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# *Intellectual Discourse*

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# Medical Ethics in the Light of Maqāṣid Al-Sharī‘ah: A Case Study of Medical Confidentiality

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**Abstract:** The Islamic jurists utilized the discipline of *maqāṣid al-sharī‘ah*, in its capacity as the philosophy of Islamic law, in their legal and ethical interpretations, with added interest in addressing the issues of modern times. Aphoristically subsuming the major themes of the *Sharī‘ah*, *maqāṣid* play a pivotal role in the domain of decision-making and deduction of rulings on unprecedented ethical discourses. Ethics represent the infrastructure of Islamic law and the whole science of Islamic jurisprudence operates in the light of *maqāṣid* to realize the ethics in people’s lives. Scrutinizing the key themes of *maqāṣid*-based *ijtihād* and scope of ethics in *maqāṣid*, this article delves into the discourse on the application of *maqāṣid* to medical ethics. As a case study, this research analyses the extent of medical confidentiality in the light of

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*maqāṣid* and arrives at the conclusion that limited confidentiality goes more in line with the maxims of *maqāṣid*.

**Keywords:** *Maqāṣid*, *Ijtihād*, medical ethics, confidentiality, public interest

**Abstrak:** Ulama-ulama Islam telah menggunakan disiplin *maqāṣid al-sharī‘ah* dalam keupayaannya bagi falsafah undang-undang Islam, termasuk undang-undang dan etika tafsiran meraka dengan minat untuk membuat tambahan dalam menangani isu-isu zaman moden ini. Secara khususnya, tema-tema utama *Sharī‘ah* iaitu *maqāṣid* memainkan peranan yang penting dalam domain pembuatan yang mana keputusannya dibuat daripada rumusan wacana etika yang tidak pernah berlaku sebelum ini. Etika-etika ini mewakili dasar dan asas undang-undang Islam serta bagi seluruh sains perundangan Islam yang turut bertindak dalam ruang *maqāṣid* demi untuk merealisasikan etika dalam kehidupan orang ramai. Dengan meneliti tema utama *ijtihad* berasaskan *maqāṣid*, serta skop etika dalam *maqāṣid*, artikel ini mendalami wacana tentang penerapan *maqāṣid* bagi etika perubatan. Sebagai satu kajian kes, penyelidikan ini menganalisis sejauhmana maklumat kerahsiaan perubatan sejajar dengan *maqāṣid* dan seterusnya menentukan kesimpulannya bahawa kerahsiaan yang terhad banyak diselaraskan mengikut aliran *maqāṣid*.

**Kata kunci:** *Maqāṣid*, *Ijtihād*, etika perubatan, kerahsiaan, kepentingan awam

## INTRODUCTION

Being the philosophy of Islamic law, the discipline of *maqāṣid al-sharī‘ah*<sup>1</sup> holds significant locus in the landscape of Islamic sciences in general and of Islamic legislation in particular. The scrutiny of the Qur’ān and Prophetic tradition substantiates that the legal rulings on both worship (*‘ibādāt*) and civil transactions (*mu‘āmalāt*) are not posited for the sheer obedience of God via entertaining certain wordings or actions; rather they are legislated in order to fulfill certain higher purposes in human life. *Maqāṣid*, as a whole and as a distinct topic, endorse *Sharī‘ah*’s deep concern with humankind’s comprehensive benefits in this world and in the afterlife.

The leading leitmotif of the revealed knowledge (the Qur’ān and Prophetic tradition) focuses on the realization of justice and integrity in a way that is conducive to potentially framing all-human interactions as beneficial and organized. The Qur’ān asserts: “We bestowed revelation from on high, and [thus gave you] a balance [wherewith to weigh right

and wrong], so that men might behave with equity” (57: 25). The verse above reaffirms the fact that ‘justice’ is the overarching principle behind the prophets’ mission.

Notably, all newly emerging issues need to have a legal ruling so as to facilitate for people to set their lives in accordance with the divine injunctions. The jurists consider the exploration of wisdom behind particular rulings as a central topic for *maqāṣid* research. Therefore, the jurists, both as individuals and committees, need to have mechanisms of *ijtihād* (independent reasoning) to comprehend the *Sharī’ah* without dropping its divine spirit and to discern the actual context with meticulous observation. Otherwise, hermeneutics may result in the erroneous placement of legal provisions, thus ruining the higher objectives of the *Sharī’ah* as a result. In order to achieve this goal, the jurists devised the process of *al-ijtihād al-maqāṣidī* (*maqāṣid*-oriented independent reasoning) in which they required the comprehension of *maqāṣid* as a pre-requisite.

