# Medical Ethics in the Western Cape of South Africa: An Islamic Clerical Perspective

## Yusha Salie

yushasalie@gmail.com

## Abstract

This study examines how Islamic clerics in the Western Cape conceptualise and address contemporary medical-ethical questions. It situates their reasoning against the limits of the four-principle framework of biomedical ethics when applied to Islamic moral thought grounded in fiqh (Islamic jurisprudence) and Sufi ethical cultivation. Using qualitative content and discourse analysis, the study applies a critical framework that combines Al-Zuhayli's neo-traditional usūlī paradigm with Auda's maqāṣid-based reformist approach to analyse primary data from local clerics and archived fatāwā from regional judicial bodies. The findings indicate no single dominant methodological tendency: while many clerics consult medical experts and engage contemporary realities, their final rulings frequently revert to traditional patterns that prioritise preservation of life. Proactive notions of well-being and medical-ethical reform remain underdeveloped. The diversity and inconsistency across verdicts highlight the absence of a coherent medical-ethical framework in the Western Cape and the need for structured collaboration between jurists, clinicians, and scholars of Islamic legal theory.

*Keywords:* Clerical perspective, Islamic, jurists, legal verdicts, *maqāsid* approach, medical ethics, *usūli* paradigm

# 1.  Introduction

Medical ethics has been defined as "the analytical activity in which the concepts, assumptions, beliefs, attitudes, emotions, reasons and arguments underlying medico-moral decision making are examined critically" (Macnair, 1999, p. 2). Contemporary medical ethics, as used today, uses descriptive principles such as autonomy and beneficence, amongst others, to ethically reason why a certain medical procedure for a particular profile of patient is ethically sound or not. Amongst the Islamic sciences, traditionally, the science of *fiqh* engages with issues of ethics in the form of a consequentialist approach by issuing Islamic legal rulings (i.e. compulsory, disliked, etc) towards the ethically questionable behaviour.

Previous literature on Islamic medical ethics has focused on investigating the current four abovementioned ethical principles used by medical professionals to demonstrate their compatibility with Islamic legal frameworks. Other studies often focused on describing Islamic research and rulings related to a particular medical procedure, such as organ transplantation, whereas others have compared ethical approaches towards medical ethics, as that which is shared and found in other religions, especially those of the Abrahamic faiths. The majority of previous studies and articles were also carried out internationally, with limited local representation in the Western Cape, South Africa. Thus, a gap exists in the literature, especially in South African academic literature, regarding the current Islamic juristic approach to medical ethics.

This is an exploratory, descriptive study where primary and secondary data were collected from Islamic clerics and Islamic judicial organisations in the Western Cape province of South Africa. This study had the following objectives: to investigate the approach used by Islamic clerics to medical ethics, to analyse the collected data on medical procedures, and to investigate the objectives of Islamic clerics on medical ethics and procedures when issuing legal verdicts. This study also analysed data sets collected via questionnaires comprising five questions. The secondary data were legal verdicts issued by judicial organisations, which were collected from their archives.

The data were analysed using a qualitative content and discourse

analysis method, drawing on an eclectic Islamic critical discourse analysis. This approach comprised Al-Zuhayli's neo-traditionalist *usūli* paradigm (2015) and Auda's modernist *maqāsid*-based reformist approach (2008).

This research contributes to the sparse existing literature on bioethics in South Africa. Furthermore, this research serves as a potential clinical tool for clinicians to aid their understanding of Islamic medical ethics and thus provide culturally sensitive healthcare to their Muslim patients. Finally, this research provides data for future research to build on possible alternative systematic or functional approaches towards Islamic medical ethics.

## 2.  Literature Review

### 2.1  The Global Landscape of Islamic Medical Ethics

The literature on Islamic medical ethics is abundant internationally, with a focus on increasing healthcare providers' knowledge when delivering culturally sensitive care (Mustafa, 2014). Scholars have sought to demonstrate the alignment of the Islamic paradigm with the four traditional principles of medical ethics: autonomy, beneficence, non-maleficence, and justice (Mustafa, 2014). As the Muslim population grows in various democracies, the need for inter-religious dialogue has also increased, leading to studies that showcase shared medical principles as well as those unique to various religions (Ahmed, 2016; Paris et al., 2018). A number of descriptive studies have analysed legal verdicts from regions like North America, focusing on specific medical procedures, such as organ transplantation (Padela, 2020). However, it is important to note that some of these studies, like Padela's, focused on the rulings and *ijtihād* (research) rather than the underlying Islamic medical ethics. In contrast, progressive research from Iran has described the medical ethical framework practised by their healthcare professionals (Larijani & Zahedi, 2008). Another comparative study also explored the Sunni-Shi'ite divide on organ transplantation, explaining the views of various scholars (Golmakani et al., 2005). However, the latter study was selective in its presentation of Sunni views, quoting only Saudi Arabian scholars and focusing more on a descriptive history of contemporary legislation rather than a holistic

discussion of medical ethics (Golmakani et al., 2005).

The distinction between Western and Islamic approaches to medical ethics has also been a subject of research. Professor Syed Awais (2008) highlights that Western medical ethics take a "rights-based" approach, emphasising individual rights, whereas Islamic medical ethics are eclectic, based on a duty-bound approach and rights related to Allah (SWT) and the community. While Awais' editorial was progressive, it lacked specific details and instead mentioned broad themes related to the formulation of medical ethics, such as the preservation of life within the broader *maqāsid* (objectives of the *sharī'ah*) framework (Awais, 2008).

An article published in 1997 by Siddiqui made a distinction between morality and ethics and proposed that the science of *fiqh* should be related to medical ethics (Siddiqui, 1997). The author addressed the dilemma of contemporary times: a divide between jurists who studied in traditional seminaries but lacked modern scientific knowledge and those who studied in secular institutions but lacked an understanding of the Islamic tradition. The author proposed that both types of scholars should jointly discuss new modern medical challenges, which was a progressive thought for its time (Siddiqui, 1997). However, the author did not involve a professional with medical knowledge in the discussion, focusing instead on the divide among Islamic scholars themselves.

