

SURGICAL SEPARATION OF THORAOPAGUS TWINS: THE ISLAMIC LAW PERSPECTIVE.

By

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Abstract

Eng and Chang bunker were the first pair of conjoined twins recorded in medical annals of gynaecology and obstetrics. Born in Siam, Thailand today, on May 10, 1811, attached by a five- inch connecting ligament near their breastbones, Eng. and Chang grew and lived a fairly private life and involved in successful business in North Carolina. They later married sisters, Sallie and Adelaide Yates respectively, produced 21 children between them and lived until they passed away in 1874 at the age of 63 years. It was after their death that medical doctors established that surgical separation could have been possible. Recent statistics put the rate of conjoined twins at a range of 1 in 50000 to 1 in 200000 births. Though conjoined twins have been the subject of scientific exhibits and medical study for quite a long time, it became a subject of courtroom battle in 2000, when the surgical separation of conjoined twins, Jodie and Mary, the children of Michael Angelo and Rina Attard of the Maltese Island of Gozo surfaced and sought judicial intervention. The case illustrated the difficulty of applying legal principles to unprecedented life-and-death decisions involving proposed medical interventions for children- particularly when parents and physicians disagree about what should be done. Despite the proliferation of sophisticated surgery techniques, the risk of surgical separation still stands high; in case of survival of both of them, anaesthesia, surgical complications, and other effects usually follow the successful separation process. But despite all these effects, medical doctors are convinced that the present quality of life is so worthless that the risky dangerous surgery is justified and should be performed. This research presents the Islamic law (Shar'iah) perspective towards the surgical separation of Thoraopagus conjoined twins whose separation involves certain death of a weaker twin to save the stronger one as presented in the cases of twins Jane and Louisa and Mary and Jodie that will be reviewed in this paper.

Introduction

The birth of conjoined twins is a rare occurrence resulting from late and incomplete division of monozygotic embryonic disk generally after 13th day of fertilization. The twins come from one fertilized egg which stops from separation before completion, leaving a partially separated egg which continues to mature into a conjoined foetus.

Conjoined twins are fused twins resulting from incomplete division of a single blastocyst 13 to 16 days' post fertilization.¹ Fused body components, overlapping

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visceral components and impaired organogenesis characterize this anomaly. Conjoined twins fall under the monozygotic type of twins; they are always identical and of the same sex.²

The classification of conjoined twins is based on anatomical site of fixation and a Greek suffix pagus (meaning, that which is fixed) which was employed to indicate the kinds of conjoined twins, namely; Cranionpagus, conjoined at the cranium (the top of the head or skull), Pygopagus, back-to-back conjunction, Ischiopagus, joined by the coccyx (lowest part of the backbone) and the sacrum (backbone immediately above the coccyx), Omphalapagus, united from the waist to the lower breastbone, Dicephalus, where one body is with two separate heads and necks and Thoraopagus, the most common form, in which twins share part of the chest wall and usually share the same heart.³

The Islamic Legal Necessity for Surgical Separation The delivery of conjoined twins is held abnormal in

Islamic law; it is a stature that attracts attention from onlookers to the point of inflicting on them, a condition certainly accompanied by physical and psychological stress. This justifies the legality of surgical separation to treat this defect and alleviate the discomfort, as it can be inferred from the following Qur'anic injunctions: "Verily, we created man in the best stature (mould)"⁴. The common stature of man which distinguishes him from other creatures is an upright, individually discrete and singleton form. The conjoined stature is aberrant to this description and therefore considered abnormal.

To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows female (offspring) upon whom He wills and bestows male (offspring) upon whom he

². Essays of an Information Scientist, The Conception, Development and Delivery of Twins, Nov, 1984, Vol. 7, p.366; women's health Specialists, Twins, Germantown, 2004, www.whsobgyn.com.

³. Hilfiker ML, Ziegler MM, Azizkhan RG, Weber TR, Eds, Conjoined Twins, Operative Surgery. New York: Mc Graw-Hill; 2003, p. 1063-1072; Craig Sanders, conjoined twins, twinsstuff.com, 23rd, September, 09; Jeong Wook Seo, Yoon Seong Lee, and Geun Chi, Cross-Sectional Illustration on Major Types of Conjoined Twins, Journal of Korean Medical Science, Vol. 3, No. 1, 1988: p.19-25.

⁴. Surat A ttin, 95:4.

wills, Or He bestows both males and females, and He renders barren whom He wills⁵.