Since the protection of the human body is one among the five essential *maqāṣid*, the medical field needs to be discussed under the gamut of the *maqāṣid*. Unquestionably, the protection of the human body plays a pivotal role in the safeguarding of the other four *maqāṣid*, i.e. preservation of human body is essential for the safeguarding of one’s religion, family, intellect and wealth. As a result, since the beginning, the scholars of *maqāṣid* have been concerned in theorizing the objectives of medical treatment and designing them in conformity with the objectives of the *Sharī’ah*. The objectives of the *Sharī’ah* and the purposes of medicine converge at the aim of achieving well-being for humanity, notwithstanding the variances in terms of comprehensiveness between them.

Because of the tremendous technological headway, which has occurred in biomedicine, healthcare laws and ethics have undergone frequent modification and amending. Since the medical laws in the modern world are founded on the general secular philosophical framework, they are deprived of religio-ethical implications and as a result, they have arguably been futile in solving some modern ethical dilemmas. As far as Islam is concerned, the concept of ethics is overarching and encompasses all aspects of life and considers general medical ethics as a branch of other professional ethics but reframed within specific terminologies to fit the medical applications (Kasule,

2008). At this juncture, review of the medico-ethical framework in the light of *maqāṣid*, which is deemed as the juridical theory of Islamic law, seems to be promising as it will unlock specific strategies for dealing with the dilemmas in healthcare.

Given the pragmatic significance of *maqāṣid* in ethical grounding, this research delves into applying *maqāṣid* to medical ethics with an analysis of its impacts in sorting out the ethical dilemmas in healthcare, with special reference to medical confidentiality.

## LITERATURE REVIEW

There are two categories of related literature for this research. The first of which is about the ones related to the biomedical ethics from Islamic perspective and the second deals with medical confidentiality ethics in the light of Islamic principles. In the last decade, several works related to both categories have been produced and some of them have been expounded with thorough reviews. Below are the important works and academic dissertations related to the scope and sequence of the present study.

In the book, *Ifshā' al-Sirr al-Ṭibbī wa Atharuhu fī al-Fiqh al-Islāmī* of 'Alī Muhammad Aḥmad (2007), the author discusses the various meanings of confidentiality in the context of *fiqh*. In this work, Aḥmad explains the situations wherein giving out information about a patient becomes acceptable and permissible.

Omar Hasan Kasule (2008) has written some articles related to this present study. One of his important works is *Medical Ethics: Theories and Principles*. Kasule states that the *maqāṣid* are the basic ethical theory in Islam. For a medical action to be proven ethical, it must fulfill the preservations any religion, life, progeny, intellect, and wealth. He further argues that the foundation of Islamic medical ethics "is derived from the 5 principles of the Law which are: intention, *qasd*; certainty, *yaqeen*; harm, *dharar*; hardship, *mashaqqat*; and custom or precedent, 'urf or 'aadat."

The thesis, *al-Mas'ūliyyat al-Jazā'īyyah li al-Ṭabīb 'an Ifshā' al-Sirr al-Ṭibbī* of Būmadān 'Abd al-Qādir (2011) deals with medical confidentiality and the duty of having to keep the confidentiality. The study also includes the role of contracts in order to have a patient made liable and how to judge the harm if confidentiality will be breached in order to determine the penalty for it as stated by the law.

The book *Islamic Biomedical Ethics: Principles and Application* by Abdulaziz Sachedina (2012) gives new outlook of Islamic biomedical ethics based on Islamic legal theory and moral reasoning to take decisions without losing the spirit of Islamic *Sharī'ah*.

The co-authored book, *Contemporary Bioethics: Islamic Perspective* by Mohammad Ali Al-Bar and Hassan Chamsi-Pasha (2015) deliberates on various sources and origins of common ethical principles in Islam followed by separate discussion on the ethical virtues related to the healthcare like integrity and conscientiousness. After that, the authors locate the regulations of medical profession in which they present a subchapter on confidentiality from an Islamic perspective.

*Islamic Perspectives on the Principles of Biomedical Ethics* is an edited volume by Mohammed Ghaly (2016), which makes relevant intellectual contributions to the current study. This book is divided into three parts which are respectively 1) Methodological Issues, 2) Principles of Biomedical Ethics 3) Islamic Perspectives on the Principles of Biomedical Ethics.

Based on our investigation, though the abovementioned studies survey various dimensions related to the current study, they have not given adequate emphasis on a deliberation of medical ethics in the light of *maqāṣid* principles. More importantly, this study will be among first that discusses the two different arguments regarding the extent of medical confidentiality from a *maqāṣidic* perspective.

