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Hymenoplasty in the Perspective of Sharī'ah Law: An Analytical Study

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Abstract:

Times immemorial signify the virginity as an auspicious element of a woman. A torn hymen has been a sign of non-virgin condition of a woman. Although, fornication has not always been a genuine reason behind a torn hymen, yet, social milieu has shown a great significance to virginity in every age of mankind. Medical science has shown several miracles for the mankind. One such miracle belongs to the field of plastic surgery where a torn hymen has been repaired to save a woman from social pressure. On the one hand, it enhances the courage and confidence of a woman and makes her survival possible with grace and honor in the society, and on the other hand; it contains apprehensions in case of immodesty and fornication. It can be a double edged sword. Therefore, this research paper will demonstrate the legal aspects of Hymenoplasty in the light of Sharī'ah law of Islam. Since, it is a novel research, so it would prove a gateway for other researches in this field.

Key Words : Hymenoplasty, *Sharī'ah* Law, Contemporary Medical Issue

Introduction:

In the Eastern world generally, and the Muslim world especially, Virginity in women is considered a desired and auspicious element in marriage. Virginity causes the pride and honor of bride and her family, which reveals the unblemished and virtuous character of a woman. It possesses social, religious, and moral significance.¹ Medically speaking, the presence of Hymen is an indication of virginity of a woman. However, it is not the matter of fact, since; Hymen can be torn due to different reasons, e.g. jumping, hopping, skipping, athletic activities, carrying the heavy weight, etc. Whatever would be the reason of a torn hymen, traditionally, it is considered an inauspicious thing for an unmarried woman. Therefore, Hymenoplasty has been introduced by the medical science; it is a

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procedure to reconstruct the ripped hymen. It is a procedure where anesthesia is done both in local or general as per the condition of the patients. In the said procedure, the torn pieces of hymen were incised and incision is done in the remnants of hymen beneath the urethral orifice making two layers-outer and inner. When the procedure completed only a small hole was left in hymen for menstrual blood and other vaginal secretion to flow out the vagina.² This procedure is also called the genital plastic surgery for women, for it is a comparatively new phenomena, therefore, it has become a topic of discussion in mass-media, medical journals, and online websites. There is dearth of legislation in this field, still standard medical measures, and proper training in this field is missing.³ As it has been mentioned, Hymenoplasty is a multi-dimensional issue, which contains social, religious, medical, ethical, and legal aspects. Therefore, the current research article aims at examining Hymenoplasty in the perspective of *Shari'ah* law. The viewpoints of contemporary religious scholars will be presented in the light of sources of Islamic *Shari'ah* in this research paper. Methodology of analytical research will be employed in this research paper.

Importance of Maidenhead in 'Urf and Shari'ah

There is no doubt that maidenhead is a mark of chastity and sexual abstention for an unmarried woman. This indicates the pure character of a woman who saved her virginity at every cost. Hence, her sound character becomes a source of pride not only for that woman but also for her family and tribe. On this account, all the divine religions take the hymen as a matter of pride and unanimously make it a worthwhile thing. Similarly, the absence of maidenhead indicates an unchaste character and becomes a cause of enmity that leads to the bloodshed and devastation of many lives. As the torn maidenhead is a source of shame for a husband, so its presence also assures a prosperous marital life for a married woman.

It can be noticed that the presence of virginal membrane diminishes doubts and suspicions, and promises for a happy marital life. Therefore, its presence is essential. In the same way, Islamic *Shari'ah* and social ethics provide injunctions certain principles for its protection. It's such a human tissue which is distinctive to females, and holds a peculiar value in the case of purity and modesty. Therefore, if someone breaks it by force or commits adultery, then he would not only earn a grave sin but also be penalized.⁴ 'Allāmā ibn-ē-*Qadāmah* says that if someone forces a woman to adultery and destroys her virginal membrane, in such a case, that man would pay one third part of *diyat* (blood money) and would also be fined with *Mahr-e-Mithal* [Dower of the like]. The reason of the penalty is that he performed sexual intercourse in a place that was not

lawful for him. Hence, like other crimes penalty would be due in such a case. However, in the matter of penalty of maidenhead, there are two traditions. First tradition says that penalty is not due; instead *Mahr-e-Mithal* would be due in such case. According to second tradition penalty would become due on him, like it becomes due as tearing with a finger.⁵

According to Imam *Shāfi*'s point of view he would be liable only for penalty, since he was allowed to do intercourse, and not to pierce the maidenhead. Hence, it is like cutting the hand of the woman.⁶

According to *Māliki* viewpoint if a husband intentionally tears the maidenhead through his finger, then he would be liable to pay the blood money, moreover, tearing the maidenhead with finger is *Haram* (unlawful), and the husband would be reproached.⁷ *Hanafi* viewpoint in this case is, if a husband intentionally tears the hymen with his finger, penalty would not be liable on him, but such an act is disliked.⁸

Literal Meaning of Virginitly:

The hymen is a thin piece of mucosal tissue that surrounds or partially covers the external vaginal opening.⁹ This tissue rips when husband performs intercourse, and thus; woman converts from virgin to *Thēbāh* (non-virgin). Likewise, the man who has not maintained sexual relationship with a woman is also called a "*Bikr*" (virgin).^{10 11} الْبِكَارَةُ (بِالْفَتْحِ) وَالْبِكْرُ: الْمَرْأَةُ الَّتِي لَمْ تُفْتَضَّ، وَيُقَالُ لِلرَّجُلِ: بَكْرٌ، إِذَا لَمْ لُغَةً: عُدْرَةُ الْمَرْأَةِ، وَهِيَ الْجِلْدَةُ الَّتِي عَلَى الْقُبُلِ¹² - بَكَارَةٌ، عُدْرَةٌ، كَوْنُ الْفَتَاةِ عُدْرَاءَ حِجَابٍ¹³ يَقْرَبُ النِّسَاءَ، وَمِنْهُ حَدِيثُ الْبِكْرِ بِالْبِكْرِ جُلْدٌ مِائَةٌ وَتَفِي سَنَةً - الْبِكُورِيَّةُ: غِشَاءُ الْمَهْبِلِ وَهُوَ غِشَاءٌ رَقِيقٌ فِي عُنُقِ فَرجِ الْبِكْرِ الْعُدْرَاءِ¹⁴

Jurists View of Virginitly :

Hanafi School of Thought: According to *Hanafi* school of thought *Bakirah* (virgin) is a female who neither experienced sexual intimacy nor committed fornication. Hence, a female whose virginity has lost due to jumping, excess of menstruation, operation, or staying unmarried for a long time, will also be considered a virgin.¹⁵

Māliki School of Thought: considers a female virgin who has experienced sexual intercourse after marriage or substitute of authentic marriage. A female whose hymen has not ripped completely, will also be considered a virgin.¹⁶

Shāfi School of Thought: considers a female virgin whose hymen continuously remains safe. Hence, if she loses her virginity due to adultery, then she will not be considered a virgin.¹⁷

Hānbāli School of Thought: says that virgin is a female who has not married before or sexual intercourse has not been performed with her in vagina.¹⁸

Importance of Virginitly in Marriage Contract:

In marriage contract the virginity has the following significance:

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- i. Hymen is a desired thing in marriage that is considered a virtuous factor, therefore, Hazrat Jabir (R.A) says that when I got married, the messenger of Allah asked me, if I married with a virgin or non-virgin woman? I replied, a non-virgin woman, the apostle of Allah said: Why you did not marry with a virgin? So that, both of you could play with each other.¹⁹ This Ḥadīth highlights the significance of marrying with a virgin girl, for a virgin contains bashfulness and modesty which leads her towards chastity, and keeps the society free from immodesty. This is a factor which attracts a husband towards his spouse, unlike a non-virgin girl, who remains doubtful for her husband and mental peace becomes a dream for such a couple.²⁰
 - ii. Dower of virgin girl exceeds to a non-virgin woman: it is generally observed that dower of a virgin surpasses the non-virgin woman, that's why the absence of virginity causes financial lose to husband, and he can ask for the return of extra dower, because the purpose due to which the husband set the higher dower is absent, so he would like to decrease the dower on account of the absence of the desired characteristics.²¹ In the same vein, a matter related to *Fiqh* is also involved in this matter, if a man marries a woman with a condition that she is virgin, and afterward she is found non-virgin, in such a case, the gist of jurists' view regarding the nullity of *Nikāh* is consisted of following two views:
 - i. According to first view which belongs to *Ahnaf* that *Nikāh* will not become void by the absence of virginity's condition.²² And *Mālikis* are also agreed with this view; however, there are two exceptions. Firstly, girl's father was aware of that defect, and he intentionally concealed it, in such a case, *Nikāh* will become void. Secondly, husband set the condition of virginity, and it was not found, then *Nikāh* can be nullified in such a case, either father of the girl was informed about it or not, since the condition was missing. Secondly, three *Imams* are of the view that father was informed that his daughter is a non-virgin and he concealed this fact, or the husband placed the condition of virginity and found her a non-virgin then husband would have the right to nullify the *Nikāh*.²³

The logic behind the first view is that the real purpose of *Nikāh* is enjoyment. There is no difference of enjoyment between a virgin and non-virgin. Furthermore, positive thinking for a believer is a virtue, so, it can be assumed that the loss of virginity was because of jumping or hopping. Hence, absence of virginity is not a reason of nullity of *Nikāh*.²⁴ The logic behind the second view is that the difference of the characteristic in *Nikāh* is like the

difference in the essence, since in the case of *Nikāh*, one has to trust on the characteristics of the woman, they are not observed and determined. Hence, nullity of *Nikāh* is allowed, if the characteristic of virginity is missing. Moreover, if father of the girl was informed about that fact, then it would be a matter of cheating; therefore, he must face the consequence in the form of voiding of *Nikāh*.²⁵

Preferred View: First opinion is preferable for two reasons.