The verse indicates that Allah's creation vary between individual offspring of males and females. The structure of conjoined twins is a deviation from this standard, and therefore considered abnormal.

While commenting on the above verse, Ibn Hayyan (987-1076A.H) observed thus Allah did not mention hermaphrodites because giving birth to them is depressing.⁶ It can be concluded from the above proof that deviation from the popular stature of human beings is considered abnormal.

The positive appraisal of good health suggests that illness is an affliction that has to be cured. In fact, search for a cure for every disease is founded on the unusual confidence generated by the divine promise that God has not created a disease without a cure. Hence, the purpose of medicine is to search for a cure through the application of human knowledge and scientific endeavour, and to provide the necessary care to those afflicted with diseases.

Surgery, in Islamic circles, refers to carrying out an operation to reform a deformity, or suture a rupture or wound, with intention to discharge pus or fluid or to excise an affected or abnormal part of the body.⁷ It is part of medical profession whose necessity and legality is recognized in Islamic Law (Shar'iah).

The necessity to carry out surgery can be derived from the primary sources of Islamic Law; Qur'an and Sunnah. From Qur'an, Allah said (and if anyone save a life, it would be as if he saved the life of all mankind)⁸, and from Sunnah, Ibn Abbas narrated that the prophet peace be upon him was treated by cupping in his head.⁹ The Qur'anic verse legalizes all ways through which life can be saved, including surgery, and the evidence from Sunnah clearly indicates permission to treat by operation or cauterization.¹⁰

⁵. Surat A shuura, 42:49-50.

⁶. Ibn Hayyan, Muhammad bin Yusuf, Al-bahru Al-Muhiit, Beirut, 2001Vol.7, p.503.

⁷. Al Mausuu'a A tibbiyah Al Hadiitha, (The Encyclopedia of Modern Medicine, Egypt, 1970, Vol.3, p. 450.

⁸. Alquran, Surat Al-Maida, 5:32.

⁹. Sahiih Bukhari, Hadith No: 5373.

¹⁰. Al-Hazmi, Fahad bin Abdallah, Al wajiz fi Ahkami-l jiraaha A tibbiyyah, Beirut, p.3

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Shar'iah holds conjoined twins as two independent persons, for each has an independent soul which is a basis of an independent life. However, they remain deprived of some human rights, like the right to privacy, marital rights and individual responsibility and reliability, till they undergo surgical separation to restore those rights. Surgery of this kind falls under general prophetic traditions which permit therapy; Jabir bin Abdullah narrated that the prophet sent a medical doctor to Ubayy bin Ka'b; the doctor excised a vein from Ubayy and cauterized it.¹¹

It was also reported that 'Urwa bin Zubair was hit by a camel, the effect moved up to the tibia, Waleed bin 'Abdul Malik, an Umayyad governor sent him medical doctors, they resolved to excise his leg, it was excised and never did he writhe.¹²

The leading legal maxims in the permissibility of separating conjoined twins are "no harm shall be inflicted or reciprocated " and "harm should be removed"¹³. Surgery is therefore permissible to ward off the bane of pains and illness.

Imam Al-Shatibi (790A.H) observed "a medical doctor is allowed to use bitter medicine and to excise corroding body parts, and remove aching teeth, and to deprive a sick person even though all the above involve hurting him, because the purpose is to attain a benefit which is greater and more significant to maintain than the harm which usually accompanies the pain, and that is the nature of Shar'iah".¹⁴

Sheikh `Atiyah Saqr, former head of Al-Azhar Fatwa Committee, expounded that "Beautification which is used to reshape a deformed part of the body is generally recommended in Islam, as long as it is used for a valid reason, this kind of beautification is permissible. It is a form of co-operation in what is good and preventing harm that a person may face due to a deformity in his physical and outward appearance".¹⁵

¹¹. Sahiih Muslim, Hadith No: 4875.

¹². Al As'bihani, Abu naim, Hilyatul Auliya, 4th Edition Beirut, 1405 A.H, Vol. 2, p.179.

¹³. Ibn Nujaim, Zainul- 'Abidiin, Al Ash-baah-wa-Nazair 'Ala Mazhab Abi Haniifa, Beirut, 1980, p.85.

¹⁴. Al-Shatibi, Ibrahim bin Musa, Almuwaafaqat, Beirut, Vol. 2, p.127.