### **KEY THEMES OF *MAQĀSĪD*-BASED *IJTIHĀD***

The word *maqāṣid* (singular: *maqṣad*) means: goals, objectives, intents and purposes (Al-Qāmūs al-Muḥīṭ 2: 327). In the early period, the scholars of *uṣūl al-fiqh* (principles of Islamic jurisprudence) had explored several aspects of *maqāṣid* and referred to them with various terms. In legislative terminology, *maqāṣid* are frequently denoted with terms like *ḥikmah* (wisdom), *maṣlahah* (interest), *munāsabah* (appropriate attribute), *'illah* (*ratio legis*). In addition, some scholars denoted *maqāṣid* using phrases such as *al-ma'qūliyyat al-Sharī'ah* (rationality of the *Sharī'ah*) and *falsafāt al-Sharī'ah* (philosophy of the *Sharī'ah*). Some scholars named them by highlighting their purposes like 'fulfilment and protection of the interests', 'removal and elimination of harms', 'reduction of hardships and its eradication'. Meanwhile,

some scholars mentioned them pointing to particular areas of *maqāṣid* like ‘establishment of safety and justice’, ‘facilitation’, ‘moderation’, ‘kindness’, ‘concession’, ‘equability’ and ‘denouncement of extremism and exaggeration’ (Al-Shāṭibī, 1402 AH: ), 2:175; Ibn ‘Āshūr, 2001; Hāmid, 1979). In summary, *maqāṣid* are objectives underlying the ethical framework of Islam (El-Mesawi, 2003: 32).

Some of the *uṣūlī* scholars explained the inherent connection of *maqāṣid* with the concept of ‘attainment of welfare of people and elimination of evils’ (*jalb al-maṣlaḥah wa dar’ al-mafṣadah*) (al-Qarḍāvi, 2000: 1: 31). In the view of Abū Hāmid al-Ghazālī (d. 1111) the essential leitmotif of the *Sharī‘ah* is the protection of five matters, namely the faith, life, intellect, posterity and wealth (Al-Ghazālī, 1413AH: 1: 174). All actions aimed at the preservation of these five matters are considered as ‘benefit’ (*maṣlaḥah*) whereas whatever causes their damage is ‘evil’ (*mafṣadah*), so elimination of what is evil is also deemed as ‘benefit’. Ibn al-Qayyim al-Jawziyyah (d. 1350) explicated the main thesis of *Sharī‘ah* as:

Sharī‘ah is based on wisdom and achieving people’s welfare in this life and the afterlife. Sharī‘ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common with mischief, or wisdom with nonsense, is a ruling that does not belong to the Sharī‘ah, even if it is claimed to be so according to some interpretation (Ibn al-Qayyim, 1973: 3: 3).<sup>2</sup>

*Maqāṣid* are also consensually perceived as the five universal legal purposes, namely the protection of religion, body, intellect, progeny and wealth. Noticeably, all nations and communities have acknowledged the importance of these five foundational objectives.

The definitions of *maqāṣid* by contemporary jurists are more straightforward and comprehensive.<sup>3</sup> In addition, they deal with *maqāṣid* as an independent discipline, as they are not in favour of regarding it a sub-chapter of *qiyās* or dependent on *uṣūl al-fiqh* (Auda, 2008: xxv). They defined it as ‘modalities intended by the *Sharī‘ah* for people to achieve beneficial purposes or to save the interests of the public in their specific actions’ (Ibn ‘Āshūr, 2001: 306-307; Al-Fāṣī, 1993: 7). Concisely, *maqāṣid* are underlying values and purposes of the Islamic law’ (Auda, 2008: xxiv).

As far as the human-made laws in general and secular concepts in particular are concerned, they deal with and concentrate on the present world alone, and categorically ignore the hereafter. As opposed to secular laws, the *Sharī'ah* sheds light on the rulings of all segments of human life not only for living a dignified life in this world but also for the pursuit of contentment of the Almighty in the hereafter. The *Sharī'ah* is characterised to have descended upon the people as a mercy. In one verse, the Qur'ān describes purpose of *Sharī'ah* by saying, "O Muhammad! We have sent you to be a real blessing for the people of the world" (21: 107). One of the major dimensions of mercy is to show right-path and to relieve the sufferings, to that aspect the Quran denotes: "He enjoins them to follow virtue and forbids them from evil: he makes pure things lawful for them and impure things unlawful. He relieves them of their burdens and frees them from the shackles that bound them" (7: 157).

The 'virtue' in the above verse denotes sustaining good etiquette and maintaining the bonds of kinship (Al-Qurtubī, 1353 AH: 7: 299). The word 'pure thing' refers to the legally permitted things whereas the word 'impure thing' refers to the prohibited and sensibly non-hygienic items (Ibn Kathīr, 1999: 3: 487). Likewise, this verse sheds light on two important aspects of *Sharī'ah*, which are facilitation and magnanimity. It also stresses on the people in authority to be people of easiness and glad tidings and not to be tough and rough. The Prophet's life, which has been described as a practical model of the Qur'ān, was replete with incidents that show the application of the above message (Ibn Kathīr, 1999: 3: 488).

