

Medical Aid

The Islamic perspective

There are many medical aid schemes. Some in my humble opinion may be permissible while others are not. In this Fatwā I am only discussing that scheme wherein a certain fee is paid to a medical aid company in return for which they take responsibility of the client's hospitalization or medical expenses. In these schemes, the amount under normal circumstances is paid directly to the hospital or people who have provided the necessary treatment.

This particular type of scheme ought to be permitted in our Sharī'ah, based on it being an Ijārah contract between a member and the scheme. The Ijārah works in such a manner that the member pays a fixed and mutually agreed amount monthly and the scheme takes responsibility for his treatment and well being. There are two examples in Sharī'ah with regards to this that presently come to mind:

1. It has been a longstanding trend for centuries in the villages, towns and cities of the Indo-Paak sub-continent that barbers, carpenters, and blacksmiths etc. take responsibility for the respective needs of the people, and the people in return pay them a stipulated amount of grain or cash at the time of harvest. This trend is still prevalent in Afghanistan, India, (Deoband, Thānabhawan, Sahāranpūr etc) and many other places. So, for example, the barber takes the responsibility of maintaining the hair of a family which is unspecified and unknown, but this ambiguity does not lead to arguments and disputes, and in return the family pays them for this service at the time of harvest by giving them a stipulated amount of grain or cash, immaterial as to whether they had requested his services or not and immaterial of the amount of times he was

summoned. Similarly, in medical aid too, the company takes responsibility of treatment which is unspecified and uncertain, but it does not lead to arguments and disputes.

2. Hiring a wet nurse for infants is unanimously permissible. Here too, one party takes responsibility for breastfeeding etc. while the other party pays her for this service. The period, quantity, and number of times the baby will require breastfeeding are all unspecified, but this ambiguity does not lead to disputes, therefore rendering this practice lawful according to all the Fuqahā.

- A point worth noting here is that they are only two types of *Aiir* (employees) in *Sharī'ah*:

(1) Ajīr-Khān : A person who works for a particular employer such as a teacher, office worker, domestic worker etc.

(2) **Ajīr-Mushtarak:** A person who offers his services to the public such as a tradesman, taxi driver, porter, or tailor, etc.

Now the objection that may arise here is that the party taking responsibility of treatment in the medical aid scheme is regarded as an Ajīr Mushtarak or an Ajīr Khāṭṭ ? If they are regarded as Ajīr Khāṭṭ , then how is it that they can accept responsibility for the treatment of others as well, as an Ajīr Khāṭṭ cannot accept work from others? This can be seen from the following text of Shāmī, vol 6, pg 64:

[illegible]

On the other hand, if they are regarded as Ajir Mushtarak, then they only have the right to be paid after working, treating etc, whereas the Medical Aid Schemes demand payments timeously even if there was no need to treat a member for that particular month?

- The answer to this objection is, that some Fuqahā (Jurists) have combined Ajīr Khā and Ajīr Mushtarak in some instances, for example, if a Murīyah (wet-nurse) breastfeeds the infant at her own house, then she is regarded as an Ajīr Khā and an Ajīr Mushtarak, i.e. she will still be paid for her services even though she breastfeeds other children as well, as can be seen from the following text of Fatḥ ul-Muʿīn, the commentary of Kanz, vol 3, pg 354,

[illegible]

So whether the services of the Medical Aid Schemes are utilized or not (as in some months they might have been no need for treatment) they will still be entitled to receive payments as an Ajīr Khāṣṣ, and they could accept work from others as well, as an Ajīr Mushtarak.

- In Aṣṣanul Fatāwā, vol 7, pg 25, Muftī Rashīd Aḥmed Ludwyanwī R.A. has briefly stated the impermissibility of Medical Aid. It is possible that Haḥrat Muftī Muḥammad ibn R.A had given this ruling based on the ambiguity and uncertainty of the services provided by the Medical Aid. Yet on another occasion, Haḥrat Muftī Muḥammad ibn has stated the permissibility of such a transaction if it does not lead to disputes. This can be seen from the following question posed to Haḥrat Muftī Muḥammad ibn with regards to the impermissibility of a person giving roti as payment to a person in return for him making roti (flat bread) for him, as the payment of roti is ambiguous and unspecified here. In reply to this Haḥrat Muftī Muḥammad ibn stated that if this ambiguity of Ujrah (payment) does not lead to dispute, then it would not cancel and nullify the Ijārah contract. (Aṣṣanul Fatāwā vol 7, Pg 313)

This ruling "that ambiguity which does not lead to dispute does not nullify a transaction" has been mentioned by many jurists as can be seen in the following text of Fatāwā Aālamiyyah, vol 4, pg 411:

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Haṭṭ rat Moulānā Anwar Shāh Kashmīrī R.A. has mentioned a very valuable point in Fayḥ ul Bārī the commentary of Saḥīḥ al Bukhārī, vol 3, pg 289:

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هذا النص هو مثال لنص يمكن أن يستبدل في نفس المساحة، لقد تم توليد هذا النص من قِبل برنامج توليد النصوص الآلي، ولا يُعد هذا النص مناسباً للاستخدام في أي مشروع حقيقي. يرجى استخدام محتوى النص الخاص بك لتجنب أي مشاكل قانونية أو أخلاقية.

