

RULES OF ANATOMY IN ISLAMIC LAW

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ABSTRACT

This article talks about anatomy in Islamic law. Anatomy has become widespread in many hospitals for various purposes. It is very necessary in our time, especially the educative anatomy that teaches doctors parts of human body to help them in treating people. Criminal anatomy is also important to know how someone has been killed; it is very important as through it innocence and guilt could be established. Pathology is very essential as well, to know the types of sickness that affect human which can be avoided by knowing it. The problem is that we must know the rule of shariah regarding anatomy and its classifications, and to know the rule of buying corpse for the purposes of anatomy. I have adopted inductive and analytical approach to highlight the view of the jurists on that issue and the conditions that must be observed on the anatomy of corpse. The most important results we reached are: Among the most important principles by Islam is the inviolability of human, his blood and body, and they cannot be exposed except by a reason of the shariah, and that human must be respected and that tempering with his body with something unbeneficial must be avoided.

Key words: Anatomy, corpse, inviolability of human.

1. The Concept of Anatomy

Anatomy literally means ‘detection’ Technically, anatomy is a knowledge that study how the body looks like from the arrangement of veins, nerves, cartilage, bone, meat and others (Al-Qanuji, 1978). Or it is knowledge of the body organs and its parts and how it is constructed from bone, muscles, vein, nerves and others.

The definition of corpse means the body of human (Zubaidi, 1965).

The meaning of anatomy is a knowledge that studies how the body looks like from the arrangement of veins, nerves, cartilage, bone, meat and others. But the function of the organs is studied under what is called “Physiology”. This research will only look into anatomy.

Anatomy is classified into three: First: Criminal anatomy; it is anatomy to identify criminal offence. Second: Medical anatomy; it is for the purpose of verification of epidemic diseases in order to take the necessary measures to prevent them. Third: Educative anatomy; it is for education purposes.

2. Statement of the Sanctity of a Muslim and the Necessity of Protecting Him Death and Alive

The origin of autopsy of Muslim corpse is forbidden because of what it has of violating his sanctity and disgracing him. The Prophet (saw) said: “Breaking the bones of a Muslim while he is dead is like breaking them while he is alive”. According to the shariah, when a Muslim die, he has to be washed, clothed by Kafan and buried as soon as possible, and not to delay that for the sake of autopsy of the body which may extend to several days, together with what it has for dishonouring Muslim, violating his sanctity, revealing his genitalia and cutting his body (al-Bukhari 1992).

There are various hadiths that indicate the need for quick funeral and burial, some of them are:

- a. Narrated from Husain ibn Wahwahin “that Talha ibn Barra was sick and the Prophet (saw) came to visit him and said: “It seems that Talha is at the verge of death, and if that happens hurry in his burial as the corpse of a Muslim shall not be kept with his family” .
- b. Narrated by Ali ibn Abi Talib may Allah be please with him: that the Prophet (saw) said: “O Ali, three things do not delay them, prayer when its time enters, funeral when it is present, marriage for a lady when she gets a husband” (Narrated by Tirmidhi 2001 in his Sunan, Book: Funerals, Chapter: Speeding up Funeral. Corrected by Albani, (1985).

And there are other hadiths that indicate speeding up of burying corpse.

There should be no doubt that the origin of autopsy of a Muslim is prohibition, but what requires meditation from us is for Islam not to permit autopsy for the evil it has to ward off evils that are greater than this evil; and we know that Islam came to achieve interest and maximize it and to block evil and minimize it, and among the principles of shariah when there is a conflict between two evils, we block the greater evil by tolerating the lesser evil, and also the principle of sharia “necessities permit prohibitions”. Among these necessities is knowing the reason of death, as “autopsy may establish innocence of accused or his guilt”; because it is a preponderant interest; it is part of the general Islamic principles and purposes when there is a conflict between two interest, the stronger one is preferred and when there is a conflict between two evils, the lesser one is committed to avoid the greater one. In this case, there is a conflict between speeding up burial and autopsy to know the reason of death and this will delay burial; and

since knowing the reason of death by autopsy has great benefit where the reason of death would be known to establish innocence and guilt, and this will prevent wrong judgement and protect the right of the dead and also protect the right of people from aggression, and achieving all these benefits have preference over speeding up burial” (Afanah, 2002).

