup>13</sup>

### 1.3 The Gap

This discourse is situated within Islamic bioethics. Islamic medical ethics is a fairly nascent area of research and much more robust work is needed.<sup>14</sup> However, there has been some Islamic research evaluating the Islamic perspective of WLST.<sup>15</sup> Perspectives in existing research tend to be driven by either clinicians with limited Islamic scholarship or Islamic scholars with limited clinical knowledge and little active interaction with patients and families involved in these situations.<sup>16</sup> I have attempted to analyse and synthesise these two main views factoring in the real-life experience of patients.

Personally, this dissertation is also an attempt to better calibrate my own moral compass and create a moral calculus that determines when an intervention can be deemed ethical. This dissertation aims to explore whether the clinical and Islamic perspectives are dichotomous and irreconcilable or whether there is a synergy that can harmoniously bridge the gap.

### 1.4 The Structure

As this is a dissertation intended to answer the question “what is the Islamic perspective of WLST?” it is necessary to analyse the question by breaking it down into parts divided in the following chapters.

Chapter one is an introduction discussing the aim, the experiential evolution, the reason and background of this research study.

Chapter two discusses the clinical framework that underpins and governs the clinical decision of WLST.

Chapter three outlines the background, the research methodology employed by scholars when formulating a response to a question on an Islamic perspective. The origins of an Islamic perspective are rooted in divine revelation termed *wahy* and are then codified in the Islamic Shari'a. Hence, the overall objectives and underpinning philosophy of Shari'a are discussed. A brief introduction to the both primary sources and secondary sources are discussed. Understanding the Schools of Law or *Madhhabs* are essential in developing and refining an Islamic perspective. As WLST is a relatively new phenomenon a discussion on the goals (*maqāṣid*) of Shari'a and maxims (*qawā'id*) of Islamic jurisprudence (*fiqh*) seems relevant as they ensure the findings do not contravene an established goal and are excellent tools that help extrapolate existing established principles to this new situation. All this leads to the creation of a determination or perspective (*ḥukm*), therefore the taxonomy of a determination is elaborated upon. Finally, I present the results and discuss the findings and implications thereof. A general overview of the Qur'anic view on health, disease and cure is given followed by specificities of the Qur'anic view on life and death.

Chapter four synthesizes the research by drawing a conclusion.

## 1.5 Limitations

Seeking an Islamic, ethical and legal perspective has many limitations. I have endeavoured to present an Islamic perspective on the discourse surrounding the main issues of WLST; my discussion is by no means exhaustive.

### 1.5.1 'An or The' – who speaks for Islam

When researching to determine the Islamic position on a particular issue one is immediately faced with the challenge firstly defining what is Islamic and secondly who decides what is Islamic. This is

problematic for a researcher as it becomes virtually impossible to determine *'The'* Islamic position leaving the only tenable option of coming up with *'an'* Islamic position.

Muslims are considered a “super diverse” community due to significant numerical, ethnic, cultural and intra-religious differences. Islam is not a monolithic structure where one size fits all but is inherently pluralistic and subject to a variety of interpretations by legal experts.

Practices will vary internationally, nationally, regionally, at a local community level and ultimately each individual's level of adherence differs. There are more than 1.6 billion Muslims globally from a most diverse ethnic and cultural make-up spanning the entire globe. This diversity is reflected in the United Kingdom population due to immigration and conversion. There are 2.7 million people (4.8 percent of the population) who have identified as Muslim in the 2011 census, an almost doubling from the 2001 census.<sup>17</sup>

### 1.5.2 Islamic or Islamicate?

An important factor to consider when looking at the Islamic perspective is to distinguish between an Islamic and an Islamicate viewpoint. The former being more religious-based in its outlook whereas the latter takes into consideration a more cultural outlook of Muslims so that a Nigerian Muslim's perspective may be quite different to an English-convert Muslim's perspective. This has been explained quite well by the originator of the term Hodgson,

“I have been driven to invent a term, 'Islamicate'. It has a double adjectival ending on the analogy of 'Italianate', 'in the Italian style', which refers not to Italy itself directly, not to just whatever is to be called properly Italian, but to something associated typically with Italian style and with the Italian manner. One speaks of 'Italianate' architecture even in England or Turkey. Rather similarly (though I shift the relation a bit), 'Islamicate' would refer not directly to the religion, Islam, itself, but to the social and cultural complex historically associated with Islam and the Muslims, both among Muslims themselves and even when found among non-Muslims” (Hodgson, 59)<sup>18</sup> In this dissertation I have broadly adhered to the methodology of the traditional jurists as detailed below without delving into the cultural differences.

Theologically, Islam has two main varying strands: *Sunni* and Shia. Strong ideological schisms between the two alter the Islamic perspective respectively. Amongst the *Sunni* Muslims, there are the four mainstream schools of law or *madhhabs*, but there are also various sub-strands such as Deobandi, Barelvi, Salafi and Sufi orders that add to the identity of the British Muslim.<sup>19</sup>

### 1.5.3 The era in which Islam was born

It is important to put in perspective the time, place and situation prevalent when the Qur'an and Sunnah were revealed. This will give some context to their sayings and prescriptions. Historically, this was a time medicine referred to as the post-Galen middle ages. Medicine was medieval globally and more so in Arabia. As such to pre-judge what the reaction of the Prophet Muhammad would be to the current situation is very difficult. Nevertheless, to arrive at an honest opinion, it is necessary to analyse the textual evidence available and evaluate the current position of contemporary scholars.

### 1.5.4 The British context

Every healthcare system is set up with the needs of the community it serves in mind. It is therefore important to situate the focus of this discussion within a British context. In the British context majority of Muslims are from south Asia totalling about 69 per cent of the entire British Muslim population.<sup>20</sup> This is reflected in the patient population in the hospital. I therefore have devoted more research on this particular demography. South Asians generally tend to follow the *Hanafi* school of thought. Hence more focus was given to this particular school.

This dissertation largely follows the *Sunni* sect and the jurisprudence of the four schools as majority of Muslim in Britain are *Sunni*. Sifting through the opinions of scholars within the *Sunni* school reveals many inter-school and intra-school differences. In this dissertation, I have confined the majority of my research to the *Sunni*, *Hanafi* and British context due to majority of my interaction being with patients and carers from these backgrounds and because my personal interest and experience has been within that context. It is hoped this will be a foundation for a further study in this field.<sup>21</sup>



# Chapter Two: Modern medicine- to treat or not to treat?

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## 2 Introduction

“We can, so we should..?”

The main aim of this chapter is answer this question. Becoming unwell can be a challenging time in the life of a person. Many will want to know why they are unwell (diagnosis) and if they can become better (prognosis) and how they may become better again (intervention).<sup>22</sup> This, in a nutshell, is the treatment process. From a physician’s perspective getting a diagnosis, prognosis and prescribing an intervention can be quite a complex process. It is therefore important to predicate this discussion by determining the Goals of Care (GOC) before evaluating the reason for withdrawal of treatment. An understanding of why WLST is clinically recommended is premised on the understanding of the definition, goals, functions and ethics of treatment. I have therefore discussed this conceptual framework in this chapter as a precursor to the Islamic perspective in the ensuing chapters.

### 2.1 The Goals of Care (GOC) – why treat?

“What is the purpose of treatment itself?”

Various scholars have defined the GOC from varying clinical, philosophical and ethical perspectives. Below I discuss some of the more recent and more common viewpoints.

The Hastings Centre’s consensus report lists four goals of care: “The prevention of disease and injury and the promotion and maintenance of health, the relief of pain and suffering caused by maladies, the care and cure of those with a malady, and the care of those who cannot be cured, the avoidance of premature death and the pursuit of a peaceful death.”<sup>23</sup>

A clinical framework around the goals of care by Thomas et al., suggest a three-phase model of curative, palliative and terminal.<sup>24</sup>

I have summarised their views into four broad goals. This is also substantiated by other research and is more of a practical working doctors view.<sup>25</sup>

This is hierarchically prioritised as preventative, curative and palliative care. In view of completeness, I have added euthanasia and assisted dying even though they are currently illegal here in the UK.

### **2.1.1 Preventative treatment**

The first GOC is preventing pathological conditions and maintaining optimum physiological functioning. This is the main goal of primary health intervention. Prevention is better than cure has been an age-old adage and is still seen as the ideal. Vaccines are an example of preventative medicine. Many have helped eradicate and mitigate the occurrence of many diseases such as polio, small pox, yellow fever. Another example of modern preventative medicine is personalised medicine based on a review of a person's genetic code. An intervention can be prescribed to try and eliminate genetic faults such as women with the BRCC gene may wish to have her breasts removed to pre-empt breast cancer.<sup>26</sup>

### **2.1.2 Curative treatment**

The second goal is cure which aims to ameliorate the adverse effects of the pathological condition by eradicating the disease; modifying the pathology and repairing the injury and restoring the body to full physiological functioning. Many of the acute conditions such as a cardiac event can be cured through surgical interventions such as bypass surgery and the prescription of drugs.

### **2.1.3 Palliative treatment**

If a cure is not a realistic expectation, the GOC will shift to palliative care. Palliative care is aimed at managing and controlling symptoms with little or no emphasis on curative treatment. Conditions such as diabetes mellitus can be managed by insulin injections and haemodialysis can help keep a patient suffering from renal failure alive and relatively well. Similarly, an end-of-life patient may be treated with opioids for pain relief.<sup>27</sup>

This is a relatively new development and reflects the evolving nature of modern medicine.<sup>28</sup>

### **2.1.4 Euthanasia**

If all treatment options are exhausted and or the patient feels strongly about it, many cases are now being considered for euthanasia. The debate for and against it still rages, but it is now widely

becoming a viable option for patients in the western world. This is currently illegal in the UK but is available most notably in Switzerland.<sup>29</sup>

Assisted dying is the process of prescribing medication that will end one's life. The physician will not administer the prescription; this will need to be done by the patient herself.

As shown above, the GOC is a dynamic concept that evolves under the influence of inventions, public opinion, ethics and law. Correspondingly any Islamic research into WLST will need to factor in the current trends when formulating a perspective. Having understood the general GOC the next step is to specifically analyse LST. Understanding LST is imperative when analysing why LST is withheld, limited or withdrawn.

## 2.2 Technological advancement – boon or bane?

The advancement of modern technology such as the invention of the mechanical ventilator,<sup>30</sup> together with our increased understanding of genetics and the physiological functions of the human body leading to the discovery of LST's has led to the preventing, diagnosing and successful treating of diseases that has saved and enhanced countless lives.<sup>31</sup> Previously, motor vehicle accident victims, suffering from intracranial haemorrhage had no chance at surviving but now through surgical intervention can return home fully recovered.<sup>32</sup> All this has significantly reduced the mortality rate and enabled people to live longer and healthier lives.

However, the ability to support life without significantly modifying the underlying pathology calls into question the objectivity and consistency of the criteria of the decision-making process when, initiating, maintaining, withdrawing or withholding of life-support treatment (LST).<sup>33</sup>

Clinicians, patients and carers have wrestled with questions such as:

When should radical curative treatment be initiated or withdrawn?

When should antibiotics be stopped?

Similarly, questions about discontinuing support of physiological systems such as weaning off the ventilator, stopping renal dialysis, withdrawing clinically assisted nutrition and hydration have

become increasingly difficult to answer.<sup>34</sup> This has given rise to deep legal, religious and ethical dilemmas as studies have suggested a significant increase in patients in critical care units are receiving treatment that may be deemed futile.<sup>35</sup> Decisions can be challenging, and the approach to decision-making needs to be sensitive to the patient's values and beliefs, the needs of the healthcare system and the law and public interest.<sup>36</sup>

Two key drivers have led to this revolutionary ability to diagnose and treat pathological conditions and the consequent rise of ethical and legal challenges.<sup>37</sup>

The first is the speed of technological advancement and the second is the rise of patient autonomy. Access to medical knowledge from the world wide web has empowered many patients to ask more searching questions and expect a more involved role in decision-making. This has resulted in a trend in medical decision-making that has moved away from the more paternalistic 'doctor knows best' approach to a more shared decision-making (SDM) approach. Subsequently, the need to take into account the patients ethical, religious and spiritual beliefs and values has become increasingly important. In paediatrics and in adults that lack capacity, consent for treatment or non-treatment is also a legal obligation.