- i. it is compatible with the spirit of Islam as it secures the family institution.
- ii. it also provides space to positive thinking, which is a desired matter of Qur'an and *Hadīth*.²⁶

Causes of the Disappearance of Hymen:

The reasons of the disappearance of hymen are as such:

- i. Fornication is one of the reasons of the vanishing of hymen: in such case, operation will be considered akin to deception. Although, the care is observed regarding concealment of *Sattar*, however, on the other hand, the right of husband comes to an end, since; it is a objective for a husband.
- ii. Disappearance of hymen due to marriage: in such case, operation will also be considered a deceitful act. Because, a non-virgin becomes a virgin in this case. Dower is adjusted on the basis of virginity, while as the matter of fact, virginity is lacking in this case, which is a desired thing for a husband, but husband is charged with the dower of a virgin. Hence, it is also a deception.
- iii. When hymen disappeared due to hopping, skipping, carrying a heavy burden, or owing to a serious shock. In such a case, operation will be a rightful act to restore the hymen, since; it is not a deception.

Hymenoplasty (Reconstruction of Hymen) --- Addressee of Law-Giver

The addressees are those people who perform this operation or give consent for it. These people can be of two categories.

- i. Woman: she is the first addressee of this legal obligation, and beside her those family member who are agreed on this surgery, although the woman will be the only beneficiary of this operation.
- ii. Doctor: he is the second addressee of this legal obligation, for he performs the surgery. Doctor is like actual actor in this case, since his consent will make this surgery happen.²⁷

Definition of Darning (*Rataq*) and Medical Possibilities:

Darning (*Rataq*) literally means repairing and mending of something. It is called that this has been fixed, and repaired (رتق فتق الشئى) and two quarreling parties have come to peaceful terms (رتق فتق)

أَوَلَمْ يَرَ الَّذِينَ كَفَرُوا أَنَّ السَّمَاوَاتِ وَالْأَرْضَ كَانَتَا رَتْقًا فَفَتَقْنَاهُمَا وَجَعَلْنَا مِنَ الْمَاءِ كُلَّ شَيْءٍ حَيًّا أَفَلَا يُؤْمِنُونَ²⁸). Likewise, Allah says in Qur'an that "Have not those who disbelieve known that the heavens and the earth were joined together as one united piece, then We parted them? And We have made from water every living thing. Will they not then believe?"(21:30)

Similarly, *Rataqī* is a woman who has "imperforate hymen" and sexual intercourse is not possible with her.²⁹ In the term of the Jurists, *Rataq* is the surgery, which is conducted to repair the ripped hymen by the expert surgeons. In the view of this operation, it can be said that in comparison to other treatments, this operation holds such distinctive characteristics:

- i. This is a medical treatment in which physician has to touch the body, and therefore, acute care must be kept into account, otherwise physical harm can be inflicted to the patient.
- ii. This is not a treatment where patient will experience any pain, or any organ will become impaired, or defect will occur in physical performance. Thus, its treatment carries a secondary importance. However, where a woman has to face mental or physical torture, in such cases; to save the victim, such operation can be conducted.
- iii. Immediate surgery is not essential in such cases, because it does not involve any emergency which can endanger a human life. This state gives ample time to surgeon to look into the matter carefully.
- iv. This surgery is like other operations that contain both good and bad, except the danger of faith that carries only expediency. When this surgery contains expediency and detriment both, then in the light of principles of jurisprudence, one aspect will be preferred. Principles of jurisprudence say that avoiding of detriment has preference over seeking the benefit. The basic reason behind this principle is that Islamic *Shari'ah* has laid more stress on don'ts than do's.³⁰

Contemporary 'Ulamā's View About Hymenoplasty:

Contemporary 'Ulamā's are agreed upon the two states of Hymenoplasty:

- i. At the first place, they are of the view that it is illegitimate.
- ii. At the second place, they are agreed on it legitimacy.

In the first place, they are agreed that a woman whose hymen has been ripped off due to the fornication, in such a state, Hymenorrhaphy is illegitimate.

In the second place, they are agreed that a woman whose hymen has been ripped due to hopping or jumping or carrying the burden, then Hymenorrhaphy for such woman will not be considered a deceit. The purpose behind this act is to provide the safety to the concerned woman against the evil tradition of the society, thus; such surgery is legitimate and lawful.