### 2.1.1 Progressive and Neo-Traditionalist Approaches

Various organisations and scholars have developed progressive frameworks to address modern medical ethical dilemmas. The Centre for Islamic Legislation and Ethics (CILE) has proposed an Islamic bio-ethical framework that uses an eclectic approach of *qawā'id* (legal maxims) and *maqāsid* (objectives of the *sharī'ah*) (Ghaly & Salah, 2020). The CILE's methodology is progressive as it involves joint discussions with medical professionals in the decision-making process, aligning with the principles of *fiqh* of citizenship. Dr.Yusuf Al-Qaradhāwi is a significant figure who has paved the way for such organisations. His approach is a great example of a jurist who interacts with traditional knowledge, primary sources, the objectives of the *sharī'ah*, and the complexities of modern medical procedures. He issues legal verdicts that are reactive in response to

contemporary issues while also prescribing proactive principles from primary sources (Al-Qaradhāwi, 2005). This approach can be seen as a neo-traditionalist one, which is essential for the present day (Auda, 2010). Another contemporary scholar, Dr. Hāzim Yusuf, has also adopted a neo-traditionalist approach in his book on *fiqh*, where he discusses a range of medical rulings, such as using medicinal drugs for medical response, exemptions for doctors from congregational Friday prayer, and organ donation (Abu Dhayf, 2021). His methodology involves adapting views from the legacies of Islamic scholarship and using legal maxims to provide rulings on issues not previously discussed by classical scholars (Abu Dhayf, 2021).

## 2.2  The Local South African Context

In contrast to the international arena, there appears to be a scarcity of literature on Islamic medical ethics from South Africa, with only isolated *fatāwā* or legal verdicts from judiciary or *fatwa* committees addressing modern medical practices. However, there are notable progressive developments from local scholars. A local scholar, Sheikh Abdurraghiem Sallie, included an article dedicated to menstruation and contraception in the preface of his book on *talāq* (divorce) (Sallie, 1993). This was a progressive academic approach at the time, as the author consulted with a medical doctor, Dr. Pandy, before issuing an authoritative *fatwa* (Sallie, 1993). This practice of consulting medical practitioners before providing a legal ruling was, at the time, a significant departure from traditional methods.

While there is a wealth of international literature on Islamic medical ethics, with some researchers focusing on culturally sensitive healthcare and others on descriptive legal analysis, there is a significant lack of local South African literature focusing on the South African context. Entities and individuals like the CILE, Al-Qaradhāwi, and the local scholar Sheikh Abdurraghiem Sallie have demonstrated progressive and nuanced approaches to legal verdicts related to medicine. However, a significant gap remains in the literature: to date, there is no in-depth description or analysis of the specific approaches of local jurists and judicial organisations in the Western Cape to medical ethics. This study aims to address this gap by analysing the approaches of Islamic jurists and the legal verdicts of judicial organisations related to medical ethics in the Western Cape, South Africa.

## 3.  Conceptual Framework

The classical framework of medical ethics, as elaborated by Beauchamp and Childress, rests on four principles: beneficence, non-maleficence, justice, and autonomy (Mustafa, 2014). Applying traditional Islamic sciences to medical ethics is complex, as beliefs fall under *aqīdah* (theology), moral decision-making under *fiqh*, and behavioural and cognitive change under *tasawwuf*. Linguistically, "ethics" (from Greek "ethos") relates to appropriateness and rationality, unlike "morals" (from Latin "mores"), which concern common feelings and actions (Siddiqui, 1997).

In this study, "jurists" refer to *aʾimmah* of those adhering to serving the *ahlu-sunnah wal-jamāʾah* (people of the sunnah and the community of Muslims) in the Western Cape. As noted, a *fatwa* (pl. *fatāwā)* is an Islamic legal verdict by a qualified jurist, and a *hukm* (pl. *ahkām*) also refers to an Islamic legal ruling but connotes the general address of Allah (SWT) derived from sources like the Qur'an and Sunnah*,* which relates to the actions of the duty-bound (Zidān, 1996). The "primary sources" in the study's questionnaires are the legally independent sources agreed upon by the four *Sunni* schools. This study's "secondary sources" are juristic rulings derived from primary sources, upon which the four *Sunni* schools may differ, and include *maqāsid al-sharī'ah* and Islamic legal maxims. A medical procedure is defined as an invasive service by a healthcare practitioner.

## 4.  Theoretical Framework

This study employs a descriptive analysis of questionnaires from Islamic clergy across various organisations to investigate their approach to medical ethics, procedures, and *fatāwā* issuance in this domain. The critical analytical framework is an eclectic combination of Auda's *maqāsid* approach and Al-Zuhayli's traditionalist *usūli* (principles of Islamic jurisprudence) paradigm. This study utilises Auda's "*maqāsid al-sharī'ah* as philosophy of Islamic law" (representing a modernist reformist perspective) and Al-Zuhayli's *"usūl al-fiqh al-Islāmi"* (representing a neo-traditionalist *usūli* perspective). *Usūl al-fiqh* is defined as the science of maxims and

proofs leading to the extraction of *fiqh* (Zīdān, 1996). Classical *usūl al-fiqh* had two schools: the theologian's path (*Mālikīyyah, Shāfi'iyyah, Hanbaliyyah*) and the jurist's path (*Hanafiiyyah*) (Zīdān, 1996). Neo-traditionalism, unlike strict adherence to one classical school, allows openness to multiple schools (Auda, 2008), which characterises Al-Zuhayli's approach. *Maqāsid al-sharī'ah* aims to ensure human utility and prevent harm (Zīdān, 1996), with *Al-Shātibi's* influential framework (Auda, 2008), leading some scholars like Al-Zuhayli (2008) to see it as a means for *usūl al-fiqh* renewal. Islamic modernism seeks to reconcile Islamic faith with modern values, with "usūli revisionists" attempting to reform Islamic legal theory, often facing resistance from some traditionalists and neo-traditionalists (Auda, 2008). Auda's objective-based approach, as presented in his work, represents this *usūli* revisionist modernist perspective and will be used alongside Al-Zuhayli's approach to analyse the collected data. For a summary of the above, see Table 1 summarising differences between the key concepts of the eclectic theoretical framework used for critical analysis.

