

**RESPONSIBILITIES OF A MEDICAL DOCTOR
(PHYSICIAN OR SURGEON)
IN THE CONTEXT OF ISLAMIC TEACHINGS**

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Medical profession is one of the important professions in society. Obtaining knowledge of the medical profession in the collective duty of the Muslims. A Muslims society must have sufficient number of medical experts for the welfare and medical care of its members. It is evident that the Islamic teachings give importance to the medical science to be used for the welfare of mankind.

Keeping in view its importance in the Islamic teachings, it is understandable to say that there must be some sort of liability on the part of the doctor or the medical staff, for carrying out such sensitive and important jobs. It is also because the lives of mankind are involved with it. Thus the question arises that when a person does perform this sort of welfare job, is he/she responsible for any type of mishap if occurs during his/her medication? If so, up to what extent? Thus the Islamic teachings determine their responsibilities as and when they perform their duties as medical practitioners. The present study mainly includes medical practitioners, i.e. the physician/surgeons and their concerned subordinate involved in different types of remedial measures or in other words the medical doctors and their technical staff.

Diseases are different in their nature, some of them are infectious and fatal. Usually the government and even the World Health Organization wants to prevent the societies from such fatal diseases. For this purpose vaccination is the latest technology, which is being used as a preventive precautionary measure. This task is being achieved through different organizations with the permission of the concerned governments and the governments themselves. Apart from their achievements, although it is rare but some times the results of these vaccinations are in the negative. The question arises, whether the vaccinating doctor or the concerned staff is responsible for any damage, if occurs or the liability lies upon the concerned department?

In the Islamic perspective it looks recommended when medical profession is intended to be used as a tool for giving advantage to the people under the inspiration of the teaching of the Qur'an and *sunnah* of the Prophet (PBUH).

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capacity undergoes deep scanning. All it is because appropriation of private property is strictly prohibited.

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One of the Governors of Hazrat said that they would delay the collection of Kharaj until the tax payers had the means to pay it conveniently.

5. Mutual Consent and Satisfaction.

Assessment of produce, etc. should be done with the consent of the assesses. Both assessor and assessee by contented with each other. Neither the Zakah (Tax) collector will chose their superior goods nor the inferior. The prophet (P.B.U.H) advised Hazrat Muaz not to take the best mal in Zakah. He also said, "the tax collectors, when they depart, should be happy with you". Hazrat Umar used to send for the people from different areas to know how the governors dealt with them. When Kharaj or Jizyah revenues were presented before him, he got his collectors sworn by God, that they had not teased the people.

6. The Principle of Economy.

Islam ordains moderation and resents extravagance. A great emphasis has been put upon the economy in the Zakah (Tax) collection as well as disbursement of Zakah. Prophet (P.B.U.H) ordained his collectors of justice and economy and strictly prohibited to accept gifts. They were ordered to disburse receipt in the same locality and return with nothing. State will pay for their services. Imam Shafie is of the vew that Zakah collectors would be given 1/8 only and not more than that. Yousaf Al-Qardawi has deduced principle of economy from the verse of surah al-Taubah.

7. Earmarking

The very need for imposing taxes tells the allocation of tax receipt. It is the rationality and wisdom of shariah that it has specified the heads of expenditure of Zakah to exclude the shims and desires of the rulers. The use of Zakah proceeds, war booty have been specified. Kharaj and Jizyah proceeds can be utilized for administrative and other public expenditure. Faqaha have agreed that if additional taxes are levied by the Islamic state for meeting a specific need the proceeds can not be spent except for meeting the same need.

8. The Conclusion

The limits of the role of Islamic state hover around the circumstances and state of the economy. Dimensions of economic role of the state as revealed by jurists, commentaries and contemporary economists allude to the taxing power of the state. However, taxing power is not absolute; it has to pass through the conditions-filter. The effectiveness of the state tax raising efforts in connected with the taxable capacity of the economy. Here, too, tax generation out of the taxable

case of Kharaj and not less than 20%. The same criterion was applied keeping in view wealth and property of zimmi. Custom duty was different for different persons.