Islam urges people to use their faculties of intellect for contemplation, pondering, critical thinking, creative reflections, innovative inductions and meticulous scrutiny for performing their role and leadership in making the world better, systematized and harmless. Interestingly, for those who are competent and eligible, engaging in *ijtihād* is recommended and rewarded for it's intellectual exertion, no matter whether the result is right or wrong, although the *ijtihād* of correct result obtains two rewards. The divine nature is to forgive mistakes as the Prophet Muhammad says, "Verily, Allah has pardoned my nation for their mistakes, their forgetfulness, and what they are coerced into doing" (Ibn Mājah, vol. 3, p. 199). Nonetheless, in the case of *ijtihād* that arrives at an incorrect result, Allah not only forgives the person,

but also offers them a reward. *Ijtihād* means the thorough exertion for extracting the legal rulings from detailed sources of *Sharī'ah* evidence. It is an intellectual struggle to place the references of *Sharī'ah* in the right context and as a human being, he may be right in his conclusion or go wrong (al-Khādimī, 1419 AH: 1: 45).

In the Qur'ān, Allah introduces himself as All-Wise, so He must have set distinctive wisdom behind the creation of humanity. The more an individual knows Allah, the deeper he comprehends the wisdom and goals of His creation and injunctions. Allah says, "Did you think that we had created you without any purpose" (The Qur'ān, 23: 115). However, rather than explaining all the wisdom behind the rulings, Allah sets certain methods to reason out the divine intents and purposes of Islamic law in order to thrust people to make use of their intellect and capacity and to reward them based on their attempts.

*Maqāsid* play a pivotal role in the domain of decision-making and deduction of rulings for unprecedented types of legal and ethical issues. They help the jurists derive the rulings by comparing the outcomes of particular actions with the purposes of the *Sharī'ah*. In more than 1000 places, the Qur'ān has explicated the objectives after explaining the rulings. Following this method, the jurists reached a conclusion that the rulings are supposed to be framed in a way that satisfies the objectives of the *Sharī'ah* (Al-Jawziyyah, 1968: 1: 169).

After having extensive and intensive discourses on the various aspects of *maqāsid*, we may summarize its conceptual framework as sustainable development and comprehensive success. Hence, the jurists apply the notion of accrument of benefit and warding off harm as the yardstick in the process of *ijtihād* and issuance of fatwas.

The jurists rely upon *maṣlahah mursalah* (unrestricted public interest) and *'ādah* (custom) to protect the interests of the people and use *istihsān* (juristic preference), *sadd dharā'i'* (blocking the means) to eliminate the potential harms in society. It also shows that *Sharī'ah* is not just addressing the needs of the particular point of time of its revelation; rather, it creates a competent mechanism to handle the issues universally. The *Sharī'ah* introduces universal and general maxims, which are arguably sufficient to apply to all the particular cases that humanity may encounter.

## ETHICS IN *MAQĀṢID* DISCOURSES

Noble character (*akhlāq*) and ethics (*akhlāqiyyāt*) are considered as part and parcel of faith (*īmān*) in Islam. Al-Shāṭibī mentioned, “The *Sharī‘ah* in its entirety creates only noble morals” (Al-Shāṭibī, 1402 AH: 2: 124). The Qur’ān teaches that the piety is blend of faith and ethics. Allah says:

Piety is not that you turn your faces to the east and the west [in prayer]. But righteous is the one who believes in God, the Last Day, the Angels, the Scripture and the Prophets; who gives his wealth in spite of love for it to kinsfolk, orphans, the poor, the wayfarer, to those who ask and to set slaves free. And (righteous are) those who pray, pay alms, honor their agreements, and are patient in (times of) poverty, ailment and during conflict. Such are the people of truth. And they are the God-Fearing (The Qur’ān, 2: 177).

The above verse first delineates that piety is a mixture of belief, worship and ethics. The Prophet reiterated, “piety is good character, and sin is whatever bothers you and you do not want people to know” (Muslim, vol. 8, p. 6). Likewise, prophetic traditions render a key focus on the improvement of character in the life of a believer. Manifesting the importance of moral behaviour in Islam, the Prophet said, “I have only been sent to perfect noble character”; in other words, the whole purpose of the Prophet’s mission was to perfect moral character (Musnad al-Bazār, vol. 15 p. 364). In addition, the perfection of one’s adherence to Islam is measured based on the perfection of one’s character. In order to encourage believers to work on their behaviour, the Prophet promised several great rewards in the hereafter.

Notably, in the view of the Qur’ān, worship is preordained for strengthening the etiquette in the routines of humankind. The five daily prayers restrain people from shameful and unjust deeds (The Qur’ān, 9: 103). The *zakāt* helps to purify their wealth and improve people’s characters by being merciful and compassionate towards the underprivileged (The Qur’ān, 9: 103). Besides showing kindness and giving comfort to people, *zakāt* refines the benefactor’s character and purges it from the evil of greed. Fasting helps elevate and sharpen the consciousness of Allah and trains people to control their tongue from using it for bad causes.

