

HARMONISING INTERNATIONAL LEGAL FRAMEWORKS AND SHARIAH PRINCIPLES IN THE CONTEXT OF MEDICAL TOURISM: AN ANALYSIS

Noor Shuhadawati Mohamad Amin*

Noriah Ramli**

Majdah Zawawi***

ABSTRACT

Shariah-compliant medical tourism has grown into a specialised sector of the global medical tourism market that serves patients looking for medical care that complies with Islamic principles. For the sake of ensuring patient safety, ethical considerations, and the harmonisation of practises across borders, the role of international law in governing this special type of medical tourism is essential. The study first establishes a connection between the objectives of the Shariah (Islamic law) together with its salient principles and health in Islam. In this context, it is apparent that the relevant Shariah objectives and principles have a great influence on the delivery of healthcare services. The study, which is doctrinal in nature then explores the international law and how it relates to shariah-compliant medical tourism. Further, the study discusses universal values, human rights, and the protection of patient rights as they are stated in the international conventions. The purpose of this study is to critically analyse the relationship between the Shariah principles in the context of medical tourism with the standards prescribed in the international legal framework. From the study, it is obvious that the international legal standards can accommodate and respect Shariah requirements and has the potential to attract not only Muslims but also non-Muslims patients.

* Assistant Professor at the Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: shuhadaamin@iiu.edu.my.

** Associate Professor at the Civil Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: noriahr@iiu.edu.my

*** Associate Professor at the Islamic Law Department, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. Email: z.majdah@iiu.edu.my

Keywords: Medical Tourism, Shariah Principles, International Law, Healthcare.

MENGHARMONIKAN RANGKA KERJA PERUNDANGAN ANTARABANGSA DAN PRINSIP-PRINSIP SYARIAH DALAM KONTEKS PELANCONGAN PERUBATAN: SATU ANALISIS

ABSTRAK

Pelancongan perubatan patuh Syariah telah berkembang menjadi sektor khusus pasaran pelancongan perubatan global yang memberi perkhidmatan kepada pesakit yang mencari rawatan perubatan yang mematuhi prinsip Islam. Demi memastikan keselamatan pesakit, pertimbangan etika, dan penyelarasan amalan merentas sempadan, peranan undang-undang antarabangsa dalam mengawal jenis pelancongan perubatan khas ini adalah penting. Kajian ini mula-mula menjalinkan perkaitan antara objektif Syariah (undang-undang Islam) bersama dengan prinsip-prinsip penting dan kesihatan dalam Islam. Dalam konteks ini, jelaslah bahawa objektif dan prinsip Syariah yang berkaitan mempunyai pengaruh yang besar dalam penyampaian perkhidmatan penjagaan kesihatan. Kajian yang bersifat doktrinal ini kemudiannya meneroka undang-undang antarabangsa dan bagaimana ia berkaitan dengan pelancongan perubatan patuh Syariah. Seterusnya, kajian ini membincangkan tentang nilai sejagat, hak asasi manusia, dan perlindungan hak pesakit seperti yang dinyatakan dalam konvensyen antarabangsa. Tujuan kajian ini adalah untuk menganalisis secara kritis hubungan antara prinsip Syariah dalam konteks pelancongan perubatan dengan piawaian yang ditetapkan dalam rangka kerja perundangan antarabangsa. Daripada kajian tersebut, ternyata piawaian perundangan antarabangsa dapat menampung dan menghormati kehendak Syariah serta berpotensi menarik bukan sahaja orang Islam tetapi juga pesakit bukan Islam.

Kata Kunci: Pelancongan Perubatan, Prinsip- Prinsip Syariah, Undang-Undang Antarabangsa, Penjagaan Kesihatan.

INTRODUCTION

Medical tourism has become a worldwide phenomenon, with people seeking treatment outside of their own countries for a variety of factors, such as cost-effectiveness, care quality, and specialised treatments. Shariah-compliant medical tourism, which caters to people who want medical treatments in conformity with Islamic beliefs and rules, is one particular specialty within this business. Shariah-compliant medical tourism provides treatments that satisfy the moral and spiritual needs of Muslim patients, taking into account things like gender segregation, halal food, and adherence to Islamic medical principles. Shariah-compliant medical tourism is getting more recognition along with the increased number of Muslim population across the globe.¹ Some scholars even equate this kind of tourism with new definition of pilgrimage.² Pilgrimage, as generally understood refers to travelling to another place for religious purpose in one way would also include medical tourism as Muslims are aware of their obligations to look for a halal medical treatment to fulfil Islamic obligations which is available in the modern era.³ In this sense, healthcare and medical practises are

¹Take South Korea for an example. Although it is a non-muslim state, the Korean government has developed close ties with some Gulf Cooperation Council (GCC) nations, which permit South Korea to receive patients from those nations, a steady flow of GCC medical tourists to Korea has been coming from the Middle East and North Africa. The number of Muslim medical tourists visiting Korea has been rising for more than a decade. Loai Alfarajat, “Halal Food and Medical Tourism: Muslim Patients’ Experiences and Satisfaction in South Korea”, *Journal of Religion and Health*, 27 (1) (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9792942/> accessed May 22, 2023.

²Mohammad Mushfequr Rahman, *Universal Declaration of Human Rights & Islamic Human Rights: A Comparison*. Available from: https://www.researchgate.net/publication/355034343_Universal_Declaration_of_Human_Rights_Islamic_Human_Rights_A_Comparison [accessed May 22 2023].

³In Surah Al – Nisaa, verse 97 Allah says “Was not the earth of Allah spacious [enough] for you to emigrate therein?” This verse proposes a policy of free migration in/out of a jurisdiction. Hence, Islam allows freedom of movement as long as it does not include trespassing in another’s property. Also, it can be seen from classical practice during Prophet Muhammad’s time, Medina people were not supposed to take permission to enter or

just two of the many areas of global relations that are shaped and governed by international law. Shariah-compliant medical tourism has arisen as a special subset within this varied medical tourism industry, catering to people who seek medical treatments in conformity with Islamic beliefs and rules.

While Shariah-compliant medical tourism offers advantages to both patients and healthcare professionals, it also raises significant concerns about the function of the international law in policing this specialised type of medical tourism. As a foundation for global governance, international law addresses different facets of transnational activities, human rights, and ethical norms. To ensure the protection of patients' rights, ethical considerations, and the standardisation of practises across nations, it is essential to comprehend how international law regulates Shariah-compliant medical tourism. It is a known fact that the protection of human rights is one of the instrumental cornerstones of international law. Understanding the degree to which Shariah-compliant medical tourism can be effectively managed within this framework requires examining the congruence between Islamic principles and international legal rules.

RESEARCH METHODOLOGY

The research employs doctrinal method. Doctrinal or library-based research is the most commonly used research methodology in legal studies. This approach focuses on researching the law in specific circumstances, with an emphasis on the establishment and implementation of legal concepts mainly through statutes, international instruments and decided case law. This method tries to get a deeper grasp of the fundamental legal rules regulating specific situations by delving into legal doctrines and their historical development.⁴The research is also conducted using a qualitative approach, with textbooks, academic journals, and websites serving as the primary sources of information.

even leave the first Islamic state Medina as long as they honoured the Islamic constitution of Medina.

⁴Salim Ibrahim Ali et.al., "Legal Research of Doctrinal and Non-Doctrinal," *International Journal of Trend in Research and Development*, 4 (1)(2017).