3. Certainty.

It implies that state should be certain about the receipt and Tax payers about payment. Yousaf Alqardawi has interpreted certainty in two ways which exists in Islamic taxing:

1. Time Certainty
2. Amount Certainty

Under the Islamic framework of taxation no one is thrown to darkness. All those who possess wealth in the form of gold, silver, other metals, and currencies, unequivocally know that Zakah is levied after one year. Agricultured crops are subject to Ushar when they have been reaped. He, who discovers a treasure, will be taxed after he has owned. Moreover, when people are habitual of paying taxes, there prevails no ambiguity or confusion about the rates of Zakah, Usher, Khums. The range of Variations in Khraj and Jizyah has been specified. Each and every non-Muslim cultivator will be having complete information about Kharaj as it will be in the form of written pact between the state and the cultivators. Same is the case of Jizyah. In addition to that, the frequent changes in the tax system as practiced in the secular system, which create distrust, are absent in the Islamic framework.

4. The Convenience of the Tax Payers.

Taxes when collected should not be inconvenient for the Tax payers. It is reported by Hazrat Abdullah Ibn Umar that Prophet (P.B.U.H) said, "the Zakah collector should not ask the people to present their animals in front of them. Zakah should be collected at their homes and the owners of the animals should be present during the assessment."³⁴

As regards crops and fruits, He ordered, "be lenient while assessing and ignore $\frac{1}{3}$ or $\frac{1}{4}$ of the produce of fruits and trees. These traditions furnish two types of convenience.

1. Time Delay
2. Amount Exemption

The example of time delay is found in the period of Umar (R.T.U) when he allowed late payment in the year of hunger". Hazrat Ali advised the newly appointed governor of Abkara that he would not sell their summer and winter dress in payment for Kharaj nor their working animals, nor beat anyone, nor auction their utensils.³⁵

anyone because of his nobility or wealth, and no exempting even your own official or courtiers or followers; and not levy on anyone a tax which is beyond his capacity to Pay.”

- (B) It is unjust to tax the people who hardly meet their basic needs and have nothing in surplus. Islam has set a minimum limit (Nisab) to safeguard basic needs.
- (C) No one will be taxed twice a year for the same wealth.
- (D) Islam regards the labor most auspicious factor and has given due consideration while imposing Zakah (Tax). For example, the land which is rain fed and human efforts are small, the ratio is 1/10 and when it is watered by human effort is lowered to 1/20. This justice is present in Islamic system only.
- (E) Personal circumstances differ and a just tax system should cover this aspect too. Islam is credited with this as a tax is to be imposed after many deductions. e.g. house for living, tools of earnings, family responsibilities.

Ibn Qayyim³³ has demonstrated that Allah has fixed a period of one year for Zakah because fruits and crops get ripe in one year. this period is based on justice. If Zakah were levied every week and every month this would have been troublesome for the rich and if it were taken only once in the life it would have been harmful to the poor. Therefore, the period of one year is a just period.

2. The ability to Pay.

Islamic system of taxation is simple and takes extra care of the ability of the tax payers. The very low rates that tax payers easily bear, are the evidence of this truth. The rulers are urged to levy taxes at such amount and rates that tax payers are easily able to bear. This does not mean equal sacrifice rather it means treating the unequal unequally. This can be better understood by the practice of Hazrat Umar. He said, “I would neither assess a tax that assessee can't bear and nor would collect Kharaj except what can easily be borne by land.”

The tax rates will vary with ability to pay. Fuqaha have fixed the extreme upper limit for the ability to pay to 50% of the produce of land in

advice delivered by the Prophet (P.B.U.H) and wise caliphs to Zakah, Kharaj and Jizyah collectors when they went to visit the areas of the Islamic state.

Shah Wali Allah has argued that a reasonable and genuine tax system should be based on the following four principles:³²

1. The Zakah or tax be collected from the mal which goes on increasing or has growth potential and government is responsible for its protection. This consists of grazing cattle, fields, orchards and tradables.
2. The people who have gold and silver treasures and sleep on them, should be charged reasonable amount as they need to maximum safety of their wealth to be provided by the government against thieves and dacoits. A low levy will make no difference to them.
3. Those who find treasurer without any labor, should also contribute to the bait-al-mal.
4. The majority of people consists of professionals. They earn daily and a very low tax on them will fetch large funds to bait-al-mal.

The notable idea in all four cases is that he has proposed a low tax. The reason is that taxation in Islam is not motivated with collecting as much as possible.