Good character refers to a good relationship with the Creator, the creatures and oneself. Taking the importance of noble character into consideration, the *Sharī'ah* places the qualities of honesty and uprightness as conditions of a valid witness. For example, in a major transaction, one of the requirements for its validity is the presence of a competent witness in order to secure their property from treachery.

*Maqāsid* have three levels, namely, *darūriyyāt* (necessities), *ḥājīyyāt* (needs) and *taḥsīniyyāt* (embellishments) and their importance is in the respective order. Ethics are largely included in *taḥsīniyyāt* which is deemed as the introduction or support or complimentary branch for *darūriyyāt*. Al-Rāzī (1997) explained that *taḥsīniyyāt* means the stabilization of people's attitude on the noble character. Al-Shāṭibī (1402 AH) elucidated *taḥsīniyyāt* as adherence to the noble customs and fighting against bad characters (Al-Shāṭibī,). Explaining the relationship of *taḥsīniyyāt* to the *darūriyyāt*, al-Shāṭibī (1402 AH) elucidated: "all *ḥājīyyāt* (needs) and *taḥsīniyyāt* are retainers of the *darūriyyāt* or the improvers of their qualities". In addition, *taḥsīniyyāt* embrace many moral characters such as sincerity, honesty, workmanship, cooperation in work, love for family, prohibition of disobeying parents, prohibition of cheating in transactions, covering of the private parts, decency and prohibition of unnecessary mixing of the opposite genders. At times, *taḥsīniyyāt* become the supporters of *darūriyyāt* such as showing gratitude and giving advice (Al-Shāṭibī :1402 AH: 2: 11).

The *maqāsid* regard ethics as basic ideals necessary for the maintenance of *Sharī'ah* as a system. Ethics operate as a means to preserve the essence of Islamic legal rulings to an extent. The failure to do so may affect the existence of the objectives as such. Thus, one of the missions of ethics is to block the means of defects to the *darūriyyāt*; in other words, ethics become part of preserving the *darūriyyāt*.

Being a support or branch of the essentials (*darūriyyāt*), the *taḥsīniyyāt* are not supposed to be a disqualifier of *darūriyyāt*, for example keeping the confidence of a patient is appreciated as an ethical obligation but it is prohibited if it leads to cause harm to a human life. The ethics of preservation of privacy are among the *taḥsīniyyāt* while the duty of preservation of human life is among the *darūriyyāt*. On the other hand, the disclosure of the secrets of a patient will affect the trust and confidence in the doctor which is a foundational tenet in medicine.

Therefore, it is hard to give a black and white decision for ethical dilemmas; rather resolutions have to be the outcome of weighing and balancing the good and evil of each situation and giving preference to what brings maximum net benefit.

If ethics are needed for the fulfilment of any obligatory thing as a prerequisite, then ethics also become obligatory, as per the maxim “whatever follows in practice also follows legally” (*al-tābi‘ tābi‘un*). Likewise, if application of the ethics leads to any prohibited thing, then those manners are also considered as prohibited. There are several similar maxims in this regard and a *mujtahid* benefits from using them to weigh between the benefits and evils of issues they come across and then prioritizing accordingly. In the face of conflicts of interest, jurists have to use the maxims such as “The greater injury should be prevented by committing the lesser injury” (*al-ḍarar al-ashadd yudfa‘ bi al-ḍarar al-akhaff*) and “harm to a person is permitted to prevent harms to the public” (*yutahammal al-ḍarar al-Khāṣṣ li al-daf‘ al-ḍarar al-‘amm*) (Ibn Nujaym, 1399 AH: 88).

### **APPLICATION OF *MAQĀṢID* TO MEDICAL ETHICS**

Among the various types of general professional ethics, medical ethics has a special significance since it deals directly with life, health and death. Professional ethics, which are also known as ‘professional manners’, incorporate rules and standards of behaviour that govern the undertakings of professionals towards their profession, society and themselves. Medical ethics are defined as, ‘the principles of proper professional conduct concerning the rights and duties of the physician, patients, and fellow practitioners, as well as the physician’s actions in the care of patients and in relations with their families’ (Miller-Keane Encyclopaedia, 2003). This moral construct, being a code of practice, governs the professional behaviour of all individuals involved in healthcare.

Professional ethics are integral to the obligations for performance enhancement and quality services. However, negligence of the code of ethics has become an impediment in the fulfilment of goals, thus depriving the public from their rights and smooth governance. As part of tackling this issue, some of moral obligations were reconstructed as legal duties, so that people could sue for the tort of negligence for the breach of conduct.