| Concept | Auda's Approach (Modernist Reformist) | Al-Zuhayli's Approach (Neo-Traditionalist *Usuli*) |
|---|---|---|
| **Primary Framework** | *Maqāsid al-sharī'ah* as a philosophy of Islamic law. | *Usūl al-fiqh al-Islāmi* (principles of Islamic jurisprudence). |
| **Perspective** | Modernist reformist / u*suli* revisionist. | Neo-traditionalist. |
| **Objective of Sharī'ah** | Aims to ensure human utility and prevent harm. | Sees m*aqāsid* as a means for *Usūl al-fiqh* renewal. |

| Relationship to Schools of Thought | Open to multiple schools of thought, challenging strict adherence. | Openness to multiple schools of thought, which is a characteristic of neo-traditionalism. |
|---|---|---|
| Source of Legal Theory | Based on his work, "*maqāsid al-sharī'ah* as philosophy of Islamic law." | Based on his work, *"usūl al-fiqh al-Islāmi"*. |
| Focus | An objective-based approach, representing a reformist perspective. | A traditionalist approach, but with openness to various classical schools. |
| Position on Modernism | Seeks to reconcile Islamic faith with modern values, part of the "*usūli* revisionists" attempting to reform Islamic legal theory. | Represents a more traditional stance, but not in strict opposition to modernist ideas; rather, he sees *maqāsid* as a tool for renewal. |

Table 1: A Comparison of Key Concepts between Auda and Al-Zuhayli

## 5. Methodology

This study's research design is an exploratory and descriptive study. The primary data source was *fuqahā* (jurists), *aʾimmah* on independent mosque boards and *shuyūkh* (Muslim Clerics) on *fatwa* boards in judicial organisations; the primary source of data can be described as Muslim clerics. The secondary data source was *fatāwā* that are from the archives of Islamic judicial organisations. The information for the primary data was obtained through distribution of questionnaires with consent forms via electronic platforms such as e-mail, WhatsApp and social media during the months from December 2021 until January 2022. Questionnaires that were given to Islamic clerics were used to inform from Islamic clerics the research study questions. Secondary data sources that were taken included use of the archives. The *fatāwā* gleaned from the archived

verdicts were used because the scholars who issued them had a great impact in forming Islamic judicio-social organisations, for example Sheikh Muhammad Shakir Gamieldien was a founding member of the Muslim Judicial Council (MJC), who thereafter, along with other scholars, separated and formed the halal certifying body and non-profit organisation Majlisush Shura al-Islami (Behardien, 2014). Another example is that of the former Mufti Yusuf Karaan who was instrumental in spreading the *Deobandi* thought in South Africa and was a founding member of the United Ulama Council of South Africa (UUCSA) (Cii radio, 2015).

As mentioned above, this study adopts a critical Islamic discourse made up of Al-Zuhayli's and Auda's approaches. This was used to analyse the primary and secondary data sources. Thus, a qualitative content and discourse analysis was used in this study. The primary and secondary data sources' content was summarised and then compared and further scrutinised according to the eclectic critical Islamic discourse used. The scrutiny of the primary and secondary data sources was done by cross-referencing them with the responses found in the data set, with Auda's and Al-Zuhayli's understanding of the responses found in the data set. Their understanding was then recorded. This was followed by discussing reasons for possible discrepancies between responses in the primary data set.

## 6. Limitations of the study

This study does not make any analytical propositions and is purely descriptive in essence, as previously mentioned. Furthermore, one limitation of using archived data sources was that there is the possibility that the archive content would be unrelated to the study questions and thus irrelevant when analysing the data.

## 7. Interview results

From the primary data source, six participants replied and consented to participate in this study. They can be described as representatives of the following organisations: the Muslim Judicial Council, *Dār al-Iftā* Western Cape, the Claremont Main Road mosque independent mosque board, *Majlisush Shura Al-Islami* and The Tennyson Street *Masjid*. The secondary data sources obtained were legal rulings

issued by the MJC and *Majlisush Shura Al-Islami*.

The results discussion below is based on the appendices as numbered below (Salie, 2021). They are summarised in the following list:

- Appendix 1: Claremont Main Road Mosque Independent Mosque Board.
- Appendix 2: The Tennyson Street masjid
- Appendix 3: Dār al-Iftā Western Cape
- Appendix 4: MJC Fatwa Committee
- Appendix 5: MJC Fatwa Committee
- Appendix 6: Majlisush Shura Al-Islami
- Appendix 7: MJC Fatwa Committee archives
- Appendix 8: MJC Fatwa Committee archives
- Appendix 9: Majlisush Shura Al-Islami archives

# 8. Discussion and Analysis

## 8.1 Primary Data Analysis

### 8.1.1 Primary Sources for Legal Verdicts Related to Medical Procedures and Medical Ethics

In response to question one and two, the analysis of the primary data revealed a divergence in how religious authorities approach the foundational sources for medical ethical dilemmas.

Amongst ethical dilemmas are foundational epistemological sources which participants differed. One participant (*Appendix 5*) stated that the Qur'an and Sunnah are the primary sources for medical procedures, which aligns with Al-Zuhayli's *usūli* approach that recognises these as the agreed-upon sources for legislation (Al-Zuhayli, 2015). Auda, too, refers to these as the fundamental sources of Islamic law (Auda, 2008). Whilst the Qur'an and Sunnah are Islamic legal sources, they do not have detailed knowledge regarding most medical procedures, everything from simple, minimally invasive intravenous insertions to invasive organ transplantation surgery. Therefore, the aforementioned approach could form a basis for health-seeking behaviour that is counter to modern medicine and therefore lead to more barriers of maintaining health, especially if

followers of this Islamic cleric would adopt these views built on this approach. This could also serve as a possible explanation for the low vaccination rate in certain areas of Cape Town like Mitchell's Plain, which is known to have a predominantly *Muslim* population (Kamqa, 2021).