Technically, the findings of the jurists provide us with the following principles:

1. The principles of Justice & Equity.

Islamic concept of justice in taxation implies that:

- (A) All will stand equal while imposing taxes. Differentiation is not allowed. After defining and setting aside the minimum all will be subject to the same tax.

Rulers and ruled, laymen and the gentry, young and old will bear the same tax.

Ibn Khuldon has mentioned a letter of Tahir Ibn al-Hassan to his son, who was governor of a province in the following words:

“So distribute (taxes) among all people with justice and equity, making it general and not exempting

Taxes will be used in the Benefit of Ummah.

As the taxes will be need-specific, the amount collected will be spent on the same need. There is no allowance for using these funds on lavish living and comforts of the rulers. Take the case of Zakah. The wisdom behind the expenditure specification (8 heads) is to eliminate any chance of discretionary use of funds by the rulers. The wise caliphs were very careful about it. Hazrat Umar once asked Hazrat Salman if he (Umar) was a king or a Khalifa (Caliph) Salman replied that he was king if he mis-spent even a single dinar.. Umar's eyes were filled.....with tears with this reply.³⁰

5. The Taxable Capacity.

Taxable capacity is the surplus that remains after deducting from national income the amount necessary for maintaining the capital of the countries provided efficiency of the people stands unimpaired. Or alternatively, it refers to the amount of tax burden which the community is in a position to bear without leading to the impairment of its production efforts and efficiency.

Islamic theory regarding taxable capacity has been pronounced by the Holy Quran in the verse that,

“they ask you what they ought to spend, say; which is surplus.”

Hazrat Umar for the implementation of divine direction once asked Hazrat Huzaifa and Hazrat Usman Ibn Hanif who had returned from Iraq with Kharaj revenue how they had imposed tax? I think you have imposed more than their tax capacity. Hazrat Huzaifa said, “I have left even the surplus with them”, and Hazrat Usman said, “I have left with them more. Hazrat Umar said, “I exhort who would be caliphs about the inhabitants of towns to take surplus of their wealth only. these are the people who add to wealth and defend Islam. No burden beyond their capacity should be placed upon them.”¹³

It will be wonderful to know that Muslim thinkers have unable to bear rules of Kharaj imposed by Hazrat Umar, then you are allowed to change such rate as in accordance with the land and the capacity of the cultivators.

6. The General Principles.

After qualifying the binding conditions, taxation will be conducted in conformity with the basic principles and spirit of Shariah. Shariah has descended to create easiness for the people and to protect their lives and properties. The set of principles has been derived from the directions and

has also finished, they are permitted to exact expenditure of jihad from the people. Imam is prohibited to take their wealth if he has any kind of wealth.²⁹

Similarly Zahir Babar of Syria intended to wage war against the enemy the bait-al-mal could not finance the war. He called upon the ulama of Syria to know their consent for taxation.

Imam Nawawi was not present and others permitted him in view of the need and benefit of Ummah. He sent for Nawawi and asked to sign the judgement given by others. Nawawi refused to do so. The king wanted to explain for the refusal. Nawawi said, "you were a gun man and you hand nothing. God gave you the kingship and now you have one hundred he-slaves and two hundred she-slaves and each one of them has a bag of gold and ornaments. First spend all this wealth in jihad. After you have spent all that, I will permit you to Damascus and leave the city. Although he allowed Imam Nawawi after sometime to return but Nawawi refused and said, "I will not enter the city till the death of Zahir". Zahir died after a month.

Mawardi, Abu Ya'ala, al-Ghazali and Sarkhasi recommend the same. Additionally, before imposing taxes four things must be observed. These are:

1. Expenditure trimming.
2. Financing development undertaking by means of private participation.
3. Selling public goods for fair prices or fees.
4. Voluntary or forced public borrowing.

State can seek the participation of public in financing many public goods such as infrastructure and construction works on the profit basis. Voluntary and forced public borrowing can be adopted in extra-ordinary and emergency conditions.