While the benefits of modern medicine are evident the question in hospitals has now shifted from, 'can we treat?' to 'should we treat?'<sup>38</sup>

### **2.3 Life-Sustaining Treatment (LST): optional treatment or human need?**

The United Kingdom has no legal definition of LST. However, The Royal College of Paediatrics and Child Health (RCPCH) defines LST as,

"Life-Sustaining Treatments (LSTs) are those that have the potential to prolong life. They may include experimental therapies that are not validated by research, as well as more conventional treatments such as Cardiopulmonary Resuscitation (CPR), mechanical ventilation, intravenous inotropes, antibiotics, renal dialysis and Clinically Assisted Nutrition and Hydration(CANH)."<sup>39</sup>

Scholars discussing WLST need to agree on the definition and scope of LST. This is important as many papers tend to accept WLST but restricted to CPR and mechanical ventilation but not CANH.

### 2.3.1 WLST: utility or futility?

Is defining futility futile?

This is a question that is increasingly being asked in ethical and clinical circles. Medical futility (MF) is the central argument used to decide to initiate, withhold, withdraw or limit LST. There have been many attempts at defining MF but consensus on the definition of medical futility has proved elusive. For the purposes of this paper I have summarised and reviewed White and Pope's research and the RCPCH's (The Royal College of Paediatrics and Child Health) advisory and guidance document on MF and WLST.<sup>40</sup>

White and Pope have enumerated eight major positions on MF:

#### 1. Physiological futility

This is an intervention that has a zero percent chance of achieving its intended goal. Examples include antibiotics for a viral illness, CPR in the presence of rigor mortis and chemotherapy for an ulcer. This is the most objective and empirical but is practically very limited, one hundred percent certainty that an intervention has zero effect is extremely rare.

#### 2. Medical ineffectiveness

This is defined as a certainty to a reasonable degree that a medical procedure will not prevent deterioration or death. Examples are a patient dying of metastatic cancer who is diagnosed with aortic stenosis. Replacement of the valve will work from a cardio perspective but will not prevent imminent death.

#### 3. Quantitative futility

This would involve assessing the success rate in the past one hundred cases as proposed by Schneiderman.<sup>41</sup> Critics argue that setting a threshold percentage is arbitrary and determined by social policies, not clinical judgment.

The RCPCH quantitative assessment has three key indicators.

The first is when the burden of the proposed treatment in itself is such that it will not alleviate suffering but will add to it.

The second is when the burden of the condition is causing intolerable pain and suffering.

The third is when treatment will not provide any overall benefit by improving the quality of life of the child.

#### 4. Qualitative futility

This involves evaluating the quality of the goals of treatment whether they are beneficial, meaningful or worthwhile. This maybe in the form of balancing benefits and harms, therefore if prospective benefits outweigh associated burdens it will be deemed worthwhile and vice versa. An example is providing long-term dialysis to a patient with severe dementia where it can be argued that this is only an exercise in prolonging agony with no likelihood of a good outcome. Similarly, attempting CPR on a metastatic patient would only serve to increase suffering by causing multiple rib fractures without enhancing the patient's prognosis. The second form of Qualitative Futility looks at the ultimate quality of life that treatment would provide. So, even if the treatment may not cause suffering but neither does it improve the overall quality of life of the patient.

Critics argue that this is highly subjective as the quality of life varies from patient to patient and doctor to doctor.

Schneiderman had proposed two criteria to determine qualitative futility: permanent unconsciousness and permanent dependence on intensive medical care.

Critics argue that the predictions of permanence are in itself problematic and very difficult.

The RCPCH also recommended a qualitative assessment. The qualitative assessment involves identifying the potential quantity of life remaining by three measures.

The first is ascertaining the level of neurological function still existent in the child. A child that has irreversibly lost the capacity of consciousness and this is confirmed as brain death or brain stem death (BSD), it would be considered ethically appropriate to withdraw LST.

The second measure is when death is seen as imminent defined as within minutes and hours.

The third is when death is not imminent but inevitable, and any further treatment will not have any overall benefit.

The RCPCH document is a significant improvement from the previous version but is yet to satisfactorily provide clear and unambiguous terms that can be objectively applied. Most of the terms used such as imminent, inevitable and quality of life are highly subjective and will vary in application from doctor to doctor.

#### 5. Procedural process-based approach

Due to the enormous difficulty and lack of consensus in defining futility or medical inappropriateness, many have abandoned the attempt to do so and have taken an altogether different approach. They have called for a fair process that may include obtaining a second opinion, case review by the hospital, ethics committee, transfer to another hospital and finally seeking judicial intervention. This approach avoids burdening either invested party with decision making but rather seeks alternative views.

#### 6. Surrogate selection approach

This involves getting a surrogate to decide on behalf of the incompetent patient by trying to infer the patient's wishes or by trying to make a decision based on the welfare of the patient.

#### 7. Conscience-based objection approach

This involves the clinician withdrawing from treating the patient that they deem inappropriate to be treated.

#### 8. Distributive justice approach

Most medical futility decisions are based on bioethical principles of autonomy and beneficence, but increasingly clinicians are calling for a more justice-based approach. This involves taking into consideration resources, cost and benefit chance.

Analyses of the above positions indicate the significant challenges in defining the concept of MF let alone in attempting to objectively and consistently apply it. The subjective nature of the WLST decision has led to many of the court cases previously discussed. This lack of clarity leads to disputes with parents and carers.<sup>42</sup>



# Chapter Three: The Islamic perspective – obsolete or dynamic?

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## 3 Introduction

Is Islamic law equipped to provide relevant guidelines to modern ethico-legal dilemmas?

Answering this question is the aim of this chapter. It is essential to understand how an Islamic law is formulated and how it responds to new situations not directly discussed in the traditional sacred texts (*nass*). For this I trace the origins of law embedded in revelation (*wahy*) and expounded in the Shari'a . I discuss the primary and secondary sources of Shari'a followed by how the goals (*maqāsid*) and maxims (*qawā'id*) of Shari'a can help formulate an Islamic response to a modern problem. After applying the above methodology to a modern problem the resultant perspective is accorded a moral value confined within the taxonomy of an Islamic determination (*ḥukm*).

### Divine revelation (*Wahy & Shari'a*)

When asking “what is the Islamic perspective?” on an issue the questioner wishes to determine what Allāh’s will or guidance is on the particular issue concerned.<sup>43</sup> Determining the will of Allāh is dependent on either seeking a path of communication with him through *wahy* (divine revelation) or searching through the existing collection of *wahy* to locate Allāh’s will.<sup>44</sup> Due to the belief of the finality of the prophethood of Muhammad (Peace Be Upon Him) the first source is considered closed.<sup>45</sup> It now remains upon the researcher to access the existing collection of *wahy* to discern what Allāh’s will is on that particular issue. This collection of *wahy* is broadly known as the Shari'a and primarily comprises of the Qur'an and Sunnah (traditions) of the Messenger of Allāh Muhammad (PBUH). The first step is to understand the overall objective of Shari'a.<sup>46</sup>

### Goals and objectives

The Muslim jurist Ibn Qayyim (d. 1350 C.E.) has encapsulated the objectives and philosophical underpinnings of Shari'a in the following quote,

“Verily, the Shari’a; its structure and foundation are premised upon prudence and public interest and welfare in this life and the afterlife. It is an embodiment of complete justice, beneficence, welfare and wisdom. Hence, every avenue that leads from justice to tyranny, from beneficence to maleficence, from public interest to corruption, and from prudence to idiocy is not a part of the Shari’a even if it was introduced therein by interpretation.”<sup>47</sup>

Shari’a stems from the two main sources of *Wahy*, i.e. The Qur’an and The Sunnah. It is, therefore, necessary to consult these sources to determine the Islamic perspective on WLST.

In this chapter I will analyse both the clinical framework and Islamic analytical paradigm outlined in the previous two chapters to determine an Islamic perspective.

### 3.1 Primary sources: Textual evidence (Nass) base - The Qur’an and Sunnah, *Ijm’a* and *Qiyās*

#### 3.1.1 Introduction

To determine Allāh’s will the methodology, majority of *Sunni* Muslim scholars, have adopted, is to begin with examining the Qur’an. In the event of not finding adequate redress to the matter at hand the next step is searching the Sunnah compilations. The Qur’an and Sunnah have sanctioned two other sources to follow - *ijm’a* (scholarly consensus) and *qiyās* (precedent based analogies).<sup>48</sup>

##### 3.1.1.1 The Qur’an

This is the first and foremost source of guidance for the believers.<sup>49</sup> Muslims believe the Qur’an to be the uncreated speech of Allāh that has been revealed to the Prophet Muhammad PBUH through the medium of the angel.<sup>50</sup> It is believed to be immutable, universally applicable and for all times and ages. Every letter is considered Allāh-given and therefore accorded the highest authority and respect. Belief in every explicit command is necessary, and the denial or rejection of it is negatory of *Iman* (belief).<sup>51</sup>

The main subject matter of the Qur’an is belief and values. Statistically, only approximately five hundred verses directly deal with practical laws and legislation.<sup>52</sup> The Qur’an deals more with

general principles and broad legislation. There are exceptions such as the laws of inheritance and divorce which are dealt with in minute detail.<sup>53</sup> Generally, the Qur'an expounds principles without delving into the details leaving it upon the Prophet to expand on what the Qur'an deals with concisely.<sup>54</sup>

### **3.1.1.2 The Sunnah**

The Sunnah refers to the words, sayings and tacit approval of the Prophet Muhammad PBUH. This is considered the second most authoritative source in Islam and can be used to substantiate the moral status of an action. The Prophet through practical demonstration when needed and theoretically when required, explained the Qur'an. An example is the prayer (*salah*), The Qur'an commands the prayer but leaves all the specific details on how it should be carried out to the Prophet. Similarly, alms-giving, the command is found in the Qur'an but the amount to be given and other details are in the Ḥadīth. It is also the job of the Prophet to legislate about situations that may crop up in his presence and are not specifically addressed by the Qur'an.<sup>55</sup>

### **3.1.1.3 Scholarly consensus (Ijm'a)**

*Ijm'a* has been interpreted in many ways. For the purposes of this paper, I have taken it to mean the consensus of suitably qualified Islamic legal scholars of an age on a matter not explicitly discussed in the Qur'an or Sunnah, after the death of the Prophet Mohammad (PBUH).<sup>56</sup> Due to WLST being a fairly nascent issue, there has been no significant scholarly consensus on it.

There have been many attempts by new fatwa councils, state organisations and even trans-national bodies to seek broad consensus on WLST. The Islamic Fiqh Academy, The Muslim World League, The European Fatwa Council and The Al Qalam scholars are examples of international, continental and national organisations. However, there has been criticism that these organisations have not been transparent enough on how they have arrived at their respective resolutions, hence it is not always easy to critically analyse these resolutions.<sup>57</sup>

#### **3.1.1.4 Precedence-Based Analogy (Qiyas)**

*Qiyās* is the extrapolation of a known ruling of the Qur'an and Sunnah to a new situation that has the same effective cause (*'illat*).<sup>58</sup>

This has been the main approach utilized by scholars when dealing with modern issues. I have dealt with this under the heading of

### **3.1.2 Methodology**

#### **3.1.2.1 Limitations**

I have limited the discussion to mainly the Qur'an primary due to four reasons:

1. The status and universal acceptance of it as the highest source for Islamic perspectives.
2. The comprehensive albeit concise nature of its relevance to WLST. What is discussed in Qur'an is essentially the foundational with the Sunnah, Ijm'a and Qiyas only adding onto its principles.
3. As for the Ḥadīth – the search result indicated hundreds of Ḥadīth discussing these topics. This is primarily due the nature of the reporting of Ḥadīths amongst the authors where a single Ḥadīth may be narrated by dozens of different narrators hence showing up in the results individually. I have therefore restricted the amount of Ḥadīths discussed to an amount that is sufficient to illustrate the relevant themes to WLST. Another reason for restricting the amount of Ḥadīths used is that the Sunnah essentially expounds the concise message of the Qur'an hence the results are essentially similar to what was found in the Qur'an besides a few more details.
4. Ijm'a and Qiyas have not been included due to the scarcity of relevant data.