3. Jurists’ Schools of Law and their authorities with regard to rule on anatomy

I mentioned earlier that the sanctity of dead is just like that of living person; and since the shariah prohibits tempering with dead body, the jurists differed in the rule of anatomy –in the past and contemporary period- as follows:

In the past

The Malikis and Hanbali (1995) pursuant to the hadith: “Breaking the bones of dead person is like breaking them while he is alive” it is not permissible to slit the belly of the dead pregnant woman to remove the fetus from it; because normally the child does not live, and there is no certainty that he will live; it is not permissible to violate the sanctity of certain for something uncertain.

The shafi’is permit slitting the belly of a dead pregnant woman to remove her son; and slitting the belly of dead person to take out money from it. Hanafis also permit slitting the belly of the dead person when he swallows someone’s money, if he has no legacy to pay from it, and no one guarantees him.

The Malikis also permits slitting the belly of a dead person who swallows his or someone’s money before his death if the money is much; that is the nisab of zakat, if he swallowed for fear or excuse. But if he swallows it in order to prevent the heir from inheritance, his belly must be opened even if the money is little.

But in our present time (Shanqiti, 1994), the scholars differed on two views:

First view: It is permissible to do autopsy on dead bodies for the purpose of learning medicine, and the following bodies hold this view:

1. Council of Senior Scholars Saudi Arabia.
2. Islamic Fiqh Academy in Makkah.
3. Fatwa Committee of the Hashemite Kingdom of Jordan.
4. Dar al-Ifta al-Azhar in Egypt.

A number of scholars and researchers hold this view: Sheikh Yusuf Dajwy, Sheikh Husain Makhluaf, Sheikh Ibrahim Yaaqubi, Dr. Muhammad Sa’eed Ramadhan Buti, Dr. Mahmud Nazim Nasimi, and Dr. Mahmud Ali Sartawi.

Their Authority

Those that hold the view that autopsy is permissible relied on qiyas (analogy) and glimpse on Shariah principles:

First: Qiyas (Analogy): that is from several ways:

First: Autopsy is permissible and also slitting belly of a dead pregnant woman to remove her fetus if there is hope he will live. This analogy has been discussed that analogy is not proper here, because the interest of the fetus is uncertain.

Second: Autopsy for dead body for the purpose of education and others is permissible and also cutting fetus in order to save his mother if it is likely she would die because of the fetus.

Third: Autopsy of dead body is permissible, and it is also allowed to slit his stomach to remove snatched money that he swallowed, to request for the benefit of the live person of saving him from death for the sake of needed benefit which is returning the snatched money to its owner.

Fourth: Those who hold the view that autopsy is allowed made an analogy with digging up the grave to take the snatched kafan.

Fifth: Analogy to eating of dead by desperate person, Nawawi said in Raudah: “It is permissible for desperate person to kill the apostate to eat his flesh and also to kill adulterer, muharib, and the person who forsakes prayer based on their most correct view” (Nawawi, 1405).

Second: Their Authority from the Islamic Principles

- 1- They said: Among the general Islamic principles and purposes: When there is conflict between two interests, the stronger one is preferred, and when there is conflict between two evils, the lesser one is committed to avoid the severe one.
The application of the rule:
Autopsy of dead bodies for the purpose of education is for public interest because it helps in studying medication that can help in preventing diseases from the society and to get health for its members by Allah’s will; this is public policy supported by texts. The interest of abstaining from autopsy is considered as private interest related only to the dead person; based on this there are two conflicting interest, and undoubtedly the strongest is the public interest which is performing the autopsy; and it must be preferred on the private interest, by preferring the interest of the nation. Thus,

medical autopsy is permissible because it has the interest of protection of life; the evils are immersed in the side of interests. And Allah knows best.

Furthermore, the shariah came to ensure benefit and maximize them, and to block evils and minimize them, and to commit the lesser harm to avoid the greater one, but when there is conflict between interests, the best one shall be taken.