¹⁵. Group of muftis, Islamic stance on plastic surgery, islamonline.net, October 20, 2009.

Besides, the primary objective of Shar'iah is to secure good (Manfa') or to get rid of harm (Mafsada), so that man can attain the purpose of law both worldly and for the hereafter. World purposes, in combination, seek to preserve and protect the interest of diin (religion), Nafs (life), Nasl (progeny), Aql (intellect) and Mal (wealth). Separation of conjoined twins falls under the preservation of life, which is considered to have a higher priority than preservation of religion, for the interest of religion cannot be upheld without life.¹⁶

Securing the benefit of life, like the other three interests is determined in light of either of the three levels, i.e. extreme necessity (Dharurat), supplementary (Hajiat) and complementary (tahsiinat). Any attempt to preserve life is good (manfa'), and any attempt to hurt life is evil (mafsada), and to avoid it is securing good.¹⁷

The first level, extreme necessity, (dharurat) is the primary purpose of law which must be maintained and without it life becomes difficult. It is followed by supplementary needs which are additional purposes required by the primary purposes, even though the primary purposes would not be lost without them. The complementary needs rank last as they seek to establish ease and facility in the law.¹⁸ From this categorization, the need for separation of conjoined twins will arise in light of these three categories depending on the nature and degree of conjunction.

General Conditions of Surgical Operation in Islamic Law

Muslim scholars laid down seven conditions which must be observed before any surgical operation on human body is undertaken.¹⁹

The operation should be legal: Neither a patient shall seek for an operation nor a medical doctor shall adhere to his request unless the operation sought is legal. This is

¹⁶. See: Niyaze Imran Ahsan, Theories of Islamic law, Islamabad, 2009, p. 234.

¹⁷. See: Al-Ghazali, Al-Mustasfa fi 'Ilm al Usul, Beirut, 1413 A.H, p.174.

¹⁸. Ibid, p.175.

¹⁹. See: Sheikh Nizam, Al-fatawa A-Hindiyya, Vol. 4, P.458, 1991; 'Alaish, Muhammad Ahmad, Man'hul-Jalil, Beirut, 2003, Vol. 3, p. 776,777; Asharbiiny, Muhammad Al-khatib, Mugnil-Muhtaj, Vol.2, p.324, Beirut; Al-bahuuty, Mansoor bin Yunus, Kashaf-Al-qanna', Beirut, 1402 A.H, vol. 4, p.9.

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built on the fact that the entire life of man is a trust (amanah) given to him by God. Human body has to be employed in a way sanctioned by the trustee (God) and any way that conflicts with His commands is unlawful even if such a utility is noble or based on altruistic motives. Legality or illegality of an operation is determined by its importance and necessity to human life.

The operation should be of benefit to the patient and in need for it. The need might be either of extreme necessity, like the one deemed to save his life and correcting a deformity, or of supplementary and complementary, like the one deemed to ward off the harm caused by pains. A surgery which is devoid of any benefit is of absolute harm to the patient and it is not permissible to carry it out.

Permission must be sought from the patient or his guardian who has legal capacity for acceptance save in exceptional cases which shall be highlighted later.²⁰

The surgeon and his assistants should be qualified. Qualification encompasses their competence and expertise to carry out that specific operation as well as the ability to do it perfectly.²¹

The probability of success in the operation must be higher than failure. Ibn Abdu Salam observed: "and those (body parts) whose benefit cannot be achieved except by impairing other parts, like excising a corroded hand in order to safeguard life, it is permissible if safety is most likely to be achieved by excision"²². The surgeon is the reference in determining this probability.

There shouldn't be any less harmful alternative method of curing the illness. Administration of tablets or injection or other non-surgical methods should be given priority in order to avoid the greater harm of tampering with human body.

An operation shouldn't lead to a greater harm than the one suffered by the patient. A patient should remain with the harm of the illness than carrying on an operation that will inflict a greater harm. This ruling is based on a legal maxim "harm shouldn't be removed by a similar harm"²³.

²⁰. See: Ibn Qudama, Abdallah bin Ahmad, Al Mugni, Beirut, 1405, vol. 6, p.124.

²¹. Ibid, vol. 6, p.133.

²². Ibn Abdu Salam, 'Izzuddin, Qawaid Al Ahkam Fi MasalihAnaam, Beirut, vol.1, p.110.

²³. Ibn Nujaim, Al Ashbah Wa Nazair, p. 87.