The gist of this text is that when a transaction does not involve breaking any of the commandments of Allāh (Subḥānahu Wa Ta'ālā) and is free from all types of Shar'ī prohibitions, then it can not be nullified merely on the basis of ambiguity and uncertainty until and unless this ambiguity does actually create disputes.

Presently there are many other schemes similar to that of Medical Aid which have become very common nowadays. An example of this is the security companies. People in order to protect their cars, properties, etc. from theft make an agreement with a security company that every month we will pay you so much if you take responsibility for our security. Then if the car etc. gets stolen, the company tracks it down by means of their tracking devices and makes an effort to return it to the owner. In this case too, the service and security a person gets in return for his monthly payments is unspecified, and sometimes for years the need does not arise to take service from such companies, but due to it not leading to disputes such schemes are permissible. Similar to these schemes is the nature of Medical Aid.

- There is another side to the issue of Medical Aid. Some of these companies generally operate on a non profit basis and regard their services as a favor with the intention of benefiting and treating its members. Based on this clause, this scheme could also be regarded as a Tabarru' al-Mashrū', i.e. the scheme will, from their own side treat and benefit people with the condition that they contribute a certain stipulated amount to their cause. Such a transaction, (Tabarru' al-Mashrū'), is permissible according to the Fuqahā. Further insight on this topic can be found in Imdādul Aḥkām, vol 3 pg 386 and pg 606.

In conclusion, whether we regard this contract as Ijārah or Tabarru' al-Mashrū', a scheme of this nature is permissible and it would be permissible for one to take benefit from.

- At this juncture, another question that generally arises is that even if such a transaction is termed Ijārah or Tabarru' al-Mashrū', in both cases Medical Aid companies generally are involved in ḥarām dealings such as re-insurance, bank interest etc. so what would be the ruling with regards to taking benefits and treatment from such a company whose income comprises ḥarām?

The answer to this is that generally in non Muslim countries Medical Aid companies belong to non-Muslims, and there are three different opinions of our pious predecessors with regards to the business dealings of non-Muslims:

1. Imām Zufar R.A says that those dealings of a Kāfir (non-Muslim), Zimmī (Kāfir living in the lands of Islam) or ʿarbī (Kāfir living in Dārul ʿarb) which are contrary to the Sharīʿah are Fāsid (null and void). Therefore for Muslims to accept that money or goods which the Kuffār have earned through ʿarām means (gambling, interest, sale of alcohol etc.) would not be permissible.

2. Imām Abū Yūsuf and Imām Muḥammad R.A say that those dealings of a ʿarbī done in Dārul ʿarb, which are contrary to Sharīʿah, would not be termed null and void as they have not subjected themselves to Islamic law. Yes, those Zimmīs who live in a Muslim country, their dealings would be scrutinized, if they do not conform to Islamic law then they would be regarded as null and void and it would not be permissible for Muslims to accept money from them that they earned in such transactions. For example, if they earned any money by means of interest, then it would not be permissible for Muslims to utilize it.

3. Imām Abū Hanīfah R.A. says that non Muslims, whether living in Dārul ʿarb or Dārul Islām, are not bound to Islamic law without accepting and agreeing to abide by it. This is because the ʿarbīs are not residing in Dārul Islām and thus, are not subjected to its laws, and those Zimmīs living in Dārul Islām have also not subjected themselves to those Islamic laws which are in contradiction to their own religion or customs, and neither have they made it necessary upon themselves to abide by Islamic law. Therefore those dealings of theirs which are contrary to Islamic law will not be nullified, and it would be permissible for Muslims when dealing with them to receive as payments that money which they earned in these ʿarām transactions. Yes, should the Zimmīs in dealing with Muslims agree to abide by a condition which conforms to Islamic law or they sign an agreement accepting to abide by it, then in such a case going against this agreement would nullify the Zimmīs' transactions. Thus, in this case for Muslims to take or consume from such dealings would not be permissible. Those Kuffār living in non Muslim countries are similar to ʿarbīs, therefore their dealings which conform to their laws would not be regarded as null and void and it would be permissible for Muslims to take and utilize the profits earned from them. Haḍrat Mawlānā ʿafr Aḥmed Uthmānī R.A. has thrown light with great detail on this subject and this Fatwā was also reviewed by Haḍrat Mawlānā Ashraf Alī Thānwī R.A. as can be seen from the contents of the Fatāwā.

4. In the event where a Medical Aid company belongs to a Muslim and his overall income is