3. Justice in the distribution of burden.

Imposing taxes on the poor contradicts the principle of Zakah. It will hit the minimum standard of living of the poor. It implies that the tax burden should be proportional to the position and ability of the payer after subtracting an adequate level of living. Taxing everyone equally is injustice. Indirect taxation will also be avoided on the same ground. Yousaf Al-Qardawi recommends direct and progressive taxes for fulfilling the justice in the distribution of tax burden so that the wealthy may go down by one step and the poor up by one. Nejatullah has proposed taxing for removing inequalities.

5. Every body benefits from the public goods and one should pay for these benefits according to the principles "no gain without loss".

4. PRINCIPLES OF TAXING POWER.

It has been demonstrated that Islamic state has to play dynamic role and there is ample evidence provided in Kitab, Sunnah and opinions of jurists to impose taxes. The empowering of state to tax raises some important questions. Does it depend on the discretion of the rulers or are there some minimum necessary conditions for the taxes to be imposed? How far taxable capacity is safeguarded? What are the guiding principle which satisfy and guarantee that taxes, when imposed, will be optimal?

The Building Conditions

No man has absolute freedom and power in Islam. Every man being subservient to God, can enjoy limited freedom. Khalifah has no power to tread or go beyond Shariah norms. He will exercise power to tax within the boundaries set by Shariah. Islam strictly condemns encroachment upon anyone's property. Mal is as sacred as body. Shariah disapproves any tax which is levied with out Islamic backing. It has provided with binding conditions for the tax to be imposed jurists agree on the following conditions:

1. Taxes are tightly linked to need.

This is need criterion. State is allowed to tax to safeguard the benefits of the people (Masaleh) as delineated by jurists in terms of "Objectives of Shariah". Shariah gives top priority to the fulfillment of needs for the existence and peace of life. No tax can be levied unless there exists a real need; e.g., feeding the hunger stricken, defending natural calamity or any other emergency like war, etc. Ordaining what is good and forbidding what is bad also provides the grounds for taxation. Public goods such as building and maintaining of mosques, flood protection net works, etc. are justified to be financed through additional taxes. If the voluntary sectors role is deficient due to any constraint, the ultimate responsibility devolves on the state to fill the resources gap by levying taxes.

2. Taxes are the last resort.

Fuqaha have adjudged that taxes can be imposed only if all the resources have exhausted and bait-al-mal is empty. Malik Nasir of Egypt decided to prepare an army against Tatars and invited all the Fuqaha to know their opinion. Imam Izz-ud-din Ibn Abd Al-Salam told that if enemy attacks the land of Islam Jihad is "fard" on Islamic state. If bait-al-mal is empty and the money which rulers usually donate as gift for noble service

A similar hadith is reported in Tirmizi. Fatimah bint Qais (R.T.A) reports that Messenger of God said:

“There are rights in property other than Zakah”²⁷. Ibn H. permitted the use of force if the taxes on well-to-do are resisted to meet the rights of the needy. Shatibi²⁸ discussed the need for taxation in detail and stated that if imam is striving for the defense of the country and expanding the army for blockade and army requirements are so large that bait-al-mal is dried out he is permitted (provided he is justful) to impose taxes to meet need of the time.

Taxing by the state can not be tied to the general social security and defense only. Fuqaha have extended it to the obligatory as well as expanding activities of the state. Mawardi has suggested that taking physical as well as financial help from citizens for constructing wall around the city and repairing and constructing canals is permissible. He is also of the view that if wayfarers can not be helped from the bait-al-mal due to the shortage of funds, the funds can be collected from the citizens for them.

Islam directs its followers to fully utilize the endowments of God. The modern day technology development have made it easier to exploit these resources for promoting human welfare. The adoption of technological developments in the fields of defense, agriculture, industry, transportation has been recognized as a necessity both for the existence and betterment of human life. It requires huge financial resources. In this context, Ibn Tamiyyah's view is worth mentioning. He regards educational and industrial development indispensable for the nation which needs large wealth that can be obtained through taxes only. Thus, early jurists and modern day Muslim thinkers agree that the state can resort to taxation on the following grounds:

1. Islamic philosophy of social security and brotherhood endorse it.
2. Zakah is limited to eight heads of expenditures only while state has to incur expenditures on many other heads too.
3. The Shariah aims at the attainment of benefits and removal of losses and this broadens the horizon of the economic role of the state.
4. Jihad with wealth is as necessary as by body and Imam is empowered to levy an amount upon the wealthy.