First Objective:

When the hymen of a woman has torn due to fornication, and people know about her unchaste character, in such case, Hymenoplasty would mean to conceal her defect from the potential husband, which would be equal to deceit. Had the husband informed about her non-virginity, he would never marry her, especially, when the reason of torn hymen was adultery. That's why the contemporary 'Ulamā' have unanimous opinion about the illegitimacy of Hymenoplasty of such a woman. Since, when she has committed a shameful act, then what would be the use of veiling by Hymenoplasty?³¹

Arguments for the Illegitimacy of Hymenoplasty:

The arguments for the illegitimacy of Hymenoplasty are based on logic, although their original sources are Qur'an and *Sunnah*:

- i. A human being who is involved in the lustful activities and obscenity, such women will be considered out of the circle of veiling, hence, such women are not worthy of covering herself. They only deserve the calumny which will be turned into a lesson for others. The objective of Hymenoplasty is veiling, therefore; according to preferred view Hymenoplasty must not be conducted, because for veiling of such women a contradiction of the following *Hadīth* occurs:

كل امتي معافى الا المجاهرين و ان من المجاهرة ان يعمل الرجل بالليل و قد ستره الله عليه، فيقول : يا فلان ! عملت البارحة كذا وكذا ، و قد بات يستره ربه و يصبح يكشف ستر الله

“My every follower would get salvation except those who openly commit sins, and the open sin is that a man commits some act in such a state that Allah Almighty conceals his sin, and he says to others in the morning that I have done so and so in the night, while Allah concealed his sin in the night and he revealed that sin in the morning.”

This *Hadīth* explains the forgiveness for a person who commits sin secretly; while a person who openly commits sin will not be forgiven. That's why; a woman who is openly indulged in fornication is not worthy to marry a pious man.
- ii. Allah says in Qur'an that **الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ**³² “The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers. “ It is possible that an unchaste woman marries with a pious man, therefore, *Shari'ah* has prohibited such marriage. At another place, it is said that **Be aware! لا لعنة الله على الكاذبين**³³ Allah's curse is upon a liar. A non-virgin woman by falsehood

presenting herself as a virgin, that is forbidden in the light of above mentioned verse.

- iii. It is also mentioned in a *Hadīth* that an adulterer who has received the punishment of adultery will marry a person of his/her kind. As it is reported that: “and adulterer who has ³⁴الرَّانِي الْمَجْلُودُ لَا يَنْكُحُ إِلَّا مِثْلَهُ” received the lashes as the penalty of adultery would marry with the person of his/her type. *Abu Hurairah* [R.A] has reported that من: “One who adulterates is not amongst us.” ³⁵غش فليس منا”
- This *Hadīth* can be presented as an evidence for the illegitimacy of the hymenoplasty, since one who cheats a Muslim is not amongst us, and this operation is a kind of cheating. As it is mentioned in another *Hadīth* that who takes weapons against us is not amongst us.³⁶ Therefore, it is forbidden to take up weapon on a Muslim, similarly, a man who deceits others is also commit an unlawful act and will be considered outside the circle of Islam. In the abovementioned *Hadīth*, cheating is not peculiar to anything; hence, it will be inclusive to things and to persons both. Cheating in persons is more fatal than cheating in things, since cheating in things will cause the harm to a person, while cheating in person will cause damage to the whole family. Hymenoplasty belongs to this category of cheating, for it carries a greater deceit. That’s why if husband finds that his wife was not virgin then he would have the right to nullify the *Nikāh*.³⁷

Logical Arguments:

- i. The logical argument for the illegitimacy of Hymenoplasty is that ripping of the hymen creates doubt in pedigree, since the woman’s ovary already carries the sperm and after *Nikāh* blending of sperm with already existed sperm is unlawful.
- ii. Legitimizing the Hymenoplasty would increase the ratio of fornication among the girls, and would further enhance fornication and obscenity in the society.
- iii. Legitimizing the Hymenoplasty would be considered cooperation in vice mongering, for once the doctors would get the permission, and they would become uncontrolled. Similarly, in the case of pregnancy, secret abortion will be carried out and a precious human life would be depleted.
- iv. Legitimizing this surgery would pave the way for fornication which is forbidden in *Shari’ah*.
- v. Legitimizing the surgery would open the door of falsity and falsity is forbidden in *Shari’ah* except in dire conditions.

- vi. It carries another evil that without any genuine reason doctor would touch the woman that is not right.

Islamic Legal Maxims:

The jurists who are against Hymenoplasty have derived the arguments from Islamic legal maxims. These maxims are as such:

- i. “one damage can’t be averted with another ³⁸الضرر لا يزال بالضرر damage” This rule demonstrates about two damages, one damage previously existed, and to avert this existed damage an action is performed which causes damage to another person. For instance, damage already existed is the ripping of hymen, and the second damage is the deceit to the husband by the surgery of the concerned woman. Thus, keeping into account the damage of the husband, hymenoplasty will not be performed.
- ii. e will be accepted “peculiar damage ³⁹يتحمل الضرر الخاص لأجل الضرر العام towards a general damage.” Here are two harms, one is before the operation, and the other is after the operation. Former harm is peculiar with the woman, because it would conceal the shortcoming of the woman. While after the surgery, the later harm will become general, for every woman could undergo the process of hymenoplasty after committing adultery, which would ultimately lead towards the propagation of fornication and obscenity in the society.⁴⁰

Second Objective:

The woman whose hymen has not been ripped due to debauchery, rather it happened by virtue of hopping and skipping, or carrying the heavy burden. Hymenoplasty in such a case would not be counted as a deceit, instead; it would be considered a safeguard for the woman from cruelty of traditions and society.

