

An Islamic Basis for the Use of Vaccines with Impermissible Ingredients

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Background on Vaccination

A vaccine is a “product that stimulates a person’s immune system to produce immunity to a specific disease, protecting the person from that disease”¹. Vaccination is the process of administering a vaccine, most commonly by an injection, with the immediate goal of achieving “active immunity” in the recipient of the vaccine. Active immunity involves the “stimulation of the immune system to produce antigen-specific humoral (antibody) and cellular immunity”, and can last for many years, sometimes even a lifetime². Vaccination benefits the immunized patient directly and also indirectly benefits unimmunized people through “community immunity”. This occurs when there are enough people who are immune to an infection to decrease the risk of its transmission, and it also protects people who cannot receive vaccines due to young age or other contraindications³.

Studies have shown that vaccination is one of the most effective preventative health measures. After routine childhood vaccines were introduced, the number of cases for most vaccine-preventable diseases has dropped by over 90% in the United States⁴. According to statistical models, for children born between 1994 and 2013, it is estimated that routine vaccination will prevent 322 million illnesses, 21 million hospitalizations, and 732,000 deaths over the course of their lifetimes⁵.

Issue: Impermissible Ingredients in Vaccines

Based on the above findings the benefits of vaccination are clear. In the United States, routine vaccination is required for public-school children in all 50 states, with possible exemptions varying by state.⁶ In certain industries such as healthcare, employees are required to receive vaccination for their own protection as well as the protection of patients. However, many vaccines contain ingredients that are considered impermissible for Muslims to consume, regardless of whether they are ingested or injected. Some examples are porcine gelatin, calf serum and material from growth mediums that include human, chicken, and monkey cells⁷. If a permissible version of a particular vaccine is not available, then a question arises: is it permissible for a Muslim to receive that vaccine, given that he or she does not currently have that disease and is not guaranteed to be infected by it in the future?

Principle: Necessity Permits the Unlawful

A general principle in Islamic law is that: "الضرورات تبيح المحظورات", or “necessity permits the forbidden”, to the extent of the need⁸. Preservation of health and safeguarding of possessions are considered to be a necessity (ضرورة), and this includes protection from serious illness and death. Something that is otherwise unlawful can be allowed to occur

when a person *fears* that his health or possessions would be harmed, even if he does not have absolute certainty the harm will actually occur. In other words, the expectation of a particular outcome (غلبة الظن) is considered to be sufficient. According to the principles of Islamic law, this “expectation” is simply defined as thinking that an outcome is more likely to occur than not occur. In other words, if there is greater than a 50% expectation that a particular outcome will occur, then this is considered to be “غلبة الظن”⁹.

For example:

- If a person is sick and (based on his experience or on the advice of a doctor) he expects to get worse if he fasts during Ramadan, he would be excused from fasting that day and can make up the fast after Ramadan.¹⁰
- If a person is sick and he expects (based on his experience or the advice of a doctor) that performing wudu would make his sickness worse or prolong it, he can perform tayammum¹¹
- A person performing salah must break his salah if he fears that a blind person may fall into danger and he is able to *prevent* that person from falling into harm.¹²
- A person performing salah can break his salah if he fears that a thief will steal his possessions if he were to remain busy in prayer¹³

The Importance of Avoiding Populational Harm

These examples apply to the preservation of an individual’s health and safeguarding of possessions. In each case, the threat of harm to an individual (ضررخاص) permitted something that is normally unlawful. According to the principles of Islamic law, the preservation of populational health and wealth is even more important and emphasized. Therefore, avoiding populational harm is given preference to avoiding harm to an individual¹⁴. There are numerous examples in which something that is otherwise unlawful and causes harm to an individual is allowed or even required to occur in order to preserve the health and wealth of (i.e. prevent harm to) a group of people¹⁵. This applies even when there is an expectation (غلبة الظن) of some populational harm, not only when the harm is already occurring or is certain to occur.¹⁶ Examples include:

- Forcing landowners to create a dam around a river on their property when there is fear that the water will flood and harm other people^{17, 18, 19}
- Putting restrictions on the type of business transactions that a person can engage in when it is feared that he will harm others by his reckless spending habits, cheating or inability to conform with rules of Islamic law²⁰
- Preventing a doctor from practicing or a judge from ruling due to their ineptitude in order to prevent potential harm to others