- 2- Among the rules of the shariah: (whatever leads to necessity is necessary). Studying the medical surgery and other branches of medicine is fulfilling the needs of the nation to this beneficial knowledge; and ensuring this necessity depends on autopsy that doctors can understand theoretical and practical aspect of the knowledge through it; thus, it is regarded as legitimate and necessary from this angle.

Second View: Autopsy on the dead bodies for the sake of education is not permissible; it is the view of some scholars and researchers, they are:

Sheikh Muhammad Bakhit al-Muti,ee, Sheikh Araby Bu'Iyad Tabkhi, Sheikh Muhammad Burhanuddin Sanbahli, Sheikh Hasan ibn Ali Saqqaf, and Sheik Muhammad ibn Abdulwahhab, Buhairi.

Their Authority:

They rely on the Qur'an, Sunnah and Qiyas (analogy) and glimpse on the Principles of the shariah.

- 1- Their authority from the Qur'an: Allah (swt) said: (We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation.) (Isra':70).

They said this verse indicates the honouring of human by Allah (swt), and this honour is applicable to their lifetime and death. And autopsy of dead bodies is a disgrace because it consists of cutting the organs of the corpse, slitting the abdomen etc. and this contradicts the honour Allah (swt) has given to human beings, thus it is not allowed to perform it. This has been discussed: That disgracing dead body by autopsy is permitted by its proponent by also relying on qiyas (analogy) where they based their decision on the decisions of some past scholars of the permissibility of exhuming the grave of the dead person to take out the stolen or snatched kafan, and they made an analogy that disgracing the corpse by autopsy is just like disgracing him by taken out his kafan, and exposing his genitalia because it ensures interest of a live person that is needed.

Also, autopsy is not a violation of honour; it is only prohibited when it is done with the intention of hatred, abuse and revenge, but in this case is different.

- 2- Their Authority from the Sunnah: They mentioned the following hadiths:
 - a. The hadiths that prohibit mutilation, among them what was reported in Sahih from the hadith of Buraidah (ra) he said: When the Prophet (saw) appoints a leader on a group of fighters he used to command him and his troop first to fear Allah and said to him: "Fight by Allah's name and in the course of Allah; fight those that disbelieve in Allah, fight and do notmutilate".
They said: There is mutilation in autopsy of the dead body, and it is within the general meaning of prohibition contained in this hadith and other hadiths that prohibit mutilation.
The hadiths on mutilation have been discussed that there are other hadiths that specify them like the story of Araniyyin and the verse on robbers. Hence, if mutilation is allowed for public interest which is to stop aggressors from attacking people, it is also allowed to mutilate the unbeliever for public interest required by medicine which is autopsy. Moreover, some scholars say the prohibition here is for tanzeeh (not for compulsion).
 - b. They also rely on the hadith of Aisha (ra) that the Prophet (saw) said: "Breaking the bones of a dead Muslim is like breaking them while he is alive".
They said: This hadith indicates the prohibition of breaking the bones of a dead believer, and autopsy is part of that, and hence it is not permissible.
This hadith has been discussed that the prohibition of breaking the bones of dead body is specifically for the believer as mentioned by the same hadith.
 - c. The hadith of Abu Hurairah (ra) that the Prophet (saw) said: "It is better for one of you to sit on a cinder which will burn his clothes and his skin than to sit on a grave".
This hadith has been discussed that it indicates the dead person is hurt by that act (sitting on the grave), and this is in line with the view that says the prohibition is only for a dead Muslim; but hurting the unbeliever after his death is allowed, thus, there is nothing wrong in doing it.

- 3- Their Authority for qiyas (analogy):

First: The hadiths that indicate impermissibility of sitting on a grave, and that the owner of the grave is hurting by that act, although sitting on the grave has no direct contact with body of the dead person, thus prohibition of cutting his organ and slitting his abdomen which is more severe in disgracing his honour is more likely.

Second: There are some scholars that see the prohibition of slitting the stomach of a dead pregnant woman to save her fetus that will likely live eventhough there is a necessary interest in that, thus, not allowing autopsy that consist of slitting or more is more likely.

- 4- Their Authority from the Principles of shariah: They rely on the following:
 - 1- Rule: (Harm cannot be eliminated by harm).
 - 2- Rule: (There should be neither harm nor malice).