Arguments For the Legitimacy of Hymenoplasty:

- i. Qur’an says: إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا وَالْآخِرَةِ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ⁴¹ “Verily, those who like that (the crime of) illegal sexual intercourse should be propagated among those who believe, they will have a painful torment in this world and in the Hereafter. And Allah knows and you know not.” In this verse, Allah has warned those people of severe punishment who aim at spreading obscenity and vulgarity in the society. Now, if a woman’s hymen has ripped by the virtue of things which are not chargeable, and in such case, debate about it would instigate the lust and lechery in the community. Then, the hymen that is ripped as a result of adultery, its discussion would spread more vulgarity, hence; Hymenoplasty is a better solution.

- ii. At another place Qur'an says: يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ
 (الظَّنِّ إِنَّكُمْ وَلَا تَجَسَّسُوا)⁴² "O you who believe! Avoid much suspicion,
 indeed some suspicions are sins. And spy not" This verse
 demonstrates the disliking of Almighty Allah about being
 suspicious, and suspicion is associating something to someone
 without any proof, and the same verse asks the Muslims to think
 positively about others, and accusation must be avoided in all cases.
 And the best way to avoid the allegation is to repair the hymen. The
 repair or reconstruction is possible only through Hymenoplasty.
 Hence, it proves that Hymenoplasty is legitimate.⁴³

Hadīth of the Holy Prophet [S.A.W] says: لَا يَسْتُرُ عَبْدٌ عَبْدًا فِي الدُّنْيَا، إِلَّا
 سَتَرَهُ اللهُ يَوْمَ الْقِيَامَةِ.⁴⁴ "When a person conceals the shortcomings of
 another person, Allah would hide his on the day of Judgment." This
 Hadīth gives tidings to a person who veils the failing of others that
 Allah would veil his shortcomings in the world and the hereafter. This
 tidings benefits to the legitimacy of veiling the defects. Similarly, the
 surgery for the reconstruction of a woman's hymen will be considered
 the veiling of defect of that woman, thus; Hymenoplasty in the light of
 this Hadīth is legitimate.

Māez [R.A] after committing mistake, admitted his mistake, and
 punishment of *Ḥad* applied on him. Another companion of the Prophet
 [S.A.W] appreciated his courage. The Messenger of Allah [S.A.W]
 asked the later " لَوْ سَتَرْتَهُ بِثَوْبِكَ، كَانَ خَيْرًا لَّكَ " ⁴⁵if you could hide his failing
 under your garment, it could be better for you. The Messenger of Allah
 [S.A.W] admonished the praise of the companion who appreciated the
 courage of *Māez* [R.A], because the appreciation was becoming the
 means of propagation of the mistake. Since, the objective of *Shari'ah*
 is to veil the failings and faults. When veiling is considered for a
 person who is indulged in sins, then the sin that could threaten the
 existence of a family and the murder of the concerned woman could
 also be anticipated, so the veiling is preferred in such case.⁴⁶

Shabī [R.A] reports that a man came to 'Umar [R.A] and asked him. O
 leader of the faithful! I buried my maid in the time of ignorance, but saved
 her before death. Afterward, she embraced Islam with us. She committed
 fornication, and when she felt burden of her mistake, she tried to kill her
 with a knife. We saved her life, and her wound recovered. Now, there is a
 proposal for her. Should I tell the interested person about her defect?
 Hazrat 'Umar [R.A] replied to him, if you would have done this, I would
 be given you a punishment, that could become a lesson for everyone.⁴⁷

'Umar [R.A] action manifests that such defects must be veiled in
 every condition. If the advertisement of such an act would be essential,

'Umar [R.A] would never ask to hide it. It further authenticates the fact that every action that veils others faults and defects must be done. The surgery for the reconstruction of hymen too comes under this category. Hence, Hymenoplasty is legitimate.⁴⁸

Argumentation Of Legitimacy On the Basis of Consensus (*Ijmā'*)

Companions of the Prophet [S.A.W] have unanimous opinion that fornication does not deter *Nikāh*, even the woman becomes pregnant as the consequence of adultery that is not a deterrent of *Nikāh*. 'Allāmā ibn-ē-*Hazm* cited the *Ijmā'* of companions of the Prophet [S.A.W] that 'Umar [R.A] considered the *Nikāh* of a woman legitimate who got pregnant in the result of adultery, and companion of the Prophet of Allah [S.A.W] condemned his viewpoint.⁴⁹ Likewise, the inference can be derived; that such a woman could also operate her hymen.⁵⁰

Logical Deductions:

Some scholars have demonstrated logical inferences of Hymenoplasty, their arguments are as such:

- i. The conduction of this operation by the surgeon holds a basic state of positive thinking. Because non-conduction of the operation will lead the people towards suspicion and would call that woman a whore and unchaste lady.
- ii. Hymenoplasty brings a woman equal to man, since no sign of fornication appears on him after adultery that could indicate the non-virgin condition of that man. On the other hand, torn hymen indicates the non-virgin condition of a woman, while equality is a desired element in *Shari'ah* law. Therefore, in the light of the concept of *Shari'ah*, it can be logically inferred that Hymenoplasty is legitimate.
- iii. It can be fairly assumed that after the reconstruction of hymen, an unchaste woman would start to lead a chaste life.
- iv. If the view of illegitimacy of Hymenoplasty will be accepted, then in such case, whenever; someone would propose her, she would feel embarrassment. If she would hide her past, it would be considered a deceit and falsity. While, as Allah Almighty has refrained from spreading the obscenity in the society, similarly, he has abstained us from spreading the obscenity at individual level. This is only possible, when hymen has repaired, which is only possible through surgery. Thus, it proves that Hymenoplasty is legitimate.⁵¹

Ruling About Avoiding the Punishment of *Had*:

When Judge decrees punishment of *Had* for an adulterer woman, in such case; Hymenoplasty is unanimously illegitimate. However, if four

witnesses of her adultery are available, yet the case has not pleaded into the court of law. In such case, if Hymenoplasty can be done, so that punishment of *Ḥaḍ* could be avoided. The reason behind it that if some woman is accused of fornication, and judge gives the order of medical checkup, then in the presence of hymen, punishment of *Ḥāḍ* will not be implemented on her. There are two views of scholars regarding such an operation:

According to first view, this means would be forbidden to save her from the punishment of *Ḥad*.⁵² On the other hand, according to second view, in such case, Hymenoplasty would be allowed to avoid the punishment of *Ḥad* before the decree of the judge.⁵³

Causes of Conflict in Views:

The reason is *Ḥadīths* which mention the veiling of an adulterer woman, either they are inclusive to such a condition or not? Hence, the scholars who adopted the view that such *Ḥadīths* and traditions are not inclusive to such a condition; they opposed the legitimacy of such operation. While the scholars who considered that those *Ḥadīths* and traditions are inclusive to such a state, they consented for the Hymenoplasty.⁵⁴

Arguments of the Opponents:

These scholars have presented their arguments on the basis of logical reasoning:

- i. Four witnesses presented against the woman caused the propagation of her fornication, thus; the veiling a woman who is known for adultery is unanimously not permissible. This operation is also a means of veiling, therefore; it's too illegitimate.
- ii. There is no expediency in the operation, maximum it would give the benefit of positive thinking, while in such a state positive thinking cannot be adopted, for her adultery has manifested.⁵⁵

Arguments of the Supporters

The scholars who favor or support the operation have adopted the *Ḥadīths* and traditions that are relevant to veiling, furthermore, their views are based upon logical reasoning.

- i. *Hazrat ibn 'Abbas* [R.A] reports: when *Māez* [R.A] came to the Prophet [S.A.W] and admitted his mistake. The Prophet [S.A.W] said to him, might be you only kissed her, or you saw her.⁵⁶ This *Ḥadīth* giving a chance to admit to deny his admission, so that, punishment of *Ḥāḍ* could be averted from him. This would cause the veiling for the concerned person, and operation is also a means of veiling. *Ibn Hijr* writes: "يجوز تلقين الامام المقر بالحد ما يدفعه عنه".⁵⁷
- ii. *Abu 'Uthmān Nahdī* reports that a man gave the witness against *Hazrat Mughīrah bin Shuba* [R.A] in the presence of *Hazrat 'Umar*

[R.A] which changed the color of 'Umar's [R.A] face in anger. A second man came and he too gave the witness against him, it also changed the color of 'Umar's [R.A] face, a third man came, he too gave the witness, and once again 'Umar's [R.A] face changed the color in anger. Then, he said that all the praises are due to Him, who did not allow the Satan to be rejoiced on the *Ummah* of the Prophet Muhammad [S.A.W]. And 'Umar [R.A] decreed to whip that group of people due to accusation of fornication.⁵⁸

This traditions shows that judge should try to avoid the witnesses in the cases of *Ḥaḍ*'s punishment. Because, veiling *Hāḍ* a preference before 'Umar [R.A], therefore, it can be said that it is legitimate for a woman to veil her wrongdoing, and should avoid punishment of *Ḥaḍ* through Hymenoplasty.⁵⁹

Logical Reasoning:

- i. A woman whose case has been presented for hearing in the court of law and still waiting for decree, and a woman whose adultery has proved. There is a huge difference between the two; hence, the veiling of former is legitimate.
- ii. A principle of *Shari'ah* states that punishment of *Ḥaḍ* is included in the rights of Allah, and this punishment is based upon connivance. It is against this principle to be extra strict in its enforcement. So, the illegitimacy of Hymenoplasty also falls in this category.⁶⁰

Decree About Hymenoplasty in the Case of Emigration:

A woman who is known for her unchastely character, or the judge has given a decree about her, in such case, Hymenoplasty is not legitimate. However, if that woman migrates to another place, where none knows her, and she wants to start a pious life, in such case, hymenoplasty for her would be legitimate. Since, expediency manifests itself in the form of veiling. It is possible that at a new place, her repentance would become a means of success for herself and her family. This verdict (*Fatwā*) is issued by *Dār-al-Iftāh* Egypt.⁶¹

Ruling for Doctor in the Case of Hymenoplasty:

Religious scholars are agreed on the illegitimacy of Hymenoplasty for two types of women:

- i. A married woman, a divorcee, or a widow, Hymenoplasty is not legitimate for such women, since there is no need for reconstruction of hymen in such cases.
- ii. A woman who is known for fornication or fornication has happened and the judge has decreed against her, then Hymenoplasty for such a

woman is not allowed. Because, the objective of operation is veiling, and in such case, there is no benefit of veiling.