- Forcibly taking down the wall of a privately-owned building when the wall is leaning on a public path and there is fear that it will collapse onto the path and harm people²¹
- Forcibly selling the possessions of a person in debt in order to avoid continued harm to those whom he owes money ²²
- Forcibly selling the food of a person who is hoarding it in times of famine in order to aid the general population, even if he refuses to sell it²³

Application of these Principles to Vaccination

The examples above illustrate the following principles of Islamic law:

- 1) Necessity permits the unlawful, to the extent of the need
- 2) Preservation of health is considered to be a necessity, therefore avoiding serious threats to health is also considered to be a necessity
- 3) An expectation of harm is sufficient to be considered as a threat to health, defined as being more likely than not that the harm would occur (greater than 50% expectation).
- 4) Based on #2 and #3, an expectation of harm can be considered necessary to avoid and therefore can allow for the unlawful to be permitted when there is no permissible alternative
- 5) The preservation of populational health is emphasized more than the preservation of individual health

Based on these principles, we have seen that in order to prevent a potential harm to the larger population (ضرر عام), a subset of the population is subjected to something that is normally unlawful (ضرر خاص). These principles can be applied to determine if Muslims can use vaccines when there is only an impermissible version of the vaccine available. If it is determined that a necessity (ضرورة) exists, then this vaccine would be administered to a portion of the population in order to prevent harm (in terms of morbidity/mortality) to the general population. In other words, something that is unlawful and involves consumption of impermissible ingredients (ضرر خاص) would be permitted to be used in order to prevent harm to the greater population (ضرر عام) if necessity is established.

Also, as in the examples discussed, there is an *expectation* (غلبة الظن) that the harm will occur, but not certainty. This expectation of harm is based on the known epidemiology of the infection and on clinical trials. And as in the examples above, the use of something that is unlawful is only allowed to the extent of the need. In the case of vaccination, if a version of the vaccine with permissible ingredients becomes available, then it would no longer be necessary to use versions with impermissible ingredients to achieve immunization. In that case, Muslims would be required to only use the version with

permissible ingredients. This is in line with rulings given by contemporary Islamic scholars stating that vaccines with impermissible ingredients can be used when there is no permissible alternative if there is a *need* to use the vaccine.

Variables to Consider for an Infectious Disease and its Vaccine

In order to apply these principles to an infectious disease, it is necessary to establish that there is a necessity (ضرورة) to be immunized from it. Multiple variables need to be considered in order to establish this, such as:

1) Morbidity and Mortality

This data needs to be analyzed in order to understand the level of necessity (ضرورة) for immunization from that infection. The examples discussed earlier do not mention a specific number of people that need to be saved from death or illness, but rather stress the importance of preventing harm to a group of people. In these examples, only a small group of people was threatened compared to the general population, such as in the case of a structure being removed if an unstable wall threatens people passing by, and this was still considered to be potential populational harm (ضرر عام). In the case of infectious diseases, medical data needs to show that there is a significant impact on the morbidity and mortality of the population, such as serious illness requiring hospitalization or resulting in death.

2) Population-Specific Data

The level of risk to the general vs specific populations needs to be analyzed. In some cases, the level of morbidity and mortality may not affect a significant proportion of the general population but may be higher in a subset of the population. An example would be the pneumococcal vaccine for adults, which is recommended for ages 65 and above and those with certain chronic medical conditions²⁴. In these subsets of the population, there is a greater prevalence of and risk of complications from the infection compared to healthy adults under 65. Therefore, the data may show that necessity (ضرورة) for the vaccine is limited to a subset of the population.

3) Effectiveness of the Vaccine

Data on the impact of the vaccine on reducing the morbidity and mortality of an infection needs to be analyzed. In the examples we have discussed, an unlawful action can be allowed due to necessity only because it is expected to prevent a harm. For this to apply to a vaccine, data needs to support that there is a significant decrease in the morbidity or mortality from the infection that is immunized against.