UNDERSTANDING THE OBJECTIVES OF SHARIAH AND ITS SALIENT PRINCIPLES IN THE CONTEXT OF MEDICAL TOURISM

A strong and viable healthcare system that can support its community is vital in any state. This is because a poor healthcare condition not just emits one's ability to work, it can also reduce economic opportunities which would ultimately lead to medical debt and bankruptcy. An ideal healthcare system should be able to provide an affordable yet reliable healthcare treatment to the patient. In Islam, health is regarded as the second greatest blessing to have been given to human beings after faith in Allah. In the *hadith* of the Prophet, "There are two blessings which many people do not appreciate: health and leisure".⁵ Before Shariah-compliant medical tourism can be materialised, the objectives of Shariah must first be understood.

Before venturing on the discussion of *maqasid al shariah* (objectives of Islamic law), it is crucial to first examine the sources of Shariah that dictate the importance of health in Islam. Al-Quran and Sunnah are two primary sources of Islamic law. There are a number of Quranic verses that stress on maintaining good health for Muslims. In *Surah al-A'raf* verse 31, Allah says, "O Children of Adam! Dress properly whenever you are at worship. Eat and drink, but do not waste. Surely, He does not like the wasteful". In this verse, Islam places an important focus on living a healthy lifestyle since Islam believes that in order to be at peace, one must be physically well. People would therefore be able to live their lives properly and thoughtfully if they led a healthy lifestyle. Further, to maintain good health is also considered the cornerstone of a faithful Muslim as mentioned by Prophet Muhammad in one of his *hadiths* (the saying of the Prophet).⁶ Secondary sources in Islam comprise of *ijma'*, *qiyas*,

⁵*Sahih al-Bukhari*, 1984, Book 81, 1:6412,p.1232. This hadith was mentioned in Al- Sheikh, A.F, *The Right Path to Health: Health Education through Religion*, (Alexandria Egypt, WHO Regional Officer for the Eastern Mediterranean, 1996), p. 3.

⁶Prophet was once quoted saying, "The strong believer is better and more beloved to Allah than the weak believer, while there is good in both" [This hadith was narrated by Muslim]. In this hadith, it understood that health and fitness are equally as important as a person's faith and moral strength. This implies that Muslims have a responsibility to take good care of their mental, emotional, and spiritual well-being.

*masalah mursalah, istihsan, urf and istishab.*⁷ Perhaps the most significant of the secondary sources in relation to healthcare would be the exercise of *ijtihad*. It refers to the practices of Muslim jurists to formulate their own ruling when the Quran or Sunnah is silent on a particular matter. In today's world for example, the usage of vaccination is important to establish herd immunity. The issue of non-halal vaccination has been debated and modern Muslim jurists allow the use of non-halal vaccines for the purpose of bringing considerable health benefits to communities worldwide.⁸

Another salient principle of Islam that worth highlighting is the objectives of Shariah and how it intertwines with health in particular. The idea of *maqasid al shariah* directs the creation and provision of healthcare services in the framework of Shariah-compliant medical tourism. The preservation of life is given priority, and attempts are made to offer therapies and interventions that put people's health and wellbeing first. This entails respecting the ideals of justice and equity, patient safety, and stringent ethical standards. Furthermore, Shariah-compliant medical tourism acknowledges the role that religion plays in the healing process. It offers a setting that respects and allows for religious practises and beliefs, including gender segregation, halal food preparation, and the availability of prayer spaces. This guarantees that patients receive medical care while feeling at ease and receiving support in their religious practises. At this juncture, it is worth highlighting that the *maqasid al shariah* is the basis of a Muslim's living. It serves as a guide underlining the purpose of a Muslim's daily activities. There are five pillars of *maqasid al shariah* namely protection of religion (*deen*), protection of life (*nafs*), protection of lineage (*nasl*) protection of intellect (*'aql*) and protection of property (*mal*).⁹ From these pillars, protection of life is closely related to health.

⁷Nora Abdul Hak, *Secondary Sources of Islamic Law*, (ScholarMind Publishing: Kuala Lumpur, 2016).

⁸Sadek, George. *Egypt and United Arab Emirates: COVID-19 Vaccine Ruled Permissible under Islamic Law*. 2021. Web Page. <https://www.loc.gov/item/global-legal-monitor/2021-01-22/egypt-and-united-arab-emirates-covid-19-vaccine-ruled-permissible-under-islamic-law/>. Accessed May 23, 2023.

⁹Duguri, U. S., Salleh, M. A., Hassan, I., & Azmi, M. N. L, "The Application of Maqasid Al-Shari'ah in the Foreign Policy of Islamic States, " *International Journal of Academic Research in Business and Social Sciences*, 11(3)(2021), pp. 88-96.

This is because life can be protected through good health. A good Muslim must ensure that health is well taken care of. Without good health, a Muslim will face difficulty in performing his duties as a vicegerent of Allah on earth such as to work, to study, to perform *solat* and many others.

Another important principle in Islam is the requirement of halal. Halal is an Arabic word meaning lawful or permitted.¹⁰ From the religious perspective, the concept of halal in general covers every aspect of human life such as to get a halal income from working by performing the work with utmost integrity. Halal food is the most common term associated with halal. It denotes the dietary standard for Muslims as prescribed in the Quran. The opposite of halal is *haram*, which means unlawful or prohibited. Muslims are required to only consume halal food, cosmetics, personal care products, pharmaceuticals, food ingredients, and food contact materials and to avoid haram food and products with few exceptions.¹¹ From the scientific perspectives, the halal concept is crucial because it includes other elements such as hygiene, ethics, values and food safety. The non-muslims have no issue consuming halal products because of how the halal products are managed. The importance of halal products in Shariah-compliant medical tourism is anchored in Islamic law's tenets as well as Muslim patients' dietary restrictions and worldview. The availability of halal items becomes important in the context of Shariah-compliant medical tourism for a number of reasons. First of all, it takes care of the dietary and religious requirements of Muslim patients who follow Islamic beliefs. Muslim patients who travel overseas for medical care might need to have access to halal food and drinks that are prepared and served in conformity with Islamic dietary regulations. This includes the exclusion of foods that are forbidden, such as alcohol and pork and adherence to the method of slaughtering animals for consumption in accordance with Islam.

¹⁰Surianom Miskam et.al., "An Analysis of the Definition of Halal: Shari'ah vs Statutes." Paper presented at World Academic and Research Congress 2015 (World-AR 2015), YARSI University, Jakarta, 2015.

¹¹ Islamic Council of Victoria, What is Halal? A Guide to Non-Muslims, <https://www.icv.org.au/about/about-islam-overview/what-is-halal-a-guide-for-non-muslims/> accessed May 21, 2023.

The concept of halal has its relationship to the notion of necessity, or its Islamic term, *darurah* which refers to a dire situation in which there are no lawful means to prevent harm that may be inflicted upon human life. The idea of necessity recognises that safeguarding and sustaining life takes precedence over other factors in the context of health and medical problems. Islam strongly supports the preservation and welfare of people and places a high value on the sanctity of life. As a result, when faced with a medical necessity, people are allowed to conduct behaviours that might otherwise be forbidden or discouraged, and in some cases even forced to. For instance, the idea of need in healthcare permits the use of drugs or medical procedures that are forbidden in Islam so long it is taken in modesty. This is in accordance with the guidelines provided by the Muslim scholars especially in weighing the potential harms and benefits in each circumstance.¹²

AN OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORKS FOR REGULATING MEDICAL TOURISM

The human right to freedom of movement and the right to healthcare are two inherent rights embedded in various international frameworks. As people use their freedom of movement to receive healthcare treatments outside of their own nations, these themes are intricately intertwined. The junction of these two important factors is examined while emphasising their importance in the context of medical tourism.

