

30th November 2020

Nasal Flu Vaccination for Children

Question: I am receiving conflicting views about the nasal flu vaccination whether it is permissible or not. I am aware that it contains porcine gelatine however some have asserted that due to the chemical changes, its original properties no longer exist. Please clarify whether this is the case or not and if it doesn't then can it be allowed due to *dharurah* – genuine necessity? Appreciate a detailed response on this issue in light of evidences.

الجواب حامداً و مصلياً

In the name of Allāh, the Most Gracious, the Most Merciful

Answer

Based on the various sources and fatawas we have reviewed and speaking to medical experts, in our humble opinion the nasal flu vaccination is not permissible because the porcine gelatine does not fulfil the criteria of actual change rendering it Halāl and neither does it fulfil the criteria of *dharurah* that permits the unlawful under genuine constraint. It is necessary to resort to Halāl medications alternative to the nasal flu vaccine to reduce the harms of flu upon the advice of the doctors. The reasons to our position from the Islamic fiqh perspective is explored below but before that, it is worth presenting an overview of what the vaccination is, why is it given and other alternatives to it.

Influenza Vaccination

1. What is the flu vaccine and why is it given?

It is a type of immunisation that is given to children, adolescents, adults and elderly to prevent the spread of influenza, a typical type of flu caused by a virus that potentially makes one bed-bound for a few days but not necessarily a life or death issue per se. It is





given in the form of a nasal spray known as Fluenz Tetra and by an injection. The nasal spray is given to children from age 2 and above (up to 18 years) because it is quick, painless and easily administered by simply squirting droplets into the nostrils. Children can also be vaccinated with injections instead of the nasal spray but can be somewhat painful compared to the nasal spray. The injectable flu vaccines given to children are the same ones offered to adults and elderly patients over 65 years of age. But children aged between 6 months and 2 years with underlying health conditions or who are at high risk of catching the flu are offered the flu vaccine injection instead (because currently the nasal spray is not licenced for children below the age of 2). Underlying health issues may include asthma, heart problems, allergic reaction to previous flu vaccines etc. Healthy children of 2 years and above however are initially offered the live nasal vaccine due to its apparent effectiveness.¹

2. Do all vaccines contain Porcine Gelatine?

There are various vaccines available to treat flu as well as other illnesses such as measles but not all of them contain porcine gelatine. According to the NHS vaccines and porcine document, there are three vaccinations that contain porcine gelatine;²

- Fluenz Tetra - the nasal spray vaccine that protects children against influenza

¹ Children's Flu Vaccine, NHS, available at <https://www.nhs.uk/conditions/vaccinations/child-flu-vaccine/> [accessed 3rd November 2020].

The flu vaccination for children Fluenz nasal vaccine and pork gelatine, available at <https://www.thepantonpractice.co.uk/mf.ashx?ID=3e63f39a-4d7e-450d-a1a6-d94550944596> [accessed 3rd November 2020].

Flu vaccine effectiveness in 2017 to 2018 season, available at <https://www.gov.uk/government/news/flu-vaccine-effectiveness-in-2017-to-2018-season> [accessed 3rd November 2020].

NB – Healthy non-immunocompromised children are offered the 'flu vaccine through an NHS annual programme, administered usually through their school. The only type of vaccine offered to these children is the live nasal spray (Fluenz Tetra). If parents dissent to this vaccine, they are not routinely offered the alternative non-porcine injectable. If however a child may be compromised in immunity or classified as high risk, needing to be immunised against influenza, then they may approach their GP Surgery to be administered the injectable. This however, will not be offered by the School.

² Public Health England, (2015), Vaccines and Porcine Gelatine, NHS, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824013/PHE_vaccines_porcine_gelatine.pdf [accessed 3rd November 2020]





- MMR VaxPro - a vaccine that protects against measles, mumps and rubella
- Zostavax - a vaccine that protects older adults against shingles.

Alternative vaccines that **do not** contain porcine gelatine are;

- MMR Priorix -this is as safe and equally effective as MMR VaxPro.
- Shingles: Zostavax - is the only shingles vaccine currently available in the UK.
- Injectable flu vaccines that do not contain pork gelatine, but these are expected to be less effective than Fluenz Tetra in children. They may also do less to reduce the spread of flu in the community.

The nasal spray is the only non-injectable vaccine that contains gelatine. Gelatine is a protein that is extracted from the collagen³ of animals such as cattle, pigs and fish which is derived from skins, ligaments and bones of the animal. The gelatine referred to here is the collagen extract from a pig's skin, thus taking the name 'porcine gelatine'. Porcine gelatine is used in vaccines as a stabiliser – to ensure that the vaccine remains safe and effective during storage. Unlike the gelatine used in foods, the product used in vaccines is highly purified and broken down into very small molecules called peptides.⁴

The only Halāl alternative to the nasal vaccine is the injection but doctors usually recommend the nasal vaccine for children aged 2 and above due to its effectiveness in reducing the transmission of the flu compared to the injection. Although flu vaccination is not mandatory by law, doctors can at most urge parents to take it. The final decision whether to assent to it or not is in the hands of the parents,⁵ which suggests that parents

³ The collagen protein is what gives the elastic effect of the skin in humans and animals.