#### **3.1.2.2 Search sources**

I have searched the Qur'an using the website The Qur'anic Arabic Corpus.<sup>59</sup> I have searched the Ḥadīth database using the Ḥadīth index website sunnah.com.

#### **3.1.2.3 Search criteria**

The words sickness and cure have different interpretation in Arabic. I have therefore used the following commonly used words:

1. The trilateral root *mīm rā ḍad* (م ر ض) means illness. This word occurs twenty-four times in the Qur'an
  - a. Thirteen times as the noun *marāḍ* (مَرَضٌ), however, all references relate to the “illness of the heart” and not a physical illness. Hence I have excluded them.
  - b. Ten times as the noun *marīḍ* (مَرِيضٌ) of which all are regarding physical illness and all are related to sickness being a valid excuse for relaxes religious obligations as discussed further below.<sup>60</sup>
  - c. once as a verb that reinforces the Islamic belief that sickness is from Allāh.<sup>61</sup>
2. The trilateral root *shin fa ya* (ش ف ي) meaning cure and healing occurs six times in the Qur'an; thrice referencing the Qur'an as a cure, twice ascribing cure to Allāh and once describing honey as a cure.<sup>62</sup>
3. The trilateral root *ba rā hamzah* (ب ر أ) occurs thirty-one times in the Qur'an but only twice in the meaning of healing; both times describing the ability of Prophet Eesa to heal the blind.<sup>63</sup>
4. The words life and death were found to be particularly relevant in gleaning the Islamic perspective on the sanctity and preservation of life and death determination.

The criterion for inclusion were those texts that were related to physical health and wellbeing. All those texts referring to spiritual health and wellbeing and spiritual diseases were excluded. The above words are a sample of words relevant to this research, and due to the scope of this dissertation, it was considered sufficient.

### 3.1.3 Results

There is no explicit reference to the permissibility or impermissibility of WLST. However, there are general texts that can inform the Islamic perspective on WLST. The relevant verses and Ḥadīths are divided into two main themes:

1. A general discussions on health, disease and cure
2. A specific discussion life and death

### 3.1.3.1 Health and wellbeing

The Qur'an promotes healthy living by adopting a wholesome,<sup>64</sup> pure,<sup>65</sup> balanced diet of fruits,<sup>66</sup> grains and wholesome organic products from the earth,<sup>67</sup> fish<sup>68</sup> and livestock.<sup>69</sup> This is all encouraged in moderation and avoiding excess.<sup>70</sup> The reason one is blessed with good health is to utilise it to worship Allāh by prostrations,<sup>71</sup> prayer and helping Allāh's creation by doing good deeds.<sup>72</sup>

The importance given to a healthy diet and lifestyle by which many diseases are prevented substantiates the first goal of care i.e. Preventative medicine. This also posits the Islamic perspective as a supporting a more holistic approach to healthcare and treatment.

### 3.1.3.2 Disease

The Qur'an suggests sins,<sup>73</sup> punishment, provoking reflection and repentance<sup>74</sup> and a means of testing a believer are underlying causes of sickness and disease.<sup>75</sup> This in no way diminishes the view that a healthy lifestyle is key to a healthy life. The idea is to avoid a solely medicalised view of the aetiology of disease. This concept supports a more accepting approach to cases where there is no diagnosis and/or poor prognosis insofar as it encourages a spiritual response of reliance in Allāh (*tawakkul*).

### 3.1.3.3 Dispensations

The Qur'an recognises that becoming unwell diminishes one's capacity to lead a normal life and therefore eases obligations and offers dispensations. The second pillar of Islam *ṣalāh* is not accepted without ablutions with water. However, if using of water is considered injurious to health one may substitute water with sand.<sup>76</sup> Similarly, if unwell, one is not obligated to do the nightly vigil.<sup>77</sup> Fasting during Ramaḍan is obligatory for all adult Muslims. However, a patient is allowed not to fast or break the fast and make it up later and/or pay compensation.<sup>78</sup> Pilgrimage is the fifth pillar of Islam, and there are many restrictions on how to dress and behave. However, some prohibitions are relaxed such as shaving of the head if needed.<sup>79</sup> One is not obligated to take part in defending the borders of Islam if physically unable to.<sup>80</sup> Alms-giving is always recommended; however, not spending due to an inability to earn due to a disability is not blameworthy.<sup>81</sup>

This recognition of the impact on physical and mental capacity that illness can have and catering for it through relaxation of certain tasks supports the third goal of care, i.e. managing the pathological condition of chronically ill patients. Patients suffering from diabetes mellitus can avail of the dispensation of not fasting ensuring effective disease management.

This concept fosters a more pragmatic approach to situations where health and religious observances intersect. It creates a framework that can be referred to when there is an apparent conflict and has led to the creation of the goals-centered approach in Shari'a law. This is discussed further under the goals of Shari'a below.

An evaluation of the dispensations due to illness leads to the conclusion that there is considerable recognition for the ill and disabled in Islam and that hardship must be eased. This has resulted in a significant maxim termed as the hardship maxim. From this fundamental maxim, many sub-clauses are derived relating to eliminating and mitigating avoidable suffering and facilitation of ease (this is discussed later).

#### **3.1.3.4 Cure**

The command to seek a cure is not explicitly mentioned in the Qur'an. However, the Prophet Jesus was blessed with the ability to cure the sick through the permission of Allāh.<sup>82</sup> The Prophet Abraham was clear in his belief that Allāh is the sole curer,<sup>83</sup> and all human intervention is considered as a means that only becomes effective subject to the will of Allāh. Natural remedies such as honey are extolled in the Qur'an for their healing properties and hence recommended as a prescription.<sup>84</sup>

The Ḥadīth states that, "There is no disease that Allāh has created, except that He also has created its treatment."<sup>85</sup> Similarly, it has been narrated that, "There is a remedy for every malady, and when the remedy is applied to the disease it is cured with the permission of Allāh, the Exalted and Glorious."<sup>86</sup>

In another Ḥadīth the prophet specifically requested a procedure done as indicated in a Ḥadīth that, "Ubay bin Ka'b fell sick, and the Prophet sent a doctor to him who cauterised him on his medical arm vein."<sup>87</sup>

This all indicates a permissive attitude to seeking, researching and discovering medical treatments.

This also indicates that means should be adopted but ultimately reliance in Allāh is the key factor that will ensure the realisation of a cure. This is an acknowledgment and acceptance of human limitations in treating disease.

However, the command to seek treatment is not unqualified (*mutlaq*) and there are restrictions to its remit. In a Ḥadīth it is reported that, "The Messenger of Allāh PBUH forbade cures that are impure (*khābiṭh*)."<sup>88</sup> This prohibition seems to indicate that potentially curative treatment can still be forbidden if its source is considered religiously unclean such as porcine or alcohol. This is a significant principle to WLST as potentially curative treatment options can be declined based on an external consideration.

All the above suggests seeking a cure by utilising the physical means available is permissible and even recommended albeit while maintaining it is only by the permission of Allāh that a cure is achieved. This is an important principle that is relevant to the discussion on WLST in that it encourages a Muslim to seek treatment that is reasonably effective. However, it also discourages the insistence on treatment believing it to be intrinsically healing. Rather the Qur'an tells us cure lies in the permissive will of Allāh. This concept reinforces acceptance of medical limits and acceptance of the decree of Allāh. This all also ties in well with the second goal of care, i.e. curative medicine. A further detailed discussion on seeking treatment is below.

#### **3.1.3.5 Incurable conditions**

Conditions that are incurable and non-survivable are also recognised in the Qur'an and Sunnah.<sup>89</sup> In these states administering a cure is deemed futile and evidence of humans inability to master their mortality. Overwhelming burdensome conditions such as debilitating illness are not sought after goals of life and supplicating Allāh to save oneself from them are encouraged.

This recognition of medically futile conditions that cannot be cured and the recommendation to avoid overly burdensome situations can be argued to be broadly supportive of the fourth goal of care, i.e. palliative medicine.

This can also be construed to indicate that pursuing invasive and aggressive forms of treatment that are more burdensome than beneficent are against the spirit of the Qur'an and Sunnah which encourages acceptance and resigning to the will of Allāh.

Below is a discussion on specific themes that have emerged from my search of the Qur'an and Sunnah. I have categorised them into the following themes:

1. Life: its sanctity, quality, preservation and ownership
2. Death: its definition in Islam

### **3.1.4 The Qur'an and Sunnah on the ownership, sanctity and preservation of life and the body it resides in**

#### **3.1.4.1 Why is this is relevant**

Life and death are discussed on a number of occasions in the Qur'an. Life and death are not owned by anyone<sup>90</sup> but is considered a trust from Allāh and its stewardship is a fundamental duty of a Muslim. The creating<sup>91</sup> and destroying of life and death is considered the sole prerogative of Allāh.<sup>92</sup> It is therefore forbidden to take one's own life<sup>93</sup> or the life of another living being without a valid reason.<sup>94</sup> Human life is considered the most sanctified and honoured<sup>95</sup> and the taking of a single life has been equated to taking the life of the entire humanity.<sup>96</sup> Similarly, prohibition of suicide implies one's life is not one's own but a trust from Allāh and therefore autonomy and self-determination is not absolute.

The outcome of WLST may be the loss of life which will fall under the purview of the Qur'anic commandment to preserve and maintain life.<sup>97</sup> It is therefore important to commence this discussion with a fundamental understanding of the position of life in Islam. This is significant as it underpins the position of WLST and the questions that stem from it.

#### **3.1.4.2 What are the relevant texts**

"Because of that, we decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely."<sup>98</sup>

This verse and many similar verses substantiate the command to preserve life and the prohibition of taking life.

The obligation of preserving life even if it is only through the consumption of the unlawful has been mentioned on five occasions in the Qur'an.

“He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allāh. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allāh is Forgiving and Merciful.”<sup>99</sup>

These particular verses are the basis of the necessity maxim which is discussed below.

Another verse often cited in this discussion is the verse of destruction with one's hand:

“and do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allāh loves the doers of good.”<sup>100</sup>

A Ḥadīth is mentioned here to illustrate this:

"Verily! Your blood, property and honour are sacred to one another like the sanctity of this day of yours, in this month of yours and in this city of yours."<sup>101</sup>

#### 3.1.4.3 Analysis

The command to preserve life due to its Allāh-given sanctity can be used to argue against WLST. As this command is general (*mutlaq*) it would include even the faintest forms of life irrespective of the quality in accordance to the juristic principle that *mutlaq* denotes a word which is “neither qualified nor limited in its application.”<sup>102</sup>

This leads to an understanding that life is always better than death and hence even a life with very little quality must be preserved. Treatment at all costs and wanting everything done can stem from this interpretation of the above Qur'anic concept.

However, this line of reasoning raises a few important issues:

1. Is the patient receiving LST, such as one on a ventilator, still alive or is the ventilator giving the impression of life. This leads to asking the question of how death is defined in Islam and is discussed below.

2. If the patient is alive is it believed to be solely due to the ventilator and whose removal will cause death. If so is this against the Qur'anic verses indicating life and death are solely in the hands of Allāh such as when Abraham said,  
  
"My Lord is the one who gives life and causes death."<sup>103</sup>
3. If it is believed that life and death are only in the hands of Allāh does it not hold true then that the ventilator does not delay death and removal of it does not hasten death but rather death will only arrive at its appointed time as stated in the verse,  
  
"So when their time has come, they will not remain behind an hour, nor will they precede [it]."<sup>104</sup>  
  
This is also according to the lived reality of many families who have witnessed a loved one die on the ventilator and live after its removal despite doctor's predictions to the contrary.<sup>105</sup>
4. It can be counter-argued that WLST does not cause death but rather the pathological condition is what has caused death. LST was only a temporary measure that was implemented to gain more time in attempting a cure, which was then withdrawn when it became apparent there was none. If LST is viewed as a temporary vehicle utilised to take the patient to a better destination and is not in itself a goal; this may circumvent the fixation on the preservation of life argument.