The majority of participants (*Appendices 1, 2, 3, and 6*) listed medical practitioners and websites as their primary sources of information. This aligns with Auda's modernist perspective, which emphasises the need for Islamic law to be open to self-renewal and to consult specialists in natural and social sciences, including medicine (Auda, 2008). This approach reflects a progressive stance, as opposed to certain organisations that are often perceived as traditionalists.

One participant (*Appendix 4*) indicated that the objectives of the religion (*maqāsid*) were their primary source of guidance. Al-Zuhayli recognises the *maqāsid* approach as "observable meanings or significations" related to the rulings of the *sharī'ah* (Al-Zuhayli, 2015). Auda highlights that for many jurists, these objectives are synonymous with people's interests and advocates for a purposeful approach to these sources (Auda, 2008). This recognition of *maqāsid* as a legal evidence for Islamic legislation reflects the evolution of jurisprudence amongst Islamic jurists within the Western Cape. This could potentially translate to the preparatory understanding of *maqāsid* amongst both scholars and amongst the general Muslim population. This creates a significant precedent within legal theory and specifically proponents of *maqāsid* to increase education and awareness regarding the *maqāsid* approach to Islamic law.

### 8.1.2 Secondary Sources used for Medical Ethics

In response to question three, the discussion on secondary sources and methodologies reveals an even greater variety of approaches.

The responses regarding secondary sources for medical ethics reveal a diverse range of approaches among participants. Several participants cited traditional Islamic scholarly opinions, both classical and contemporary, a practice that aligns with Al-Zuhayli's (2015) analysis of legal sources. One participant noted works that frequently referenced classical scholars like Imam Al-Shāfi'i, Imam Al-Shawkānī, and Imam Al-Ghazālī, while also allowing for

opinions outside the four traditional legal schools, which conforms to the views held by Al-Zuhayli (2015). This participant also mentioned online research, a source not directly addressed by Al-Zuhayli but which Auda (2008) implies is a necessary consideration for jurists in a modern context.

### 8.1.3 Secondary Legal Sources: A Detailed Breakdown

A comprehensive list of sources is provided in Appendix 5, including several that Al-Zuhayli (2015) categorises as either primary or secondary. These included *qiyās* (analogy) and *ijmā'* (scholarly consensus), which Al-Zuhayli considers primary, as well as a host of secondary sources.

*Istihsān* (juristic preference) is favoured by the Hanafi, Māliki, and Hanbali schools but rejected by Imam Al-Shāfi'i (Al-Zuhayli, 2015). Auda (2008) calls for a purposeful approach to *istihsān* beyond simple analogy. This contrasts with *urf* (customs), which is used as an independent source by some schools (*hanafiyyah* and *mālikiyyah)* within legal maxims by others (Al-Zuhayli, 2015). Auda (2008) adopts Ibn Ashur's view of using custom to reinterpret texts based on their objectives. *Masālih al-mursalah* (unrestricted interests) is a famous juristic concept held by the *Māliki* school, which involves a relevant characteristic not explicitly included as part of the *sharī'ah* (Al-Zuhayli, 2015). Auda (2008) advocates for merging unrestricted and considered interests into a single category coherent with the purposes of Islamic law. *Shar' man qabalana* (previous legislation) which is a legal concept and proof held across all four schools of law, as they consider previous divine laws binding if they were not proscribed or abrogated in Islamic law (Al-Zuhayli, 2015). Auda (2008) notes the varying acceptance among classical schools but does not discuss it within his systems-purposeful approach. *Sadd' al-dharāi'* (blocking the means) aims to prevent harm and facilitate benefit (Al-Zuhayli, 2015). Auda (2008) highlights its consequentialist ethics and advocates for a purposeful approach to opening means to good ends as historically advocated by Al-Qaraffi. *Qawl al-sahābah* (view of the companions) used as an independent legal source has four distinct views, ranging from outright rejection to conditional acceptance (Al-Zuhayli, 2015). Auda (2008) implicitly includes it in his purposeful approach. *Istishāb* (presumption of continuity) refers to the continuation of a ruling

based on its past status (Al-Zuhayli, 2015). Auda (2008) advocates for a "wide presumption of continuity" based on values like justice. *Qawāid al-fiqhiyyah* (legal maxims) as per Al-Zuhayli (2015) considers knowledge of legal maxims a prerequisite for a *mujtahid* (a scholar qualified to perform *ijtihad*), and Auda (2008) briefly studies their classical use. *Maqāsid al-sharī'ah* (higher objectives of the law) according to Al-Zuhayli (2015) adopts Ibn Ashūr's conditions for considering *maqāsid*, while Auda (2008) advocates for a systemic approach using a purposeful methodology for all legal evidences.

## 8.1.4 The Role of *Ijtihād* and *Maqāsid*

Appendix six specifically advocated for *ijtihād* guided by *maqāsid* as a secondary source. This approach aligns with both Al-Zuhayli's and Auda's methodologies, emphasising a systematic research process that consults the Qur'an, Sunnah, *ijmā'*, and *qiyās* (Al-Zuhayli, 2015). Auda (2008) describes this as a "systems perspective" and a purposeful approach to legal sources, moving beyond reductionist and binary thinking. The participant's emphasis on *ijtihād* suggests a dynamic, research-oriented method for addressing contemporary ethical dilemmas.

In summary, the analysis reveals that while there was a shared adherence to the fundamental principles of Islamic law, a clear difference exists in the practical application of these principles. The majority of participants demonstrate a progressive and at times a modernist, approach by actively consulting with medical professionals. The objectives of their verdicts, while centred on the core Islamic principle of preserving life, are increasingly incorporating more proactive and holistic concepts like well-being, reflecting a contemporary shift in understanding medical ethics.