¹²In dealing with necessity, the maxim hardship begets facility or in Arabic, *Al-mashaqqahtajlib al-taysir* describes the application of *rukhsah*. It simply means that a Muslim is allowed to avoid certain hardship by violating Islamic command or prohibition. With the application of this maxim, it shows the flexibility of Islamic law because Islam is not the kind of religion that would impose an obligation exceeding one's ability to cope with it.¹² For an instance, a starving person is allowed to eat pork to save himself from death due to starvation.¹² Application of *rukhsah* can also be seen in prayer. Muslims are allowed to shorten and combined two prayers into one at time of travel or when a doctor is performing a long surgery for the purpose of saving the life of the patient. In cases of necessity, Islam has allowed concession or *rukhsah*. Islamic legal maxim known as *Al-Qawaid al Fiqhiyyah* which refers to the general principles of Islamic law, applicable into various issues of *fiqh* and presented in a form of maxim.

In examining the relationship between the human right to freedom of movement and the right to healthcare, it is also crucial to explore the international legal framework regulating cross border medical tourism.

Freedom of Movement

Historically, due to geographical restrictions, societal and cultural conventions, and other factors, people's mobility in the past was constrained. However, several prehistoric communities acknowledged the right to migrate and travel. For instance, the city-state of Athens in ancient Greece gave its residents the freedom to travel within its limits and take part in political activities.¹³

The notion of freedom of movement is recognised as a fundamental human right as enshrined in numerous international agreements and treaties. In order to exercise their right to freedom of movement, people must be able to traverse borders, go anywhere they like, and leave and enter their nation of origin. As stated in Article 13 of the Universal Declaration of Human Rights (UDHR) which was adopted in 1948, “everyone has the right to freedom of movement and residence within the borders of each state” and “everyone has the right to leave any country, including his or her own, and to return to his or her country.”¹⁴ The UDHR declares the right to freedom of movement to be an applicable fundamental human right and such right has been reiterated in many other international conventions that come after. The right to freedom of movement is also protected under the International Covenant on Civil and Political Rights (ICCPR), another important international human rights documents. In accordance with Article 12 of the ICCPR, people have the freedom to move around as they like, including the freedom to enter and exit their own nation as well as the freedom to choose where they live.¹⁵ The ICCPR emphasises that these

¹³Bejan, T. M. “The Two Clashing Meanings of ‘Free Speech’”, *The Atlantic*, <https://www.theatlantic.com/politics/archive/2017/12/two-concepts-of-freedom-of-speech/546791/> accessed May 24, 2023.

¹⁴United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed on May 25, 2023.

¹⁵This universal instrument was adopted on December 16, 1966 by the General Assembly Resolution 2200A (XXI). See United Nations, International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/instruments->

rights should only be subjected to restrictions that are required and appropriate for particular goals, such as maintaining public order, national security, or health.¹⁶

The right to freedom of movement is also upheld by the regional human rights documents like the African Charter on Human and Peoples' Rights. The Charter was adopted in 1981 and outlines a number of basic human rights applicable to the Africans. Freedom of movement is mentioned in Article 12 of the Charter which provides "Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law."¹⁷ Here, the freedom of movement within each zone as well as the entry and exit from member states are outlined in these documents. Another key international instrument is the European Convention on Human Rights (ECHR). It is an instrumental international convention aims at protecting human rights and political freedoms in Europe. The convention came into force on 3 September 1953. Freedom of movement is prescribed in Protocol No. 4, Article 2 to the Convention for the Protection of Human Rights. Article 2 (3) further states that no restrictions should be imposed in exercising the right except in accordance with law for the purpose of upholding the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.¹⁸ The freedom of movement is especially important in the context of international migration. Speaking of migration, people who seek employment outside of their home country popularly known as migrant workers are also accorded with the freedom of movement. The right of migrant workers and their families to leave any country, including their own,

mechanisms/instruments/international-covenant-civil-and-political-rights accessed on May 24, 2023.

¹⁶General Comments Adopted by the Human Rights Committee under Article 40, para 4, of the International Covenant on Civil and Political Rights, Human Rights Committee, International Covenant on Civil and Political Rights, 1 November 1999.

¹⁷African Union, African Charter on Human and Peoples' Rights, <https://au.int/en/treaties/african-charter-human-and-peoples-rights> accessed May 24, 2023.

¹⁸Council of Europe, European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf accessed May 24, 2023.

and to enter and stay in their country of employment is recognised by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹⁹

Right to Health

The right to health on the other hand appears as an important subject within the international legal framework in the context of medical tourism. The foundation for fair access to healthcare services and the best possible level of physical and mental well-being is set by the right to health, which is recognised as a fundamental human right. The right to health was emphasised in the UDHR1948, which asserts that “everyone has the right to a standard of living adequate for health and well-being, including medical care and necessary social services.”²⁰

Another instrumental international legal document pertaining to health is the constitution of the World Health Organisation (WHO). This specialised organisation is a division of the United Nations (UN) focusing on global public health. The idea behind the establishment of the WHO can be traced back to the latter stages of World War II. The destruction brought on by the war including the spread of diseases among displaced people and the requirement for post-conflict reconstruction highlighted the need for an international organisation to handle issues related to global health. In its constitution, the organisation declares that health is a basic human right as such it is a right to be granted to every human without any discrimination of race, religious belief, political belief, economic or social circumstance.²¹The International Covenant on Economic, Social and Cultural Rights (ICESCR): The ICESCR which was adopted by the United Nations General Assembly in 1966, is an international human rights treaty aiming to protect economic, social and cultural rights of its state parties. This international covenant also echoes the similar right

¹⁹See Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted on December 18, 1990 by the General Assembly Resolution 45/158. United Nations, International Convention on the Protection of the Rights of All Migrant Workers

²⁰<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> accessed May 24, 2023.

²¹World Health Organisation, History, <https://www.who.int/about/history> accessed May 24, 2023.

prescribed in the WHO constitution. It guarantees the right to the enjoyment of the highest attainable standard of physical and mental health. It calls for the prevention, treatment, and control of diseases, as well as the improvement of environmental and occupational health.²²

With the emergence of technology and modernisation happening around the globe, the UN has taken the initiative to develop 17 sets of goals integrating economic and environmental sustainability approaches.²³ Hence, in 2015, the Sustainable Development Goals (SDGs), were enacted to eradicate poverty, safeguard the environment, and guarantee that by the year 2030, peace and prosperity will be experienced by everyone.²⁴ One of its specific goals is dedicated towards ensuring healthy lives and promoting well-being for everyone at all ages.²⁵ Additionally, it seeks to address a variety of health-related challenges, including lowering maternal and infant mortality, eradicating communicable diseases, and establishing universal access to healthcare.²⁶

Cross-border Healthcare

Having discussed these two important themes, it is crucial to also acknowledge the importance of cross-border healthcare to promote medical tourism. For this purpose, various international trade and services agreements have substantially impacted the industry.

One of the most prominent agreements in this regard is the General Agreement on Trade in Services (GATS) under the World Trade Organisation (WTO). GATS that came into force in 1995 deals with the international trade in all service sectors including healthcare

²²See the Preamble to the WHO Constitution, <https://www.who.int/about/governance/constitution> accessed May 24, 2023.

²³UNDP, What are the Sustainable Development Goals?, [https://www.undp.org/sustainable-development-goals#:~:text=The%20Sustainable%20Development%20Goals%20\(SD Gs\)%2C%20also%20known%20as%20the,people%20enjoy%20peace%20and%20prosperity](https://www.undp.org/sustainable-development-goals#:~:text=The%20Sustainable%20Development%20Goals%20(SD Gs)%2C%20also%20known%20as%20the,people%20enjoy%20peace%20and%20prosperity). Accessed May 24, 2023.