Example: Data for Routine Childhood Vaccinations

Routine childhood vaccination under the “Vaccines for Children” program began in 1993 and initially included vaccines for diphtheria, tetanus, pertussis, polio, Haemophilus influenzae type b disease, hepatitis B, measles, mumps, and rubella. Five additional vaccines were later added to the program: influenza, hepatitis A, varicella, pneumococcal disease, rotavirus. The program provides cost-free vaccines to children in the United States who lack health insurance or are otherwise unable to pay for vaccines²⁵. Data was analyzed for vaccines administered through this program, and as mentioned above, statistical models estimate that for children born between 1994 and 2013, 21 million hospitalizations and 732,000 deaths will be prevented during their lifetimes. Data for each individual infection is presented in the table below, with cases measured in the thousands:

(Table is reproduced from MMWR 2014 Apr;63(16):352-5.)

TABLE. Estimated number of illnesses, hospitalizations, and deaths prevented by routine childhood immunization for selected vaccine-preventable diseases among children born during the Vaccines for Children era – United States, 1994–2013			
Vaccine-preventable disease*	Cases prevented (in thousands)		
	Illnesses	Hospitalizations	Deaths
Diphtheria	5,073	5,073	507.3
Tetanus	3	3	0.5
Pertussis	54,406	2,697	20.3
<i>Haemophilus influenzae</i> type B	361	334	13.7
Polio	1,244	530	14.8
Measles	70,748	8,877	57.3
Mumps	42,704	1,361	0.2
Rubella	36,540	134	0.3
Congenital rubella syndrome	12	17	1.3
Hepatitis B	4,007	623	59.7
Varicella	68,445	176	1.2
Pneumococcus-related diseases†	26,578	903	55.0
Rotavirus	11,968	327	0.1
Total	322,089	21,055	731.7

* Vaccines were considered as preventing disease for birth cohorts born in all years during 1994–2013 except for the following, which were only in use for part of the 20-year period: varicella, 1996–2013; 7-valent and 13-valent pneumococcal conjugate vaccines, 2001–2013; and rotavirus, 2007–2013.

† Includes invasive pneumococcal disease, otitis media, and pneumonia.

Applying the principles discussed earlier, we first need to establish that there is a necessity (ضرورة) for immunization from diseases for which vaccination with impermissible ingredients is being considered. As stated above, this can be established by data on morbidity and mortality, both of which can be derived from the table above. Serious illness requiring hospitalization and deaths represent morbidity and mortality from these infections that would be expected to occur (غلبة الظن) if the vaccine was not administered.

We also need to establish that the vaccine is effective in removing the expected harm from the infection. The data above can be used for this purpose as well, as it represents morbidity and mortality that is expected to be *prevented* by the use of each vaccine.

We also need to determine if there is a need to use a form of a vaccine that has Islamically impermissible ingredients. This can be determined by analyzing the ingredients of each form that is available on the market and accessible to patients. If a form of the vaccine with permissible ingredients is available, then there would be no need to use the one with impermissible ingredients. For example, analysis of influenza vaccines for the 2019-2020 flu season found that permissible forms are available in the United States²⁶. Therefore, impermissible forms cannot be used by Muslims unless an impermissible form is specifically required in individual circumstances.

Some vaccines are only available in combination with others. In that case, the combined data for the infections that are immunized against should be considered.

Below are some examples of infections for which necessity (ضرورة) can be established based on the data presented. In each case, the data leads to an expectation (غلبة الظن) of significant populational harm (ضرر عام):

- 1) Diphtheria, Tetanus, Pertussis: the vaccine for diphtheria is only available in combination with either tetanus or tetanus and pertussis for young children in the United States²⁷. In combination, these infections are expected to cause approximately 7.8 million hospitalizations and 528,000 deaths if the vaccine is not given.
- 2) Measles, Mumps, Rubella: the vaccines for these infections are only available in combinations in the United States²⁸. In combination, these 3 infections are expected to cause approximately 144 million hospitalizations and 58,000 deaths if the vaccine is not given.
- 3) Hepatitis B: this infection is expected to cause 623,000 hospitalizations and approximately 60,000 deaths if the vaccine is not given
- 4) Pneumococcus-related diseases: Infections in the form of pneumonia, otitis media and invasive disease are expected to cause approximately 900,000 hospitalizations and 55,000 deaths if the vaccine was not given

Once necessity (ضرورة) is established for immunization from these infections, then further investigation into the available forms of the vaccines for these infections can be done to determine if Muslims have permissible options, or if an impermissible form must be used, as discussed above.