This diversity in views indicates a growing need for an agreed-upon framework for medical ethics within the contemporary sphere. Interestingly, for secondary sources related to Islamic medical ethics, no single participant mentioned principilism which is the dominant and leading Western Medical Ethics framework used and taught in South Africa (Moodley, 2017). This shows the disconnect between Islamic clerics and people in real-life situations, such as Muslim medical professionals and the realities that they face.

### 8.1.5 The Objectives when Issuing a Legal Verdict Related to Medical Ethics and Medical Procedures

In response to question four and five, majority of participants stated that their legal verdicts must conform to the *maqāsid al- sharī'ah*, with the notable exceptions of appendices two and six. Appendix one highlighted the preservation of life and the facilitation of health and well-being as key objectives. This contrasts with Al-Zuhayli's (2015) prioritisation of religion over life. Al-Zuhayli also categorises the facilitation of well-being under the concepts of need and *tahsīniyāt* (Embellishment or beautification), which serve to perfect the primary objective of preserving life.

Appendix two, in contrast, stated a preference for deferring to expert *muftūn* (sing. *mufti;* jurists) for legal verdicts, raising the issue of *taqlīd* (blind following within Islamic jurisprudence). Al-Zuhayli (2015) discusses the unconditional permissibility of a scholar following another in a specific case if they are unable to perform their own research, a view held by scholars like Ahmad and Ishāq.

### 8.1.6 Diverse Interpretations of Legal Principles

Several participants provided nuanced perspectives on legal principles. Appendix one, along with appendix three, reflects those responses focused on participants' objectives regarding the use of permissible procedures. Al-Zuhayli (2015) details the five commissionable rulings (*hukum taklīfiyy*), from compulsory to prohibited, while the *Hanafi* school distinguishes eight. Auda (2008) also notes this difference, explaining that classical approaches often use a binary, consequentialist method to derive these rulings.

Appendix six implicitly mentions *maqāsid* by focusing on preserving life, ensuring that procedures align with the Qur'an and Sunnah, and considering the overall benefit for the patient, family, and *dīn* (religion). This aligns closely with Auda's (2008) systems approach, which calls for interests to be coherent with the purposes of the *sharī'ah*, thereby resulting in "considered interests" that agree with the objectives of primary sources. This participant also emphasised the *dharūrāh* (necessity) of questionable medical procedures, a concept Al-Zuhayli (2015) discusses under *al-rukhsah* (special license), where forbidden acts may be permitted when necessary.

### 8.1.7 Evolving *Maqāsid* frameworks

The responses collectively suggest a shift from a reactive, preservationist framework to a more proactive and holistic one. The appearance of "facilitation of health and well-being" in Appendix One as an objective is particularly noteworthy, as it moves beyond a purely biomedical definition of health. This aligns with Auda's (2008) discussion of a contemporary shift among some jurists from a focus on "protection" and "preservation" to "development" and "rights," despite some jurists rejecting this "contemporising" of *maqāsid* terminology. This proactive, holistic approach also resonates with the biopsychosocial model found in modern family medicine (Borrell-Carrio, 2004).

The responses also highlight the importance of expert consultation. The objective of ensuring that Muslim medical professionals follow Islamic guidelines through consultation with expert scholars, as appears in Appendix Three, underscores this point. Al-Zuhayli (2015) outlines the qualifications for a *mufti*, including being knowledgeable and just, while Auda (2008) emphasises the importance of "multi-disciplinary," arguing that a "disciplinisation" that monopolises sources can hinder creativity and new ideas.

The discussions on the objectives of medical ethics used by the participants reveal a lack of a standardised approach among participants. The absence of a common trend in responses suggests why various judicial organisations issue different rulings on ethically unclear procedures, such as organ transplantation and mandatory COVID-19 vaccinations. The themes can be summarised in three main areas.

Firstly, most responses were reactive, focusing on the preservation of life in specific situations (e.g., "saving lives"). This focus on the text often neglects the broader needs of patients, such as women's sexual and mental health. This contrasts with a more proactive approach, which would aim to facilitate well-being and align with modern medical models like the biopsychosocial approach.

Secondly, none of the participants explicitly advocated for changing the existing medical ethical frameworks used by hospitals and their ethics committees. This reactive approach, which focuses on

providing rulings rather than influencing policy, does not align with the concept of *fiqh* of citizenship, despite the large historically relevant and important Muslim population in the Western Cape.

Thirdly using Auda's understanding of moving away from "disciplinisation" of one science and the results of this question, sciences such as perhaps Islamic medical ethics could be more thoroughly researched by individuals working in the industry, such as medical professionals, to synthesise an appropriate context-relevant proactive approach to reform healthcare decision making. The results of this study emphasised this as the participants, whilst only having a reactive approach, are not in those realities and could perhaps not accurately conceive of the importance of policy and medical ethical reform.

## 8.2  Analysis of Secondary Data Sources

Three legal verdicts from prominent South African religious figures and organisations were analysed to understand their underlying methodologies.

### 8.2.1 Analysis of Legal Verdicts from the Former Mufti of the MJC

Regarding primary sources of medical ethics the verdicts issued by the deceased participants were likely used non-*sharī'ah* sources, such as websites and health professionals, as evidenced by the use of biomedical jargon (see appendices 7 & 8). This aligns with Auda's concept of "multi-disciplinarity" and the self-renewal of Islamic law through engagement with modern sciences (Auda, 2008). The verdicts also drew on the Qur'an and Sunnah, which both Al-Zuhayli and Auda agree are fundamental sources (Al-Zuhayli, 2015; Auda, 2008).

Regarding secondary sources of medical ethics the previous Mufti referenced "modern day *ulamā*", indicating a neo-traditionalist approach that is open to views from outside the four main Sunni schools of jurisprudence (Auda, 2008).