Based on this, operation should be undertaken if positive results are most likely to exceed the negative ones. This is further consolidated by a legal maxim "if (warding off) two harms conflict, the lesser one should be undertaken to avoid the severe one".²⁴

Surgical Separation of Thoraopagus Twins in Islamic Law

As stated in the abstract, the cases of twins Jane and Louisa and Jodie and Mary shall be cited as a benchmark to review the position of conventional law, followed by the Islamic Law perspective on surgical separation of thoraopagus twins.

Jane and Louisa were born at the University Hospital of the West Indies in the United States of America, conjoined at the xiphisternum to the pelvis. By emergency caesarian, Jane and Jodie were born with only three lower limbs (tripus), the fourth being deformed as a fused appendage. Jane was bigger, more active and had a normal face whereas Louisa had left facial hypoplasia, cleft palate, grasping respiration and generalized cyanosis. Jane had a simple arterial septal defect while Louisa had an uncorrectable cardiac defect, including transposition of the great vessels and a thick inter-ventricular septum. Both shared one liver situated almost entirely in Jane's abdominal cavity. Physician assessment unveiled that Luisa was dying because of a poor circulatory system, her circulation depended on the pump action of Jane's heart and toxins accumulating in Louisa's circulation would cause Jane's heart to arrest because of the twins' circulations. Emergency surgical separation was therefore indicated to save Jane, but this surgery would precipitate Louisa's demise. Jane's survival was by no means guaranteed by successful separation, with a physical disability of one leg and a permanent colostomy as the surgery possible outcome.

A care conference was convened to clarify treatment and obtain surgical consent. The mother did not consent to separation, for she felt that surgery was tantamount to mutilation and gratuitous infliction of pain and suffering of the twins, yet neither of them would survive it. Legally, doctors could not proceed with surgery without

²⁴. Ibid, pp.87.

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parental consent and the twins demised within 25 minutes of each other, 15 hours after the care conference.²⁵

Although clinicians at University Hospital of West Indies chose to respect autonomy and abandon the surgical option, paediatric surgeons in Manchester, England took an opposite path and challenged successfully, the decision taken by parents of conjoined twins Jodie and Mary, with a similar dilemma to deny consent for separation surgery.

Jodie and Mary were born on August 8, 2000 in England. They were joined at the pelvis, their spinal columns on the same axis, with each having two arms and two legs. They shared vital organs, particularly the aorta. Mary's (the weaker twin) heart and lungs had no capacity to sustain life and Jodie's (the stronger twin) heart was used to pump the oxygenated blood through Mary's body. According to physicians, Mary was incapable of independent existence, Jodie's heart would eventually fail and she would suffer a cardiac arrest, Mary's death would inevitably follow, separation was possible without significant risk to Jodie who would then live an independent life, but it would mean certain death of Mary within minutes of the common aorta being severed. The parents refused to authorize the separation on the basis that it was wrong to choose between the lives of two innocent children and that it was contrary to their Roman Catholic religious belief.²⁶

Physicians decided to go to court for authorization to proceed with the separation over the objections of the parents. The trial court judge in Britain ruled in favour of separation for it was in the best interests of both children and that separation was not a case of killing Mary but one of the passive euthanasia in which her food and hydration would be withdrawn by clamping off her blood supply from Jodie. The parents and official solicitor, whose task was to represent Mary, appealed. Though all the three judges on the appeals panel agreed that separation should be performed, they differed from one another's legal reasoning

²⁵. ND Duncan, A Barnett, H Troman, P Ramphal...Conjoined twins: Bioethics, Medicine and the Law, West Indian Medical Journal, Allah bad, 2006, p.123.

²⁶. Stuart Knowles, The case of the Siamese Twins, www.mills-reeve.com/health, December 2000.

and none agreed with the legal reasoning of the trial court judge.²⁷

The aftermath of this case confirmed the medical predictions as Mary died following surgery separating her from Jodie, and Jodie is doing well though she will require extensive surgery over the next five years.²⁸

The Law Legal Reasoning for and Against Separation Though opinions of Lord Justices Alan Ward,

Robert Brooke and Robert Walker were not on the basis of law but on an intuitive judgment, some evidence for and against surgical separation of thoraopagus twins can be deduced from their legal deliberations.