In conclusion this verse should not be read in isolation of the other verses and cannot be used to conclusively determine WLST is not permissible. Moreover, reading the verses together suggests that human effort should be utilized to preserve life but within the boundaries of human limitation.

An analysis of the verses that command the preservation of life reveal the following key points.

1. An obligation to adopt measures to sustain life such as nutrition and hydration
2. An obligation to utilise prohibited measures to sustain life when necessary
3. Necessity is defined as a life-threatening situation such as starving to death
4. It limits the usage to the minimum amount needed to sustain life

A medicalised model of diagnosis, prognosis and intervention of the above situation would look like this: The diagnosis would be certain starvation; the prognosis without intervention would be certain death, and with intervention, certain life; the intervention would be consuming prohibited food.

If this model was extrapolated to a WLST situation such as when a patient is on a ventilator then it could be argued to support the view of refusing to WLST.

However, as discussed above and what will be discussed later, it does not necessarily follow that this should be the case.

As for the verse urging against self-destruction the following points should be noted:

1. According to the context of the verse this specifically refers to not spending in the path of Allāh to be a source of self-destruction.
2. LST is primarily designed to be a vehicle to build a constructive environment that is conducive to healing. WLST is only implemented when the fear is LST has lost its objective and now is more destructive than constructive as discussed in chapter two.

### 3.1.5 Quality of Life (QoL) Metrics in Islam

Having discussed the Qur'anic attitude to life in general there is a need to examine what the Qur'an and Sunnah state on the desired quality of life worth preserving. The quality of life (QoL) arguments are some of the most medically significant in deciding on WLST as discussed in chapter two.

As for the Islamic perspective the following two questions need to be discussed:

1. Does Islam not consider a QoL metric when discussing WLST?
2. If it does what is the standard?

The Prophet Muhammad PBUH has said, "None of you should long for death because of a calamity that had befallen him, and if he cannot, but long for death, then he should say, 'O Allāh! Let me live as long as life is better for me, and give me death when death is better for me.'" <sup>106</sup>

This Ḥadīth suggests that there QoL is a factor recognized by Islam albeit very much subjective to the individual. The word "better (*khayr*)" generally refers to, "Good, moral or physical; anything that is good, real or ideal, and actual or potential; a thing that all desire; such as intelligence, for instance,

and equity; and excellence; and what is profitable or useful; benefit.”<sup>107</sup> The words “for me (*lee*)” consist of the words *lām* and *yā*. *Lām* denotes, “in the interest or to the benefit of” which neatly ties into the best interest debate.

This understanding of the phrase “better for me” (*khayr lee*) is both an holistic assessment coupled with a relative application. This approach favoured by the Prophet can be interpreted to be a holistic-relativist approach.

Padela and Qureshi have proposed a *mukallaf* status (MS) as an Islamic marker on QoL. This has been heavily critiqued by several scholars but has nevertheless initiated a healthy debate around this issue amongst Islamic scholars.<sup>108</sup> The main criticism has been about its reductionist approach insofar as it suggests an optimal life worth saving is a one where physicians prognosticate that they would be most likely able to restore life to a state where the patient would be regarded as *mukallaf*. This seems to suggest a non-*mukallaf* life is not a worthy life. This generally raises questions regarding the life of children, mentally unwell, dementia patients amongst others albeit the authors have excluded the first two.

As for what constitutes a minimum standard of QoL I would agree with Padela and Qureshi on using the *mukallaf* status (MS) as *a* marker but not necessarily *the* marker. It can be included in the more holistic-relativist model I have proposed together with a host of diverse markers.

This model can be based on the very notion that determining that there will be a most likely improvement in QoL is, in essence, the very goal of treatment as discussed in chapter two under goals of care. Improvement would mean from the current baseline to a previous baseline that was better. The question of what constitutes a baseline worthy of striving to achieve then goes back to the above QoL argument.

When the anticipated benefits of treatment fail to materialize or are deemed to be unachievable it renders treatment redundant and therefore burdensome and possibly even more torture than treatment.

All the above are discussed more below. Factoring in all of the above will give an indication on WLST

### 3.1.6 Death definition

#### 3.1.6.1 *The Traditional view*

Traditionally death was seen as the irreversible cessation of the cardio-pulmonary function, i.e. when the heart stopped, and the person ceased to breathe permanently. This is called death by the circulatory standard. This definition has become problematic due to mechanical ventilation, Extracorporeal Membrane Oxygenation (ECMO) and other interventions can indefinitely sustain cardio-pulmonary function hence technically keeping the person “alive.” This has resulted in the creation of the brain death standard discussed below.<sup>109</sup>

#### 3.1.6.2 *The Modern view*

In the seventies, the concept of brain death was discussed, and the Harvard stipulation of brain death being equated to human death was by and large accepted. This was referred to as death by neurological criteria or the neurological death determination (NDD). There is general acceptance of brain death in western countries, but there are two differing standards. The first considers whole brain death and the second considers Brain Stem Death (BSD).<sup>110</sup>

Withdrawal of LST after BSD is seen as acceptable, and there is little disagreement from experts on its appropriateness.

However, as this is not universally accepted some families may object and the US case of a 13-year old girl, Jahi McMath, is a well cited example.<sup>111</sup> This is also highlighted in a case I was involved in last year. In the case of Central Manchester NHS Foundation Trust v Patient A (2015), a child was confirmed as clinically dead through the brain stem death criteria; this, however, did not convince the father to consent to WLST. The judge noted that “One of the questions posed by the father here was whether brain stem death is synonymous with clinical/legal death. The father certainly does not consider the two to be equivalent. This seems to me at least as rooted in his Muslim beliefs as in his basic paternal instinct.” The father and I had had many discussions on this topic, and he had found it very difficult to reconcile the clinical position and his understanding of the Islamic position on WLST.

### 3.1.6.3 The Legal view

The UK has no legal definition of death. Common Law, upon which the UK courts normally adhere to, accepts death verification by practitioners using accepted medical guidance in this field. This is contained in the 2008 Academy of Medical Colleges Code of Practice for the Diagnosis and Confirmation of Death. In the UK, BSD once confirmed by Doctors is accepted as death.<sup>112</sup>

### 3.1.6.4 The Islamic view

In Islam, death is defined as the separation of the soul from the body.<sup>113</sup> The soul is a non-physical intangible entity that is the life force of the human body. It is referred to in the Qur'an as "from the command of my Lord."<sup>114</sup> The Hadith talks about it being infused into the body after the completion of the third forty-day period of embryonic development. It is infused by an angel who has been deputed to transport it from the realm of souls to the destined body.<sup>115</sup> Death indicates the return of that soul back to Allāh.<sup>116</sup> The departure of the soul is a non-perceptible phenomenon and can only be surmised by external physical signs such as the cessation of breathing and the lack of a pulse. Islamic scholars have generally accepted the circulatory criteria of death determination<sup>117</sup> but not BSD.<sup>118</sup> The Islamic position on BSD varies; ranging from it being forbidden to withdraw to it being obligatory to withdraw LST.<sup>119</sup>

Critics of BSD argue that BSD cannot be determined as human death and the heart has to stop beating permanently before an Islamic declaration of death can be made.<sup>120</sup>

Arguments against BSD are based on the following proofs:

"So We cast [a cover of sleep] over their ears within the cave for a number of years. Then We awakened them that We might show which of the two factions was most precise in calculating what [extent] they had remained in time."<sup>121</sup>

In this verse, Allāh has described the condition of a group of youth that had sought refuge in a cave in the face of political persecution. They had been put to sleep for three hundred and nine years.

The word of significance to this discussion is *ba`athna*. This word literally means to resurrect or revive. The inference is despite having lost complete consciousness for a number of years and

presenting with no perceptible life signs and no recourse to any life-sustaining interventions they have not been termed as dead by the Qur'an.

Similarly, the maxim of certainty states that certainty cannot be overridden by doubt. Therefore, the certainty that the patient was alive cannot be overridden by the doubt that he is dead.

Proponents argue that it is unanimously agreed that life begins at one hundred and twenty days.

Before this point, the heart is already activated and functioning yet none considers the foetus alive.

<sup>122</sup> It can, therefore, be concluded that the existence of a heartbeat does not indicate the existence of the soul which is the distinction between life and death.

Similarly, a foetus that was born even at full term but without having breathed is not considered to have lived hence there is no funeral prayer for it. This is despite the unanimity amongst all that that foetus displayed all signs of life.

WLST in Disorder Of Consciousness (DOC) cases besides BSD such as Permanent Vegetative State (PVS) or Unresponsive Wakefulness Syndrome (UWS), Minimally Conscious State (MCS) and coma are ethically challenging. The experts in the field differ considerably on the criteria to determine when it is appropriate and when it is not. The key concept that seems to underpin this is the concept of medical futility (that has been discussed above).

## 3.2 Secondary and Tertiary Sources

### 3.2.1 Introduction

Secondary and tertiary sources can be useful in ensuring an academic rigorous application of the law has been duly followed when extrapolating textual principles and helping as a safeguard against confounding issues. Some relevant principles that will be used are discussed below.

### 3.2.2 Goal of Shari'a - Complimentary or confounding

This approach was pioneered by scholars such as Al-Ghazali<sup>123</sup> and Al-Shaatibi.<sup>124</sup> The ultimate goal of Shari'a is to maximise benefit and to minimise harm. The goals of Shari'a are an elucidation of this objective of the Lawgiver by clarifying five overarching fundamental purposes. Any research findings would have to conform with the *maqāṣid* framework to be validated and any new findings

contradicting the *maqāṣid* would be rejected. This serves as a control and safeguard for the overall goals of Allāh's law.<sup>125</sup> The five goals of Shari'a in order of priority are:

### **3.2.2.1 Preservation and safeguarding of religion (Ḥifẓ Al-Din)**

The preservation of faith must take precedence above all. The right of the Creator supersedes the rights of the creation when in conflict.<sup>126</sup>

The permissibility of WLST must be proven to be within the confines of the Shari'a for it to fulfil this Goal and this is the ultimate aim of this dissertation.

### **3.2.2.2 Preservation and safeguarding of life (Ḥifẓ Al-Nafs)**

The entire Shari'a is premised on the preservation of life. Every possible action must be pursued to preserve life and ensure its sanctity. Any action that threatens it cannot be rationally sanctioned.

As far as WLST is concerned, this goal is of the most significant determinants of the *ḥukm*. As the expected outcome of WLST is death, at face value this directly contravenes this goal. This goal also does not seem to make a distinction in the quality of life that must be preserved. As it was already discussed above that this goal can be used both for and against WLST I will not repeat it.

It has also been argued that consenting to a DNA-CPR (Do Not Attempt Cardiopulmonary Resuscitation) order can be argued to go against the above goal.

However, it needs to be balanced with the command to save and preserve resources *ḥifẓ al-māl* and the certainty of success. The standards of certainty are:

1. *Yaqīn* - one hundred percent certain,
2. *Ghalabat al-ẓann* - fifty-one percent and above certain &
3. *Shak* - less than fifty percent certain).

The severity of the risk of harm is an important consideration under the maxim of prevention of harm and its subsidiary maxims such as harm should be mitigated and harm should not be substituted by a greater harm or similar in severity.

Hence, if the potential outcome of CPR is certainly going to be successful, i.e. an overall net benefit that is long-lasting and with negligible risks it could be considered to be obligatory. This would be due to the underlying principle that it involves saving a life as encouraged in the Qur'an:

“and if anyone saved a life, it would be as if he saved the life of all mankind.”<sup>127</sup>

If there is no *yaqīn* but *ghalabat al-zann* that it would be successful then it would be considered *recommended*.

This is based on the principle of utilising human expertise to try and save and preserve life and maximise a beneficial outcome to the best of our human ability. This will be based on the recommendations of the Prophet to seek medical treatment such as the Ḥadīth narrated by Abdullah ibn Abbas: “A man was injured during the lifetime of the Messenger of Allāh PBUH; he then had a sexual dream, and he was advised to wash, and he washed himself. Consequently he died.