²⁴United Nations, Department of Economic and Social Affairs Sustainable Development, The 17 Goals, <https://sdgs.un.org/goals> accessed May 24, 2023.

²⁵Ibid.

²⁶Ibid at 22.

services and is crucial in establishing the legal basis for medical tourism.²⁷ With an emphasis on GATS and its ramifications, this introduction examines the relationship between international trade agreements and medical tourism. GATS and other international trade seek to encourage the liberalisation of services across national boundaries and foster an environment that is favourable to international trade.²⁸ GATS aims to make it easier for people to receive medical treatment by facilitating cross-border trade in healthcare services. The GATS creates a framework for WTO members to liberalise healthcare services.²⁹ The GATS broadly defines trade in services to cover four modes of service provision: Mode 1: cross-border through primarily electronic transaction, for example, telemedicine; Mode 2: movement of consumers, for example, travel for the purpose of consuming health services; Mode 3: commercial presence through the establishment of branch, subsidiary, joint venture, etc., for example, hospitals; and Mode 4: provision of services through movement of nurses and doctors.³⁰ These four modes are important to further enhance the success of cross-border healthcare and instil confidence in patients seeking treatment abroad.³¹ Participating states are also required to gradually lower their trade restrictions on services, particularly healthcare-related restrictions. This includes taking steps to ensure transparency and non-discrimination in the delivery of healthcare services, allowing foreign healthcare providers to set up and run facilities, and allowing healthcare personnel to move around.³² GATS has two significance for medical tourism. Firstly, it gives the healthcare industry a legal foundation that encourages market access and competition. GATS can help medical tourism destinations attract patients from abroad by opening up healthcare markets to foreign

²⁷World Trade Organisation, General Agreement on Trade in Services (GATS), https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm accessed May 24, 2023.

²⁸Ibid.

²⁹World Trade Organisation, Basic Purpose and Concepts, https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/cls3p1_e.htm accessed May 25, 2023.

³⁰Ibid.

³¹International Trade in Healthcare Services and the GATS: Current Issues and Debates, edited by Chantal Blouin, Nick Drager and Richard Smith, (The World Bank: Washington, 2006), p. 24.

³²Ibid at 29.

providers, fostering economic growth and job prospects.³³ Secondly, GATS also raises crucial questions about the governance and regulation of healthcare services. As nations liberalise their healthcare industries, they must find a balance between advancing commerce and defending the general populace's health, ensuring patient safety, and upholding the standard of healthcare services.³⁴ GATS encourages openness and non-discrimination in rules while acknowledging member states' legal authority to regulate healthcare services in order to accomplish these goals.

Lastly, it is equally important to recognise the existence of the ISO (International Organisation for Standardisation) that aims to create and publish standards in a variety of sectors, including healthcare and tourism.³⁵ In this regard, the recent ISO 22525: 2020 was introduced to govern the requirements and recommendations for facilitators and healthcare providers in medical tourism.³⁶ In order to meet the expectations of medical tourists, it is therefore evident that it is necessary to define, at a global level, the minimum quality requirements for providing medical tourism services, taking into account the numerous players involved. The standard has been adopted

³³Chugan, Pawan K. and Dhar, Upinder and Bhatt, Shwetang, Medical Tourism Under Mode II of GATS (WTO): Opportunities, Challenges and Entrepreneurial Strategies in Gujarat, *Nirma University Journal of Business and Management Studies*, 3 (3 & 4) (2009), pp. 23-36, https://www.researchgate.net/publication/228271515_Medical_Tourism_Under_Mode_II_of_GATS_WTO_Opportunities_Challenges_and_Entrepreneurial_Strategies_in_Gujarat accessed May 25, 2023.

³⁴Ibid.

³⁵International Organisation for Standardisation, About Us, <https://www.iso.org/home.html> accessed May 25, 2023.

³⁶See International Organisation for Standardisation, ISO 22525:2020: Tourism and related services, Medical tourism, Service requirements. <https://www.iso.org/standard/73387.html#:~:text=This%20document%20establishes%20the%20requirements,reasons%20as%20a%20primary%20motivation.> Accessed May 25, 2023.

in public and private institutions in countries such as the United States of America³⁷ and Turkey.³⁸

EXPLORING THE INTERSECTION OF INTERNATIONAL LEGAL FRAMEWORKS AND SHARIAH PRINCIPLES IN MEDICAL TOURISM

There are several similarities shared by both the international legal framework of medical tourism and Shariah principles. Shariah-compliant medical tourism primarily caters to Muslim patients looking for healthcare services that follow Islamic ethical and moral values, but the international legal framework covers a wider scope and applies to medical tourism practises globally. Despite having different objectives, these two frameworks show areas of overlap and share similarities such as promoting ethical and moral standards, safety and wellbeing of patients, assurance of quality healthcare services, equality of treatment regardless of religious belief and advocating safety and wellbeing of patients.

Ethical and moral standards

The intersection of Shariah principles and international safety standards for medical tourism highlights the shared commitment to patient welfare while taking into account the unique cultural and religious contexts of Muslim patients. This is especially true when it comes to ethical principles like informed consent, patient autonomy, and privacy.

A key ethical principle known as informed consent guarantees that patients have access to the information they needed in order to make their own healthcare decisions. The need for informed consent is emphasised by the international medical tourism guidelines, which call for healthcare professionals to give patients thorough information about their diagnosis, available treatments, risks, advantages, and

³⁷See American National Standards Institute (ANSI) Standards Action, 51 (52) (2020) <https://share.ansi.org/Shared%20Documents/Standards%20Action/2020-PDFs/SAV5152.pdf> accessed May 21, 2023.

³⁸See Turkey, AgfoCert, <https://agfocert.com/services/systemcertification/> accessed May 25, 2023.

potential results. ³⁹This gives people the ability to decide on their own medical care with knowledge. The Nuremberg Trials, a series of military courts convened after World War II to try Nazi medical professionals who had performed terrible medical experiments on prisoners without their consent, gave rise to a set of moral guidelines known as the Nuremberg Code. In response to the atrocities carried out during these experiments, the Nuremberg Code was founded in 1947 with the intention of establishing standards for morally responsible medical research involving human participants. It was created to safeguard people against unethical and damaging medical procedures and to ensure that their autonomy and wellbeing were respected. One of the key principles of the Code is informed consent that became its first statement; “The voluntary consent of the human subject is essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision.”⁴⁰ Another instrumental international document that deals with informed consent is the World Medical Association in their Declaration of Helsinki. In the declaration under the heading of Ethical Principles for Medical Research Involving Human Subjects specifically article 31, it is the duty of the physician to fully inform the patient which areas of their care are used for the purpose of research. It is further emphasised that if the patient refuses to participate in the research, such decision should not affect the patient-physician relationship.⁴¹

³⁹The examples include the Nuremberg Code and World Medical Association in their Declaration of Helsinki.

⁴⁰Arellano, L et.al., Ethical Considerations in Informed Consent, Ethics in Scientific Research,

<https://www.intechopen.com/online-first/1123544> accessed May 25, 2023.

⁴¹ World Medical Association, Declaration of Helsinki, Ethical Principles for Medical Research involving Human Subjects, <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/> accessed May 26, 2023.