Based on the following proof, it defeats logical reasoning to see twins in their care die when one was capable of being saved:

The Welfare Principle: The overriding and paramount consideration is what is in the best interest of the child. Based on this principle, the court concluded that it was overwhelmingly in Jodie's best interests that she be given the chance to live a normal life with a normal expectation of life. On the side of Mary, it was not in her interest to undergo surgery which would terminate her life but as Lord Justice Ward indicated: "the only solution is to balance the welfare of each child against the other to find the least detrimental alternative"²⁹

Choosing the Lesser Loss: Separation that will lead to death of the weaker twin is justified by having to choose the lesser of the inevitable loss. Lord Ward remarked "The only proper legal path when there is a conflict of interest between conjoined twins is "to choose the lesser of two evils".³⁰

The Principle of Self-defence: Lord Ward used substituted judgment (determining what an incompetent

²⁷. Re A (Children) (Conjoined Twins): Surgical Separation (2000) 4 All ER 969, UK Court of Appeal no: B1/2000/2969; George J. Annas, Conjoined Twins- The Limits of Law at the Limits of Life, The New England Journal of Medicine, Vol. 344, No. 14. April 5, 2001: 1104-1105. www.nejm.org. November 5, 2009.

²⁸. Lavilles S. "Mary was freed by death, says father", Daily Telegraph (London) December 7, 2000, p.1.

²⁹. Stuart Knowles, The case of the Siamese Twins, www.mills-reeve.com/health, December 2000.

³⁰. Re A (Children) Conjoined Twins: Surgical Separation (2000) 4 All ER 961.

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person would decide if he or she were capable of making a decision) to justify the positive killing of Mary in the course of surgery. In his opinion, killing of a weaker twin is justifiable homicide and a case of quasi self-defence. He observed: "Mary may have a right to life, but she has little right to be alive. She is alive because ... she [parasitically] sucks the lifeblood out of Judie. He added: "If Judie could speak, she would surely protest, 'stop it, Mary, you are killing me'.³¹ He added: ""on a question of law, not morality, the child may be killed in legitimate self-defence. I see no difference between that resort to self-defence and the doctors coming to Jodie's defence and removing the threat of fatal harm to her presented by Mary draining her lifeblood".³² In another observation: "Mary is a pursuer, and pursuers must be stopped before they kill"³³

The Doctrine of Necessity: The case of R. v. Dudley and Stephens, a famous 1884 case was cited by Lord Justice Robert Brook as a guiding precedent in the case of Mary and Jodie. A crew of four was sailing the yacht Mignonette from England to Australia when the ship came apart in a storm in the South Atlantic Ocean 2000 miles from land. The crew escaped in a lifeboat with only two cans of turnips. After 19 days the three senior members of the crew killed 17-year-old Richard Parker, the youngest and weakest member of the crew, and ate him in order to survive. They later explained that the point of killing him before he died naturally was to be able to drink his blood. After being arrested and tried for murder- a charge they did not deny-their defence was "necessity".³⁴

Although British courts rejected this defence, this case illustrates that there may be circumstances in which the necessity defence should be allowed. For instance, a rabbinical scholar in the united states while counselling a Jewish couple faced with the same dilemma on their conjoined twins who shared a heart cited an example of a caravan surrounded by bandits, and the bandits demand that a particular person be turned over to them or they will kill

³¹. Ibid.

³². Stuart Knowles, The case of the Siamese Twins, www.mills-reeve.com/health, December 200.

³³. George J. Annas, Conjoined Twins- The Limits of Law at the Limits of Life, p. 1107.

³⁴. Regina v. Dudley & Stephens, (1884) 14 QBD 273.

everyone, it is permissible to turn that person over because he has been "designated for death".³⁵

On the basis of the above legal reasoning, the court held that the separation was deemed (if and when considered appropriate by the involved clinicians) to be lawful.³⁶

Comment

While commenting on this case, George J. Annas highlighted the problem of using substituted judgment on arriving at legal deductions. He identified a difficulty of speculation basing on adult values that Jodie could equally well say to her identical and attached twin that "I love you as myself and will do everything, including sacrificing my life, to keep you alive as long as possible." Likewise, Mary might reasonably say to Jodie, "you are my identical twin, and because I love you, I'm willing to die so that you can live, since this is the only chance for my genes to be transmitted to the next generation". Any of these hypotheses is plausible, but made-up monologues cannot take the place of legal analysis.³⁷