However related to the objectives of rulings related to medical procedures and medical ethics. The rulings were reactive, providing a "commissional ruling" (e.g., stating certain forms of surrogacy are "wrong"). This aligns with a traditionalist-binary approach to legal

rulings (Auda, 2008). The verdicts implicitly used the traditional *maqāsid* paradigm, specifically the preservation of paternal lineage, a core principle within the *dharūriyāt al-khams* or the five main objectives of the *sharī'ah* (Al-Zuhayli, 2015).

### 8.2.2 Analysis of Legal Verdicts from a Founding Member of Majlisush Shura Al-Islāmi

In relation to the primary sources used for medical ethics and medical procedures (see appendix 9) the archived verdict likely also utilised the perspectives of health professionals, demonstrating a "multi-disciplinary" approach similar to that of the former Mufti (Auda, 2008). The Qur'an and Sunnah were also used as primary sources, with a verse on necessity being quoted (Al-Zuhayli, 2015; Auda, 2008).

Interestingly in relation to the primary sources used for medical ethics and medical procedures the archived verdict explicitly used legal maxims and the objective of the preservation of life as secondary sources. Al-Zuhayli considers knowledge of legal maxims a prerequisite for a *mufti* (Al-Zuhayli, 2015).

Whilst related to the objectives when issuing a legal verdict related to medical procedures and medical ethics; the ruling provided was a commissioned ruling on the permissibility of alcohol-based medication when no alternative exists. This approach diverges from a strictly traditionalist view of necessity (which limits it to the preservation of life), advocating for a broader understanding that includes enhancing life or its quality. This aligns with the call from scholars like Al-Qaradhāwi (2001) for a return to textual evidence rather than a rigid adherence to past scholarly opinions. Table 2 provides a comparison of these positions.

| Feature | Former mufti of the MJC (Neo-traditionalist with modernist tendencies) | Founder of Majlis Al-Shura Al-Islāmi (modernist with neo-salafi tendencies) |
|---|---|---|
| Approach Characterization | Neo-traditionalist with modernist tendencies. | Modernist with neo-salafi tendencies. |

| | | |
|---|---|---|
| **Use of Non-*Sharī'ah* Sources** | Used to define the medical procedure, showing engagement with modern advances. | Used to understand the medical procedure (e.g., various uses of alcohol in medication). |
| **Reference to Scholars** | References "modern-day '*Ulama*", showing an openness to views outside of the four traditional Sunni schools. | Aims to return directly to textual evidence without explicitly citing various schools of thought. |
| **Application of *Maqāsid*** | Implicitly used a traditionalist *maqāsid* paradigm, emphasizing the preservation of paternal lineage. | Utilised the concept of necessity/*dharurah* for the preservation of life, but with a broader scope to include enhancing life's quality. |
| **Stance on Legal Rulings** | Reactive, providing a "commissional ruling" based on a specific situation. | Reactive, providing a commissional ruling but with a broader, more flexible interpretation of necessity. |
| **Underlying Methodology** | Non-restrictive approach to *usūli* evidences and schools of thought, referencing contemporary rulings. | Utilised legal maxims and the concept of necessity directly from primary sources, aligning with Al-Qaradhāwi's call to return to textual evidence (Al-Qaradhāwi, 2001). |

Table 2: Results of the Secondary Data Sources

## 9. Conclusion

This study showed that the approaches relating to medical ethics used by various judicial organisations, as represented by the primary and secondary data sources, cannot purely be described by one particular tendency or theoretical stream. This is evidenced by Al-

Zuhayli's neo-traditionalist and Auda's modernist analyses used in this study. Furthermore, the approaches used by the representative judicial organisations in this study were not standardised or common, generally tending towards a reactive, consequentialist and random approach with certain participant exceptions. The study further showed that most organisations in this study have modernist tendencies relating to investigating medical procedures. Finally, the objectives for issuing a legal verdict from the data sources showed a very traditionalist approach, with only providing legal rulings reactively to ethically unclear medical procedures. This approach is further emphasised as none of the participants explicitly stated an integrative approach with proactive tendencies to improve or academically challenge the current medical ethical paradigm used by medical professionals in South Africa.

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# Appendices

**Questions: (list your questions here)**

1. What are your primary sources used to investigate medical procedures?

Medical Experts in the field of the medical procedure

2. What are your primary sources used for medical ethics?

Quran and Hadith

3. What are your secondary sources/juristic tools used for medical ethics?

Muslim Scholarly Opinions both classical and contemporary

4. What are your objectives when issuing a legal verdict/*fatwa* relating to medical procedures?

Protection and Preservation of Life and Facilitation of the Health, Well-Being of the Patient

5. What are your objectives when issuing a legal verdict/*fatwa* relating to medical ethics?

Same as above

PERSONAL INFORMATION & QUESTIONNAIRE Appendix 2

Questions: (list your questions here)

1.  What are your primary sources used to investigate medical procedures?

I don't investigate medical procedures, I refer them to those who are equipped to investigate them.

2.  What are your primary sources used for medical ethics?

The Medical Scholars.

3.  What are your secondary sources/juristic tools used for medical ethics?

Online, reading up on medical ethics

4.  What are your objectives when issuing a legal verdict/*fatwa* relating to medical procedures?

I don't issue a Fatwa relating to medical procedures, I let the experts in this specific field do that.

5.  What are your objectives when issuing a legal verdict/*fatwa* relating to medical ethics?

As a result of the fact that I don't issue a Fatwa relating to medical procedures and as a result of me letting the experts in this specific field do that, I receive and inspect the objectives of the one (body) issuing the verdict/fatwa.

**PERSONAL INFORMATION & QUESTIONNAIRE Appendix 3**

Questions: (list your questions here)

1. What are your primary sources used to investigate medical procedures?

Consultation with medical professionals and reputable medical websites including allopathic or traditional practitioners.

2. What are your primary sources used for medical ethics?

The Quran, Hadith Legal Maxims, Jurisprudence based on the 4 agreed upon Schools of Thought.

3. What are your secondary sources/juristic tools used for medical ethics?

Same as number 2.