They said the first rule indicates that the evil of harm shall not be eliminated with harm, and in autopsy there is eliminating harm with harm, this is because autopsy for the sake of education helps in eliminating diseases, but this elimination also has another harm that is related to the autopsy on dead person, and in this case it becomes eliminating harm with harm, and this is what the rule indicates its prohibition.

And the second rule indicates the prohibition of harming others, and autopsy consists of harming the dead body, thus, it is not allowed.

4. The Best view

After discussing the authorities of both proponent and opponent of autopsy, it seems that the view that says autopsy is permissible is the best view; but it is better to be on the body of unbeliever not a Muslim because of the following reasons (Zuhaili, 1989):

First: The origin is the inadmissibility of the disposition of the body of a Muslim except to the extent authorized by the shariah, and autopsy is not part of it, and this origin must be maintained. Those who view the permissibility of autopsy submit to this origin, although that brings an exception of autopsy considering the need for it.

Second: The need for autopsy can be achieved by the dead bodies of unbelievers, and thus, it is not allowed to use the Muslim corpses because of the sanctity of the Muslim during his lifetime and after his death; the dead body of pagans and others from the unbelievers are affordable with the cheapest prices.

Third: The authority of prohibition can be specified for Muslim and not unbeliever, and there is nothing wrong in disgracing him because of his disbelief as Allah (swt) said: (and such as Allah shall disgrace, - None can raise to honour: for Allah carries out all that He wills.) (Hajj: 18). There is no doubt that the unbelievers are among those that Allah (swt) disgraced.

Fourth: The authority of those that see the permissibility of autopsy which made an analogy by digging grave to take out the snatched kafan is unacceptable because it is an analogy with difference.

Fifth: Autopsy on the corpse of a Muslim spoils a lot of obligation that shall be performed on the body after death, such as bath; clothe (kafan) and burial. Allah knows best.

5. Classifications of anatomy in Islamic Law

Anatomy is divided into three: First: Criminal anatomy: it is done to ascertain criminal allegation. Second: Medical anatomy: it is done for the purpose of knowing chronic diseases to take necessary measures to prevent them. Third: Education anatomy: It is the one for the sake of education. Below is the discussion of each of the three classifications with their shariah ruling.

First: Education Anatomy

This is rampant now in universities and colleges through which students learn anatomy to know the organs and their functions to produce skilled doctors, as it is imperative for the doctor before practicing his profession to learn how to do anatomy through dead bodies.

Fiqh Councils and Committees have extensively studied the rule of anatomy for the sake of education, and there are two conflicting great principles:

First: Sanctity of the corpse in shariah, and the emphasis on respecting it.

Two: The necessary interest related to anatomy in many cases.

Here, we quote the fatwas issued by educative bodies and some contemporary scholars, among these decisions are:

- 1- Resolution of the Islamic Fiqh Academy of the Muslim World League (Zuhaili, 1989). It decided during its tenth session held in Makkah from Saturday 24 Safar 1408 AH, 17 October 1987 to Wednesday 28 Safar 1408, 21 October, 1987: "That it is permissible to do autopsy of corpses for the purpose of medical education like the practice in medical schools". And some restrictions must be taken into account, which are:
 - a- If the corpse is for a known person, he must have authorized the autopsy before his death, or his heirs authorize it after his death, but autopsy should not be done on a person of infallible blood except when it is necessary.
 - b- The autopsy shall only be restricted when it is necessary to avoid tempering with the corpses.
 - c- Autopsy on women corpses shall only be performed by women, except in their absence.
 - d- And in all cases, it is compulsory to bury all parts of the body after the autopsy.

Sheikh Fawzan disagrees with the decision of the Academy, where it is mentioned: Some scholars disagree, among them: Salih ibn Fawzan ibn Abdullah Al-Fawzan where he said: "I do not agree with autopsy on Muslim corpse for the sake

of medical education, and I have a detailed objection on that” (Zuhaili, 1989). According to the resolution of the Islamic Fiqh Council of the Organization of Islamic Conference in Jeddah, it was stated: “Yes, Islam honoured human alive and dead, and hence forbade tempering with corpses and mutilating them, but the shariah permits the autopsy on corpses when it is necessary for education and expertise in medicine to prepare skilled doctors that benefit the Muslim community; thus, autopsy for the sake of education and medicine serves a noble purpose” (Zuhaili, 1989).