Shar'iah Stance on Surgical Separation

Life in the Islamic perspective is a divine trust that cannot be terminated by any form of active or passive voluntary intervention. Therefore, evidence against separating thoraopagust wins can be inferred from the following Quranic verses: "And slay not the life which Allah hath forbidden save with right"³⁸. The text of this verse is clear about forbidding any kind of killing except with a right, which according to Sunnah is by revenge, apostasy and adultery.³⁹ "And do not throw yourselves into destruction"⁴⁰ "And do not kill yourselves surely, Allah is most merciful to you".⁴¹ Consent is a pre-requisite to carrying out surgical separation of conjoined twins. It is

³⁵. George J. Annas, GJ. Siamese twins: killing one to save the other, Hastings cent Rep 1987; 17: p. 27-9.

³⁶. Stuart Knowles, The case of the Siamese Twins, December 2000, www.mills-reeve.com/health.

³⁷. George J. Annas, Conjoined Twins- The Limits of Law at the Limits of Life, p. 1107.

³⁸. Al-Isra': 33.

³⁹. Sahiih Muslim, Hadith No: 4470.

⁴⁰. Surat Annisa, 4: 195.

⁴¹. Surat Annisa, 4: 29.

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sought from the one who has legal capacity to do so either the twins themselves or their guardian. In both cases, the decision to carry out separation that will lead to death of the weaker twin is tantamount to throwing oneself into destruction which can be equated to positive killing.

From Sunnah, the prophet said: "Harm should neither be inflicted nor reciprocated"⁴². "Dharar" is the Arabic term used to refer to harm. It is explained as man's unintentional move to do something beneficial to him but detrimental to another⁴³. Separation intended to save the life of a stronger twin while sacrificing the life of the weaker one is contrary to this Hadith because it inflicts harm to the weaker twin.

The Hadith is further elaborated by the following legal maxims: "No harm shall be inflicted or reciprocated" and "Harm is not removed by harm". In light of these two maxims, scholars held that one shouldn't act under duress to kill another in order to save his own life, for both have equal rights to live and the necessity of one's need to survive cannot be safeguarded by terminating another one's life. Likewise, the life of both twins is depending on an equal service of the same heart and separating them will lead to preferring one's survival over the other which is prohibited. "Certainty is not abated by doubt".⁴⁴ In this case, the life of both twins is certain and the death of both of them if separation is not carried out is probable, so the former cannot be abated by the later. This view is corroborated by the fact death cannot only be decided by Allah and Medical judgments about death are based on probability; a doctor can predict the end of life with certainty, for example, only very close to the time of death. No one has a right to decide when they will die; "When their time...arrives they cannot tarry for a single hour nor can they go ahead".⁴⁵

Comment

The legal maxim, "certainty is not abated by doubt" can be refuted by what Imam Muhammad Ibn Juzzy (693-741) noted while defining dharurat (extreme necessity). He

⁴². Al Bayhaqi, Ahmad bin Al Hussein, AssunanAlqubra, Hadith No: (11166), Makkah, 1994.

⁴³. Al yahsabi, 'Iyadh bin Musa, Mashaariq Al Anwar 'ala Sihah Al Aathar, Beirut, vol.2, p.57.

⁴⁴. Ibn Nujaim, Al Ashbah-Wa-Nazair, p. 56.

⁴⁵. Surat Al A'raf: 34.

noted: "dharurat means fear of loss of life, and it is not a condition that one should wait until he is on the brink of death".⁴⁶ In light of the above statement, medical doctors are the authority to determine the danger of losing both twins if separation is not carried out to save one of them. Since their predictions are based on scientific facts supported by divine evidence, separation is preferred to save one's life than losing both of them if separation is not carried out.

In addition to that, no doubt that death is determined by Allah alone, but holding this view in its entirety defeats the necessity for visiting medical doctors for treatment. Since this belief is refutable, a via media that gives authority to experts to diagnose and predict a disorder should be upheld.

Shar'iah Evidence in Support of Surgical Separation Though the general rules and texts of Shar'iah

forbid terminating life without a justifiable legal reason, surgical separation of thoraopagus can be inferred from the following legal maxims:

"Harm should be warded off as far as possible".⁴⁷ As observed by medical doctors, Mary was incapable of independent existence and her life was relying on Jodie's lifeblood. At the same time continued dependence would lead to eventual death of Jodie. This harm can only be warded off by separation, it is therefore lawful.