The Islamic medical compendium is rich with several general principles governing the doctor-patient relationship. As an important means to preserve health, medicine has been one of the top concerns of the *Sharī'ah* since the early period of Islam dating back to the era of Prophet Muhammad (S.A.W.). In the Islamic sources both primary and secondary, several directives have been set up to govern the culture and nature of healthcare. The competence and trustworthiness of practitioners is also important among the conditions stressed by the Prophetic traditions; the former is meant to protect people from harm by unqualified doctors and the latter is meant for honouring the privacy and dignity of the patient.

Ahmed Raissouni asserted that medicine plays a pivotal role in the realization of the *maqāṣid* and Islamic history is rich with active engagement between the objectives of *Sharī'ah* and objectives of medicine (Al-Zāhir, 2013). He added that some societies give utmost priority to the protection of human life but they ignore the issue of protection of progeny, which culminates in crises due to aging and lack of sufficient youth to be part of the development of their nation.

Ishāq bin Ali al-Ruhāwī and al-Rāzī<sup>4</sup> (d. 925 AD) are considered as two main Muslim scholars who thoroughly discussed medical ethics in light of the Islamic values and principles (Prioreshi, 2001: 394). Scholars like Abdul Malik ibn Ḥabīb al-Andalūsī (d. 853) had highlighted the requirement of competence, licence and medical consent to undertake a medical treatment. The four foundational biomedical principles of modern medicine namely, autonomy, beneficence, non-maleficence and justice were frequently mentioned by early Muslim scholars like Ibn Abī Uṣaybi'ah (d. 1270) and Aliyy ibn Riḍwān (d. 1061) (Beauchamp and Childress, 2013). Largely, their books explain the character of a doctor, his physical perfection, intelligence, competence, appearance, trust and confidence. They emphasize that physicians have to prescribe healthy medicine and to desire for the healing of patients more so than the remuneration they receive in lieu. In addition, they instruct healthcare providers to be chaste and of good manners when dealing with the opposite gender (al-Bayūmī, 2011).

The works of the famous jurist Ibn Qayyim (d. 1350) in the discourse of medical ethics are prominently vital. He defined and redefined the obligations of a doctor in light of Islamic law. He summarized the duties

of a physician to one of five stages, which are as follows: Firstly, a doctor has to strive to maintain and protect the health of a patient. Secondly, a doctor has to try hard to help get the patient's health back. Thirdly, a doctor has to remove the causes of disease or minimize them as much as possible. Fourthly, if there is a possibility of one of two harms, the doctor has to choose the lesser one in order to resist the bigger one. Finally, if there is a chance of choosing one of two benefits, the doctor has to prefer the greater one (al-Jawziyyah, 1998: 28).

The importance of *maqṣad* in preserving the wealth of people has a robust relationship to healthcare in the modern world. Islam has legalized business and earning of profits as long as they do not transgress certain boundaries. In analysing the current trends in modern healthcare, the concerned parties seem to have forgotten the universal legal maxim, "harm must be eliminated," consequently an overwhelming number of people are being exploited or manipulated (Mālik, vol. 3, p. 927). This kind of exploitation by the doctor of the helplessness of patients and making money via illegal means are against the *maqṣad* of preservation of wealth.

The *maqṣad* of preservation of dignity also has an application to the medical profession because some of the diseases suffered by patients might be vulnerable or sensitive, so revealing them will be encroaching upon the dignity of the patients. In addition, the *Sharī'ah* restricts the looking, touching and examining of the private parts of a patient if unnecessary and if necessary that it should be conducted under certain conditions. As part of protecting personal privacy and human dignity, medical confidentiality is considered as one of the important features to be applied throughout the medical profession.

Unethical medical interventions are incompatible with the *maqṣad* of preservation of religion. This includes engaging in any medical intervention which is clearly prohibited by the *Sharī'ah* without any necessity to do so, such as prescribing prohibited materials as medicine. Likewise, mercy-killing, removal of life-support machinery from a person affected by a brain death and abortion come under unethical clinical actions which are against the *maqṣad* of protection of human life. The doctors have to treat human organs with high respect and to value them above all their monetary interests. Islam does not allow cosmetic surgery if they are intended only to increase one's appearance without

any pressing need, so to work in this regard is clearly contradicting with *maqāsid*.

Violation of the *maqṣad* of preservation of the progeny includes surrogacy, family planning, milk banks and semen banks. To commit abortion without any valid reason is against *maqāsid* because it involves the annihilation of life and progeny. However, if the abortion is done for valid reason, then it comes under preventing greater harm with lesser harm in order to protect the life of mother. Organ donation is considered legal if and only if it does not place the donor in peril and saves the other person's life. However, the business using human organs is prohibited, because the organs are not property owned by the human but trusted to him or her by God to preserve and take care of.