When this was reported to the Messenger of Allāh PBUH he said:

They killed him; may Allāh kill them! Is not inquiry the cure of ignorance?”<sup>128</sup>

If the outcome of the CPR is not as the above two then it would not be considered recommended.

### **3.2.2.3 Preservation and safeguarding of the min - Ḥifẓ al 'aql**

The preservation of mind and by extension cognitive abilities is fundamental when seeking a new ruling.

This is an important goal that can be used to assess DOC situations. A patient in a PVS state whose cognition is diminished but may otherwise be physiologically functioning can be argued to be protected under this goal. It can be countered that in a PVS patient the lack of significant cognition is a plausible reason for WLST as continuing treatment compromises the integrity, dignity and honour of a person that ones intellect normally strives to safeguard.

### **3.2.2.4 Preservation and safeguarding of wealth and property - Ḥifẓ al-māl**

Preservation of wealth is necessary for the establishment of all of the above hence treatment that does not pass the benefit versus cost analyses will go against this goal. Also a scarcity of resources leading to rationing can severely hinder the treatment of potentially better children.

### **3.2.2.5 Preservation and safeguarding of [roge]ny -*Hifz al-nasl***

For the continuation of human life on earth, the opportunity for procreation must not be denied.<sup>129</sup>

This will impact on treatment that can negatively impact human reproduction and does not seem to be of relevance to WLST.

### **3.2.3 *Juristic Maxims -Qawāid Al-Fiqhiyyah: Reductionist or prudent safeguards***

Understanding the definition, functions, types and relationships with other disciplines of Islamic legal helps a researcher formulate a true and informed opinion to the best of their ability of what they consider to be Allāh`s will.

#### **3.2.3.1 *The maxim of motive***

‘Acts are judged by the motive behind them’, and its sub-clauses are the first premise upon which the entire WLST decision-making process must be scrutinised by. The motive behind WLST must be to minimise harm and there should be no ulterior motives such as hastening death or euthanasia.

#### **3.2.3.2 *The harm maxim***

‘Harm must be removed’ and its sub-clauses such as harm should be mitigated if it cannot be removed and harm should not be substituted by harm of a similar degree are fundamental considerations underpinning the decision of WLST.

All treatment causes a certain degree harm to the human body even it is the taking blood or the swallowing of a pill. LST particularly can be invasive and aggressive such as CPR and ventilation. This maxim if applied in isolation would render all treatment impermissible. However, considered with the potential benefit of the treatment the Shari`a allows and even encourages treatment based on weighing the harm and benefits. Therefore in WLST this standard can be applied and considered to the HR approach suggested by this dissertation.

#### **3.2.3.3 *The certainty maxim***

‘Certainty is not removed by doubt’ and its sub-clauses such as continuation of the norm until contra-indicated are significant when assessing a WLST cases such as extubating a patient on mechanical ventilation.

If this were extrapolated to an LST situation, the key factor that would decide whether LST is obligatory would be the degree of certainty. Certainty is the underpinning of many an *ḥukm*. There are three main levels of certainty:

1. The highest is legal certainty (*yaqīn*) followed by
2. Dominant probability (*ghalabat al-zann*). This is statistically fifty-one percent and above followed by
3. Doubtful (*shak*)

The certainty that food will alleviate suffering and will sustain life by fulfilling the nutritional requirements of a human can be graded as *yaqīn*.<sup>130</sup>

Hypothetically, if an LST sustained life as food and drink sustain life, then that specific LST would take the same *ḥukm* of food and drink. This is based on the principle of *qiyās* where a known *ḥukm* is applied to a new situation that shares the same *illat* (effective cause). Hence, continuation of that type of LST that certainly sustain life and without which certain death will ensue can be termed obligatory and its withdrawal forbidden even if it entails a prohibited intervention.

Most LST would not be able to fulfil this criterion of *yaqīn* and hence cannot be said to be obligatory.

Most would be categorised as recommended where there is *ghalabat al-zann* of benefit or *makrūh* where there is doubt of benefit or where there is dominant probability of harm.

There would also be a few situations where it would be considered *Haram* to intervene due to absolute lack of certainty.

#### **3.2.3.4 The custom maxim**

‘Custom is the basis of a *ḥukm*’ and its sub-clauses such as the customary meaning of words are legally binding are helpful in defining medical terms and concepts.

These are significant principles that impact various treatment models such as issues relating to modern-day convention within healthcare when considering WLST.

### 3.2.3.5 *The hardship maxim*

'Hardship begets facility' and its sub-clauses such as 'necessity relaxes the prohibited', 'the law is permissive where there is no alternative', 'prevention of harm has priority over assuring a benefit', 'the lesser of two harms is chosen if no other alternative is available' and 'the public-interests takes precedence over the private interest'. This is a relevant maxim in the WLST debate.

This is especially significant to the discourse at hand as it can be argued that WLST is underpinned by the philosophy of alleviating and minimising suffering caused by medical conditions and interventions and facilitating a dignified and peaceful death. This would, therefore, be in harmony with the Islamic philosophy of end of life care.

### 3.3 **The Taxonomy of a determination (*Hukm*) – A deontological pentagon?**

Determining the Islamic perspective leads to the creation an Islamic determination which is accorded a moral status. This is an evaluation of that action according to a moral gradient spanning from obligatory to forbidden. Every Islamic action or inaction is categorised in up to five moral status'. Each one has a worldly and an afterlife consequence.<sup>131</sup>

The WLST perspective tends to be merged into the overall discussion on medical treatment in the classic books of *Fiqh*. There is a wide range of opinions spanning from impermissible through to obligatory.

Majority of Muslims will follow one school of law that have developed over the past twelve centuries and are based on varying interpretations of the Qur'an and Sunnah.<sup>132</sup> They are the *Hanafi*, *Maliki*, *Shāfi'i* and *Hanbali* schools.<sup>133</sup>

Below I have distilled the views of the scholars into five categories and synthesized them with the above finding to produce an easy-to-refer-to taxonomy. The practise of creating these deontic pentagons and at times decagons has been the standard of Islamic scholars from the earliest jurists.<sup>134</sup>

### 3.3.1 Obligatory - *Wājib*

For an action to be accorded this status it must be proven both from its source and implications to be definitive and not speculative (*qat`i*). The source must be either the Qur`an or such a Ḥadīth that has been successively reported by a large number of reliable narrators (*mutawātir*). The implication of that text must be clear and explicit and not subject to ambiguity or differing interpretation.

The worldly consequence of *wājib* is it must be done with all its attendant conditions. However, it can be waived for a valid excuse. The afterlife consequence is reward for execution and possible punishment for non-compliance.<sup>135</sup>

#### 3.3.1.1 Proponents of the position that treatment is obligatory

Proponents include some *Shāfi`is*, some *Hanbalis* and the *Ḥanafis*. Below is a detailed look at this position.<sup>136</sup> As a majority of Muslims in Britain adhere to the *Hanafi* SOL, I will analyse their classical books on this topic. Majority of modern day juri-consults access these books to form a fatwa.

#### 3.3.1.2 Reasoning and Evidence

In *Fatawa Hindiyah* and *Fatawa Qadhi Khan* it is stated, "if a man presents with an illness and the doctor prescribes an intervention and the patient does not comply and subsequently dies, he will not be sinful as it is not possible to definitively say his cure was in it."<sup>137</sup>

#### 3.3.1.3 Evaluation

The *Ḥanafis* have categorised medical outcomes into three: *maqtu`*, *maznūn* and *mawhūm*.

1. *Maqtu`* is an outcome deemed certain such as the certain effect of eating and drinking on hunger and thirst respectively. Hence, if treatment were certainly going to save one's life, it would be obligatory to initiate and continue it while abstaining from it is not considered reliance on Allāh but rather forbidden when fearing death.<sup>138</sup>
2. *Maznūn* meaning probable, hence if a positive outcome were more probable it would be recommended to seek that particular treatment. Example cited are cupping, drinking a laxative and all other medical treatments and all apparent remedies in medicine. As for this intermediary category then complying with it is not negatory of trust in Allah (*tawakkul*) as

*mawhūm* is and its abstention is not forbidden as *maqtu'* is. However, at times can be superior to take it up for certain individuals. Hence it is between the two ranks.<sup>139</sup>

3. *Mawhūm* meaning speculative, hence if a positive outcome was merely speculative it would be permissible such as cauterization. However, to refrain from it better.

This is an outcome-orientated approach. The determination substantiated by the degree of medical certainty about an intervention's life-saving ability. This is strikingly similar to the modern day qualitative benefits-burdens approach that evaluates the worth of an intervention relative to the goals of treatment as discussed in chapter two.

The situation of the patient will be assessed according to

1. the degree of certainty of the diagnosis,
2. the degree of certainty of the prognosis and
3. the degree of certainty of the benefit and burden of the proposed intervention.

Hence, if the benefit of an intervention is considered certain, correspondently the Islamic position would determine a ruling of obligation. Likewise, if medical futility were deemed a certainty a determination of prohibition would be made. A detailed discussion on the concept of medical futility is in chapter two.

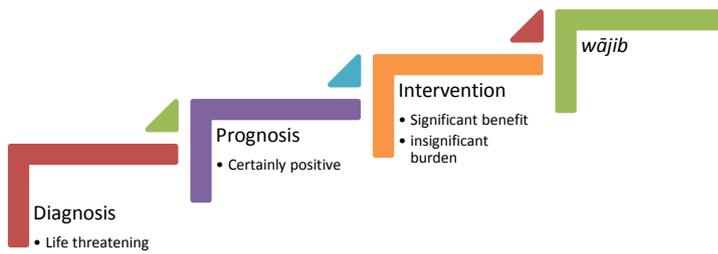
It is also necessary to distinguish between LST and non-LST. The overwhelming opinion of the past and present scholars is non-LST cannot be said to be *wājib* (obligatory) nor *ḥarām* (forbidden).

As for LST the Islamic determination (*ḥukm*) would be dependent on the overall benefit of the treatment or lack thereof, so if the benefit is deemed to be beneficial overall it would be considered *mandūb* (recommended) and if it is non-beneficial overall it would be considered *makrūh* (non-recommended).

#### **3.3.1.4 Conclusion**

It can be said with a high degree of certainty that it would not be permissible to consent to WLST from a patient who has a certain chance of recovery. However, whether it would be considered obligatory to continue life sustaining treatment remains unclear. As a determination of obligation

would result in sin in the event of non-compliance, therefore the more cautious view would be to recommend LST but not mandate it.



### 3.3.2 Recommended - *Mandūb*

This is a non-binding recommended action. It is based on a non-definite (*ẓanni*) sources such as a single-chain Ḥadīth. The commission of *mandūb* is meritorious and the non-perpetual omission is not sinful.

#### 3.3.2.1 Proponents

Proponents include the *Shāfis* and majority of earlier scholars and the consensus among the latter scholars and some from the *Ḥanafis* and *Mālikis*.<sup>140</sup>

#### 3.3.2.2 Reasoning

This is based on numerous Ḥadīths extolling the benefits of various remedies and foods. Moreover, the Prophet PBUH himself sought treatment and encouraged it.

#### 3.3.2.3 Evidence base

The Messenger of Allāh PBUH said: 'You should use Indian aloes wood for it contains seven cures, including (a cure for) pleurisy.'<sup>141</sup>

Narrated Abu Sa`id Al-Khudri: A man came to the Prophet PBUH and said, "My brother has some abdominal trouble."

The Prophet PBUH said to him "Let him drink honey."

The man came for the second time, and the Prophet PBUH said to him, "Let him drink honey."

He came for the third time, and the Prophet PBUH said, "Let him drink honey."

He returned and said, "I have done that ' The Prophet PBUH then said, "Allāh has said the truth, but your brother's `Abdomen has told a lie. Let him drink honey."

So he made him drink honey, and he was cured.<sup>142</sup>

The Messenger of Allāh PBUH forbade from cures that are impure.<sup>143</sup>

Another Hadith sates, "There is a remedy for every malady, and when the remedy is applied to the disease, it is cured with the permission of Allāh, the Exalted and Glorious."<sup>144</sup>

Another Hadith states, "I came to the Prophet PBUH, and his Companions were sitting as if they had birds on their heads. I saluted and sat down. The desert Arabs then came from here and there.