4. What are your objectives when issuing a legal verdict/*fatwa* relating to medical procedures?

Protection of life. Procedures should be known to expedite recovery. Should be permissible forms of procedures.

5. What are your objectives when issuing a legal verdict/*fatwa* relating to medical ethics?

Ensuring Muslim medical professionals adhere to Islamic guidelines sourced from agreed upon sources with due consultation with expert Islamic scholars.

**PERSONAL INFORMATION & QUESTIONNAIRE Appendix 4**

**Questions: (list your questions here)**

1. What are your primary sources used to investigate medical procedures?
   Any medical procedures must adhere to the following primary sources and objectives of beautiful religion - which are - preservation of religion, lineage, mind, wealth and life - which can be called ' the higher objectives of medicine.

2. What are your primary sources used for medical ethics?

   The research also includes the basic tools usul law recognized that ethics cannot be separated from Sharia. Islamic law is a compendium of ethics and its legal rules. Thus, the purpose of Sharia is to encompass jurisprudence and its rules, to be the foundation of good ethics d for ethical rules in Islam be derived from five principles and objectives of Sharia - intent, certainty, harm, hardships and customs. Muslim should return to their legislative inheritance as a source of moral norms.

3. What are your secondary sources/juristic tools used for medical ethics?

   Islam recognized that ethics cannot be separated from Sharia. Islamic law is a compendium of ethics and its legal rules. Thus, the purpose of Sharia is to encompass jurisprudence and its rules, to be the foundation of good ethics.

4. What are your objectives when issuing a legal verdict/fatwa relating to medical procedures?

   The purpose and objective of any legal verdicts (-including medical)- is to facilitate ease upon people and create a sense of confidence in the questioners mind, tht the verdict given is in line with the Quran, sunnah and higher objectives of our deen.

5. What are your objectives when issuing a legal verdict/fatwa relating to medical ethics?
   That it's given on the premise of saving lives, in full consideration of the well-being of the patient - with the utmost of integrity, truthfulness, compassionate, tolerance and etc. In the early development of Islamic medicine- most issues were resolved by direct interaction with the text. Later, medicine started to progress and scholars used the tools of إجماع، قياس and استحسان. However, in our current development and modern technology Era- we need to develop broader concepts and do more research in the مقاصد of sharia

**PERSONAL INFORMATION & QUESTIONNAIRE Appendix 5**

**Questions: (list your questions here)**

1. What are your primary sources used to investigate medical procedures?

The two primary sources would be the Quran and Sunnah, e.g. Kitaabut Tibb of Imaam Bukhaari. Amongst the Secondary sources would be Kitaab Al Jaraahah At Tibbiyah Wa Aathaar Almutaratibah Alayhaa by Imaam

Muhammad Shinqiti, Fiqhul Islaam Wa Adilatuhu by Wahbatu Zuhaili, Tibbun Nabawiyy by Ibn Qayyim, Arrahma fi Tibbi wal Hikmah by Imaam Suyuti. Tertiary sources would be various Fatawa websites, e.g. IslamQA, Fatatwa Misriya etc.

2. What are your primary sources used for medical ethics?

The same as above the Quran and Sunnah.

3. What are your secondary sources/juristic tools used for medical ethics?

Ijmas', Qiyaas, Istihsaan, Urf, Masaslihul Mursala, Shar' Man Qablana, Qawl al-Sahaabi, Sad al-Tharaai', Istishaab,

Qawaa'idul Fiqhiyah, Maqassid Shari'a.

4. What are your objectives when issuing a legal verdict/*fatwa* relating to medical procedures?

The objectives of the Shari'a - Hifthul Aqal, Hifthud Deen, Hifthun Nasl, Hifthun Nafs, Hifthul Maal. As well as Qawaa idul

Fiqhiyyah - Al Mashaqah Tajlibut Tayseer, Addarar Yazaal, Addaruraat Tubeehul Mahthuraat

5. What are your objectives when issuing a legal verdict/*fatwa* relating to medical ethics?

The same as the above

**PERSONAL INFORMATION & QUESTIONNAIRE Appendix 6**

**Questions: (list your questions here)**

1. What are your primary sources used to investigate medical procedures?

I would research and consult relevant medical sites concerning the procedure in order to learn more about the subject. I would also consult various doctors in order to obtain there input .

2. What are your primary sources used for medical ethics?

The Holy Quran. The Sunnah of the Holy Prophet p.b.u.h. Ijmaa and Qiyaas. These are the four sources of legislation in Islam. Also consulting the four Sunni Schools of thought and sometimes beyond these four. This would be in order to check that the procedures applied and the way it is applied is acceptable to us as Muslims In accordance with our beliefs and law.

3. What are your secondary sources/juristic tools used for medical ethics?

Ijtihad or research to make sure that the procedures satisfies the basic guiding principles of Islamic law.

Ie life, belief, integrity , intellect, protection of wealth.

Also checking if ethically there is any clash with the aims and objectives of the Shariah.

4. What are your objectives when issuing a legal verdict/*fatwa* relating to medical procedures?

To make sure that it is in conformity with the Shariah according to the Quran and Sunnah. Preservation of life.

To see where the benefit lies for the patient as well as the family and for Allah's Deen. Making sure the procedure is a necessity if it is of a questionable nature.

5. What are your objectives when issuing a legal verdict/*fatwa* relating to medical ethics?

To make sure that the procedures adopted by the doctors are acceptable and is not harmful or problematic to us as Muslims. The saying of the Prophet p.b.u.h. that "no one should harm another and that no one should be harmed."

Appendix 7

Dear brother ▮▮▮▮▮▮▮▮

Wa alaykum Assalaam !!

We have looked at the description given by yourself of the procedure involved in IVF and our response is that this type of procedure is permissible for Muslims on condition that in the process there is certainty that only the egg-cells of the wife and the sperms of her husband are utilised. We make dua that inshallah there will be success in the procedure to the satisfaction of all parties. Remember that Allah sometimes acts in a manner known only to Him. Wassalaam.

