

Bioethics Links

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cbec Activity Report by Dr. Aamir M. Jafarey

Upcoming Events:

1. **National Seminar on "Stem Cell Research and Cloning: Science, Ethics and Religious Perspectives," August 13, 2005:** This will be a half day event and talks on the scientific, ethical and religious perspectives of stem cell research and cloning. The seminar will be open to general public. The three speakers will be Dr. Syed Qasim Mehdi (Director General, Biomedical and Genetic Engineering Labs, Islamabad), Dr. Tahir Shamsi (Consultant Haematologist and Transplant Physician, Bismillah Taqi Institute of Health Sciences, Karachi) and Dr. Farhat Moazam (Professor and Chairperson, Centre of Biomedical Ethics and Culture, Karachi.). Presentations will be followed by a panel discussion in which panelists will respond to questions put forwards by the audience.

2. **International Conference and Workshop, "Fundamentals of Research Ethics: International and Regional Perspectives," November 28 and 29, 2005:** This event will aim to attract physicians, nurses, ethics committee members, researchers including those connected to pharmaceutical industry, medical administrators, medical educationists, social scientists, journalists and lawyers.

Plenary talks will be held in the mornings followed by facilitator led small group discussions on composite cases in the afternoon of Day 2. A panel of speakers has been invited to give these talks. These include Dr. Dan Wikler (Professor of Ethics and Population Health) and Dr. Richard Cash (Senior Lecturer) from Department of Population and International Health, Harvard School of Public Health, Boston, USA; Dr. Alexander Morgan Capron (Professor and Director, Department of Ethics, Trade, Human Rights, and Health Law) and Dr. Luc Noel (Coordinator, Clinical Procedures) from World Health Organization, Geneva, Switzerland. Dr. Qiu Renzong (Professor of Bioethics and President of the 8th World Congress of Bioethics, Beijing, China) will deliver the keynote address entitled "Moral Diversity."

A unique feature of this workshop will be its distinctive regional flavor. Five SAARC countries will be represented by prominent bioethicists from India, Bangladesh, Nepal, Sri Lanka and Pakistan who will present country reports of the status of bioethics in their respective countries and will also participate in the workshop.

CBEC Outreach:

INTERNATIONAL:

1. **UNESCO organized First Bangkok Bioethics Roundtable, September 2005:** One of the priority areas

for UNESCO is the ethics of science and technology, and the roundtable will hold discussions on relevant areas. Dr. Aamir Jafarey will be presenting an invited paper at the meeting.

2. **"Human Genetic and Reproductive Technologies: Comparing Religious and Secular Perspectives," February 6-9, 2006 in Cairo, Egypt:** This International Conference is being organised by Islamic Organization for Medical Sciences (IOMS) in collaboration with Islamic Educational, Scientific and Cultural Organization (ISESCO), and the Eastern Mediterranean Regional Office (EMRO). Dr. Farhat Moazam has been invited to deliver a talk.

3. **Conference on "Islam and Bioethics: Concerns, Challenges and Responses," March 2006 in Pennsylvania State University:** Members of the organising committee who met in Berlin in June included Jonathan Brockopp (Penn State University), Thomas Eich (Universität Bochum), Ersilia Francesca (Università Studi di Napoli "l'Orientale"), Ilhan Ilkilic (Universität Mainz), Birgit Krawietz (Universität Tübingen), Vardit Rispler-Chaim (Haifa University), and Farhat Moazam (CBEC).

4. **International Association of Bioethics (IAB), World Congress 2006 Beijing, China:** In May, IAB members recommended an EMRO focused session for the forthcoming IAB World Congress in Beijing. CBEC has been asked by EMRO-WHO to spearhead this special symposium which will be entitled "Bioethics and the EMRO Region: Learning from one another." Dr. Farhat Moazam is serving as the principal organizer.

NATIONAL:

1. **Goethe Institute Karachi:** An International Conference on "Common Values between the West and Islam" was held from June 15 to 17, 2005 where Dr. Aamir Jafarey presented a paper "Respect for Human Dignity: A Physician's Reflections on the Process of Informed Consent."

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cbec faculty & Staff

Dr. S. Adibul Hasan Rizvi
Professor and Director, SIUT

Dr. Farhat Moazam
Professor and Chairperson

Dr. Anwar Naqvi
Professor and Coordinator

Dr. Aamir M. Jafarey
Assistant Professor

Dr. Syeda Kauser Ali
Educational Consultant

Mr. Aamir Laasi
Admin. Assistant/Webmaster

g National Academy of Sciences Guidelines for Human Embryonic Stem Cell Research

In April 2005, the National Academy of Sciences in USA released a document entitled "Guidelines for Human Embryonic Stem Cell Research" formulated by a Committee of the National Research Council.¹ The committee was chaired by Dr. Richard Hynes of the Massachusetts Institute of Technology and co-directed by Dr. Jonathan Moreno from the University of Virginia. The report focuses on ethical and legal issues related to the derivation, banking and use of human embryonic stem cell (HESC) lines in research, and recommends broad principles for responsible practice in this rapidly evolving field. The guidelines cover research from existing HESC lines as well as those derived from:

1. Left over blastocysts from IVF clinics;
2. Blastocysts made specifically for research and;
3. Somatic cell nuclear transfer into oocytes.