"Extreme necessities justify the unlawful".⁴⁸ Ibn 'Abidiin observed: "if one tells the other: chop off my hand and eat it, he is not allowed to do so, for man's flesh is unlawful except under extreme necessity".⁴⁹ In this case, terminating the life of weaker twin is unlawful but the necessity of saving the life of the other takes the preference to losing both lives in the nearby future as it practically happened with Jane and Louisa.

"A specific harm should be endured to ward off a general harm".⁵⁰ In this case the resultant death of Mary,

⁴⁶. Ibn Juzzy, Muhammad Ahmad, Al Qawaniin Al-fiqhiyyah, Beirut, 2002, p. 94.

⁴⁷. Al 'Abdu-allatif, 'Abdu Rahman, Alqawa'idwadwawabit Al Mutadhaminat li taysiir, Saudi Arabia, 2003. p.279; Al Asmari, p.8

⁴⁸. Ibn Nujaim, Al AshbahWaNazair, p. 85.

⁴⁹. Ibn 'Abidiin, HashiyatRadd Al Mukhtar, Beirut, 1979, Vol.5, p. 215.

⁵⁰. Ibn Nujaim, Al AshbahWaNazair, p. 56.

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the weaker twin, is a specific harm compared to the eventual death of Jodie which shall precipitate the death of Mary if separation is not carried out which is a general harm to both twins, their parents, and the community at large. So the specific one should be endured to ward off the general harm.

Comment

Killing of the weaker twin would not have been viable had it been a singleton. But separation is justified if medical results confirm due to his vulnerability, that he will be incapable of surviving independently. This conclusion is based on the following evidence:

The categorization of needs into extreme necessity, complementary and supplementary implies putting the first category ahead of the last two in case of conflict, but the condition of preferring one to another is an anticipation of a major benefit in the preferred category. Likewise, the need for survival of a stronger twin has to be put ahead of the welfare of the weaker twin whose existence is short-lived and her continuous dependence will lead to death of the stronger twin too.⁵¹

There is no injustice made to terminating the life of the weaker twin; it is a divine arrangement that the life giver made one with more access to the sensitive organ(s) (heart) and deprived the other. So the operation is in line with upholding this divine arrangement.

It is an established fact that an embryo's life is sacred and lawful to terminate especially after forty days of fertilization. However, all Muslim scholars unanimously held that the life of unborn baby can be terminated if medical doctors confirm that continuation of its life in the mother's womb poses a serious threat to the mother's life. Such a legal reasoning is based on the following legal maxims: "A slighter harm should be endured to ward off the worst"⁵². In comparison, the resultant death of a weaker twin due to surgical separation is a slighter harm which should be endured to avoid the worst harm of losing both twins.

"When the avoidance of two evils conflict, the lesser one should be tolerated to fend off the greater one"⁵³. Desisting from surgery will lead to a greater bane of losing both twins, while carrying out surgery will save the life of

⁵¹. See: Ashinqiity, *Ahkam-Al-Jaraaha-Attibiyya*, Cairo, 2004, p. 98.

⁵². Khallaf, Abdul Wahab, *'Ilm Usulul Fiqh*, Egypt, 1998, p.201

⁵³. Ibn Nujaim, *Al Ashbah-wa-Nazair*, pp.89.

the stronger twin and lead to the loss of the weaker one. The bane which involves loss of one soul is lesser and should be tolerated to fend off the loss of both souls which is a greater loss.

“What cannot be wholly achieved should not be wholly foregone” and in another phrase “what cannot be wholly achieved should not be wholly abandoned” and also phrased as “a possibility shouldn’t be foregone due to impossibility”⁵⁴. In this case, it has become divinely arduous to preserve the lives of both twins and this impossibility shouldn’t be an impediment to achieving a possibility of saving the life of the stronger twin.

In conclusion, the need for surgical separation in this case may seem to be complementary but the fact that the danger of not carrying out the surgery will lead to loss of both twins raises the need to a category of extreme necessity in which surgery must be undertaken to save the life of one of the twins.

Consent to Carry Out the Surgery

Before operation, a surgeon must not only seek permission or authority from a patient or his guardian but also from the creator (Allah). The latter is determined by the legality or illegality of the operation as well as its necessity. The surgeon is not allowed to carry out an operation which is illegal or unnecessary in Islam; for instance, plastic surgery meant for mere beautification and changing of sexes.