2- The decision of Council of Senior Scholars:

It has been mentioned: As for the third classification: That is autopsy for education purposes, given that the shariah came to ensure benefits and maximize them, and to block evils and minimize them, and to commit lesser evil to avoid the greater one, and if there is conflict between benefits, the best one shall be taken.

And given that autopsy of non-human from the animals does not suffice the need for human autopsy.

And given that autopsy has many benefits that appeared with the advancement of knowledge in the fields of medicine: The Council is of the view: That autopsy of human corpses is generally permissible, but given that Islam cares for the honour of a Muslim dead and alive; this is based on what Imam Ahmad, Abu Dawood and Ibn Majah reported from Aisha (ra): That the Prophet (saw) said: “Breaking the bones of a dead person is like breaking them while he is alive”.

And due to the fact that in autopsy there is a disgrace of his dignity, and since the necessity can be fulfilled by getting the impeccable dead bodies: The Council sees that only these kinds of corpses autopsy shall done on, and not on infallible dead bodies.

Second: Histopathology

This means: To know the reason of death in general, why this person died? It is not a charge or issue or education in faculties of medicine, but just to know the reason of death of a person, what are the ills and diseases that led to his death to take the necessary measure of medicine to prevent them and so on.

There is contention between the scholars regarding this:

(The correct view on this issue is that it is permissible when there is a right purpose, for example when someone is sick and there is fear that the disease may spread in the society for being a new disease that has not been dealt with before. The reason for that is that the public interest is preferred over the private interest, because protecting the society from diseases is public interest and the sanctity of the corpse is private interest, thus, the public interest shall be preferred over the private interest).

Sheikh Abu Bakar Abu Zaid is of the opinion that autopsy on Muslim corpse and verification of the diseases is not permissible (Abu Zaid, 1996).

Third: Criminal anatomy:

This is what is known as forensic today that looks into crime and the person, his way of death; was he strangled, or he was drowned, or was killed by bullet, did he die from the back or from the front? And how? This is a very important medicine in knowing crime and apprehending the criminals and it helps in knowing the offender so that crime and criminals can be dealt with; as without that there is a means, they can use to hide their crimes.

And the forensic can reveal the secrets of the offenders through autopsy to the corpse and the means used for the crime, and through knowing the personality of the dead.

It is said: Autopsy of corpses for the sake of detecting the crime, whenever there is a concealment in crime and the reason for death, and can the tool used for committing the crime kill, did he die as a result of that or not? The best view is that it is permissible, to protect false judgment and to protect the rights of dead, and to protect the right of community from the disease of attack and assassination, and to protect the blood of the accused from another angle; thus, achieving these interests superseded what surrounds autopsy from violating the sanctity of the corpse, and the rule of shariah of committing the lesser evil, and whatever leads to necessity is necessary (Abu Zaid, 1996).

Among the decisions of the Islamic Fiqh Academy of the Muslim League, in its tenth session held in Makkah, from Saturday 24 Safar 1408 AH, 17 October 1987 to Wednesday 28 Safar 1408, 21 October, 1987 is that: Autopsy on corpses is allowed for the following reasons (Kan'an, 2000):

Investigation in a criminal case to determine the causes of death, or the crime committed, that is when knowing the cause of death is not clear to the judge, and it appears that autopsy is the means to know the cause.

The scholars provided some conditions for this kind of autopsy, they are:

First condition: There must be a person accused for killing someone, but if there is no accused there is no need for autopsy.

Second condition: The need to perform autopsy on the corpse because of weak evidence, as the origin for autopsy is prohibition; it is not permissible because of the violation of the sanctity and mutilation. But if there is no need, like when criminal evidence is clear that the aggressor is so and so or he died a natural death, there is no need for autopsy.

Third condition: Permission of shariah judge

Fourth condition: There will be a doctor who is able to know the cause of the crime.