⁴ Once the manufacturer has chosen the stabiliser for the vaccine, any change in this could require extensive laboratory and clinical studies to show that the safety and effectiveness of the vaccine has not been affected. Because of this, developing a new safe and effective vaccine with a different stabiliser may take several years or may never happen. See Public Health England, (2015), Vaccines and Porcine Gelatine, NHS, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824013/PHE_vaccines_porcine_gelatine.pdf [accessed 3rd November 2020]

⁵ Ibid



can refuse vaccination altogether. If they do decide to go ahead with it then they can opt for the Halāl injection instead.

Islamic Fiqh Perspective on the Nasal Flu Vaccination

There are two main points underpinning the discussion of the nasal flu vaccination; first is the concept of *istihalah* – transformation of one substance to another that necessitates the change in its ruling- and the second is the law of necessity- *dharurah* considering that the vaccine is given as a preventative measure to reduce the spread of influenza.

1. *Istihalah*

Those permitting the nasal vaccine commonly argue that during the manufacturing process, the gelatine undergoes significant change that justifies the change in its ruling.⁶ To evaluate this, the concept of *istihalah* must be explored in light of the classical juristic works with evidences to assess whether modern chemical understanding fits the criteria of physical or ‘chemical’ change or not. Change from one state to another comes in various forms for instance, a substance changing from being a solid to a liquid or gas and vice versa. Liquid water changing to ice or water vapour (steam/gas) is not deemed as a chemical change but as a physical change because the water molecules H₂O will still remain as H₂O. Similarly, if urine for instance is frozen solid, it is still impure because the molecules of urine (various salts including water and other compounds based on the individual’s persons diet) are still intact even though it has physically changed from liquid to solid.⁷ Both of these scenarios are not deemed as *istihalah* as their original properties are still the same even though it may be frozen and called ice. Another example is cooking a raw egg of a Harām animal such as predator birds (e.g. eagle or falcon) or a crocodile. Despite of the apparent physical change in its structure, the rules of *istihalah* do not apply because the egg itself which is impure and unlawful to consume

⁶ See the British Fatwa Council signed by three Muftis (18th September 2020), *Fatwa on Flu vaccine containing porcine gelatine*, available at; https://www.derbyfamilymedicalcentre.co.uk/practice_news/fatwa-on-flu-vaccine-containing-porcine-gelatine/ [accessed 3rd November 2020]

⁷ See McMurry, Organic Chemistry, 6th edition, page 611-612



still remains in the end. These such examples are known as *tabdeel al-wasf* – change in its quality structure rather than in the entity itself which from a Sharī'ah perspective as Ibn Abidīn Shamī رحمته الله explains does not qualify for *istihalah* like the case with milk converting into cheese, wheat forming into bread and so forth..⁸

So then what is *istihalah*? *Istihalah* means complete transformation of the physical entity from one thing to another that entails the removal of those innate properties upon which the Sharī'ah ruling hinges irrespective if this transformation is spontaneous or through human intervention. Az-Zuhaylī رحمته الله states,

*“Istihalah is the conversion of an impure entity (ayn) whether by itself or through intervention like the blood of a gazelle converting to musk (fragrance), alcohol converting to vinegar; by itself or through intervention....”*⁹

Another definition is;

*“Istihalah literally means something that (either) transforms from its innate character and quality or that which may not be possible (of the change of both). Istihalah (islamically) could be conversion (tahawwul) like converting the impure entity of faeces, alcohol and swine from its innate nature and its quality like burning, converting to vinegar.”*¹⁰

⁸ Durrul Mukhtār wa hashiyah Ibn Ābideen Shāmi, Kitābut Tahārah, vol 1, 316

قُلْتُ: لَكِنْ قَدْ يُقَالُ: إِنَّ الدِّبْسَ لَيْسَ فِيهِ انْقِلَابٌ حَقِيقَةٌ؛ لِأَنَّهُ عَصِيرٌ جَمَدٌ بِالطَّبْخِ؛ وَكَذَا السَّمْسِمُ إِذَا دُرِسَ وَاحْتَلَطَ دُهْنُهُ بِأَجْزَائِهِ فَفِيهِ تَغْيِيرٌ وَصَفٍ فَقَطُّ؛ كَلْبَنٍ صَارَ جُبْنًا، وَبُرٍّ صَارَ طَحِينًا، وَطَجِينٍ صَارَ خُبْزًا؛ بِجَلَابِ نَحْوِ خَمْرٍ صَارَ خَلًّا وَجَمَارٍ وَقَعَ فِي مَمْلَحَةٍ فَصَارَ مَلْحًا، وَكَذَا دُرْدِيُّ خَمْرٍ صَارَ طَرِيطِيرًا وَعَذِيرَةٌ صَارَتْ رَمَادًا أَوْ خَنَاءَةً، فَإِنَّ ذَلِكَ كُلَّهُ انْقِلَابٌ حَقِيقَةٌ إِلَى حَقِيقَةٍ أُخْرَى لَا مُجَرَّدُ انْقِلَابٍ وَصَفٍ كَمَا سَيَأْتِي - وَاللَّهُ أَعْلَمُ -

⁹ Zuhayli, Fiqhul Islami wa adillatihu, Kitāb al-Taharah vol 1 p. 250 - shamila

الاستحالة: أي تحول العين النجسة بنفسها أو بواسطة كصيورة دم الغزال مسكًا، وكالخمر إذا تخللت بنفسها، أو بتخليها بواسطة،

¹⁰ Mawsoatul kuwaityyah vol 10 p. 278 - 9

Ibn Humam رحمه الله, a renowned Hanafi jurist, explains *istihalah* as a type of transformation that causes its original properties to be lost whether partially or whole giving it a different name. He uses certain examples as an illustration. He states;