In view of the complexity of this research a major recommendation is the necessity for special review bodies both at national and institutional levels specifically to oversee and regulate all aspects of stem cell research. Within institutions such a committee should be

A report by Dr. Farhat Moazam

an addition to and not a substitution for the Ethics Research Committee. Other recommendations include greater attention and concern of the scientific community to ethical and legal principles of informed consent, and protection of confidentiality of donors of sperms, oocytes and somatic cells.

The report concedes the need for stem cell research that involves seeding of "nonhuman animals" with HESC but recommends that such chimera not be allowed to breed. Moreover, such research not be permitted at this time using nonhuman primates (monkeys and apes).

In addition, no research should be allowed that involves in vitro culture of the human embryo for longer than 14 days or once the primitive streak (connected to the development of the nervous system) has begun to form.

Although the guidelines are nonbinding the committee hopes that its recommendations will be accepted in private and public scientific sectors, and by the public, as means of ensuring that HESC research is being conducted in an ethical manner.

1. Executive summary of guidelines available at <http://www.nap.edu>

CBEC to offer Postgraduate Diploma in Biomedical Ethics: January 2006

CBEC will offer a one year Postgraduate Diploma in Biomedical Ethics beginning in January 2006. This will follow an innovative, on-campus cum off-campus format aimed at attracting mid career level professionals interested in enhancing their knowledge in ethics, and who wish to initiate biomedical ethics activities in their institutions. Accreditation process with the Karachi University is underway. Participating in curriculum development is Dr. Syeda Kauser Ali who has recently joined CBEC and SIUT as Educational Consultant. She brings with her a wealth of experience in the field of medical and adult education and we are delighted to have her on board!

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2. Karachi Bioethics Group: The CBEC faculty participated in the July meeting of the newly established Karachi Bioethics Group held at Patel Hospital, Karachi.

3. Fatima Memorial System (FMS): The FMS Medical College Lahore has requested CBEC to run a workshop on Research Ethics at their institution in August 2005 and help establish their Ethical Review Committee.

4. Bismillah Taqi Institute of Health Sciences (BTIHS): CBEC has received a similar request from BTIHS to help their Ethical Review Committee. CBEC will be conducting a workshop at BTIHS for their committee members shortly.

5. Aga Khan University Research Ethics Certificate Course: CBEC faculty will be participating as course faculty in a research ethics course to be offered at AKU.

In SIUT:

• **Socratic Hour:** A group of interested professionals and lay persons, led by an eminent thinker, meets every other month at

CBEC-SIUT for discussions on wide ranging topics. The first two sessions were led by Dr. Manzoor Ahmad, well known Professor of Philosophy. The first session focused on the life and philosophy of Imam Al-Ghazali; the second one involved a discussion on the historical tensions between Islam and democracy.

• **CBEC Forum:** The Forum comprises SIUT staff and faculty sharing an interest in bioethics. The objective is to provide an opportunity for discussion and analysis of ethical issues and dilemmas facing contemporary medical practice and research. The Forum meets every month for 90-minutes over lunch.

• **Ethics Rounds:** This is a monthly activity initiated for SIUT trainees to analyze and resolve commonly encountered ethical issues in their clinical practice.

• **Ethics and Culture Hour:** This activity was started last year. The Ethics and Culture Hour held in June featured Dr. Iftikhar Salahuddin who made an eloquent presentation entitled "Physicians Sans Frontiers" describing physicians who have excelled in areas beyond medicine.

Islamic Perspectives on Abortion by Dr. Farhat Moazam

Islam does not have a central interpretive authority akin to the Catholic Church thus a diversity of opinions can be found on the issue of abortion within historical and contemporary *fatawa of fuqaha*. Nevertheless, broad consensus exists in many areas as all jurists rely on the Quran and the *Sunna* as primary sources, and utilize a common methodology to develop arguments.

The Quran and Hadith

Two verses of the Quran refer in detail to the stages of fetal development (22:4 and 23:12-14). Both describe 3 stages in the progressive development of the fetus beginning from a drop or life germ (*nutfah*), progressing to congealed blood or a leech (*'alaqa*), and then to a lump or fetus (*mudgha*). The Quran refers to the creation of 'another creature' (*khalqan akharan*) following the completion of these 3 stages but does not mention the duration of each.