They asked: Messenger of Allāh, should we make use of medical treatment?

He replied: Make use of medical treatment, for Allāh has not made a disease without appointing a remedy for it, except one disease, namely old age."<sup>145</sup>

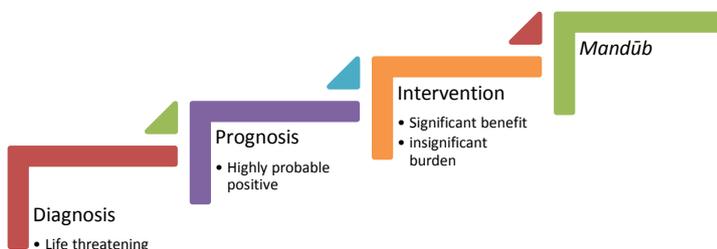
#### 3.3.2.4 Evaluation

Majority of the scholars are of the opinion that medical treatment is *Mandūb*. The evidence for this is quite overwhelming. Both the Prophet's action and saying's indicate to it being recommended.

However, this needs to be balanced and reconciled with the Hadiths indicating prohibition.

#### 3.3.2.5 Conclusion

It can be concluded that if a positive prognosis is highly likely and the benefits of LST are highly probable with the burdens considered minimum then it can be concluded that it would be recommended, however non-compliance would be permissible.



#### 3.3.3 Permissible or discretionary - *Mubāh*

This status accords the option to do or not to do something upon the discretion of the individual.

### 3.3.3.1 The position of *Mubāh*

Proponents includes some *Mālikis*.<sup>146</sup>

### 3.3.3.2 Reasoning and Evidence

Their reasoning and evidence is similar to the Ḥadīths mentioned above. The distinction is in interpreting the evidence to mean general permissibility.

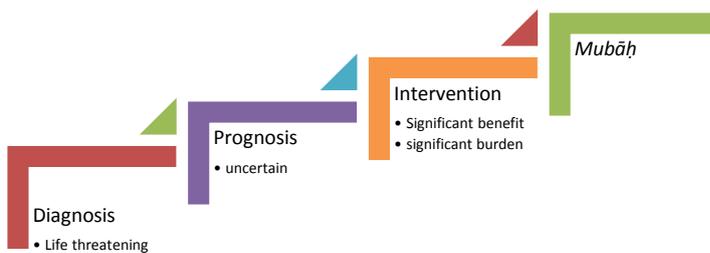
### 3.3.3.3 Evaluation

This view seems to be the middle and safest path negotiated between opposing Hadiths and therefore worthy of note.

### 3.3.3.4 Conclusion

In the situation where neither the benefits are highly probable nor the burdens are highly likely, it can be concluded that it would be permissible to provide LST and equally permissible to decline.

However, it would be better to refrain and exercise reliance on the will of Allāh.



### 3.3.4 Discouraged - *Makrūh*

Discouraged is an act that may have been prohibited but the evidentiary base and/or implication lacks definitiveness hence it is considered a reprehensible act and is best avoided. The commission of *makrūh* is frowned upon and its omission is laudable.

#### 3.3.4.1 Proponents

Proponents include the *Hanbalis*.<sup>147</sup>

#### 3.3.4.2 Reasoning

It is a mark of the truly pious to prefer to rely and accept the will of Allah over utilising human means hence abstention of treatment is superior as complying with the decree or will of Allāh and displaying submission to him is the very essence of being Muslim (literally the one who submits). However, as there are Ḥadīths that recommend treatment, it cannot be said to be impermissible. This is the main difference between this view and the view of total impermissibility.

#### **3.3.4.3 Evidence**

The saying of the Prophet PBUH,

“Seventy thousand people of my Ummah would be admitted into Paradise without rendering any account.”

They (the Companions) said, “Who would be of those (fortunate persons)?”

He replied, “Those who do not cauterise and practise charm, but repose trust in their Lord.”<sup>148</sup>

Another tradition states,

“Ata narrates that Ibn `Abbas said to me, "Shall I show you a woman of the people of Paradise?"

I said, "Yes."

He said, "This black lady came to the Prophet PBUH and said, 'I get attacks of epilepsy, and my body becomes uncovered; please invoke Allāh for me.'

The Prophet PBUH said (to her), 'If you wish, be patient and you will have (enter) Paradise; and if you wish, I will invoke Allāh to cure you.'

She said, 'I will remain patient,' and added, 'but I become uncovered, so please invoke Allāh for me that I may not become uncovered.' So he invoked Allāh for her."<sup>149</sup>

#### **3.3.4.4 Evaluation**

These Hadiths need to be interpreted according to the background and context that are reconciliatory of other hadiths. It is only then that a true determination can be made.

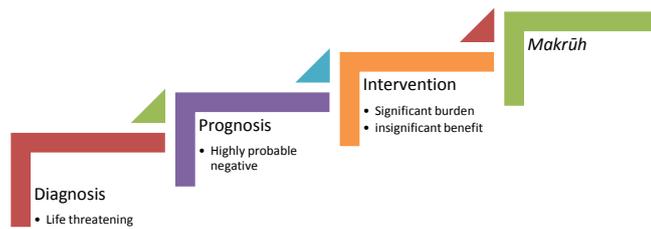
#### **3.3.4.5 Conclusion**

Although, this view is premised on a restricted evidentiary base of Hadiths it can be safely

extrapolated to the situation where the burdens significantly outweigh the overall benefits of LST

such as in the case of physiological futility (this is discussed in chapter two). Examples of applications

can include antibiotics for a viral illness, CPR in the presence of rigor mortis and chemotherapy for



an ulcer.

### 3.3.5 Forbidden - *Haram*

This is a binding command prohibiting an act stemming from an undisputable source in unambiguous terms. It is similar to *wājib* insofar as the strength of the source and implication on practice. However, the only difference being *wājib* is a positive command whilst *Haram* is a negative command.

#### 3.3.5.1 Proponents

The proponents of this view are some spiritual orders.<sup>150</sup>

#### 3.3.5.2 Reasoning

The reasoning behind this view is premised on the belief that sainthood is not complete until one does not fully accept the Islamic concept of *qadr* and *qaḍā*. *Qadr* and *qaḍā* are understood as an occurrence that is predestined and should not be altered. Illness is part of *qadr*, and seeking treatment is contradictory to the dictates of *qadr*. One should be accepting of one's fate whatever the condition and accessing medical treatment indicates unhappiness with the decree of the Almighty.

#### 3.3.5.3 Evidence base

The evidence presented to substantiate the validity of this view include the following proofs from the Qur'an regarding *qadr*,

“No calamity befalls on the earth or in yourselves but is inscribed in the tablet of decrees, before we bring it into existence. Verily, that is easy for Allāh. So that you may not grieve at the things that you

fail to get, nor rejoice over that which has been given to you. Moreover, Allāh likes not prideful boasters.”<sup>151</sup>

The Ḥadīths cited as proofs include,

“Whoever seeks treatment by cauterization, or with *ruqyah* (*Qur’an recitation*), then he had absolved himself of reliance upon Allāh.”<sup>152</sup>

Moreover, the Ḥadīth

“If I drink an antidote, or tie an amulet, or compose poetry, I am the type who does not care what he does.”<sup>153</sup>

These all seem to indicate an attitude of resignation to the decree of Allāh without attempting medical treatment.

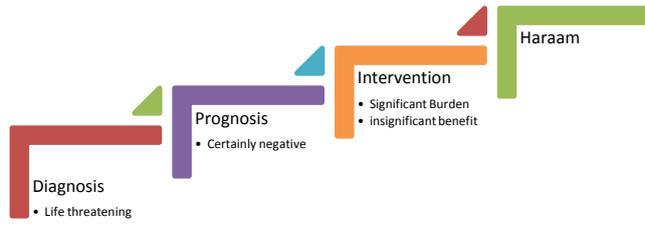
#### **3.3.5.4 Evaluation**

The above Ḥadīths can be interpreted as those who rely on themselves and not on Allāh or alternatively due to the risk of the intervention such as cauterisation. It can also be argued that the Prophet PBUH intended a specific sub-type of the treatments. The above interpretation is necessary in order to reconcile other Ḥadīths that mention the Prophet himself having cauterised Ubayy during the battle of the trench.

Finally, the Qur’an itself declaring honey as a cure implies the permissibility of seeking treatment as does many other Ḥadīth.<sup>154</sup>

#### **3.3.5.5 Conclusion**

In general treatment cannot be termed forbidden. However, in the situation where the benefits of LST are non-existent and the burdens overwhelmingly harmful to the patient, it would be considered forbidden to provide LST.



# Chapter four - Conclusions

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## 4 An Islamic perspective of WLST

Coming back to the original question asked at the beginning of this dissertation,

‘Is it permissible to withdraw life sustaining treatment?’

it will be evident that this is neither a yes or no answer nor is it a simple analytical exercise.

Each case will need to be individually analysed; the clinical situation and background of the patient together with the reasoning, assessment and recommendations of the clinicians. The psycho-social impact of WLST on the patient and wider family will also need to be factored in. Finally, the religious and spiritual beliefs and values of the patient will need to be weighed into the decision to withdraw.

The Islamic perspective will need to be evaluated methodically by following the following steps:

1. The sanctity and sacredness (*karāmah* and *hurmah*) of life must always be respected and the preservation of life must always be prioritised according to the goal *ḥifẓ al nafs*. However, when in conflict with the other goals and maxims Sharia, the aim should be to utilise this proposed HR model. Techniques such as differentiation (*furuq*); reconciliation between conflicting texts (*tatiīq*); meriting preference of non-reconciliatory texts (*tarjīh*) based on *Maslaha* (public interests) cum *Maqāsid* (purpose-led) are essential to the researcher.<sup>155</sup>
2. The motive of WLST needs to be scrutinised according to the maxim of motive (*niyyah*)
3. The prognostic value will need to be graded according to the degree of certainty in accordance with the maxim of *yaqīn*.
4. The parameters, scope and function of WLST will need to be agreed upon through the maxim of custom (*ādah*) and convention (‘urf)
5. The potential maleficence (*mafsadah*) of WLST will need to be weighed against the potential beneficence (*manfa’ah*) in accordance with the harm (*ḍarar*) and hardship (*mashaqqah*) maxims

6. Due consideration will be needed to be accorded the potential quality of life that is prognosticated. This can be measured through the level of conscious cognition that can be expected to be achieved guided by the goals *ḥifẓ al-'aql* and the level of *khayr* as discussed above.
7. The socio-economic impact of WLST will need to be assessed in line with the goal of *ḥifẓ al-māl*
8. The taxonomy of the *ḥukm* will need to be grounded according to the conventional standards of the principles of jurisprudence and will need to be informed by the juristic opinions of the classical jurists.

This holistic approach that is personalised to that particular patient seems to be the best way forward for what is a very challenging situation. Holistic-relativism seems the best way forward. This is an approach that is person-centred; taking into consideration the physical, spiritual, emotional, financial implications of the situation and wider environment of a WLST decision while respecting the afflicted individual's autonomy to decide what's in their best interest, hence holistic and relative. This approach allows and even encourages acceptance of human limitations and seems reasonable and useful avoiding a reductionist view. It is reasonable as it is the philosophical underpinning of a more deontological approach whereas useful too as it is also a more consequentialist approach epitomised by utilitarianism. This method is a more "bridging of the two" philosophies as against a strictly utilitarian approach.

We had set out to determine whether there was an Islamic perspective of WLST and if so what it was. It is now the conviction of the author that the Qur'an and Sunnah contain a wealth of resources that can guide the patients, families and clinicians to a most amicable and meaningful resolution. This is why we would conclude that the approach we have termed 'Holistic-Relativism' (HR) encapsulates the essence of the Islamic approach to WLST. It is our recommendation that it should be the guiding philosophical and ethical principle that should be used in a multidisciplinary setting. It is also the personal experience of the author over the last decade dealing with these situations that the HR approach leads to better outcomes for all; improving clinical effectiveness, enhancing the patient experience and does not compromise the safety, values and beliefs of the patient. Finally, there now only remains the need to carry out a qualitative study on the efficacy of this approach.