Conditions for Applicability

For a vaccine that contains impermissible ingredients to be considered permissible to use, the following conditions must be met:

- 1) **Need for immunization from the infection**- this can be established based on epidemiologic data on morbidity and mortality
- 2) **Definition of the Target Population:** is the need for immunization established for the general population vs a subset of the population?
- 3) **Effectiveness of Vaccine:** The vaccine needs to have a significant impact on the morbidity/mortality of the target population
- 4) **Lack of availability of a permissible alternative** – if a form of a particular vaccine is produced and is accessible for the target population, then there would no longer be a necessity to use the impermissible form

Limitations

This work is not meant to be a legal verdict (or fatwa) regarding the permissibility of any specific vaccine. Rather, it provides a legal basis upon which a potential verdict can be given. A verdict can be given for a particular vaccine based on analysis of medical data and based on recommendations of medical personal in consultation with Islamic scholars

Conclusion

Based on the principles of avoiding populational harm and of necessity permitting the unlawful, Muslims may receive necessary vaccines with impermissible ingredients when there is no alternative form with permissible ingredients.

¹ CDC: Immunization: The Basics. <https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>

² CDC: Principles of Vaccination. <https://www.cdc.gov/vaccines/pubs/pinkbook/prinvac.html>

³ Meissner HC. Why is herd immunity so important, AAP News. 2015;36:14

⁴ <https://www.immunize.org/catg.d/p4037.pdf>

⁵ Whitney CG, Zhou F, Singleton J, Schuchat A, Centers for Disease Control and Prevention (CDC). Benefits from immunization during the vaccines for children program era - United States, 1994-2013, MMWR 2014 Apr;63(16):352-5.

⁶ States With Religious and Philosophical Exemptions From School Immunization Requirements, <http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>

⁷ CDC: Vaccine Excipient Summary.

<https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/b/excipient-table-2.pdf>

1:73 الأَشْبَاهُ وَالنَّظَائِرُ، دار الكتب العلمية⁸

وَهَذِهِ الْقَاعِدَةُ مَعَ الَّتِي قَبْلَهَا مَتَّحِدَةٌ أَوْ مَتَدَاخِلَةٌ، وَتَتَعَلَّقُ بِهَا قَوَاعِدُ: الْأُولَى: الصَّرَوْرَاتُ تُبَيِّحُ الْمُحْطُورَاتِ، وَمِنْ ثُمَّ جَازَ أَكْلُ الْمَيْتَةِ عِنْدَ الْمُحْمَصَةِ، وَإِسَاغَةُ اللَّفْمَةِ بِالْحَمْرِ، وَالتَّلْفُظُ بِكَلِمَةِ الْكُفْرِ لِلإِكْرَاهِ وَكَذَا إِثْلَافُ الْمَالِ، وَأَخَذُ مَالِ الْمُتَمَتِّعِ الْأَدَاءِ مِنْ الدِّينِ بِغَيْرِ إِذْبِهِ وَدَفْعِ الصَّائِلِ، وَلَوْ أَدَّى إِلَى قَتْلِهِ.

1:97 القواعد الفقهية وتطبيقاتها في المذاهب الأربعة، دار الفكر⁹

والشك: هو التردد بين النقيضين بلا ترجيح لأحدهما على الآخر، أو هو التردد في وقوع الشيء وعدم وقوعه على السواء، وبينه وبين اليقين الظن، أو الظن الغالب. وهو ترجيح أحد الطرفين على الآخر بدليل ظاهر يبيِّن عليه العاقل أموره، لكن لم يطرح الاحتمال الآخر، ويقابل الظن الوهم، وهو الجانب المرجوح لدليل أقوى منه، والفقهاء يريرون بالشك مطلق التردد سواء كان الطرفان سواء أو أحدهما راجحاً، وعلماة الأصول يفرقون بين الشك والظن.