Hymenoplasty is illegitimate in abovementioned cases, and religious scholars hold unanimous opinion in these two types. The differing of opinion exists in other types and that is based upon two views:

First View: Apart from above-mentioned two types, Hymenoplasty for doctors is absolutely illegitimate.⁶²

Second View: the permission of operation by doctor is given only in such conditions where woman's operation is allowed by a male doctor.⁶³

Arguments of Opponents:

- i. Hymenoplasty by the doctor is against the ethics, since it contains verbal and practical falsification. Here, doctor is building the impression that the woman is chaste, while in fact she is not.
- ii. If hymenoplasty is assumed legitimate in some cases, even then it would contain a strong shade of falsehood. For instance, it could be the case that the woman had committed the adultery and said to doctor that her hymen ripped due to lifting of heavy weight. Doctor trusts her, and performs Hymenoplasty. Whilst in fact, she committed adultery, and then it would be a case of converting an illegitimate matter to a legitimate one. Therefore, according to "Prohibition of evasive legal devices " (*Sad-e-Dharāi*), Hymenoplasty is absolutely illegitimate.
- iii. In the contemporary age, neither a perfect Islamic Society exists, nor does the system of *Hudud* punishment exist. Moreover, piety is also lacking, which is enhancing the rate of fornication. Now, if Hymenoplasty gets legality for doctors, subsequently; it would double up the rate of vices. Since, it is a common observation that doctors only look for economic benefits.⁶⁴

Supporters' Arguments:

- i. Originally, man is free from accusation. Therefore, positive thinking about him must be preferred. Hence, doctor should act upon euphemism, until he comes to know about the reality. Because, ripping of hymen does not depend solely on fornication, there could be other reasons as well.⁶⁵
- ii. It is one of the principles of *Shari'ah* to avoid the suspicion, until reality reveals itself. Therefore, Qur'an says: لَوْلَا إِذْ سَمِعْتُمُوهُ ظَنَّ الْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بِأَنفُسِهِمْ خَيْرًا وَقَالُوا هَذَا إِفْكٌ مُّبِينٌ. (66) "Why then, did not the believers, men and women, when you heard it (the slander) think good of their own people and say: "This (charge) is an obvious lie?"

This verse narrates the warning about the accusation leveled against 'Aisha [R.A] that when believing men and women heard about it, why they did not adopt the good thinking, why they showed suspicion? 'Iz bin 'Abd al-Salam interprets this verse and says that this verse has forbidden some thoughts, not every thought, and they are the thought which are intended to prove such matters, that thoughts are not lawful for him. For example such thought, that someone has committed the murder or fornication. Now, these are the crimes which could not be proved through thoughts or suspicions.⁶⁷ Likewise, the ripping of hymen also comes in the same category, since it cannot be said with certainty; either it was ripped due to adultery. In other words, there is no hindrance for doctor to operate the surgery in such condition.⁶⁸ Allah says in Qur'an: يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا⁶⁹ Abu reported by adīthH. Similarly a *Huriarah* [R.A] that you must avoid suspicion, since suspicion is the most false talk.⁷⁰

- iii. Generally, the availability of the witnesses to prove innocence of a woman in such state is almost impossible, and doctor does not possess such resources to explore the reality. Thus, he can operate on the basis of good thinking.⁷¹
- iv. We can assume that doctor can acquire the reality by employing his resources, even so it would not be a right course of action, for the Prophet of Allah (S.A.W) have restrained from the suspense regarding others. As it is mentioned in a *Hadīth*, *Mu'āwiyah* [R.A] reports on the authority of the Prophet of Allah (S.A.W) that *arith Hand* ⁷² "إِنَّكَ إِنْ اتَّبَعْتَ عَوْرَاتِ النَّاسِ أَفْسَدْتَهُمْ، أَوْ كَذَبْتَ أَنْ تُفْسِدَهُمْ" *bin Numān* reports that "ثَلَاثٌ لَّازِمَاتٌ لِأُمَّتِي: الطَّيْرَةُ، وَالْحَسَدُ، وَسُوءُ الظَّنِّ". فَقَالَ رَجُلٌ: مَا يُدْهِبُهُنَّ يَا رَسُولَ اللَّهِ مِمَّنْ هُوَ فِيهِ؟ قَالَ: «إِذَا حَسَدَتْ فَاسْتَغْفِرَ اللَّهُ، وَإِذَا ظَنَنْتَ فَلَا تُحَقِّقْ، وَإِذَا تَطَيَّرْتَ فَامْضُ»⁷³ Hence, in the light of such verses and *Hadīths*, it can be said that Hymenoplasty would be legitimate.