“The shariah ruling revolves on the (ruling of) impurity on the actual substance and the actual substance is negated by the negation of some parts of its connotation so what about its entirety? Like the case with salt that is not bones or flesh (initially) when it (bones and flesh) converts to salt it now takes the ruling of salt (i.e. Halāl). It is like the case with semen that was impure, then it takes the shape of blood clot which is impure and then becomes a lump of flesh (foetus) which is (now) pure. (Similarly) juices when converted into alcohol is impure but when converted to vinegar it becomes pure. We come to know that the change of an entity follows the removal of the specific quality upon which its ruling revolves (in this case removal of impurity).”¹¹

It is understood that *istihalah* is a process of transformation of the molecular entity of one substance to another; spontaneously or otherwise. Both the physical and the chemical properties have changed so significantly that once transformed then it no longer bears its former name. This should involve the removal of specific innate properties like *najis* – impurity or, in the case of alcohol, the intoxicant element for its ruling to change.¹² Other than the term *istihalah*, terms such as *inqilab al-ayn* and *tabdeel*

مِنْ مَعَانِي الإِسْتِحَالَةِ لَعَنَةُ: تَعَبِيرُ الشَّيْءِ عَنْ طَبِيعِهِ وَوَصْفِهِ، أَوْ عَدَمُ الإِمْكَانِ. (2) فَالِإِسْتِحَالَةُ قَدْ تَكُونُ بِمَعْنَى التَّحْوِيلِ، كَاسْتِحَالَةِ الأَعْيَانِ النَّجِسَةِ مِنْ العَذِيرَةِ وَالْحَمْرِ وَالْحِنْزِيرِ وَتَحْوِيلَهَا عَنْ أَعْيَانِهَا وَتَعَبِيرِ أَوْصَافِهَا، وَذَلِكَ بِالإِخْتِرَاقِ، أَوْ بِالتَّحْلِيلِ، أَوْ بِالْوُقُوعِ فِي شَيْءٍ، كَمَا سَبَّأْتِي تَفْصِيلُهُ. أَحْكَامُ التَّحْوِيلِ: لِلتَّحْوِيلِ أَحْكَامٌ تَعَبَّرَ بِهِ، وَهِيَ تَخْتَلِفُ بِإِخْتِلَافِ مَوَاطِنِهَا، أَهْمُهَا مَا يَلِي:
أ - تَحْوِيلُ العَيْنِ وَأَثَرُهُ فِي الطَّهَارَةِ وَالْحَلْلِ

¹¹ Ibn Humām, Fathul Qadeer, Kitāb at-Taharah, vol 1 p. 200

وَكَثِيرٌ مِنَ المَشَايِخِ اخْتَارُوا قَوْلَ مُحَمَّدٍ، وَهُوَ المُخْتَارُ لِأَنَّ الشَّرْعَ رَتَّبَ وَصْفَ النَّجَاسَةِ عَلَى تِلْكَ الحَقِيقَةِ، وَتَنَتَفَى الحَقِيقَةُ بِإِنْتِفَاءِ بَعْضِ أَجْزَاءِ مَفْهُومِهَا فَكَيْفَ بِالْكُلِّ، فَإِنَّ المِلْحَ غَيْرَ العَظْمِ وَاللَّحْمِ، فَإِذَا صَارَ مِلْحًا تَرْتَبَ حُكْمُ المِلْحِ وَنَظِيرُهُ فِي الشَّرْعِ التُّلْفَةُ نَجَسًا وَتَصْبِيرُ عَاقَةِ وَهِيَ نَجَسًا وَتَصْبِيرُ مُضَعَّةً فَتَطْهَرُ، وَالعَصِيرُ طَاهِرٌ فَيَصْبِرُ حَمْرًا فَيَنْجَسُ وَيَصْبِرُ حَلًّا فَيَطْهَرُ، فَعَرَفْنَا أَنَّ اسْتِحَالَةَ العَيْنِ تَسْتَتْبِعُ زَوَالَ الوُصْفِ المُرْتَبِّ عَلَيْهِ.

¹² An instance where the something is pure but not permissible to consume due to for instance intoxication then just by removing the intoxication is sufficient for the ruling to change. For instance, Ethanol (a type of alkane alcohol whose consumption is forbidden under Islamic Shariah Law) has the chemical composition of CH₃CH₂OH. Ethanol can be

mahiyyat are also used by the jurists. Common examples the legal jurists cite to illustrate the above include alcohol converting into vinegar, a carcass whether pig, dog etc falling into a pit of salt and then over the time its skin, flesh and bones gradually dissolving and turning into salt, burning animal dung into ashes, tanning, mixing impurity into soap and impurity buried and its (impurity) effect disappearing over time. The impurity in all of these instances is removed through its molecular conversion to something else.¹³

The four schools have differed whether *istihalah* results in the rulings to change or not in the above cases;

- 1) In the Hanafi school, except for Imām Abū Yūsuf رحمته الله, the ruling of impurity changes to purity and vice versa through *istihalah*. This is the position of Imām Muhammad رحمته الله and (assumably) attributed to Imām Abū Hanīfah رحمته الله himself and the final adopted position in the Hanafi school of thought.¹⁴

converted to Ethanoic Acid, known as vinegar. This has the chemical structure CH₃COOH and is Lawful under Islamic Shariah Law. We can see very clearly that the molecular make up is not different in the vinegar and the property of the vinegar is not different to that of the reactant used (ethanol) because it now no longer is intoxicant. (McMurry, Organic Chemistry, 6th edition, page 611-612, Housecroft et al. Chemistry, 3rd edition, page 796)