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1 It is available online from <https://ijmes.chass.ncsu.edu/docs/TransChart.pdf>

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4 Al-Imam Al-Shātibī (d. 1388 CE) emphasizes the faith ('aqīdah) in his definition which is as follows (cited in Dusuki & Bouheraoua, 2011);

"The primary goal of the sharī'ah is to free man from the grip of his own whims, so that he may be the servant of Allah by choice, just as he is His slave (in matters about which he has] no choice." Nizam, Ismail, and Moussa Larbani. "A Structural Equation Model of Maqasid Al-Shari'Ah As a Socioeconomic Policy Tool." (2016).

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18 See "I have been driven to invent a term, 'Islamicate'. It has a double adjectival ending on the analogy of 'Italianate', 'in the Italian style', which refers not to Italy itself directly, not to just whatever is to be called properly Italian, but to something associated typically with Italian style and with the Italian manner. One speaks of 'Italianate' architecture even in England or Turkey. Rather similarly (though I shift the relation a bit), 'Islamicate' would refer not directly to the religion, Islam, itself, but to the social and cultural complex historically associated with Islam and the Muslims, both among Muslims themselves and even when found among non-Muslims." Hodgson, Marshall GS. *The Venture of Islam, Volume 1: The Classical Age of Islam*. University of Chicago press, 2009. One of the perplexities woven into Western studies of Islam is the conflation of Islam as a religious system of faith and practice, parallel in scope to Christianity, with Islam as the whole of the history and custom of Muslims, parallel in scope to India or Christendom. In an attempt to disentangle this conceptual snarl, Marshal Hodgson has introduced a helpful distinction between Islamic as "pertaining to Islam in the proper, the religious sense" and Islamicate as "the social and cultural complex historically associated with Islam and Muslims" (Hodgson, 1974:1:59).

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45 The analysis above refers to the 51st verse of chapter 42 (sūrat I-shūrā):

﴿ وَمَا كَانَ لِنَبِيٍّ أَنْ يَكَلِمَهُ اللَّهُ إِلَّا وَحْيًا أَوْ مِنْ وَرَائِ حِجَابٍ أَوْ يُرْسِلَ رَسُولًا  
فَيُوحِيَ بِإِذْنِهِ مَا يَشَاءُ إِنَّهُ عَلَىٰ حَكِيمٍ مُّبِينٍ ﴾

Ṣaḥīḥ International: And it is not for any human being that Allah should speak to him except by revelation or from behind a partition or that He sends a messenger to reveal, by His permission, what He wills. Indeed, He is Most High and Wise.

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55 Zaydan, Abd al-Karim. "al-Wajiz fi Usul al-Fiqh." (1993).

56 Nyazee, Imran Ahsan Khan. "Islamic Jurisprudence (usul al-fiqh)." Islamabad, Pakistan: Islamic Research Institute Press. Google Scholar (2000).

57 Padela, Aasim I., and Omar Qureshi. "Islamic perspectives on clinical intervention near the end-of-life: We can but must we?." *Medicine, Health Care and Philosophy* (2016): 1-15.

58 Nyazee, Imran Ahsan Khan. "Islamic Jurisprudence (usul al-fiqh)." Islamabad, Pakistan: Islamic Research Institute Press. Google Scholar (2000).

59 See : Dukes, Kais & Atwell, Eric & Habash, Nizar. (2013).  
[https://www.researchgate.net/publication/225362075\\_Supervised\\_collaboration\\_for\\_syntactic\\_annotation\\_of\\_Quranic\\_Arabic](https://www.researchgate.net/publication/225362075_Supervised_collaboration_for_syntactic_annotation_of_Quranic_Arabic) [accessed Sep 24, 2017].

60 "The Quranic Arabic Corpus - Quran Dictionary." [Corpus.quran.com](http://Corpus.quran.com). N.p., 2017. Web. 24 Sept. 2017.

61 *The Qur'an* 26:80 (word 2)

62 *The Qur'an* 16:68

63 *The Qur'an* 3:49 & 5:110

64 The analysis above refers to the 168th verse of chapter 2 (sūrat I-baqarah):

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلْالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ  
عَدُوٌّ مُّبِينٌ ﴿١٦٨﴾

Ṣaḥīḥ International: O mankind, eat from whatever is on earth [that is] lawful and good and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(2:168:3\)](http://corpus.quran.com/wordmorphology.jsp?location=(2:168:3))

65 The analysis above refers to the 172nd verse of chapter 2 (sūrat I-baqarah):

يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِن طَيِّبَاتِ مَا رَزَقْنَاكُمْ وَأَشْكُرُوا لِلَّهِ إِن كُنتُمْ إِيَّاهُ  
تَسْبُدُونَ ﴿١٧٢﴾

Ṣaḥīḥ International: O you who have believed, eat from the good things which We have provided for you and be grateful to Allah if it is [indeed] Him that you worship.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(2:172:4\)](http://corpus.quran.com/wordmorphology.jsp?location=(2:172:4))

66 The analysis above refers to the nineteenth verse of chapter 23 (sūrat I-mu'minūn):

فَأَنشَأْنَا لَكُمْ بِهِ جَنَّاتٍ مِّنْ جَبَلٍ وَأَعْنَابٍ لِّكُلِّ فِرْعَانٍ كَبِيرَةٍ وَمِنْهَا تَأْكُلُونَ ﴿١٩﴾

Ṣaḥīḥ International: And We brought forth for you thereby gardens of palm trees and grapevines in which for you are abundant fruits and from which you eat. [http://corpus.quran.com/wordmorphology.jsp?location=\(23:19:13\)](http://corpus.quran.com/wordmorphology.jsp?location=(23:19:13))

67 The analysis above refers to the 141st verse of chapter 6 (sūrat I-an'ām):

﴿ وَهُوَ الَّذِي أَنشَأَ جَنَّاتٍ مَّعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفًا  
أُكْلُهُ وَأَلْوَانًا وَالزَّيْتُونَ وَالزَّمَنَاتَ مُتَشَابِهًا وَغَيْرَ مُتَشَابِهٍ كُلُوا مِن ثَمَرِهِ إِذَا  
أَتَمَّ وَءَاثُرًا حَقَّ يَوْمَ حَصَادِهِ وَلَا تُشْرِكُوا بِهِ لَكُمْ لَا يُحِبُّ الْمُسْرِفِينَ ﴿١٤١﴾

Ṣaḥīḥ International: And He it is who causes gardens to grow, [both] trellised and untrellised, and palm trees and crops of different [kinds of] food and olives and pomegranates, similar and dissimilar. Eat of [each of] its fruit when it yields and give its due [zakah] on the day of its harvest. And be not excessive. Indeed, He does not like those who commit excess. [http://corpus.quran.com/wordmorphology.jsp?location=\(6:141:17\)](http://corpus.quran.com/wordmorphology.jsp?location=(6:141:17))

68 The analysis above refers to the fourteenth verse of chapter 16 (sūrat I-naḥl):

وَهُوَ الَّذِي سَخَّرَ الْيَمِينَ لَكُمْ لِيَأْكُلُوا مِنْهُ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُوا مِنْهُ حِلْيَةً  
تَلْبَسُونَهَا وَتَرَى الْفُلْكَ مَوَاجِرَ فِيهِ وَلِيَبْتَلِيَهُمْ مِنْ فَضْلِهِ  
وَلَعَلَّكُمْ تَشْكُرُونَ ﴿١٥﴾

Şahîh International: And it is He who subjected the sea for you to eat from it tender meat and to extract from it ornaments which you wear. And you see the ships plowing through it, and [He subjected it] that you may seek of His bounty; and perhaps you will be grateful. [http://corpus.quran.com/wordmorphology.jsp?location=\(16:14:8\)](http://corpus.quran.com/wordmorphology.jsp?location=(16:14:8))

69 The analysis above refers to the fifth verse of chapter 16 (sūrat I-naḥl):

وَالَّذِينَ خَلَقْنَا لَكُمْ فِيهَا دِفءً وَمَنْفَعًا وَمِنْهَا تَأْكُلُونَ ﴿٥﴾

Şahîh International: And the grazing livestock He has created for you; in them is warmth and [numerous] benefits, and from them you eat. [http://corpus.quran.com/wordmorphology.jsp?location=\(16:5:8\)](http://corpus.quran.com/wordmorphology.jsp?location=(16:5:8))

70 The analysis above refers to the 31st verse of chapter 7 (sūrat I-a'rāf):

يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَشَرِبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ  
الْمُسْرِفِينَ ﴿٣١﴾

Şahîh International: O children of Adam, take your adornment at every masjid, and eat and drink, but be not excessive. Indeed, He likes not those who commit excess. [http://corpus.quran.com/wordmorphology.jsp?location=\(7:31:11\)](http://corpus.quran.com/wordmorphology.jsp?location=(7:31:11))

71 The analysis above refers to the 42nd verse of chapter 68 (sūrat I-qalam):

يَوْمَ يُكْشَفُ عَنْ سَاقٍ وَيُدْعَوْنَ إِلَى السُّجُودِ فَلَا يَسْتَطِيعُونَ ﴿٤٢﴾

Şahîh International: The Day the shin will be uncovered and they are invited to prostration but the disbelievers will not be able. [http://corpus.quran.com/wordmorphology.jsp?location=\(68:42:7\)](http://corpus.quran.com/wordmorphology.jsp?location=(68:42:7))

72 The analysis above refers to the 51st verse of chapter 23 (sūrat I-mu'minūn):

يَا أَيُّهَا الرُّسُلُ كُلُوا مِنَ الطَّيِّبَاتِ وَاعْمَلُوا صَالِحًا إِنِّي بِمَا تَعْمَلُونَ عَلِيمٌ ﴿٥١﴾

Şahîh International: [Allah said], "O messengers, eat from the good foods and work righteousness. Indeed, I, of what you do, am Knowing. [http://corpus.quran.com/wordmorphology.jsp?location=\(23:51:3\)](http://corpus.quran.com/wordmorphology.jsp?location=(23:51:3))

73 The analysis above refers to the 123rd verse of chapter 4 (sūrat I-nisāa) as indicated by Al-Bukhāri in his Şahîh:

لَيْسَ بِأَمَانَتِكُمْ وَلَا أَمَانِي أَهْلِ الْكِتَابِ مَنْ يَمْلِكُ سَوْءَ الْجَزَاءِ بِذَلِكَ  
لَهُمْ مِنْ دُونِ اللَّهِ وَإِنَّا لَوَاصِحُونَ ﴿١٢٣﴾

Şahîh International: Paradise is not [obtained] by your wishful thinking nor by that of the People of the Scripture. Whoever does a wrong will be recompensed for it, and he will not find besides Allah a protector or a helper. [http://corpus.quran.com/wordmorphology.jsp?location=\(4:123:10\)](http://corpus.quran.com/wordmorphology.jsp?location=(4:123:10))

74 The analysis above refers to the 42nd verse of chapter 6 (sūrat I-an'ām):

وَلَقَدْ أَرْسَلْنَا إِلَىٰ أُمَمٍ مِنْ قَبْلِكَ فَآخَذْنَا مِنْهُمُ بِالْبَأْسَاءِ وَالْقَسَاءِ وَأَنزَلْنَا لَهُمُ  
بِضْرَعُونَ ﴿٤٢﴾

Mohsin Khan: Verily, We sent (Messengers) to many nations before you (O Muhammad SAW). And We seized them with extreme poverty (or loss in wealth) and loss in health with calamities so that they might believe with humility. <http://corpus.quran.com/translation.jsp?chapter=6&verse=42>

75 The analysis above refers to the 83rd verse of chapter 21 (sūrat I-anbiyāa):



Ṣaḥīḥ International: And complete the Hajj and 'umrah for Allah. But if you are prevented, then [offer] what can be obtained with ease of sacrificial animals. And do not shave your heads until the sacrificial animal has reached its place of slaughter. And whoever among you is ill or has an ailment of the head [making shaving necessary must offer] a ransom of fasting [three days] or charity or sacrifice. And when you are secure, then whoever performs 'umrah [during the Hajj months] followed by Hajj [offers] what can be obtained with ease of sacrificial animals. And whoever cannot find [or afford such an animal] - then a fast of three days during Hajj and of seven when you have returned [home]. Those are ten complete [days]. This is for those whose family is not in the area of al-Masjid al-haram. And fear Allah and know that Allah is severe in penalty.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(2:196:21\)](http://corpus.quran.com/wordmorphology.jsp?location=(2:196:21))