*Maqāsid* place a high consideration on employing measures, which are beneficial to maintain health and to eliminate harm, moreover, to block the means which can possibly lead to peril. In the discourse of the particular objectives (*maqāsid khāṣṣah*) related to healthcare, the *Sharī'ah* warns against being negligent, insincere and greedy for material benefits. In many cases, healthcare professionals through discriminatory, financial, physical, psychological and sexual aspects, which are totally against the *maqāsid* as well as Islamic law, are abusing patients. For the actualization of the objective of preservation of human life, Islamic law has established general axioms and definite principles as potential means to ensure the safety of the human body and to prevent any underlying harms before they happen or to eliminate them if they have already taken place. Unequivocally, Islamic law instructs towards the respect of the rights of others and to fulfil obligations. In healthcare, both physicians and patients are entitled to rights and supposed to enjoin the obligations as both parties are responsible for the consequences of their actions.

The obligations of a doctor are distinguished because his interventions directly befall the human body. This requires precaution and extra care because otherwise it will inflict harm upon life and people will become victims. Allah says in the Qur'ān, "you should not kill any living being whom Allah has forbidden to kill except by right" (6: 151). Justice and non-maleficence are two foundational principles in the legislation of *Sharī'ah* and are very instrumental in attaining the objectives of Islam (Ibn Qayyim, , 1428 AH: 14). In addition, Islam stresses on kindness (*ihsān*) and perfection (*itqān*) which are particularly

important in healthcare in order to optimize health and healing to as many people as possible. The Qur'ān underscores "Allah enjoins justice, generosity and kind treatment with kindred" (16: 90). Moreover, if an ineligible doctor intervenes on a human body, he is legally considered accountable for any harm that befalls the patient as a Prophetic tradition signifies "a person whoever practises treatment when he was not known to be acquainted with medicine before, will be responsible" (Al-Nasā'ī, vol. 8, p. 52).

### **ROLE OF MEDICINE IN THE PRESERVATION OF *MAQĀSID***

Both *Sharī'ah* and medicine are undoubtedly two good causes for the existence and survival of humanity; the former instils the high ideals in the people and prompts them to live a disciplined life whereas the latter is important to lead a healthy life and to be free from pain and suffering.

Now, we look at how medicine plays its role in promoting and preserving the *maqāsid* (Kasule, 2008).

#### **1. Protection of Faith**

For the practice of the five pillars of Islam – (1) testimony of faith by saying with conviction that "there is no true god (deity) but God (Allah) and Muhammad is the Messenger (Prophet) of God", (2) prayers (3) giving zakat, (4) fasting and (5) pilgrimage - one needs, undeniably, mental and physical health. It shows that health is an inevitable perquisite for belief and practice which are deemed as the actual adherence to the religion.

In addition, the protection of religion is achieved in two dimensions which are promotion of the existence of religion and eradication of threats to the survival thereof. The first dimension is assured by the belief, worship and adjudication in accordance with Islamic law, pursuit of knowledge and propagation, whereas the second dimension is ascertained by abandoning disbelief, atheism and polytheism, avoiding prohibited things, forbidding evil, eliminating bad innovations in din and striving for the sake of God (Al-Shāṭibī, 1402 AH: 2: 27). Needless to say, without adequate health a believer is unable to achieve these goals.

#### **2. Protection of Human Life**

Medicine is primarily for the protection of the human body from falling to illness and restoring health. Though humans are unable to

prevent death or to postpone it, Allah has bestowed upon mankind some powers to prevent or cure diseases and to improve the quality of life. Islam protects the security of human life by closing many doors, which are potentially risky to the people.

Medicine plays a pivotal role in maintaining the health and goodness of the human body in two ways i.e. prevention and cure. The advancements in the medical field have eased the lives of human beings in many ways including the maintenance of physiological functions; they prevent diseases on some occasions and cure them by treatment and rehabilitation on others.

### 3. Protection of Intellect

Medical treatment plays a vital role in maintaining the brain and treating the complications that occur to the intellect. Many psychological, mental and intellectual disorders are cured using medical treatment. Psychotherapy including cognitive therapy, behaviour therapy, group therapy, electro-convulsive therapy and psychopharmacology are commonly used to cure many mental disorders. Psychiatric medication, antipsychotics and antidepressants are also used to help patients recover from their mental complications and to stabilize their mood. The treatment for neurosis and psychosis are very important and they help people restore the intellectual functions and emotional steadiness. In addition, to cure drug addiction and alcoholic troubles, medicine has advanced towards many effective treatments in modern times; these are also considered as protection of the human intellect.

### 4. Protection of Progeny

Modern medicine plays a major role in the protection of progeny in the various stages of pregnancy beginning from the reproduction to the post-delivery stages. In addition, medical equipment has been invented to ensure the safety of the mother and the child and to minimize the complications that happen in the delivery stage.