¹³ Zuhayli, Fiqhul Islami wa adillatihu, Kitāb al-Taharah vol 1 p. 250 - shamila

الاستحالة: أي تحول العين النجسة بنفسها أو بواسطة كصيورة دم الغزال مسكاً، وكالخمر إذا تخللت بنفسها، أو بتخليطها بواسطة، والميتة إذا صارت ملحاً، أو الكلب إذا وقع في ملاحه، والروث إذا صار بالإحراق رماداً، والزيت المتنجس بجمعه صابوناً، وطين البالوعة إذا جف وزهد أثره، والنجاسة إذا دفنت في الأرض وزهد أثرها بمرور الزمان، وهذا عمل بقول الإمام محمد خلافاً لأبي يوسف، لأن النجاسة إذا استحالت وتبدلت أوصافها ومعانيها، خرجت عن كونها نجاسة، لأنها اسم لذات موصوفة، فتتعدم بانعدام الوصف،

¹⁴ Fatawa Hindiyyah, Kitāb Kitāb al-Taharah, vol 1, p. 45 - shamila

[البَابُ السَّابِعُ فِي النِّجَاسَةِ وَأَحْكَامِهَا وَفِيهِ ثَلَاثَةٌ فُصُولٍ]

[الفَصْلُ الثَّانِي فِي الْأَعْيَانِ النِّجَسَةِ]

الْحِمَاؤُ أَوْ الْحَنْزِيرُ إِذَا وَقَعَ فِي الْمَمْلُوحَةِ فَصَارَ مَلْحًا أَوْ بَثْرَ الْبَالُوعَةِ إِذَا صَارَ طِينًا يَطْهُرُ عِنْدَهُمَا خِلَافًا لِأَبِي يُوسُفَ - رَحِمَهُ اللهُ - . كَذَا فِي مُحِيطِ السَّرْحَسِيِّ.

Muheet Burhani vol 1. p. 191

وقد ذكرنا أن من مذهب محمد رحمه الله أن النجس يصير طاهراً بالتغيير، يفتى فيه بقول محمد رحمه الله لكان عموم البلوى

Ibn Nujaym, Bahr Rāiq, Kitāb al-Taharah, vol 1 p. 239 - shamila

- 2) The Maliki school maintain the same position like the Hanafies that in all of the aforementioned instances the ruling of impurity changes to purity (and vice-versa) hence, converting alcohol into vinegar renders the vinegar pure for consumption, using the same underlying rationale as the Hanafies that the unlawfulness revolves on the existence of *najasa* and when the *najasa* is removed then its ruling change.¹⁵
- 3) The Shafi'ees and Hanbali school do not recognise the concept of *istihalah* and state that something that was intrinsically impure can never be purified and thus remains impure regardless except when alcohol converts into vinegar spontaneously without human intervention.¹⁶

وَالسَّابِعُ انْقِلَابُ الْعَيْنِ، فَإِنْ كَانَ فِي الْحَمْرِ فَلَا خِلَافَ فِي الطَّهَارَةِ، وَإِنْ كَانَ فِي غَيْرِهِ كَالخَنِزِيرِ وَالْمَيْتَةِ تَقَعُ فِي الْمُمْلَحَةِ فَتَصِيرُ مِلْحًا يُؤْكَلُ وَالسَّرِقِينُ وَالْعَدِرَةُ تَحْتَرِقُ فَتَصِيرُ رَمَادًا تَطْهَرُ عِنْدَ مُحَمَّدٍ خِلَافًا لِأَبِي يُوسُفَ وَصَمَّ إِلَى مُحَمَّدٍ أَبِي حَنِيفَةَ فِي الْمُحِيطِ وَكَثِيرٌ مِنَ الْمَشَائِخِ اخْتَارُوا قَوْلَ مُحَمَّدٍ

¹⁵ Mawsoatul kuwaityyah vol 10 p. 278 - 9

ذَهَبَ الْمُتَنَفِّهُ وَالْمَالِكِيُّ، وَهُوَ رَوَايَةٌ عَنْ أَحْمَدَ إِلَى: أَنَّ نَجَسَ الْعَيْنِ يَطْهَرُ بِالِاسْتِحَالَةِ، فَرَمَادُ النَّجَسِ لَا يَكُونُ نَجَسًا، وَلَا يُعْتَبَرُ نَجَسًا مِلْحًا كَانَ حِمَارًا أَوْ خَنِزِيرًا أَوْ غَيْرَهُمَا، وَلَا نَجَسٌ وَقَعَ فِي بَعْرِ فَصَارَ طِينًا، وَكَذَلِكَ الْحَمْرُ إِذَا صَارَتْ خَلًّا سَوَاءً بِنَفْسِهَا أَوْ بِفِعْلِ إِنْسَانٍ أَوْ غَيْرِهِ، لِانْقِلَابِ الْعَيْنِ، وَلِأَنَّ الشَّرْعَ رَتَّبَ وَصْفَ النَّجَاسَةِ عَلَى تِلْكَ الْحَقِيقَةِ، فَيَنْتَفِي بِانْتِفَائِهَا. فَإِذَا صَارَ الْعِظْمُ وَاللَّحْمُ مِلْحًا أَخَذَا حُكْمَ الْمِلْحِ؛ لِأَنَّ الْمِلْحَ غَيْرُ الْعِظْمِ وَاللَّحْمِ. وَنَظَائِرُ ذَلِكَ فِي الشَّرْعِ كَثِيرَةٌ مِنْهَا: الْعَلَقَةُ فَإِنَّهَا نَجَسَةٌ، فَإِذَا تَحَوَّلَتْ إِلَى الْمُضْغَةِ تَطْهَرُ، وَالْعَصِيرُ طَاهِرٌ فَإِذَا تَحَوَّلَ حَمْرًا يَنْجُسُ. فَيَتَبَيَّنُ مِنْ هَذَا: أَنَّ اسْتِحَالََةَ الْعَيْنِ تَسْتَتِيعُ زَوَالَ الوُصْفِ الْمُرْتَبِّ عَلَيْهِا.