Sahih Bukhari and *Sahih Muslim*, considered to be among the best of the six authentic collections of Hadith, report the Prophet as describing each of the 3 stages lasting for 40 days, and at 120 days of gestation, "an angel is sent to breathe the soul" into the fetus. This point in gestation is unanimously interpreted by Muslim jurists as the time of "ensoulment" of the fetus. This Hadith and the Quranic verses play a central role in juristic interpretations of the permissibility or prohibition of abortion under Islamic Law.

Schools of Jurisprudence (al-Madhahib al-Fiqhiyya)

The Quran and Hadith repeatedly affirm the sanctity of life, and there is agreement that aborting a fetus is a reprehensible act. There is a consensus that the fetus is a separate entity from the mother, and juridical rulings reflect that it matures progressively in "personhood" and legal rights from the time of conception to birth. But keeping medical and social realities of the *umma* in mind, jurists have debated exceptional circumstances under which abortion may be considered permissible.

1. Abortion beyond 120 days of gestation (post-ensoulment). The vast majority of jurists from Sunni and Shi'i Schools of Jurisprudence categorically prohibit this practice. Exceptions are allowed in instances when the life of the mother is at stake; this is based on the juristic principles that "the mother is the origin or root, whereas the embryo is a branch," and that "a greater evil (in this case the death of the mother) should be warded off by the lesser evil (the death of her fetus)."

A small minority of jurists allow abortion if in the opinion of "expert" physicians the fetus is severely deformed or not likely to survive following birth.

2. Abortions prior to 120 days of gestation. Considerable differences of opinion can be found both within and between different Schools of Jurisprudence.

- **Hanafi School** (Sunni Muslims worldwide, Turkey, Asian subcontinent including Pakistan): The majority opinion holds that abortion is permissible prior to 120 days if justifiable reasons exist.

A small minority has ruled that abortion is permissible on the demand of husband and wife; a few allow it with the wife's permission alone for valid medical reasons but prefer permission from both spouses.

Valid reasons include ill health of the mother, risks of difficult or obstructed labor, complicated pregnancies in the past requiring another Caesarian section for delivery, and if the woman is still suckling a baby and the father does not have means to procure milk for another offspring. In this case, the survival of the existing child is given precedence over that of the fetus. Abortions to avoid economic hardships are not condoned by most jurists, and abortion as means of birth control is condemned by all.

In the last decade, a few *fatawa* have been given permitting abortion following rape or incest if in the opinion of physicians the pregnancy will result in mental and psychological harm to the mother. It is important to note that Muslim jurists rely on physicians to assess medical indications for aborting a woman.

- **Maliki School** (predominantly Egypt, Spain, Hijaz, Sudan, North and West Africa): The jurists of this School are generally the most conservative and a majority prohibits abortions even in the first 40 days of gestation. This is based on a view that as the destiny of all conceived embryos is ensoulment, the fetus must not be destroyed at any stage.

- **Shafi'i School** (Egypt, Iraq, Syria, East Africa, parts of Sudan, some Asian countries including Malaysia): The jurists are divided in their opinions. Some allow abortion in the *nutfah* and *'alaqa* stages

"Ikhtilafi ummati rahma"
(Differences within my community are a mercy)
Hadith of Holy Prophet (PBUH)

(first 80 days); a few, including Imam al-Ghazali who is liberal in his indications for contraception, prohibit it absolutely.

- **Hanbali School** (Saudi Arabia and scatterings in other Muslim countries): A majority of jurists allow abortion only in the first 40 days; a minority permits it up to 80 days of gestation.

- **Zaydi (Shi'ite) School** (Parts of Yemen and Iran): Jurists generally allow abortion prior to 120 days using in their reasoning an analogy to *al-azal* (coitus interruptus) which is permissible.

- **The Imami or Ja'fari (Shi'ite) School** (Largest Shi'i School with followers in Iran, Iraq, Syria, South Lebanon, Kuwait, Afghanistan, Pakistan and India): Jurists are generally among the most conservative on this issue and a majority of them do not permit abortion at any stage.

Points for Reflection

The variety of legal opinions on abortions, set within a framework of interpretations of Quran and *Sunna*, offer a collage rather than a uniform picture. This diversity of views, extending from the largely permissive stance of the Hanafi School to the relatively restrictive views of the Maliki School, is nevertheless considered in conformity with Islamic Law. It reflects the well known Hadith of the Prophet in which he is reported to have said, "The difference of opinions found within my *umma* is a blessing."