Similarly to this, medical tourism that adheres to Islamic principles acknowledges the value of informed consent within the context of Islamic principles. Islamic teachings place a strong emphasis on the value of respecting people's autonomy and capacity for making decisions. Muslim patients should receive comprehensive information about their medical treatments, including any potential religious or cultural implications, from healthcare providers who offer Shariah-compliant services in order for them to give their informed consent in accordance with their religious beliefs and values. The sanctity of the human body is greatly emphasised in the Islamic religion. All Islamic schools of thought regard any violation of it as a serious sin. The message of Prophet Muhammad includes "All of a Muslim is forbidden to another Muslim, including his blood, money and honour."⁴² Islam holds that by giving humans intellect and free will and emphasising their right to make free decisions, Allah has favoured humans over his other creations.⁴³ To ensure that man's best interests are served and to direct him to everything that will be advantageous for him in this life and the next, this right is not absolute, and it benefits from a theological framework to manage it. A person is viewed as a sinner from a religious perspective if they harm a human body, whether it's their own or someone else's.⁴⁴

Patient autonomy is the term used to describe a person's freedom from outside influence or pressure when making decisions regarding their own healthcare. The idea of patient autonomy is upheld by the international standards of medical tourism, which acknowledge patients' freedom to take an active role in choosing their own healthcare. This includes the freedom to accept or reject medical care, pick the healthcare professionals they want to hire, and take part in the formulation of their treatment plans. The principle of autonomy is echoed in the UDHR. In the first article, it states the following; "All

⁴²Narrated Sulaiman bin 'Amr bin Al-Ahwas, Jami' at-Tirmidhi, (n.d).Vol. 5, Book 44, 3087.

⁴³Saeed, A, "Religious freedom in Islam: The witness of the Qur'an and the Prophet," Religion & Ethics, *ABC*, <https://www.abc.net.au/religion/religious-freedom-in-islam/10419798> accessed May 26, 2023.

⁴⁴Ayyad, Taghreed, Ammar Al- Kashmiri, and Sina Ali Muscati. "Patient Medical Consent from an Islamic Perspective," *Ethics & Medicine: An International Journal of Bioethics* 33, no. 3 (2017).

human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This provision demonstrates that, at their most fundamental level, human rights may be viewed as a type of interpersonal interaction. The UDHR laid the foundation for human rights by recognising that each and every person is unique and has special value and dignity. Human rights are essentially morally superior to society and the state, controlled by individuals, who hold them and may, in rare circumstances, use them against the state. Human rights and personal freedom are inseparably linked and interdependent. This shows not only the equality of every person, but also their autonomy and the freedom to pursue interests and objectives that are contrary to those of the state and its authorities. In this view, autonomy is essential to the concept of human rights. It is a complicated assumption of individuals that allows them to act or desire to behave in a certain way. The capacity to think, formulate, and carry out straightforward plans based on one's preferences is a prerequisite for autonomy.⁴⁵ Hence, freedom to make decision to be given to a patient is of utmost important to reflect the principle of autonomy prescribed in the UDHR.

In a similar way, Shariah principles support the idea of patient autonomy in an Islamic setting. The value of people's freedom of choice and their right to make decisions about their own health is emphasised in Islamic teachings. Muslim patients' autonomy is respected by Shariah-compliant healthcare practitioners, who also include them in the decision-making process to ensure that their spiritual practises and values are considered. To illustrate this concept, it is important to look back at the history. During the pre-Islamic period, the Arabs possessed slave females who they coerced into prostitution in order to make money. They were forced into this filthy industry against their will, but Islam set them free and the Quran stated that they were pardoned.⁴⁶ Here, it is evident that any form of coercion is prohibited.⁴⁷ Further, numerous verses in the Quran command

⁴⁵Gumbis, Jaunius, VytauteBacianskaite and Jurgita Randakevičiūtė. “Do Human Rights Guarantee Autonomy.” (2008), p. 13.

⁴⁶*Surah Al-Nur*, verse 33.

⁴⁷Al-Bar MA, Chamsi-Pasha H, “Autonomy” in *Contemporary Bioethics: Islamic Perspective*, (Cham (CH): Springer; 2015).

religious freedom and individual accountability such as “there is no compulsion in religion”⁴⁸ and that each person has the full will to accept Islam or refuse it.⁴⁹

Privacy is a fundamental ethical value that safeguards patient confidentiality and the right to privacy during healthcare exchanges. It also protects the patient's personal and medical information. International norms for medical tourism place a strong emphasis on preserving patient privacy and confidentiality, which includes adhering to data protection laws, keeping medical records securely, and protecting personal information. Article 12 of UDHR upheld the right to be free from “arbitrary interference with [one's] privacy, family, home, or correspondence” and “attacks upon [one's] honour and reputation.” Although the possibility of State “interference”... “for the protection of health” was particularly foreseen as a possible exception, the same right can also be found in the European Convention on Human Rights 1955. Although the 1966 United Nations International Covenant on Civil and Political Rights⁵⁰ strengthened the right to privacy further, it was the Council of Europe's 1981 Convention for the Protection of Individuals with Regard to the Automatic Processing of Data, which regarded health data as “special”. Further, the Organisation for Economic Cooperation and Development (OECD)'s Guidelines for the Protection of Privacy and Transborder Flows 1989 effected significant change. The eight OECD principles in relation to privacy are highlighted. They are collection limitation; data quality; purpose specification; use limitation; security safeguards; openness; individual participation; and accountability.⁵¹

<https://www.ncbi.nlm.nih.gov/books/NBK500183/> doi: 10.1007/978-3-319-18428-9_6 accessed May 25, 2023.

⁴⁸*Surah Al Kafirun*, verse 2.

⁴⁹*Surah Al – Ankabut*, verse 18.

⁵⁰Although this Covenant was adopted by the United Nations General Assembly on 16 December 1966, it was entered into force ten years later, on 23 March 1976.

⁵¹Institute of Medicine (US) Committee on the Role of Institutional Review Boards in Health Services Research Data Privacy Protection, “Confidentiality of Health Information: International Comparative Approaches” in *Protecting Data Privacy in Health Services Research*. (Washington (DC): National Academies Press (US), 2000),

Shariah principles also acknowledge the value of privacy. The protection of one's privacy, especially that of his personal and medical information, is emphasised in Islamic beliefs. Shariah-compliant healthcare providers guarantee confidentiality and uphold the Islamic principles for the management of sensitive information, ensuring that Muslim patients' privacy is protected and maintained throughout all healthcare interactions. According to al-Najjr the Arabic word *sirr* which means secret, refers to “anything that needs to be concealed, as its disclosure leads to harm.”⁵² Medically confidential information is described as “anything that affects the ease of the patient, his dignity, and family” by some Islamic jurists.⁵³ The phrase “all matters that come to the knowledge of a physician, whether or not it relates to the patient's disease, treatment, and related situations, regardless of whether the physician gets the information from the patient or becomes aware of it during the patient's treatment” is another definition.⁵⁴ Hence, all medical information relating to a patient, whether directly or indirectly, must be kept confidential. This includes information on a patient's diagnosis, prognosis, health status, medical condition, consultation, and treatment.⁵⁵

Assurance of quality of healthcare services

When it comes to the assurance of high-quality healthcare, the intersection of international medical tourism standards and Shariah principles brings to light shared commitments to upholding legal frameworks, accreditation, and certification procedures as well as encouraging cooperation and knowledge sharing among healthcare providers.

<https://www.ncbi.nlm.nih.gov/books/NBK222816/> accessed May 25, 2023.

⁵²Sayed Mohamed Muhsin, “Medical Confidentiality Ethics: The Genesis of an Islamic Juristic Perspective”, *Journal of Relig Health*, 61 (4) (2022), pp. 3219 – 3232
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8236563/> accessed May 26, 2023.