There appears to be three opinions in the Maliki school have three opinions regarding converting alcohol to vinegar,

1. Prohibited and Haram
2. Permissible with dislike
3. Permissibility with the intention (purchasing) alcohol for that reason. See Zuhayli vol 3 p. 537

¹⁶ Mawsoatul kuwaityyah vol 10 p. 278 - 9

وَالْأَصْلُ عِنْدَ الشَّافِعِيِّ، وَالْحَنَابِلَةِ فِي ظَاهِرِ الْمَذْهَبِ: أَنَّ نَجَسَ الْعَيْنِ لَا يَطْهَرُ بِالِاسْتِحَالَةِ، فَالْكَلْبُ أَوْ غَيْرُهُ يُلْقَى فِي الْمَلَأْحَةِ فَيصِيرُ مِلْحًا، وَالذُّخَانُ الْمُنْتَصَاعِدُ مِنْ وُقُودِ النَّجَاسَةِ، وَكَذَلِكَ الْبُخَارُ الْمُنْتَصَاعِدُ مِنْهَا إِذَا اجْتَمَعَتْ مِنْهُ نَدَاوَةٌ عَلَى جِسْمٍ صَقِيلٍ، ثُمَّ قَطَرَ، نَجَسٌ ثُمَّ اسْتَنْنُوا مِنْ ذَلِكَ الْحَمْرِ إِذَا انْقَلَبَتْ بِنَفْسِهَا خَلًّا فَتَطْهَرُ بِالتَّحْلُلِ؛ لِأَنَّ عِلَّةَ النَّجَاسَةِ الْإِسْكَارُ وَقَدْ زَالَتْ، وَلِأَنَّ الْعَصِيرَ لَا يَنْحَلُّ إِلَّا بَعْدَ التَّحْمُرِ غَالِبًا، فَلَوْ لَمْ يُحْكَمْ بِالطَّهَارَةِ تَعَدَّرَ الْحُصُولُ عَلَى الْمَلِّ، وَهُوَ خِلَافٌ لِالْإِجْمَاعِ. وَأَمَّا إِنْ خُلِّتْ بِطَرَحٍ شَيْءٍ فِيهَا بِفِعْلِ إِنْسَانٍ فَلَا تَطْهَرُ عِنْدَهُمْ.

It appears that *istihalah* is a contested concept amongst the four legal schools; the Hanafies and Malikies accept *istihalah* whilst the Shafi'ees and Hanbalies do not. The only exceptional case is if alcohol spontaneously converts into vinegar without human intervention, then the vinegar is now lawful according to all of the legal schools. Those who do not recognise *istihalah* adduce the report of Sayyiduna Anas ibn Malik رضي الله عنه that Abū Talha رضي الله عنه once asked the Messenger of Allāh صلى الله عليه وسلم regarding alcohol. The Prophet صلى الله عليه وسلم commanded to pour it (i.e. get rid of it). He said, "Shall I not make it into alcohol?" He said, "No."¹⁷ In this report, the Messenger of Allāh صلى الله عليه وسلم categorically forbade from intentionally converting alcohol into vinegar which further refutes the analogy made with other substances because the existence of a clear text invalidates resorting to legal analogy – *qiyas*.¹⁸ In response to this, though it is undisputed that analogy cannot be resorted vis-à-vis textual evidence, it is argued that the prohibition in the Hadīth is not to the degree of Harām rather disliked. This is the majority view as stated by Imām Shawkāni رحمته الله in his commentary;

*"The position of the jamhoor (mainstream scholars) is that the prohibition (in this narration) is tanzeehi (minor prohibition). It is only forbidden if it is intoxicant whose signs are not concealed. But some Malikiyyah scholars view it as actual tahreem (referring to it being forbidden)."*¹⁹

Some Hadīth commentators like Allāmah Khalīl Ahmad Saharanpuri رحمته الله explain that the Messenger of Allāh صلى الله عليه وسلم forbidding this companion was because many still had a natural

¹⁷ Sunnan Abu Dawood, No. 3675

¹⁸ Dr Ramadan Hamdoon Ali, (2013), *Istihalatul ashya fi meezanil fiqhil Islami (Arabic)*, p. 12-13

¹⁹ Imam Shawkani, *Naylul awtar* vol 8, p.214

tendency towards alcohol in their hearts which could potentially lead towards consuming alcohol itself. Fearing that Shaytān will lure them into drinking alcohol, he therefore discouraged them on the grounds of *tanzeehi* lest that converting to vinegar paves the way for them to eventually consuming alcohol. This was a temporary ban but gradually overtime since its prohibition, when the tendency towards it was no longer feared due to the strength of their faith, it was no longer forbidden. This is supported by the Hadīth where the Messenger of Allāh ﷺ said, 'How excellent is vinegar as a soup'.²⁰ It is clear that the Messenger of Allāh ﷺ did not outrightly forbid converting alcohol into vinegar but merely discouraged it temporarily. The Messenger of Allāh ﷺ himself drinking and praising vinegar that was formerly alcohol indicates to the validity of *istihalah* that the change in both its physical and chemical properties renders its ruling to change as well. This principle is therefore extendable to include other instances also.

