

Bismillah Arrahmani Arrahim

Praise be to the Lord of the Universe, and peace and blessings upon our Master Muhammad, last of the Prophets, and upon his Family and Companions.

RESOLUTION N° 90/7/9

CONCERNING
ACQUIRED IMMUNO-DEFICIENCY SYNDROME (AIDS)
AND FIOH RULES APPLICABLE TO IT'

The Council of the Islamic *Fiqh* Academy, holding its Ninth Session in Abu Dhabi, State of the United Arab Emirates, from 1 to 6 Dhul Qi'da 1415H (1- 6 April, 1995)

Having examined the research papers forwarded to the Academy on the subject of Acquired Immune-Deficiency Syndrome (AIDS) and the *Shari'a* rules applicable to it"

Having listened to the debate around the subject,

RESOLVES

FIRST: **Isolation of the patient**

Medical data available today affirm that contagion with the human virus of Acquired Immune-Deficiency Syndrome (AIDS) does not take place through cohabitation, ordinary contact, breathing, insects bite, sharing of food, drink, swimming pools, seats, table-ware, or any of the other aspects of ordinary cohabitation. Rather, contagion can take place only through one of the following vehicles:

1. Sexual contact in any form.
2. Transfusion of contaminated blood or of its by-products.
3. Use of contaminated needles, especially among drug-addicts, as well as shaving blades.
4. Transmission from an affected mother to her child during

pregnancy or at birth.

Given the above, it emerges that, if there is no risk of contagion, isolating victims from their healthy peers is not a necessity in the eyes of *Shari'a* and the patients can be dealt with in accordance with the approved medical procedures.

SECOND: Deliberate Transmission of the Disease

Transmission of Acquired Immunodeficiency Syndrome (AIDS) to a healthy individual, in any deliberate manner is Haram (*Shari'a* proscribed) and is considered among the major evil sins and transgressions. It also calls for worldly punishment which may vary in accordance with the seriousness of the act and its impact on the health of individuals and society.

If the willful perpetrator's aim is to spread this vicious disease in society, then this act is considered as 'hiraba' a (criminal act directed against humanity) and a vicious act of evil-spreading, which warrants one of the sanctions stipulated in the verse of 'hiraba': *"The punishment of those who wage war against God and His Apostle, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter;"* (Surat -Al Ma'idah - Verse.36)

If his intention, in deliberately transmitting the disease, was to contaminate a specific person, and if the contamination has indeed been effected but the victim of the transmission is still alive, the deliberate transmitter is subjected to appropriate "Ta'azir" sanction (dissuasive punishment as may be decided by Sharia'a judges). In case of the victim's death, then death penalty is considered for the transgressor. In case, however, the transgressor's intention was to transmit the disease to a specific person but contamination does not take place, the transgressor is liable to Ta'azir penalty.

THIRD: Aborting a mother affected by Acquired Immunodeficiency Syndrome (AIDS)

Considering the fact that transmission of Acquired Immune-Deficiency Syndrome (AIDS) only takes place, in the overwhelming majority of cases, at an advanced stage of pregnancy (after the fetus is invested with life) or during delivery, it is therefore not permissible to abort the fetus, in Shari'a view.

FOURTH: The right for a mother affected by Acquired Immunodeficiency Syndrome (AIDS) to have custody of and to suckle her healthy child.

In as much as current medical information indicate that there is not certain danger entailing from a mother, victim of AIDS, keeping her child in her custody and suckling it, such a case being comparable to the case of ordinary association and cohabitation, there is no Shari'a objection to the mother keeping her child in her custody and suckling it, unless there is a medical report to the contrary.

FIFTH: The right for a healthy spouse to seek separation from a partner affected by Acquired Immunodeficiency Syndrome (AIDS).

A wife may seek separation from the affected husband, considering that the Acquired Immunodeficiency Syndrome (AIDS) is a contagious disease which is transmitted mainly through sexual contact.

SIXTH: Considering acquired Immunodeficiency disease (AIDS) as a terminal disease.

Acquired Immunodeficiency disease is considered as terminal in the Shari'a views, if all its symptoms are present and the victim is no longer capable of carrying out ordinary living, and death is imminent.

AND THE COUNCIL RECOMMENDS :

First: The issue of "the right to conjugal intercourse" is deferred pending further study.

Second: The need to keep up the checking system, during the Haj season, to ensure that pilgrims are free from any contagious disease, particularly Acquired Immunodeficiency Syndrome (AIDS).

Verily Allah is All Knowing