⁵³ *Ibid.*

⁵⁴ *Ibid* at 46.

⁵⁵ *Ibid* at 46.

In order to guarantee the quality of healthcare services, regulatory legislative frameworks must be established. International organisations together with governments need to create and put into effect the standards, directives, and laws that healthcare providers must follow. At this juncture, the WHO and the WTO, among other international organisations, set the laws, rules, and regulations that make up the international legal framework. These frameworks provide minimum requirements for healthcare providers and facilities, assuring adherence to moral, medical, and safety norms.⁵⁶ For instance, WTO and WHO have signed numerous agreements such as the Technical Barriers to Trade Agreement (TBT) aims to prevent technical rules, specifications, and conformity assessment practises from unnecessarily impeding commerce. The TBT Agreement is essential for eliminating technological obstacles that can prevent the international commerce of healthcare supplies, technology, and services. It encourages technical regulation and standardisation while upholding the member states' legal goals for environmental, health, and safety protection.⁵⁷ It encourages technical regulation and standardisation while upholding the member nations' legal goals for environmental, health, and safety protection. Another important agreement is the Intellectual Property and Trade Agreement (TRIPS). This is an international agreement that lays out the minimal requirements that each member nation must meet for the protection and enforcement of intellectual property.⁵⁸ In the context of healthcare, the TRIPS Agreement significantly contributes to striking a balance between intellectual property rights and the requirements for public health, technology transfer, and access to necessary medications. It aims to prevent intellectual property rights from unnecessarily placing obstacles in the way of the accessibility of reasonably priced healthcare goods and services. GATS, as explained before, aims to regulate trade in services among member states, providing a framework for the cross-border exchange of various services, including those related to healthcare.⁵⁹ This includes a broad range of service industries, including the social and health sectors. By

⁵⁶World Trade Organization / World Health Organisation, *WTO Agreements & Public Health, A joint study by the WHO and the WTO Secretariat*, https://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf accessed May 26, 2023.

⁵⁷Ibid.

⁵⁸Ibid at 50.

⁵⁹Ibid at 50.

defining principles and regulations that control how foreign service providers are treated and how service providers can access the market, it encourages the liberalisation of trade in services.

Islamic legal structures, such as those created by Islamic scholars or Shariah advisory boards, offer guidelines for adhering to Islamic values in the healthcare industry. These guidelines include abiding by halal customs, respecting cultural and religious sensibilities, and taking into account Islamic dietary requirements. The Shariah Advisory Council (SAC) is made up of internal and external people who are responsible for assessing, advising, and supporting the hospital's management. The chairman of the SAC, who is chosen from the Board of Directors, serves as the council's leader. The members of the SAC are chosen from qualified individuals who are experts in their disciplines and have a strong background in medical, legal, and financial *fiqh* (Islamic transactions), either from public or private institutions. The member should also have the training and experience sufficient to provide guidance on matters pertaining to Shariah, particularly in the areas of healthcare and Shariah.⁶⁰

Accreditation and certification programmes are essential for evaluating and identifying healthcare organisations that adhere to set quality standards. Independent accrediting organisations assess healthcare facilities and providers according to a set of standards, including organisational administration, employee qualifications, safety procedures, and patient care. Accreditation or certification shows a dedication to patient safety and quality improvement. Both international and Shariah-compliant medical tourism depends heavily on accreditation and certification procedures to guarantee the quality of healthcare services. The Global Healthcare Accreditation (GHA) and Joint Commission International (JCI) accreditation are encouraged by international norms of medical tourism.⁶¹ These organisations evaluate healthcare institutions in accordance with particular quality standards and accredit those that do. Medical tourists can feel secure

⁶⁰The Establishment of Fundamental Shariah-Compliant Hospital Management in Malaysia, *Journal of Halal Industry and Service*, 2 (1) (2019), <https://journals.hhpublisher.com/index.php/JHIS/article/view/96/76> accessed May 26, 2023.

⁶¹Global Healthcare Accreditation, GHA Standards for Medical Travel, <https://www.globalhealthcareaccreditation.com/gha-standards-for-medical-travel> accessed May 27, 2023.

knowing that a facility has been accredited for its dedication in providing high-quality care and patient safety.

Similar to this, Shariah-compliant medical tourism emphasises certification and accreditation procedures that assess adherence to Islamic ethical standards. Islamic authorities or organisations' accreditation or acknowledgment of a healthcare facility's adherence to Shariah principles can reassure Muslim patients that it does so. Each country has its own practice. In Malaysia, the MS (Malaysian Standard) 1900 Shariah-Based Quality Management System is introduced to certify products in accordance with Shariah. The standard outlines the specifications for a quality management system that complies with Shariah. This will guarantee that relevant and widely-accepted values are incorporated into the organisation's quality management process. The guideline also covers factors of providing goods and services that are halal. The MS 1900 Shariah-based Quality Management System, among other things, ensures that the universal values of justice, honesty, sincerity, punctuality, and discipline are incorporated into quality management practises; places more emphasis on ethical standards in business processes; and provides independent assurance that the organization's processes and practises are in accordance with Shariah principles (MS1900).⁶²Through specific organisations, trade delegations, and other promotional efforts, the Malaysian government has been actively involved in encouraging medical tourism abroad. The Malaysia Healthcare Travel Council (MHTC) was founded in 2009 to facilitate and develop medical tourism business in accordance with government engagement. The Ministry of Health, the Ministry of Tourism, the Association of Private Hospitals of Malaysia, the Malaysian Association of Tour Operators and Travel Agencies, Malaysia Airlines, and the Malaysian External Trade Development Corporation all participated in the promotional activities to improve the country's image abroad in promoting medical tourism.⁶³

⁶²Norah Ramli, "Halal Medical Tourism: Emerging Opportunities," *Asian Journal of Multidisciplinary Research & Review*, 3 (5) (2022).

⁶³COMCEC, *Developing Medical Tourism in the OIC Member Countries*, (COMCEC Coordination Office: Ankara, 2020) <http://ebook.comcec.org/Kutuphane/Icerik/8e2b63f8-9cca-42b4-b747-8fed5bfd8d02.pdf> accessed May 27, 2023.

It is understandable that collaboration and knowledge sharing provide high-quality healthcare. In order to share best practises, conduct research, and participate in quality improvement programmes, healthcare providers, policymakers, and stakeholders must work together, according to the international norms for medical tourism. Hence, collaboration could foster the adoption of evidence-based practises, facilitates knowledge exchange, and raises the standard of care provided to patients. At present, the WHO collaborates with more than 800 collaborating centres, more than 100 collaboration agreements, and 5 hosted partnerships. These partnerships are the most effective method to broaden the scope of our activities, get information from experts in the field, and advance the goals of national health systems.⁶⁴

The value of cooperation, especially within the Islamic community, is acknowledged by Shariah principles. Collaboration between Islamic academics, organisations involved in Islamic healthcare, and Shariah-compliant healthcare providers enables the sharing of specialised information, adherence to ethical standards, and development of Shariah-compliant healthcare guidelines. The word collaboration in the Quran is known as *taavon*, and Muslims are urged to work together for the good of others and to please Allah, while refraining from engaging in immoral behaviour and defying Allah.⁶⁵ Collaboration is implied in a number of other Quranic concepts, such as vowing, imamate, mosque, Friday prayers with a group of people, alms, charitable giving, interest-free loans, devotion, jihad, encouraging good deeds and discouraging bad ones, counselling, and sacrifice. All of these ideas are referred to as relationships in the Quran. In this respect, Islam's conception of cooperation extends to all facets of life, including communal, societal, and personal endeavours. It is not restricted to any one sector of life. In recognition of the fact that group efforts are frequently more fruitful and useful than individual efforts, it encourages teamwork, cooperation, and solidarity.⁶⁶

⁶⁴WHO, <https://www.who.int/about/collaboration> accessed May 27, 2023.