The following crucial points regarding *istihalah* can be summed up as follows,

1. There are differences of opinion amongst the schools of thoughts concerning the acceptability of *istihalah*. The Hanafies consider *istihalah* as an acceptable concept to changing something unlawful to lawful and vice-versa. This is also the preferred view in the Malikī school. Contrarily, the Shafi'ees and Hanbalies do not accept *Istihalah* at all except when alcohol turns into vinegar by itself.

²⁰ Allamah Khaleel Ahmad Saharanpuri, Badhl majhood vol 11 p. 409

(حدثنا زهير بن حرب قال: نا وكيع، عن سفيان، عن السدي، عن أبي هبيرة، عن أنس بن مالك، أن أبا طلحة سأل رسول الله - صلى الله عليه وسلم - عن أيتام ورثوا حمزاً، قال: أهرقها، قال: أفلا أجعلها خلأ؟ قال: لا).
ويظهر هذا الحديث قال أحمد (1)، وقال الشافعي - رحمه الله - لا يجوز التخليل من صاحب الخمر (2) بعلاج من خل أو ملح أو غيرهما، ولا يحل النحل وإن خللها بالنقل من موضع إلى موضع، أي إلى موضع الشمس.
فللشافعي - رحمه الله - قولان؛ أحدهما تطهيره، وعند أبي حنيفة - رحمه الله - إن الخمر إذا تخللت بنفسها، أو خللها صاحبها بعلاج من خل أو ملح أو غيرهما فالتخليل جائز، والخل حلال، وعن مالك ثلاث روايات؛ أحدها عنه: أن التخليل حرام، فلو خللها عصي وطهرت.
وأما الجواب من قوله - صلى الله عليه وسلم - لا، أن الخمر كانت نفوسهم ألفت بالخمير، وكل مألوف تميل إليه النفس، فخشي النبي - صلى الله عليه وسلم - من دواخل الشيطان، فنهاهم عن اقتراثها بالكلية نهي تنزيه؛ لئلا يتخذوا التخليل وسيلة إليها، وأما بعد طول عهد التحريم فما بقي السبب، ولا يخشى هذه الدواخل، ويؤيده خبر: "نعم الإدام الخل"

2. *Istihalah* involves significant transformation from one entity to another and the complete removal of those original properties upon which the Shari'ah ruling hinges. This implies that mere change in the chemical structure is not sufficient for its ruling to change if such original properties still exist.
3. In our case, the innate properties such as impurity and intoxication (in the case of alcohol) must be removed (or transformed) for its ruling to change. Despite any apparent physical changes of certain qualities, if the impure properties have not been completely removed or the intoxication still remains then the ruling does not change.

2. Does Gelatine Undergo *Istihalah*?

Gelatine as was explained earlier is a protein derived from the collagen of skins and bones of animals that is colourless and tasteless. Gelatine can be extracted from the collagen meat by simply boiling it but when produced by manufacturers, it undergoes a process of hydrolysatation; a chemical process wherein the gelatine is extracted and refined. There are three basic steps to gelatine production;

Step 1: Obtaining the raw material; pigs' skin/bones/collagen

Step 2: Extraction process - Placing into hot water or diluting the raw material in a carboxylic acid (normally vinegar) to hydrolyse the collagen to gelatine. At this stage the molecular structure of the pig collagen does not change, this is a "physical" change but not a chemical change.

Step 3: Refining the gelatine extract by sterilisation and various other means to produce the final product in form of powder or gel. This sterilisation process does not change the molecular make-up of the pig gelatine but simply removes bacteria and other potential pathogens.

The change in the texture; its gel or powder form that is colourless and tasteless in the end gives the obvious assumption that *istihalah* has occurred. This is however not the



case due to the following reasons as argued by many scholars such as Shaykh Mufti Sarfaraz and other experts;²¹

1. The process of extracting gelatine either by boiling the meat collagen or hydrolysis is no different except that in the latter, the gelatine is refined and purified to remove bacteria. Arguably, gelatine is the cooked form of collagen. The jurists have agreed that by merely cooking meat does not change the ruling, hence similarly in this case.²²
2. Most importantly, *istihalah* only takes place when the original properties are removed. Gelatine still contains the same amount of the amino acid proteins that is the distinct feature of collagen. Both of their composition proteins are the same. Pig's collagen is deemed impure and so is its protein molecule which still exists in gelatine.
3. The source of the animal is *najis al-ayn* (absolute impure) thus regardless if the gelatine structure appears physically different from collagen, it is still impure. The type of change here is in the quality (*wasf*) rather than in the entity itself.

To summarise, *istihalah* requires the complete removal of the impurity for its ruling to change to purity. Gelatine though it undergoes physical change by forming into powder or gel, the innate chemical properties that is *najis* still exists thus not qualifying for *istihalah*.