(FOR MJC FATWA COMMITTEE)

From: ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮
Sent: Tuesday, April 29, 2014 11:09 AM
To: fatwa@mjc.org.za
Subject: IVF and GIFT procedures for Infertility
ﻭﺑﺮﻛﺎﺕ ﺍﻟﻠﻪ ﻭﺭﺣﻤﺔ ﻋﻠﻴﻜﻢ ﺍﻟﺴﻼﻡ
Dear ▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮

My wife and I urgently need to know if IVF and GIFT procedures to assist for fertility is allowed. Our infertility is unexplained. It would be my sperm and my wife's egg:

## What is IVF?

In vitro fertilisation (IVF) is the most commonly used of the **assisted reproductive technologies**
(ART). IVF literally means "fertilisation in glass" (referring to the test tube, which is where the term "**test tube baby**" comes from).
During this process, eggs are collected from the ovaries and fertilised in the laboratory with sperm. After
a number of days, the **fertilised eggs (embryos)** are transferred to the female patient's womb to
develop and grow.

## What is GIFT?

Gamete intra-fallopian transfer (GIFT) is a form of assisted reproduction technique that involves the
same first, second and third steps as **IVF**, namely boosting the development of eggs, monitoring the
growth of the eggs using ultrasound, and then administering the medication to ensure that the **eggs mature**.
A **laparoscopy** is performed, and after the eggs have been collected, they are placed together with the
**sperm** sample in a catheter (tube). The eggs and sperm are injected into the **fallopian tube** through
this catheter. **Fertilisation** may then take place in the body, and not in the laboratory as with **IVF**.
Would be appreciated if you could respond today as we have an appointment with the specialists.
Shukran.
ﺍﻟﻤﻦ ١

## Appendix 8

Islamic verdict on Surrogate Motherhood

- 1.

**Question:** What is the Islamic verdict upon *Surrogate Motherhood?*

**Answer:** By surrogate motherhood, we understand that the ova of a woman is taken and fertilized outside the body with the sperms of a man and the fertilized egg is then implanted into the womb of another woman to carry and be developed throughout the gestation period up to the birth of the child.

If this fertilized egg is implanted into the womb of the same woman who supplied the ova and this woman is married to the man who supplied the sperms for fertilization, the process would be permissible. However, if it is implanted into the body of another woman not married to him, the Shariah of Islam considers it not permissible for various reasons.

In the first place the implanting of an egg fertilized by sperms from a man who is a stranger to the woman is wrong because it resembles introducing the sperms of a man into woman who is not his wife. This resembles the act of **Zina** and does not establish fatherhood of the male to the intended baby to be born.

Secondly the mother of the child will be the one who gives birth to it and not the one whose egg was fertilized. The Quran categorically states.

*"None can be their mothers except those who gave them birth."* (58.2)

Hence the surrogate mother in Shariah will be considered the mother of the child for the above reasons such a child will be considered an illegitimate child with no established fatherhood.

In the opinion of some of our modern day Ulema surrogate motherhood will only be acceptable if the surrogate mother is a co-wife of the fertilizing father, with the ova coming from a co-wife. In this case the egg is supplied by one wife and the other wife, married to the same husband carries the fertilized throughout the gestation person till birth. In this case the child will be legitimate and fatherhood of the child will be established, the child being born of a father and a mother.

Signed: Dated: 21 May 2004

## Appendix 9

-5-

the preservation of life is the ultimate criteria by which
such an act is judged.

3.    ADMINISTRATION OF MEDICINES CONTAINING ALCOHOL

If alcohol is placed in medicines for reasons such as the
preservation of the medicines or even for its own value as a
medicine then this is permissible if alternative medicines or
alternative means of preservation are not available.
Therefore if it is placed in medicines not for purposes of
preservation or for its own value as a medicine then it is not
permissible to use such medicines.

Allah say in the Holy Quran [Surah Ma-idah; Verse 3]

But if any is forced [by hunger]
With no inclination of transgression
Then Allah is indeed oft-forgiving Most merciful.

Hence, the use of alcohol becomes permissible only because of
the non availability of non-alcoholic alternatives and the
Shariah then regards it as lawful on the grounds of DAROORAH
[necessity], in the same way as the eating of HARAAM
[forbidden] food becomes permissible under such conditions.

4.    ADMINISTRATION OF MEDICINE DERIVED FROM PIGS

This has the same decree as the one above,viz. that if
necessity is the criterion then things normally forbidden
becomes lawful.

This is structured on the golden rule in jurisprudence that
forbidden things are permissible when necessity rules.

5.    THE IMPLANTATION OF PIG VALVES

If it is the only way of enhancing a life or causing a human
being to live a better quality life and if no other part of
human beings or other animals other than that of a pig can be
used or is available to be used, then it is necessary with no
inclination of transgression to use the valve of the pig.
Again the rule quoted above will apply, viz. that when
necessity is the order of the day, then it is permissible.

And Allah knows best.

WALHAMDULILAHI RABIEL AALAMEEN

SIGNED

**Yusha Salie** is a medical doctor at Nomzamo Community Day Centre in the Western Cape who integrates clinical practice with advanced Islamic scholarship. After memorising the Qur'an at Madrasah Al-Nur, he pursued intensive studies in Imamate and Sharīʿah at Dar Al-Turath Al-Islami, Markaz Fajr in Egypt, and through private study with scholars from Al-Azhar University and Dar Al-Fuqaha Seminary in Turkey, cultivating a strong interest in Islamic Medical Ethics. He also serves in the Education Department of Majlisush Shura Al-Islami. Alongside his religious training, he holds an MBChB and a Postgraduate Diploma in Family Medicine from the University of Cape Town, as well as a BA Honours in Islamic Studies from IPSA. He is currently completing an MA in Islamic Studies at the International Open University (Gambia) and advancing his Sharīʿah studies at Al-Balagh Academy (UK), where his research compares Sharīʿah with biomedical principlism.