80 The analysis above refers to the 102nd verse of chapter 4 (sūrat I-nisāa):

وَلِذَا كُنْتُمْ فِيهِمْ فَأَقَمْتَ لَهُمُ الصَّلَاةَ فَلْتُمْ طَائِفَةٌ مِنْهُمْ مَعَكُمْ وَلْيَأْخُذُوا  
 أَسْلِحَتَهُمْ فَإِذَا سَجَدُوا فَلْيَكُونُوا مِنْ وَرَائِكُمْ وَلْتَأْتِ طَائِفَةٌ أُخْرَىٰ لَمْ  
 يُصَلُّوا فَلْيُصَلُّوا مَعَكُمْ وَلْيَأْخُذُوا حِزْبَهُمْ وَأَسْلِحَتَهُمْ وَذَٰلِكُمْ كِفَايَةٌ لِّمَنْ  
 تَعْمَلُونَ عَنِ أَسْلِحَتِكُمْ وَأَنْتُمْ كُوفِيُونَ عَلَيْكُمْ مِثْلَةٌ مِّمَّا كَفَرْتُمْ وَلَا جُنَاحَ  
 عَلَيْكُمْ إِنْ كَانَ بِكُمْ أذىٌ مِنْ مُطْلِقٍ أَوْ كُنْتُمْ مَرَضًا أَنْ تَضَعُوا أَسْلِحَتَكُمْ  
 وَخُذُوا حِزْبَكُمْ إِنَّ اللَّهَ بَالِغُ الْكُفْرِينَ عَذَابًا مُهِينًا ﴿١٠٢﴾

Ṣaḥīḥ International: And when you are among them and lead them in prayer, let a group of them stand [in prayer] with you and let them carry their arms. And when they have prostrated, let them be [in position] behind you and have the other group come forward which has not [yet] prayed and let them pray with you, taking precaution and carrying their arms. Those who disbelieve wish that you would neglect your weapons and your baggage so they could come down upon you in one [single] attack. But there is no blame upon you, if you are troubled by rain or are ill, for putting down your arms, but take precaution. Indeed, Allah has prepared for the disbelievers a humiliating punishment. [http://corpus.quran.com/wordmorphology.jsp?location=\(4:102:51\)](http://corpus.quran.com/wordmorphology.jsp?location=(4:102:51))

81 The analysis above refers to the 91st verse of chapter 9 (sūrat I-tawbah):

لَيْسَ عَلَى الضَّعْفَاءِ وَلَا عَلَى الْمَرْضَىٰ وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا يُنْفِقُونَ  
 حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ وَاللَّهُ عَزِيزٌ رَحِيمٌ ﴿٩١﴾

Ṣaḥīḥ International: There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort when they are sincere to Allah and His Messenger. There is not upon the doers of good any cause [for blame]. And Allah is Forgiving and Merciful.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(9:91:6\)](http://corpus.quran.com/wordmorphology.jsp?location=(9:91:6))

82 The analysis above refers to the 110th verse of chapter 5 (sūrat I-māidah):

إِذْ قَالَ اللَّهُ يُعِيسَى ابْنُ مَرْيَمَ ادْكُرْ بِعَمِّي عَلَيْكَ وَعَلَىٰ لِدْيِكَ إِذْ أَبَدْنَاكَ بِرُوحِ  
 الْقُدُسِ تُكَلِّمُ النَّاسَ فِي الْمَهْدِ وَكَهْلًا وَإِذْ عَلَّمْنَاكَ الْكِتَابَ وَالْحِكْمَةَ  
 وَالتَّوْرَةَ وَالْإِنْجِيلَ وَإِذْ تَخْلُقُ مِنَ الطِّينِ كَهَيْئَةِ الطَّيْرِ بِإِذْنِ فَتَنفِخُ فِيهَا فَتَكُونُ  
 طَيْرًا بِإِذْنِي وَتُخَرِّجُ الْأَكْمَامَ وَالْأَنْرُصَ بِإِذْنِي وَإِذْ تَخْرُجُ الْمَوْتُ بِإِذْنِي وَإِذْ  
 كَفَفْتُ بَنِي إِسْرَائِيلَ عَنْكَ إِذْ جِئْتَهُمْ بِالْبَيِّنَاتِ فَقَالَ الَّذِينَ كَفَرُوا هٰذَا  
 هٰذَا إِلَّا بَشْرٌ مِثْرُكُمْ ﴿١١٠﴾

Ṣaḥīḥ International: [The Day] when Allah will say, "O Jesus, Son of Mary, remember My favor upon you and upon your mother when I supported you with the Pure Spirit and you spoke to the people in the cradle and in maturity; and [remember] when I taught you writing and wisdom and the Torah and the Gospel; and when you designed from clay [what was] like the form of a bird with My permission, then you breathed into it, and it became a bird with My permission; and you healed the blind and the leper with My permission; and when you brought forth the dead with My permission; and when I restrained the Children of Israel from [killing] you when you came to them with clear proofs and those who disbelieved among them said, "This is not but obvious magic."  
[http://corpus.quran.com/wordmorphology.jsp?location=\(5:110:39\)](http://corpus.quran.com/wordmorphology.jsp?location=(5:110:39))

83 The analysis above refers to the 80th verse of chapter 26 (sūrat I-shu'arā):

وَإِذَا مَرَضَتْ فَهِيَ يَشْفِينُ ﴿٨٠﴾



﴿ فَلَمَّا آتَاكُم مَّا حَرَّمَ رَبِّيَ عَلَيْكُمْ أَن تَقْرُبُوا عَلَيْهَا وَأَلْوَابِلَيْنَ  
 إِسْتَسْنَا وَلَا تَقْرُبُوا أَوْلَادَكُمْ مِنْ ذُنُوبِكُمْ وَإِيسَاءَهُمْ وَلَا تَقْرُبُوا  
 الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا تَقْرُبُوا أَنْفُسَ الْبَنِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ  
 ذَلِكُمْ وَصَّيْتُكُمْ بِهِ لَعَلَّكُمْ تَتَّقُونَ ﴿٣١﴾

Ṣaḥīḥ International: Say, "Come, I will recite what your Lord has prohibited to you. [He commands] that you not associate anything with Him, and to parents, good treatment, and do not kill your children out of poverty; We will provide for you and them. And do not approach immoralities - what is apparent of them and what is concealed. And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason."

[http://corpus.quran.com/wordmorphology.jsp?location=\(6:151:31\)](http://corpus.quran.com/wordmorphology.jsp?location=(6:151:31))

95 The analysis above refers to the 70th verse of chapter 17 (sūrat I-isrā):

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْوَجْرِ وَالْيَمْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ  
 وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ﴿٧٠﴾

Ṣaḥīḥ International: And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference. [http://corpus.quran.com/wordmorphology.jsp?location=\(17:70:2\)](http://corpus.quran.com/wordmorphology.jsp?location=(17:70:2))

96 The analysis above refers to the 32nd verse of chapter 5 (sūrat I-māidah):

﴿ مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ  
 فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا  
 النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعَدَ  
 ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

Ṣaḥīḥ International: Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors. [http://corpus.quran.com/wordmorphology.jsp?location=\(5:32:23\)](http://corpus.quran.com/wordmorphology.jsp?location=(5:32:23))

97 The analysis above refers to the 29th verse of chapter 4 (sūrat I-nisā)

98 The analysis above refers to the 32nd verse of chapter 5 (sūrat I-māidah):

﴿ مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ  
 فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا  
 النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعَدَ  
 ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

Ṣaḥīḥ International: Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors. [http://corpus.quran.com/wordmorphology.jsp?location=\(5:32:23\)](http://corpus.quran.com/wordmorphology.jsp?location=(5:32:23))

99 The analysis above refers to the 173rd verse of chapter 2 (sūrat I-baqarah) the other are) (5:3) 6:119) 6:145) 16:115):

﴿ إِنَّمَا حَرَّمَ عَلَيْكُمْ الْمَيْتَةَ وَالْدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلِيَ بِهِ لِغَيْرِ اللَّهِ فَمَنْ  
 اضْطُرَّ غَيْرَ سَبَاحٍ وَلَا عَارٍ فَلَا إِثْمَ عَلَيْهِ إِذْ أَلَّهِ غَفُورٌ رَحِيمٌ ﴿١٧٣﴾

Ṣaḥīḥ International: He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its

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limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(2:173:2\)](http://corpus.quran.com/wordmorphology.jsp?location=(2:173:2))

100 The analysis above refers to the 195th verse of chapter 2 (sūrat I-baqarah):

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ ﴿١٩٥﴾

Ṣaḥīḥ International: And spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allah loves the doers of good.  
[http://corpus.quran.com/wordmorphology.jsp?location=\(2:195:9\)](http://corpus.quran.com/wordmorphology.jsp?location=(2:195:9))

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114 *The Qur'an* 17:85

115 See: Abdullah (b. Mas'ud) reported that Allah's Messenger (ﷺ) who is the most truthful (of the human beings) and his being truthful (is a fact) said:

Verily your creation is on this wise. The constituents of one of you are collected for forty days in his mother's womb in the form of blood, after which it becomes a clot of blood in another period of forty days. Then it becomes a lump of flesh and forty days later Allah sends His angel to it who then blows in it the *Ruh* and is instructed concerning four things, so the angel writes down his livelihood, his death, his deeds, his fortune and misfortune. By Him, besides Whom there is no god, that one amongst you acts like the people deserving Paradise until between him and Paradise there remains but the distance of a cubit, when suddenly the writing of destiny overcomes him and he begins to act like the denizens of Hell and thus enters Hell, and another one acts in the way of the denizens of Hell, until there remains between him and Hell a distance of a cubit that the writing of destiny overcomes him and then he begins to act like the people of Paradise and enters Paradise. Ṣaḥīḥ Muslim 2643

116 The analysis above refers to the 28th verse of chapter 89 (sūrat I-fajr):

Şahîh International: Return to your Lord, well-pleased and pleasing [to Him]

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the eleventh and twelfth verse of chapter 18 (sūrat I-kahf)

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123 Al-Imam Abū Hāmid al-Ghazālī (d. 1111 CE) definition of maqāṣid emphasizes the sharī'ah concern for safeguarding the five objectives as;

"The very objective of the sharī'ah is to promote the well-being of the people, which lies in safeguarding their faith (dīn), their lives (nafs), their intellect ('aql), their posterity (nasl) and their wealth (māl). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable." Nizam, Ismail, and Moussa Larbani. "A Structural Equation Model of Maqasid Al-Shari'Ah As a Socioeconomic Policy Tool." (2016).

124 Al-Imam Al-Shātibī (d. 1388 CE) emphasizes the faith ('aqīdah) in his definition which is as follows (cited in Dusuki & Bouheraoua, 2011);

"The primary goal of the sharī'ah is to free man from the grip of his own whims, so that he may be the servant of Allah by choice, just as he is His slave (in matters about which he has] no choice." Nizam, Ismail, and Moussa Larbani. "A Structural Equation Model of Maqasid Al-Shari'Ah As a Socioeconomic Policy Tool." (2016).

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127 *The Qur'an* 5:32

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137 See Fatawa Hindiyyah الهندية الفتاوى البلخي نظام الدين لجنة علماء برئاسة http://shamela.ws/index.php/book/21640

138 See Fatawa Hindiyyah vol5 p355, ihya Uloom ud Deen vol 4 p.276, Fatawa Ibn Taymiyyah vol 21 p.564

139 See Fatawa Qadi Khan فخر الدين حسن بن منصور الأوزجندی الفرغاني الحنفي المتوفى سنة 592 فتاوى قاضيخان http://shamela.ws/rep.php/book/4560

140 See Imam Nawawi in his commentary of Şahîḥ Muslim who has discussed this in detail "Muslimşahîḥ1." Archive.org. N.p., 2017. Web. 27 Sept. 2017.

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