²¹ See Mufti Sarfaraz, *gelatine aur uska hukm*, darul Ifta, Karachi, Muhammad Ansar Hussain nadawi, *The Complex rules of analytical science are futile in the view of the Islamic Shariah*, Mohammed Aizat jamaludin et al, (2011), *Istihalah: Analysis on The Utilization of Gelatine in Food Products*, available at <http://www.ipedr.com/vol17/32-CHHSS%202011-H110020.pdf> [accessed 3rd November 2020].

²² Sarakhsi, al-Mabsoot, Kitāb al-Ashribah, vol 18 p. 24 - shamila

وَأَنَّ اشْتَدَّ عَصِيرُ الْعَيْنِ، وَغَلَا، وَقَدَفَ بِالرَّيْدِ، ثُمَّ طَبَخَ بَعْدَ ذَلِكَ لَمْ يَحِلَّ بِالطَّبَخِ؛ لِأَنَّ الطَّبَخَ لَا يَمْسُ عَيْنًا حَرَامًا، فَلَا يُغَيِّدُ الْحِلَّ فِيهِ كَطَبَخِ لَحْمِ الْخَنَزِيرِ، وَهَذَا؛ لِأَنَّهُ لَيْسَ لِلنَّارِ تَأْثِيرٌ فِي الْحِلِّ

3. Dharurah

If gelatine does not fulfil the *istihalah* rules then can the nasal spray be allowed under the laws of *dharurah*? *Dharurah* is a technical term that is loosely translated as necessity but implies an acute form of suffering that results in the fear of loss of life, limb or jeopardising any of the other essentials namely, religion, intellect, wealth etc. If it is not the case of life and death, (nor the other essentials are jeopardised) rather an ill person suffers acute pain and constrain *-haraj wal mushaqah* – then this is the degree known as *hajah*.²³ The difference between the two, as Shaykh Khalid Saifullah Rahamani explains is that *dharurah* is a higher degree of suffering that disrupts one's living condition (or either of the above five essentials) but if one just experiences constrain in discharging their duties then that is *hajah*.²⁴ Normally the ruling between the two is different but *hajah* can elevate to the degree of *dharurah* that permits the unlawful when the pain is unbearable for the individual or leads to genuine public predicament.²⁵ The conditions below must be met for the law of necessity to apply;

²³ See Zuhayli, *Fiqhul Islami wa adillatihu*, vol 1 p. 40-1

والضرورة: هي التي تهدد المرء بمهلاك نفسه أو نسله، أو تلف ماله، أو ذهاب عقله إذا لم يقدم على الشيء الممنوع. والحاجة: ما يترتب على عدم استعمال الشيء الممنوع من حرج ومشقة تصيب الإنسان في نفسه أو ولده أو ماله أو عقله.

Also see Zuhayli, *Fiqhul Islami wa adillatihu*, *Nazaryyatul Dharuratus Shari'yyat*, vol 9 p. 429

Imam Shatibi, *Al-Muwafaqat* p.9 vol 2

وَأَمَّا الْحَاجِيَّاتُ، فَمَعْنَاهَا أَنَّهَا مُفْتَقَرٌ إِلَيْهَا مِنْ حَيْثُ التَّوَسُّعِ وَرَفْعِ الضَّبِيقِ الْمُؤَدِّي فِي الْعَالِبِ إِلَى الْحَرْجِ وَالْمَشَقَّةِ اللَّاحِقَةِ بِفَوْتِ الْمَطْلُوبِ، فَإِذَا لَمْ تَرَاعِ دَخَلَ عَلَى الْمُكَلَّفِينَ - عَلَى الْجُمْلَةِ الْحَرْجُ وَالْمَشَقَّةُ، وَلَكِنَّهُ لَا يَبْلُغُ مَبْلَغَ الْفَسَادِ الْعَادِيِّ الْمَتَوَقَّعِ فِي الْمَصَالِحِ الْعَامَّةِ

²⁴ Shaykh Khalid Saifulah Rahmani, *Dharurah wal Hajat*, cited in Qadhi Mujahidul Islām Qasmi, *Jadeed fiqhi mabahith*, vol 14, p. 63

Ashbahwa Naza'ir of Imam Sutooti p. 85, Hamawi, *Ghamzul Uyoon Basair* p. 277

فَالضَّرُورَةُ: بُلُوغُهُ حَدًّا إِنْ لَمْ يَتَنَاوَلْهُ الْمُمْنُوعُ هَلَكَ، أَوْ قَارَبَ وَهَذَا يُبَيِّحُ تَنَاوُلَ الْحَرَامِ.
وَالْحَاجَةُ: كَالْحَاجِئِ الَّذِي لَوْ لَمْ يَجِدْ مَا يَأْكُلُهُ لَمْ يَهْلِكْ غَيْرَ أَنَّهُ يَكُونُ فِي جَهْدٍ وَمَشَقَّةٍ. وَهَذَا لَا يُبَيِّحُ الْحَرَامَ، وَيُبَيِّحُ الْفَطْرَ فِي الصَّوْمِ.

²⁵ Ashbahwa Naza'ir of Imam an-Nujaym p. 87

الحاجة تنزل منزلة الضرورة، عامة كانت أو خاصة

Zuhayli, *Fiqhul Islami wa adillatihu*, vol 1 p. 40-1

1. The necessity must exist – in other words the illness or perishing of one's life, limb or any of the above factors is near certain based on one's personal experience.
2. There is no other alternative medicine available to be taken.
3. It is limited only to the extent that is necessary.²⁶
4. Based on the definition that the pain must be either life threatening or acute and protracted such that it is no longer bearable for the individual.