Preference:

Apart from purely prohibited conditions legitimacy of Hymenoplasty has preference on the basis of following reasons:

- i. Hymenoplasty has many benefits and expediencies that have already been mentioned in the previous pages.
- ii. Jurists' arguments for the legitimacy of Hymenoplasty are based upon verses of the Holy Qur'an and *Hadīth*; therefore, their arguments keep reasonable authenticity.

- iii. There are many principles of *Shari'ah* that could come under consideration because of the legitimacy of Hymenoplasty, for instance, good thinking about the woman, veiling, and pardoning the mistakes, while such matters would not come under consideration in case of illegitimacy of Hymenoplasty.⁷⁴

Rules and Regulations of Surgery by the Doctor:

- i. The sensitive condition of this surgery demands that doctor must be an honest and trustworthy person.
- ii. Doctor must operate the surgery with an intention of lawful earning, and he must not merely look for mundane gain.
- iii. The permission of *Walī* (father) of the woman must be acquired before surgery, so that it must not become the means of spreading obscenity and vulgarity in the society.
- iv. In the absence of a female doctor, a male doctor can conduct the said surgery, but in case of availability of female doctor, such surgery by a male doctor would not be allowed, in case of surgery by a male doctor, he could only uncover that part of the body that is essential.
- v. A male doctor would not conduct this operation in privacy.⁷⁵

Legal Ruling About Hymenoplasty:

There is no such legislation about the illegitimacy of Hymenoplasty in the law of the land that could indicate the surgery, a matter of sin and transgression. It is known that originally the principles of *Shari'ah* allow everything, until evidence on its illegitimacy is found. Non-availability of evidence against a particular matter makes it lawful. Hymenoplasty cannot be measured with financial agreements, e.g. *'Uyūb-bil-Irādah* (defects that are present in the commodity at the time of transaction), because the two have big difference. These differences are as such:

- i. In the financial agreements, the defect in the commodity can be removed and they are not overlooked, and the compensation can be done by returning the commodity. On the other hand, *Nikāh* requires purity and chasteness, therefore, defects that are present at the time of agreement will not hinder in the application of the concerned injunctions. Hence, dower and alimony will become mandatory; moreover, in case of the birth of a child, his pedigree will also be proved.
- ii. Business transaction can be revoked by the mutual agreement of the parties, or can be revoked by the law of *Shari'ah*, for example, agreement cannot be revoked by one party. Therefore, according to *Shari'ah* law, business transaction will not be completed in the presence of defect, rather the disagreement of buyer will revoke it, except the buyer is agreed to buy the defected commodity.

iii. Modesty or shyness is a not a bar to reveal the defect in financial agreements. Therefore, no reluctance is shown in revealing the defect, rather it would be disclosed. While in the case of *Nikāh* defect will not be revealed on account of modesty. In short, hymen is torn either due to fornication or lifting a heavy weight, in both cases, there is no evidence on the illegitimacy of Hymenoplasty in the Islamic *Fiqh*. Similarly, the law of the State also does not present any proof for its illegitimacy. Therefore, according to *Shari'ah* law and the law of the land, in both cases Hymenoplasty is legitimate.⁷⁶

Conclusion:

Hymenoplasty is a modern scientific technique to reconstruct a torn hymen. *Shari'ah* law of Islam deals with every matter related to cause benefit or damage to people. Law of the land does not provide any legal instructions about this surgery. However, this surgery of woman's hymen comes under the scrutiny of religious, cultural, ethical, and medical issue. Since, it involves both the patient and surgeon. Therefore, contemporary Muslim jurists have taken an in-depth insight of this modern issue. They have demonstrated the rulings regarding the concerned woman and the surgeon involved in this surgery. Jurists have presented the views (details have been presented in the previous pages) about the legitimacy of this surgery, similarly, they too have described the conditions under which this surgery would be considered illegitimate in the eyes of *Shari'ah* law. As far as the gist of the jurists' views is concerned regarding the patient, they are of the view that the woman must not be known for her obscene character, and must not be an open adulterer, in such case, the said surgery would be considered illegitimate. However, the surgery would be legitimate, if the hymen is torn due to some reasons other than fornication, and its purpose would be to save the woman from disgrace and vindictive social traditions. On the same hand, some jurists are of the view that the surgery would be allowed for an unchaste woman, who is intended to lead a pious life in future, since *Shari'ah's* objective is to veil the defects and failings of a Muslim. Similarly, jurists have demonstrated the views regarding the concerned surgeon that he must not perform this surgery for the sake of material gain. He must be an upright person, should maintain the strict privacy of the patient. Last but not least, this surgery must be performed by a female surgeon preferably, and after seeking permission from the *Walī* (father) of the woman. This is a novice research and contains many religious, social, ethical,

medical, and legal aspects, hence; further specific and specialized research in this field is the need of the day.

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