Deliberations about permissibility or prohibition of abortions are not couched in a language of rights of the mother versus the fetus; they center on the potential of harm to the mother, predominantly physical

Legal Aspects of Abortion

An International Overview by Ms. Sharmeen Ali Khan *

Abortion is defined as terminating pregnancy before the fetus is viable or able to sustain life independently. Abortion was considered illegal almost all over the world till the middle of the last century. However, in recent years in most of the developed world, as in certain developing countries, laws restricting abortion have been relaxed.

In about two thirds of the countries of the world, abortion may now be performed in relatively legitimate circumstances. Presented below is a brief, legal synopsis.

In 1973, the US Supreme Court established the current law on abortion via the Roe v. Wade decision. This focused on privacy and the right of a woman to terminate her pregnancy during the first trimester, and her "right to choose." This right may not be forbidden even by an act of Congress.

In UK until 1938, abortion was prohibited. However, after the famous Bourne case, whereby Dr. Aleck Bourne was acquitted after performing an illegal abortion on a rape victim, it became legal to perform abortions on mental health grounds. This case was adopted as a legal precedent in most Commonwealth countries.

Italian law allows women to get an abortion for health, social or financial reasons within the first ninety days of the pregnancy, provided a doctor's certificate is obtained and the woman undergoes counseling. Abortion after 90 days is permitted if continued pregnancy endangers the life or physical or mental health of the woman or if the fetus is deformed.

In Belgium abortion is legalized since 1990 and the law allows a woman, whose condition is judged by two doctors to be under distress, to obtain an abortion. The term "in distress" may be interpreted to include not just physical, but also mental distress. France also has extremely liberal abortion laws.

China, has the world's most open policy on abortion and abortion is free upon the request of the woman. India, another country grappling with over population, has legalized abortion since 1971.

Islamic Countries:

In Zimbabwe, the Termination of Pregnancy Act of 1977 prohibits abortion except in official cases of rape or incest, fetal anomaly, or when the woman's life is endangered by the pregnancy.

Here is an overview of the legal situation regarding abortion in some of the Islamic countries. In Bangladesh, although abortion is

prohibited, doctors perform procedures without a pregnancy test in the name of "menstrual regulations". In this case, since pregnancy is not clinically confirmed, the law is circumvented.

In Indonesia, the penal code prohibits abortion; however, the health law of 1992 leaves the status of abortion in the Indonesian law ambivalent.

Abortion is illegal in Iran except to save the life or physical or mental health of a woman, or in cases of fetal impairment. In Malaysia abortion is allowed if pregnancy poses physical or mental risks to mother's health. In most of the Arab world, abortion is prohibited unless the mother's life is in danger and in some cases only with the express permission of the father.

The Pakistan Penal Code (PPC):

For the purpose of criminalizing abortion the PPC utilizes two stages of pregnancy:

Section 338 of the Pakistan Penal code provides that "Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her, is said to cause *Isqat-i-Haml* and the punishment is provided by section 338 which states that anyone who causes the *Isqat-i-Haml* is liable to a punishment of three years if the abortion is performed by the woman's consent, otherwise a maximum of ten years."

Abortion in the earlier stage of pregnancy is not a crime if carried out to provide necessary treatment. However, the term "necessary treatment" is not defined and open to interpretation.

Section 338 B and C of the Pakistan Penal Code provide that termination of a child whose limbs have been formed for any other reason than to save the life of the mother shall be liable to pay *Dyat* (blood money) and such person is also liable to be punished for up to seven years imprisonment.

In view of the provision stated above, abortion is only permitted to save the life of the mother after the first trimester. To that extent the law is in line with the majority of the countries in the world which restrict abortion till the first trimester.

From the above comment it is clear that at present almost two-thirds of the world's women reside in countries where abortion may be obtained on request or for a broad range of social, economic or personal reasons. However, the majority of women who seek abortion still get it in the most covert circumstances.

* Ms. Sharmeen Ali Khan, Legal Affairs, Pfizer Pharmaceuticals

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but more recently emotional and psychological, and the consequences of these on the family unit of which she is a component. Expertise of responsible healthcare professionals and their familiarity with the existing realities of the woman and her family, assume a critical role in decision making by contributing the *context* for pragmatic application of *textual* principles provided by Muslim jurists.

Suggested Reading: Abdel Rahim Omran, *Family Planning in the Legacy of Islam*, (London, New York: Routledge Publishers, 1992).

Information

Centre of Biomedical Ethics and Culture,
5th Floor, Dewan Farooq Medical Centre,
Sindh Institute of Urology and Transplantation, Karachi, Pakistan
Phone: (9221) 2726338 (Direct) 9215718 (Ext. 2193)
Fax: (9221) 2726338 : Email: bioethics@siut.org