The influenza flu comes in various types, A, B and C. Some can be milder than others but symptoms such as breathing difficulties, cough, high fever, body ache, sneezing, sore throat etc commonly exist in all of them. The duration of the flu varies on average from a few days up to a week depending on individual's personal condition. Nevertheless, the flu can either wear off by itself or the doctors can prescribe medication at the time.²⁷ The nasal vaccine is recommended earlier so to prevent any symptoms of the flu occurring. We do not deny any possibilities of someone being diagnosed with influenza in the future like the case with any other illness. Rulings however are never based on speculation. Near certainty (*ghalabatu dhann*) is essential which is attainable only if one

وأجاز آخرون تغيير الحكم بالضرورة أو الحاجة دفعاً للحرَج والضرر عن الناس بشرط توافر معنى الضرورة والحاجة شرعاً، والترخيص بالقدر اللازم فقط لإزالة الضرورة وتحقيق الحاجة، لأن «الضرورة تقدر بقدرها»

²⁶ Zuhayli, Fiqhul Islami wa adillatihu, Nazaryyatul Dharuratus Shari'yyat, vol 9 p. 429-430

أن تكون الضرورة قائمة لا منتظرة في المستقبل، أي أن يحصل في الواقع خوف الهلاك على النفس أو المال بغلبة الظن بحسب التجارب، أو التحقق من خطر التلف، لو لم يأكل، ويكفي في ذلك الظن، كما في الإكراه على أكل الحرام، فلا يشترط فيه التيقن ولا الإشراف على الموت، بل لو انتهى إلى هذه الحالة لم يفد الأكل ولم يحل الأكل كما صرح الشافعية.

أن يتعين على المضطر ارتكاب المخطور الشرعي أي ألا يكون هناك وسيلة أخرى من المباحات لدفع الخطر إلا تناول الحرام؛ لأن سبب استعمال المحرمات في حال الاضطرار هو ضرورة التغذية أعني إذا لم يجد شيئاً حلالاً يتغذى به. وهذا لا خلاف فيه.

أن يقتصر في رأي الجمهور على الحد الأدنى أو القدر اللازم لدفع الضرر، كما سأوضح؛ لأن إباحة الحرام ضرورة، والضرورة تقدر بقدرها.

²⁷ See Signs and Symptoms of Type A Influenza, available at <https://www.healthline.com/health/influenza-a-symptoms> [3rd November 2020]

Stanford Children's Hospital, *Influenza (Flu) in Children*, Available at <https://www.stanfordchildrens.org/en/topic/default?id=influenza-flu-in-children-90-P02514> [3rd November 2020]



immediately suffers the acute pain or is more than likely to do so based on previous experience. If for argument sake one can establish the near certainty of influenza infection through scientific research, even so the necessary condition namely, absence of alternative Halāl medication is not fulfilled. Non-porcine injectable vaccination is available for Muslim parents refusing the nasal vaccine.²⁸ Furthermore, alternative medications are available in treating the patient to alleviate the flu symptoms at the time its infection.

Conclusion

The nasal spray vaccine containing porcine gelatine given to treat influenza hinges on two important discussions namely; *istihalah* and the *dharurah*. *Istihalah* is a contested concept amongst the legal schools with only the Hanafies and the Malikies accepting it. From our research, gelatine does not fulfil the criteria of Shar'ī *istihalah*. Unless further reliable evidences establish that gelatine undergoes further changes in the medicine to fulfil the criteria *istihalah*, it cannot be ruled as pure and permissible on the basis of its apparent structural change. Moreover, the permissibility of the nasal flu vaccine, despite its effectiveness cannot be warranted through the laws of *dharurah* and *hajah*. This is either the chances of the individual catching the flu being mere speculative (*wahm*) or if not then the availability of alternative permissible medications to treat the flu. A final note on this is that we do not discourage parents from having their children vaccinating as preventative measures using Halāl means, but as one must appreciate that the Shar'iah imposes strict rules against porcine because it is considered the most impure of things.

²⁸ The national flu immunisation programme 2020 to 2021- update (2020), Department of health and social care, NHS, available at; [Annual flu programme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/531112/annual-flu-programme-2020-to-2021-update-2020.pdf) [accessed at 24th November 2020]. Point 8 of the document states,

“In addition, this season an inactivated vaccine may be offered to those children whose parents refuse the live attenuated influenza vaccine (LAIV) due to the porcine gelatine content, in order to prevent localised outbreaks this year. Providers of children's vaccination services will receive further instruction on the offering of this service in due course” (p.2).





JKN FATAWA



www.jknfatawa.co.uk



fatawa@jkn.org.uk

Allāh Knows Best

Mufti Abdul Waheed

Senior Researcher at JKN Fatawa Department

Acknowledgment

This article was thoroughly researched by Mufti Abdul Waheed under the supervision and attestation of Shaykh Mufti Saiful Islām Sāhib, the founder of JKN Fatāwa Department. The author wishes to thank those who supported us in this research through advice, proof reading and providing materials on this subject. We pray that Allāh ﷻ rewards them for their kind efforts and make this work a means of Sadaqah Jāraiyyah for them as well, Amīn.

Disclaimer: All rights are reserved of this publication. The article was thoroughly researched by the author so no part of it can be reproduced and copied onto any other website or platform without prior permission from the author.



+44 (0)1274 308 456
Mon-Fri 10am-3pm



www.jknfatawa.co.uk
fatawa@jkn.org.uk



118 Manningham Lane, Bradford
West Yorkshire, BD8 7JF