2:422 رد المحتار على الدر المختار، دار الفكر¹⁰

10 (قَوْلُهُ خَافَ الزِّيَادَةَ) أَوْ إِبْطَاءَ الرُّبِيِّ أَوْ فَسَادَ غُضُوِّ بَحْرِ أَوْ وَجَعَ الْعَيْنِ أَوْ جِرَاحَةً أَوْ صَدَاعًا أَوْ غَيْرَهُ، وَمِثْلُهُ مَا إِذَا كَانَ يَمْرُضُ الْمَرَضَى فَهَسْتَانِي ط أَي بَأَن يَغْوَهُمْ وَيَلْزَمُ مِنْ صَوْمِهِمْ صِيَاغُهُمْ وَهَلَاكُهُمْ لِضَعْفِهِ عَنِ الْقِيَامِ بِمِمْ إِذَا صَامَ (قَوْلُهُ وَصَحِيحٌ خَافَ الْمَرَضَ) أَي بَعْلَبَةِ الظَّنِّ كَمَا يَأْتِي، فَمَا فِي شَرْحِ الْمَجْمَعِ مِنْ أَنَّهُ لَا يُفْطِرُ مَحْمُولٌ عَلَى أَنَّ الْمَرَادَ بِالْخَوْفِ مَجْرَدُ الْوَهْمِ كَمَا فِي الْبَحْرِ وَالشُّرُوبِ اللَّيْلِ (قَوْلُهُ وَخَادِمَةٌ) فِي الْفَهْرِسْتَانِيِّ عَنِ الْخِرَازِمِيِّ مَا نَصَّهُ إِنَّ الْحُرَّ الْحَادِمَ أَوْ الْعَبْدَ أَوْ الدَّاهِبَ لِسِدِّ النَّهْرِ أَوْ كَرِيهِ إِذَا اشْتَدَّ الْحَرُّ وَخَافَ الْهَلَاكَ فَلَهُ الْإِفْطَارُ كَحُرَّةٍ أَوْ أَمَةٍ صَعَفَتْ لِلطَّبِيخِ أَوْ غَسَلِ الثُّوبِ

1:233 رد المحتار على الدر المختار، دار الفكر¹¹

(أَوْ لِمَرَضٍ) يَشْتَدُّ أَوْ يَمْتَدُّ بِغَلْبَةِ ظَنٍّ أَوْ قَوْلِ حَادِقٍ مُسْلِمٍ وَلَوْ بِتَحْوِكِ

1:109 درر الحكام شرح غرر الأحكام، دار إحياء الكتب العربية¹²

وَيَجُوزُ قَطْعُهَا بِسَرَقَةٍ مَا يُسَاوِي دِرْهَمًا وَلَوْ لِعَيْبِهِ وَخَوْفِ ذَنْبٍ عَلَى غَنَمٍ أَوْ خَوْفِ تَرَدِّي أَعْمَى فِي بئرٍ وَيَجِبُ قَطْعُهَا بِاسْتِغَاثَةِ مَلْهُوفٍ مَظْلُومٍ بِالْمُصْنَعِيِّ وَلَا يَجِبُ قَطْعُهَا بِنِدَاءٍ أَحَدِ أَبَوَيْهِ اهـ قَالَ الْوَلَوَالِجِيُّ إِلَّا أَنْ يَسْتَعِيثَ بِهِ أَي أَحَدُ أَبَوَيْهِ وَهَذَا فِي الْفَرَضِ فَأَمَّا فِي التَّلْفِ إِذَا نَادَاهُ أَحَدُ أَبَوَيْهِ إِنْ عَلِمَ أَنَّهُ فِي الصَّلَاةِ لَا بَأْسَ أَنْ لَا يُجِيبُهُ، وَإِنْ لَمْ يَعْلَمْ بِجِيبِيهِ كَمَا فِي الْبَحْرِ اهـ.

2:52 رد المحتار على الدر المختار، دار الفكر¹³

مطلب قطع الصلاة يكون حراما ومباحا ومستحبا وواجبا. [تتمة] نقل عن خط صاحب البحر على هامشه أن القطع يكون حراما ومباحا ومستحبا وواجبا، فالحرام لغير عذر والمباح إذا خاف فوت مال، والمستحب القطع للإكمال، والواجب لإحياء نفس.