Fifth condition: If the heirs drop their right of claiming the blood of the offender, there is no need for autopsy.

Sixth condition: Ensuring that the corpse to be performed the autopsy on it is dead.

Seventh condition: The autopsy must be done by an expert doctor.

6. Ruling on buying corpse for the purpose of anatomy

As it is known that it is not easy to have access to corpses for the autopsy, especially in Islamic countries that respect the corpses, and therefore, this may be replaced by buying these corpses for education purpose and others. Is this transaction correct or not? (One of the requirements of transaction is that the seller must own the subject matter, or agent to sell it, because of the hadith of Hakim Ibn Hizam (ra) that the Prophet (saw) said: "Do not sell what you do not have").

These corpses do not belong to the seller, and not an agent to sell them for the owner; thus, it is not permissible to sell them because of the hadith. But it is possible to get these corpses through other means, and that is contracting with the one holding the corpses through lease, where the price will be for the exchange of work and search and transport money, and other peculiarities of lease; and the money would be given based on lease after a contract between the parties (Shanqiti, 1994).

But we need to point out that the need for autopsy can be filled by the corpses of unbelievers; it is not permissible to abandon them and use the corpses of Muslims, because of the sanctity of the Muslim alive and dead. The corpses of pagans and others from the unbelievers is affordable with the cheapest price; so long as there are abundant corpses of unbelievers, it is not allowed to abandon them for the corpses of Muslims because of their sanctity alive and dead; but the unbeliever has no dignity as he is disgraced alive and dead. Allah knows best.

7. Conditions that must be taken into account when performing autopsy

There are some conditions that must be taken into account when performing autopsies and the most important of these conditions are as follows (Kan'an, 2000):

- 1- Certainty that the person is dead before performing the autopsy; as autopsy before dead is harmful and it is forbidden by Islam.
- 2- Consent of the person before his death, or consent of his heirs after his death. Consent of the person or his heirs is not required for criminal autopsy because of the preponderant interest in this case; and the refusal of the relatives may neglect public or private rights.
- 3- The autopsy must be to the extent of the necessity and the need, in order not to temper with the corpses, and to cover genitalia.
- 4- Maximizing the sanctity of corpse and not disgracing it; it is not permissible to ridicule the body or play with the organs or throwing it in autopsy rooms, and unfortunately this is what is happening today in some university hospitals.
- 5- Returning all the organs to the corpse after the autopsy and burying the corpse.
- 6- Choosing fallible corpses on infallible ones; except if there is an interest in the autopsy of the infallible corpse. The fallible corpse is of different degrees; the corpse of harbi comes first, then apostate, then a person to be punished with hadd (capital punishment). In case there is no fallible corpses the autopsy on infallible corpse is allowed but the permission of heirs or permission of the dead person before his death is required, or else the autopsy shall not be done.
- 7- If there is a permissible alternative to autopsy, then it must be abandoned, for example where autopsy on animal will suffice.
- 8- Separating female and male students during the autopsy.
- 9- There is nothing wrong for medical student to perform autopsy on women corpses in the course of study to become knowledgeable and experienced, but in practice, only female doctors should perform autopsy on women, but if there are not available female doctors, then male doctors can perform as an exception.

8. Conclusion

Results of the study:

We have reached to various educative results through our study on rulings on anatomy under the shariah; the most important ones are as follows:

First: Islam is valid for all time and place and the shariah is comprehensive for all the needs of people.

Second: One of the great principles that Islam maintained is that of the inviolability of man, his body and blood, and that it cannot be touched except with the provision of the shariah; and that man must be protected and not to temper with his body for unbeneficial things.

Third: Anatomy is very necessary in our time, especially anatomy for education purposes which doctors teach the human body through it, which in turn helps them in treating people.

Fourth: Criminal anatomy is important to know the way in which the deceased was killed, and it has a lot of benefits, and through it innocence of someone could be established or the way a person was killed.

Fifth: Histopathology is also important; so as to find out types of diseases that affect human which can be prevented by knowing this disease.

Sixth: Necessity shall be estimated based on its extent in the three types of anatomy; it is not permissible to temper with corpses without desirable benefit.

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