⁶⁵Irajpour, A, Ghaljaei, F & Alavi, M, Concept of Collaboration from the Islamic Perspective: The View Points for Health Providers, *Journal of Religion and Health*, 54 (5), 2014.

⁶⁶Alireza Irajpour et.al., "Concept of Collaboration from the Islamic Perspective: The View Points for Health Providers," *Journal of Religion and Health*, 54 (5) (2014),

Religious freedom

Different religious and spiritual beliefs may have an impact on patients' experiences and treatment preferences. Depending on the principles and customs of their faith, people may approach medical difficulties in entirely different ways. Both the international legal framework and Shariah principles highlights the significance of religious sensitivity to ensure non-discrimination in healthcare services.

According to the international medical tourism guidelines, it is important to be sensitive to patients' cultural backgrounds in order to treat them fairly. Healthcare professionals are urged to be culturally competent, comprehending and respecting various cultures' values, beliefs, and customs. Article 18 of the UDHR upholds the freedom of religion, thinking, and conscience. It highlights the fact that everyone has the freedom to practise their religion or believe in both public and private, alone or with others. This right is echoed in yet another international document, ICCPR. Article 18 (1) provides the right to freedom of thought, conscience and religion and the right attached to manifest the religion through worship, observance, practice and teaching whether in public or private. The Universal Declaration of Bioethics and Human Rights of the United Nations is another important international standard that deals with health specifically. The Declaration, as indicated in its title, grounds the principles it supports in the laws that govern respect for human dignity, human rights, and fundamental freedoms in order to address ethical challenges created by medical practises, life sciences, and related technology as applied to human beings. The Declaration acknowledges the relationship between ethics and human rights in the particular subject of bioethics by enshrining bioethics in the international human rights and by assuring respect for human life. The significance of cultural variety and pluralism in the delivery of healthcare is emphasised by this declaration. In order to ensure that no person or group is subjected to discrimination because of their cultural or religious background, it urges healthcare professionals and policymakers to consider the diversity of cultures and religions when providing healthcare services.

Religious sensitivity is the heart of Shariah-compliant medical tourism, which takes Islamic customs and norms into account. This is because it forms an essential part of faith in Islam and any non-compliance violates the core of Shariah and will be punished. Healthcare professionals that treat Muslim patients are expected to be informed about gender-specific requirements, dietary restrictions, and Islamic rituals. Shariah-compliant medical tourism highlights the requirement for the healthcare practitioners to provide the accommodations for the Muslim patients' religious needs. This entails giving patients access to prayer spaces, honouring prayer times, providing halal food options, and taking certain religious customs or rituals into account.⁶⁷ Healthcare professionals may guarantee equal treatment and foster an inclusive healthcare environment by being culturally attentive to the unique requirements of Muslim patients. This encourages the right to equality of treatment and guarantees that patients are taken care of in accordance with their cultural needs and preferences. It promotes a welcoming and polite healthcare environment where patients are treated fairly and with respect.

Safety and wellbeing of patients

Another shared aspect between these frameworks is the recognition of safety standards in healthcare. The intersection of the Shariah principles and international standards of medical tourism on the subject of patient safety highlights the shared commitment to ensuring the safety and well-being of patients in a number of aspects, including the safety of ingredients, avoiding medication errors, and the credibility and mental state of medical practitioners like doctors and nurses.

Ingredient safety is a focus of the international standards for medical tourism, which create rules and recommendations for the use of secure and efficient ingredients in healthcare supplies and services. These requirements guarantee that the treatments and medications patients receive adhere to accepted safety standards and are devoid of dangerous ingredients. In this regard, the WHO has provided a number of guidelines for pharmaceuticals. The WHO Expert Advisory Panel on the International Pharmacopoeia and Pharmaceutical Preparations, prepares an avenue for all the experts from industry, national

⁶⁷Battour, M. and Nazari, M., "Halal tourism: Concepts, practises, challenges and future", *Tourism Management Perspective*, Vol. 19, (2016), p. 150 – 154.

institutions, non-governmental organisations, and others to be part of an extensive global consultative process that results in the development of the pharmaceutical norms and standards. This process also involves the member states, national regulatory authorities, and international agencies. The WHO Expert Committee on Specifications for Pharmaceutical Preparations reviews these draught recommendations during its meetings, and if deemed appropriate, adopts them as global standards. The guidelines are categorised into seven namely (1) development, (2) production, (3) distribution, (4) inspection, (5) quality control, (6) regulatory standards and (7) specific texts for prequalification of medicines.⁶⁸ Another important body that provides guidelines and evaluation of medicinal products is the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). Since its inception in 1990, ICH has gradually changed to adapt to more worldwide trends in the pharmaceutical industry, and an increasing number of regulatory authorities are using these ICH standards.⁶⁹ The PIC/S that stands for Pharmaceutical Inspection Convention and Pharmaceutical Inspection Co-operation Scheme are two international agreements that promote positive and active cooperation on Good Manufacturing Practise (GMP) between nations and pharmaceutical inspection bodies. Leading the international development, adoption, and upkeep of standardised GMP standards and quality systems of inspectorates in the field of pharmaceuticals is the aim of PIC/S. This will be accomplished by creating and promoting standardised GMP guidelines and standards, training inspectors and other competent authorities, evaluating inspectorates, and fostering networking and cooperation between local and international organisations.⁷⁰

Shariah principles extend this focus on safety to include compliance with Islamic dietary laws and the concept of halal. Healthcare providers catering to Shariah principles ensure that the

⁶⁸WHO, Health products policy and standards, Guidelines: Norms and Standards for Pharmaceuticals, <https://www.who.int/teams/health-product-and-policy-standards/standards-and-specifications/norms-and-standards-for-pharmaceuticals/guidelines> accessed may 26, 2023.

⁶⁹ICH, About ICH, <https://www.ich.org/> accessed May 26, 2023.

⁷⁰PIC/S, <https://www.npra.gov.my/index.php/en/about/recognition-international-membership/pic-s.html> Malaysia is one of the participating authorities in PIC/S.

ingredients used in medications, medical products, and dietary supplements are halal-compliant and do not contain any prohibited substances according to Islamic dietary guidelines. This ensures that patients' religious and cultural requirements are respected while maintaining their safety. There is no *hukum* or ruling that expressly permits or condemns drug usage in the Quran or Hadith. However, generally speaking, Islam forbids its adherents from doing anything that could harm themselves. Some scholars concur that alcohol and drugs share the same *hukum*, which forbids their usage.⁷¹ They applied analogic legal reasoning (*qiyas*) based on the verse in *Surah Al – Maidah* that states; “O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination— of Satan's handiwork: eschew such (abomination), that ye may prosper.”⁷² From this verse, a ruling was deduced to the current situation which prohibits the usage of drugs from non-halal sources. However, when treating illnesses in an emergency situation, the use of medications using non-halal ingredients including alcohol and gelatine is permitted.⁷³

The prevention of medication errors is highly stressed by both international standards and Shariah principles, as such errors can have detrimental effects on patient safety and wellbeing. International guidelines emphasise the use of procedures and systems to reduce drug errors, including precise prescription, dispensing, and administration procedures.