1:75 الأَشْبَاهُ وَالنَّظَائِرُ، دار الكتب العلمية¹⁴

تَنْبِيْهِ: يَتَحَمَّلُ الصَّرْرُ الْخَاصُّ؛ لِأَجْلِ دَفْعِ صَرْرِ الْعَامِّ. وَهَذَا مُقَيَّدٌ لِقَوْلِهِمْ: الصَّرْرُ لَا يُزَالُ بِمِثْلِهِ

6:40 تبيين الحقائق شرح كنز الدقائق وبهامشه حاشية الشلبي، المطبعة الكبرى الأميرية¹⁵

(قَوْلُهُ: وَالْفَاصِلُ بَيْنَ الْخَاصِّ وَالْعَامِّ الْإِخ) قَالَ الْأَتَقَانِيُّ وَجَعَلَ مُحَمَّدٌ الْحَدَّ الْفَاصِلَ بَيْنَ الْعَامِّ وَالْخَاصِّ اسْتِحْقَاقَ الشُّفْعَةِ فَقَالَ الْخَاصُّ مِنَ النَّهْرِ مَا لَوْ بِيَعْتَ أَرْضٌ عَلَى هَذَا النَّهْرِ كَانَ لِجَمِيعِ أَهْلِ النَّهْرِ حَقُّ الشُّفْعَةِ فَيَحْتَاجُ إِلَى أَنْ يَذْكَرَ الْحَدَّ الْفَاصِلَ بَيْنَ الشَّرْكَاءِ الْعَامَّةِ وَالْخَاصَّةِ فِي الشُّفْعَةِ وَخْتَلَفَ الْمَشَائِخُ فِي تَحْدِيدِ ذَلِكَ، وَلَكِنْ أَحْسَنُ مَا قِيلَ فِيهِ مِنَ التَّحْدِيدِ هُوَ أَنَّ الشَّرْكَاءَ فِي النَّهْرِ إِنْ كَانُوا مَا دُونَ الْمِائَةِ فَالشَّرْكَاءُ خَاصَّةٌ تُسْتَحَقُّ بِهَا الشُّفْعَةُ، وَإِنْ كَانُوا مِائَةً فَصَاعِدًا فَالشَّرْكَاءُ عَامَّةٌ لَا تَجِبُ الشُّفْعَةُ لِلْكَلِّ، وَإِنَّمَا تَكُونُ لِلْجَارِ. اهْبَيَّنَ الْخَاصِّ وَالْعَامِّ أَنْ مَا تُسْتَحَقُّ بِهِ الشُّفْعَةُ خَاصٌّ، وَمَا لَا تُسْتَحَقُّ بِهِ عَامٌّ. وَوَجْهُ الْفَرْقِ بَيْنَهُمَا أَنَّ فِي الْعَامِّ دَفْعَ الصَّرْرِ الْعَامِّ، وَهُوَ صَرْرُ بَيْتَةِ الشَّرْكَاءِ، وَمِثْلُ هَذَا جَائِزٌ بِالْإِزَامِ الصَّرْرُ الْخَاصِّ بَلَّ وَاجِبٌ إِذَا تَعَيَّنَ مَدْفَعًا فَيُدُونِ الصَّرْرَ أَوْلَى؛ لِأَنَّ الْأَبِيَّ لَا يَلْحَقُهُ بِذَلِكَ صَرْرٌ بَلَّ يَحْصُلُ لَهُ نَفْعٌ بِمُقَابَلَتِهِ فَيُجْبَرُ عَلَيْهِ بِخِلَافِ مَا إِذَا كَانَ خَاصًّا؛ لِأَنَّهُ لَيْسَ فِيهِ دَفْعُ صَرْرِ عَامٍّ، وَإِنَّمَا فِيهِ دَفْعُ صَرْرِ خَاصٍّ، وَهُوَ صَرْرُ شَرْكَائِهِ فَلَا يَلْزَمُهُ الصَّرْرُ الْخَاصُّ لِدَفْعِ الصَّرْرِ الْخَاصِّ؛ لِأَنَّهُمَا اسْتَوِيَا، وَيُمْكِنُ دَفْعُ صَرْرِ شَرْكَائِهِا بِدُونِ ذَلِكَ بِأَنْ يَرْجِعُوا عَلَيْهِ بِحَصَّتِهِ مِنَ الْمُؤْنَةِ إِذَا كَانَ ذَلِكَ بِأَمْرِ الْقَاضِي بِخِلَافِ مَا إِذَا كَانَ عَامًّا؛ لِأَنَّهُ لَا يُمَكِّنُهُ الرَّجُوعُ عَلَيْهِمْ لِكُنُوتِهِمْ وَرَبْمَا لَا تُقْبَلُ الْمُؤْنَةُ الْقِسْمَةُ عَلَيْهِمْ، وَلَا يَدْرِي حِصَّةَ كُلِّ وَاحِدٍ مِنْهُمْ