In Islamic ethics an individual’s welfare is intimately linked with his or her family and community. Accordingly, the principle of autonomy (which affords the individual liberty and capacity to make a decision without coercion or other conditions that restrict one’s options) is not invoked to determine a course of action in matters related to end-of-life decisions.

Permission should be initially sought from a patient, unless he lacks the consensual capacity, in which case the guardian will stand to consent on his behalf.⁵⁵ Based on this, parents are not held guilty of any offence if

⁵⁴. Al Ansari, zakaria, Asnal-Matalib Fi Sharh-Raudhtill-Talib, vol.1, p.75, Beirut, 2000; Assuyuty, Jalal Din Abdu Rahman, Al Ashbah-wa-Nazair, p. 273, Beirut.

⁵⁵. Ibn qudaama, Abdallah bin Ahmand, AlMugni, vol.6, p.133; Al-bahuuty, Kashaf Al qana’, vol. 4, p.35.

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they consent to surgery that will lead to death of a weaker twin and survival of another, for it is in harmony with the fore cited evidence that allows undertaking a lesser loss to avoid the greater one.

However, a patient or a guardian loses his consensual right if he desists from consenting to surgery, and medical doctors, in this case are allowed to go ahead with surgery in the following two circumstances:

When a patient is threatened by death or loss of a body part but incapable of expressing his consent. In this case, a surgeon is faced with two options, either to wait till a patient regains consensual capacity, and this puts the patient's life in danger, or to go ahead with an operation without legal authority to carry out a surgery. The latter is the preferred option in Shar'iah⁵⁶.

When a patient is suffering from an epidemic disease likely to be spread to other community members if operation is not carried out immediately.

Likewise, a parent loses his consensual right if he desists from consenting to surgery; continuous dependence of a weaker twin is like an epidemic whose effect will spread and lead to death of the stronger twin. So medical doctors are allowed to go ahead with surgery, even without the parent's consent basing on a legal maxim "a specific harm should be endured to ward off a general harm". As lord Ward observed "Physicians have a legal duty to (save) Jodie, which gives them an obligation to act, and doctors cannot be denied a right of choice if they are under duty to choose".⁵⁷

Finally, the case of Ahmed and Mohamed Ibrahim can be cited as a particular precedent on Islamic stance on separating thoraopagus twins. Ahmed and Mohamed Ibrahim were born in rural southern Egypt conjoined at the head. A team of 30 doctors and nurses was brought together to determine if the two boys could be successfully separated. Although there was a danger that one or both might die, the medical staff voted affirmatively.

Later, the doctors faced winning approval from the Islamic clergy and the case was forwarded to the grand Mufti of Egypt, sheikh Mohamed Ahmed El-Tayeb, who gave written approval for the separation, provided that

⁵⁶. See; Ashinqiity, Ahkam Al Jarahat A tibbiya, p.173.

⁵⁷. Re A (Children) Conjoined Twins: Surgical Separation (2000) 4 All ER 961, UK Court of Appeal no: B1/2000/2969.

doctors believed at least one twin would survive and as long as the surgery wasn't experimental.

Dr. Abd al Moati Bauomy, an Islamic scholar and retired dean of the Faculty of Islamic Jurisprudence at Cairo's Al Azhar University observed that the case does provide a quandary but concluded that those closest to the twins should seek an Islamic solution that does the least harm. He remarked "there are general Islamic commands that guide everyone, and if there are two points of view from two religious authorities a person should go with the one that makes the most sense to him. It's a personal decision".⁵⁸

In comparison with the legal maxims and other strong proof presented above, it can be inferred that undergoing surgery that will lead to survival of the stronger twin is a solution that does the least harm.

Conclusion

From the above views for and against surgical separation of thoraopagus twins, it can be summarized as follows:

Warding off bodily harm and ensuring usefulness of human body is part of the Shar'iah general objective of safeguarding the welfare and well-being of human beings which has to be upheld in order to fulfill the divine purpose of creation.

The legal maxims of Shar'iah which call for warding off harm and tolerating a least harm to fend off the greater one, and their impact on rating priorities should be considered while deciding the necessity of separating all kinds of conjoined twins.

It is a patient's or guardian's right to consent to carrying out surgery but they lose this right if they desist from consenting to an operation to remove an illness that is likely to affect others.

⁵⁸. Voice of America News, "Doctors of Egyptian Conjoined Twins Face Dual Dilemma, 13 August 2002, news.VOA.com.