Medication mistakes can cause serious harm, incapacity, or even death when inadequate medication systems and/or human factors like exhaustion, unfavourable working circumstances, or a lack of employees have an impact on prescribing, transcribing, dispensing, administering, and monitoring practises. Although numerous strategies have already been created to reduce the prevalence and effects of medication mistakes, their implementation varies. It is necessary to mobilise a large number of stakeholders in favour of long-term efforts. “Medication Without Harm” has been chosen by the WHO as the third Global Patient Safety Challenge's subject to address many of the

⁷¹ Mustafa Afifi Ab Halim et.al., “Halal Pharmaceuticals: Legal, Shari’ah Issues and Fatwa of Drug, Gelatine and Alcohol,” *International Journal of Asian Social Science*, 4 (12) (2014), pp. 1176 – 1190.

⁷²*Surah Al – Maidah*, verse 90.

⁷³*Ibid* at 64.

challenges the globe currently faces in ensuring the safety of medication practises. The objective of the WHO is to increase global commitment and wide-spread engagement of the member states and professional bodies in decreasing medication harm.⁷⁴

Within the framework of Islamic principles, it recognises the significance of preventing drug errors. Healthcare professionals working in environments that adhere to Shariah regulations make sure that medicines are prescribed, delivered, and administered appropriately, in accordance with both global norms and Islamic regulations. This may involve taking into account particular medications or therapies that are compliant with Shariah principles and devoid of any prohibited chemicals. To reduce pharmaceutical errors and promote safe and effective treatment, it ensures that healthcare providers follow both international criteria and Islamic principles. There is no disagreement in Islamic law regarding the doctor's civil responsibility and obligation to provide insurance in the event that he violates professional medical ethics or commits a medical error that, according to medical scholars, causes the patient's harm or death.⁷⁵ According to scholars, such doctors must pay blood money or *diyat* to the patient or patient's family.⁷⁶ In this sense, medical practitioners will be much more alert in prescribing drugs to avoid such incident.

In order to provide safe and effective care, international norms of medical tourism place a strong emphasis on the credibility and emotional well-being of medical professionals, such as doctors and nurses. In order to ensure that healthcare workers have the qualifications, licences, and ongoing professional development needed to provide quality care, these criteria include these needs. In recent years, the mental health requirements of healthcare professionals have drawn attention as a significant public health issue and a danger to the provision of high-quality care. Healthcare workers are subjected to a variety of stressors at work, which may adversely affect their physical,

⁷⁴WHO, Medication Without Harm, <https://www.who.int/initiatives/medication-without-harm> accessed May 28, 2023.

⁷⁵Hoda Ahmad Albarak, "Medical Mistakes through The Islamic Sharia' and Law", *Systematic Review Pharmacy*, 12 (3) (2021), pp. 586 – 591.

⁷⁶Ibid.

mental, and emotional health.⁷⁷The Guidelines on Ethical Issues in Public Health Surveillance was introduced by the WHO to navigate policymakers and medical practitioners to discuss ethical issues and address them accordingly. The standards place a strong emphasis on the necessity of accountability and transparency in public health surveillance. The acts and decisions made by the medical professionals should be accountable, and the procedures and techniques employed in surveillance operations should be open to appropriate review. While the guidelines do not specifically address mental health, they do emphasise the value of safeguarding the wellbeing of healthcare professionals engaged in surveillance operations. This may involve taking steps to avoid burnout, offer psychosocial assistance, and encourage a healthy work-life balance.⁷⁸

Islam places a lot of emphasis on a person's whole wellbeing, which encompasses their bodily, mental, and spiritual health. Healthcare organisations that cater to Shariah principles will ensure that their medical staff not only adheres to Islamic medical principles but also meets the international standards. This also promotes a kind and moral approach to patient care by taking into account the mental health of healthcare professionals. Maintaining professional competence, ethical behaviour, and the wellbeing of healthcare workers is crucial. This is made clear by the intersection of international standards and Shariah principles in terms of the credibility and mental health of medical practitioners. By doing this, it can make sure that patients are treated by licenced, reputable specialists who are not only knowledgeable in their field but also sensitive to cultural and religious differences. Based on a study conducted involving Muslim medical practitioners in Shariah-compliant hospitals in Malaysia, 80% of the participants have shown a good level of understanding of Islamic medical practice.⁷⁹ This finding is encouraging and serves as evidence

⁷⁷Savold, L. E, et.al., "Prioritizing the Mental Health and Well-Being of Healthcare Workers: An Urgent Global Public Health Priority", *Frontiers in Public Health*, 9 (1) (2021).

⁷⁸WHO, WHO guidelines on ethical issues in public health surveillance, <https://www.who.int/publications/i/item/who-guidelines-on-ethical-issues-in-public-health-surveillance> accessed May 28, 2023.

⁷⁹Siti Roshaidai Mohd Ariffin et. al., "Understanding Doctors' and Nurses' Roles in the Islamic Medical Practice and Rukhsah Solah in a Shariah-

that with good understanding of Islamic practice, best advice can be given to the patients.⁸⁰In yet another study, it focuses on the mental health issues of the nurses. Based on the finding, it was suggested that there is an association between Islamic belief and mental health among the nurses. This goes on to show that strengthening Islamic beliefs will promote good mental health among medical practitioners as a whole.⁸¹

CONCLUSION

In summary, there are opportunities associated with integrating international legal standards with Shariah principles in the context of medical tourism. The field of medical tourism is one that is expanding quickly and involves a number of complex cultural, ethical, and regulatory issues. A more inclusive and culturally sensitive approach to medical tourism can be fostered by balancing the concepts of Shariah with those of the international law, which will be advantageous to both patients and practitioners.

The respect for human rights, such as patient autonomy, privacy, and informed consent, should be put first in any effort to harmonise these frameworks while also taking into account the cultural and religious values ingrained in the Shariah principles. This calls for cooperation between international organisations, governments, and healthcare providers to create policies and rules that guarantee the highest quality of medical care while addressing the unique requirements and sensitivities of patients seeking healthcare in accordance with their religious beliefs specifically Islam.

The process of harmonisation can be made easier by fostering communication and mutual understanding between legal and religious experts as well as by involving relevant organisations. This will help to increase the trust that patients have in doctors, encourage patient trust, and promote a more welcoming and culturally competent healthcare environment for medical tourists. It is also crucial to understand that

Compliant Hospital,” *Malaysian Journal of Medicine and Health Sciences*, 18 (SUPP. 19) (2022), pp. 93 – 98.

⁸⁰Ibid.

⁸¹Rabiyatul Hidayah Muhamad Razi et.al., “The Association between Islamic Belief and Mental Health Status among Nurses in Sultan Ahmad Shah Medical Centre (SASMEC),” *Al – Sirat*, 22 (1) (2022), pp. 12 – 19.

the unification of international legal systems and Shariah principles should not jeopardise patient safety, healthcare quality, or the moral principles that guide the medical profession. Any regulatory initiatives must continue to prioritise patients' rights and well-being, ensuring that medical tourism practises adhere to the internationally recognised norms.

Holistically, a fair and nuanced approach is needed to reconcile the international legal systems and Shariah values in the context of medical tourism. It is possible to establish a framework that respects religious views, protects patient well-being, and encourages the growth of a successful and morally upright medical tourism business by striking the correct balance between cultural sensitivity, human rights, and professional standards that can attract not only the Muslim patients but the non-Muslim patients too.

ACKNOWLEDGEMENT

This research was financially supported by the Fundamental Research Grant Scheme for Research Acculturation of Early Career Researchers (FRGS-RACER) Grant No: RACER19-041-0041