2:422 رد المحتار على الدر المختار، دار الفكر¹⁶

ط (قَوْلُهُ بِغَلْبَةِ الظَّنِّ) تَنَازَعُهُ خَافَ الَّذِي فِي الْمَثْنِ وَخَافَتْ اللَّتَانِ فِي الشَّرْحِ ط (قَوْلُهُ بِأَمَارَةٍ) أَي عَلَامَةٍ (قَوْلُهُ أَوْ تَجْرِبَةٍ) وَلَوْ كَانَتْ مِنْ غَيْرِ الْمَرِيضِ عِنْدَ اتِّحَادِ الْمَرَضِ ط عَنْ أَبِي السُّعُودِ (قَوْلُهُ حَادِقٍ) أَي لَهُ مَعْرِفَةٌ تَامَّةٌ فِي الطَّبِّ، فَلَا يَجُوزُ تَقْلِيدُ مَنْ لَهُ أَدْنَى مَعْرِفَةٍ فِيهِ ط

(قوله مسلم) أما الكافر فلا يُعتمدُ على قوله لا يُحتمل أن غرضه إفساد العبادة كمثل شرع في الصلاة بالنائم فوعده بإعطاء الماء فإنه لا يقطع الصلاة لما قلنا بحر (قوله مستور) وقيل عدالته شرط وحزم به الرُّبُعيُّ وظاهر ما في البحر والنهر ضعفه ط.

20:159 المبسوط السرخسي، دار المعرفة 17

ولو أن نهرًا بين قوم فاصطلحوا على كزيه أو بوضع ممشاة أو فطره عليه على أن يكون الثقة عليهم بحصصهم فهذا جائز كله عليهم؛ لأنهم يجزؤون على ذلك لو لم يصطلحوا إذا كان فيه ضرر عام فإن رفع الضرر واجب فإذا اصطلحوا كان إلى الجواز أقرب فإن كان بحيث لا يضرهم تركها ففي الفطرة والممشاة لا يجزؤون على ذلك؛ لأنه تدبير في الملك وهو مؤوض إلى رأي الملاك وإنما يجزؤون على إزالة الضرر العام فما ليس فيه ضرر عام لا يجزؤون عليه وأما الكزي فإنه أجبر عليه؛ لأن في تركه ضررًا عامًا فإن للناس في النهر حق السقي فيتضررون بانقطاع ذلك عنهم ولا يصل إليهم ملك المنفعة إلا بالكزي ولإتمام أن يجبر الشركاء فيه على الكزي وتما هذا في كتاب التيرب.

6:191 بدائع الصنائع في ترتيب الشرائع، دار الكتب العلمية 18

ولو زاد في غرضه لا يجوز؛ لأن الكوى من حقوق النهر فيملكه بملك النهر بخلاف الزيادة في الغرض، ولو كان نهر يأخذ الماء من النهر الأعظم بين قوم فخافوا أن يبتقوا فأرادوا أن يحصنوه فامتنع بعضهم عن ذلك فإن كان ضررًا عامًا يجزؤون على أن يحصنوه بالحصص، وإن لم يكن فيه ضرر عام لا يجزؤون عليه؛ لأن الانتفاع متعذر عند عموم الضرر، فكان الجزر على التخصيص من باب دفع الضرر عن الجماعة فجاء وإذا لم يكن الضرر عامًا يمكن الانتفاع بالنهر فكان الجزر بالتخصيص جزرًا عليه لزيادة الانتفاع بالنهر وهذا لا يجوز ولو كان نهر لرجل ملاصق لأرض رجل فاختلقت صاجب الأرض والنهر في مسنة فالمسنة لصاحب الأرض عند أبي حنيفة - رحمه الله - له أن يعرس فيها طينه ولكن ليس له أن يهدمها.

3:72 الإختيار لتعليق المختار، مطبعة الحلبي 19

(وما هو مملوك للعامه فكرهه على أهله)؛ لأن منفعته لهم. (ومن أبي منهم جبر) دفعًا للضرر العام، وهو ضرر الشركاء بالضرر الخاص، كيف وفيه منفعته؛ فلا يعارضه. وإن كان فيه ضرر عام بأن خافوا أن ينشق النهر، فيخرج الماء إلى طريق المسلمين وأراضيهم - فعليهم تخصيصه بالحصص. والنهر المملوك لجماعة مخصوصين فكرهه عليهم، ومن أبي منهم قيل: يجزى؛ لِمَا مَرَّ، وقيل: لا يجزى؛ لأن كل واحد من الضررين خاص. ويمكن دفعه بالكزي بأمر القاضي، ثم يرجع على الأبي، ولا كذلك الأول

1:242 الجوهره النيرة على مختصر القدرابي، المطبعة الخيرية 20

(قوله) وقال أبو حنيفة: لا أجز على السفيه إذا كان خرا بالغا عاقلًا السفيه خفيف العقل الجاهل بالأمر الذي لا تمييز له العامل بخلاف موجب الشرع، وإنما لم يجز عليه عند أبي حنيفة؛ لأنه مخاطب عاقل ولأن في سلب ولايته إهدار آدميته، وإلحاقه بالبهائم وذلك أشد عليه من التمييز فلا يَحْتَمَلُ الأعلَى لِنَفْعِ الأذنى إلا أن يكون في الحجر عليه دفع ضرر عام كالحجر على الطبيب الجاهل، والمفتي الماجن، والمكاري المفلس فإن هؤلاء يجزى عنهم فيما يروى عن أبي حنيفة؛ إذ هو دفع الأعلَى بالأذنى، المفتي الماجن هو الذي يعلم الناس جيلًا باطله كارتداد المرأة لتفارق زوجها، أو الرجل ليسيء الزكاة ولا يبالي أن يحل حرامًا، أو يحرم حلالًا. والطبيب الجاهل هو أن يسقي الناس دواء مهلكًا. والمكاري المفلس أن يكري إبلا وليس له إبلا ولا مال يشتريها به، وإذا جاء أوان الخروج يخفي نفسه. قوله: (وتصرفه في ماله جائز) لأنه مخاطب عاقل لقوله

1:75 الأشباه والتأاير، دار الكتب العلمية 21

منها: جواز الرمي إلى كفار تترسوا بصبيان المسلمين. ومنها: وجوب نفض حائط مملوك مال إلى طريق العامة على مالكها؛ دفعًا للضرر العام، ومنها: جواز الحجر على البالغ العاقل الخمر عند أبي حنيفة رحمه الله في ثلاث: المفتي الماجن، والطبيب الجاهل، والمكاري المفلس؛ دفعًا للضرر العام ومنها: جواره على السفيه عندهما وعليه الفتوى، دفعًا للضرر العام. ومنها: بيع مال المديون المحبوس عندهما لقضاء دينه، دفعًا للضرر عن العرماء وهو المعتمد ومنها: التسعير عند تعدي أرباب الطعام في بيعه بعين فاجش. ومنها: بيع طعام المختر جبرًا عليه عند الحاجة وامتناعه من البيع، دفعًا للضرر العام

22 Ibid

23 Ibid

24 CDC. Use of 13-valent pneumococcal conjugate vaccine and 23-valent pneumococcal polysaccharide vaccine for adults with immunocompromising conditions: recommendations of the Advisory Committee on Immunization Practices (ACIP), MMWR Morb Mortal Wkly Rep. 2012;61(40):816.

²⁵ Vaccines for Children Program (VFC), <https://www.cdc.gov/vaccines/programs/vfc/index.html>

²⁶ Shaykh Mateen Khand, MD and Ramzan Judge, PharmD. Islamically Permissible Influenza Vaccines Available in the US for 2019-2020 Season, <https://muslimmed.org/category/vaccines/influenza-vaccines-2019-2020/>

²⁷ <https://www.vaccines.gov/diseases/diphtheria>

²⁸ CDC: Vaccine Excipient Summary.

<https://www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/b/excipient-table-2.pdf>