### 5. Protection of Wealth

As far as the protection of wealth is concerned, the growth of any person, institution or country is largely based on healthy people. In other words, health is very instrumental in the financial development of a society. In addition, healthcare is a source of jobs for millions

of people and undoubtedly, huge profits are produced through this profession.

### **MEDICAL CONFIDENTIALITY IN THE LIGHT OF *MAQĀṢID***

Being the bedrock of medical practice, trust and confidence in the physician-patient relationship plays a significant role in the delivery of high quality healthcare. Confidentiality acknowledges respect for a patient's privacy and individuality, and helps people to put their trust in physicians (Siegler, 1995: 150).

There are several legal and ethical tensions between the obligation of maintaining the privacy of patients on one hand and the legal and ethical duty of a physician to reveal such confidence to third parties such as families, employers, public-health authorities, or police officers in order to avoid the threat of danger to others on other hand. Here, the physician's decision revolves around his understanding and conviction towards the benefits of self, patient, third party and society as whole.

The term 'confidentiality' denotes 'the maintenance of privacy, by not sharing or divulging to a third party privileged or entrusted information' (Taber's Cyclopaedic Medical Dictionary, 2005). Medical confidentiality refers to "the legally protected right afforded to (and duty required of) specifically designated health care professionals not to disclose information discerned or communicated during consultation with a patient" (*Farlex Partner Medical Dictionary*, 2012). Actually, by entering into the medical care relationship, doctor and patient make an agreement that "all information related by the patient is to be held in the strictest of confidence, unless it is illegal and/or dangerous to society" (*Segen's Medical Dictionary*, 2011). In general, medical confidentiality is perceived as the right of a patient and a statutorily protected duty of health professionals (*Medical Dictionary for the Health Professions and Nursing*, 2012).

The rulings on medical confidentiality from the Islamic perspective are related to the preservation of one of the basic rights of patients, namely dignity, which is highly related to one's social standing and individual status. Several definite texts from the Quran and Sunnah stress on the importance of one's dignity and duty of respecting it. The Prophet stated that "a Muslim in (his or her) entirety is inviolable to another: his blood, his wealth and his honour" (Muslim, vol. 8, p. 10).

The jurists divided the types of dignity based on the consequences that befall the people as a result of violating them. The first level is when the humiliation is done by attacking the lineage or accusation of committing any of the seven destructive sins (*al-sab' al-mūbiqāt*). Therefore, protection of people from these dishonourable acts is considered among the *ḍarūriyyāt*. As part of ensuring dignity in this regard, the *Sharī'ah* prescribes the enforcement of punishment of slander (*ḥadd al-qadhf*) for example. Harming people by attributing to them bad habits or heinous actions is the second level. The *Sharī'ah* stringently denounces such activities. Protection of people from such disgracing involvements is among the needs (*ḥājjiyyāt*) which are above the complimentary (*taḥsīniyyāt*); failure to protect them will culminate in disruption of *ḍarūriyyāt* (essentials).

The disclosure of privacy of patients may cause harm to their body or wealth, for example termination of employment. Sometimes the disclosure may pose a threat to their intellect or family, for example divorce or doubt in lineage. Moreover, these things will have bitter consequences on the social order of a society. Therefore, in dealing with the privacy of patients, a deep understanding of divine law and ethical framework based on *maqāṣid* is essentially important. However, it does not mean that disclosure of confidential information is categorically prohibited in healthcare. Rather, at times, disclosure becomes obligatory in order to achieve certain higher goals.

### **Debate on the Extent of Confidentiality**

Are the healthcare professionals who know about a harmful situation obligated to protect the third party? Does a doctor have the duty to disclose the privacy of patients in order to prevent a crime? These questions are some of most debated ethical dilemmas surrounding medical confidentiality for several decades. Form ethicists, one group believes although confidentiality can be defended as a vital principle, it has inherent limits and should not be treated as an absolute obligation whereas the other group takes a strong stand in favour of absolute adherence to confidentiality (Kottow, 1986; Kuhse, 1996; Parkes, 1982; Gillon, 2004).

To the greatest extent possible, physicians are supposed to refrain from disclosing the patient's confidential information. Medical confidentiality, as it was understood by care-seekers and caregivers

in ancient times, no longer exists due to several reasons. The World Medical Association's (WMA) International Code of Medical Ethics explains that disclosure of medical records is justified if there is a real and imminent threat to the patient or others and the only solution is breach of confidentiality (Williams, 2015: 51).

As noted by WMA, several countries and associations' medical codes acknowledge the legality to disclose confidential information if there is a real threat of harm. Meanwhile, preventing harm of others by breaching confidentiality might harm the patient in return, for instance, the damage of dignity or loss of profession. These kinds of issues largely come with patients of psychosis and infectious/communicable diseases, results of genetic testing and in disclosure of medical records of suspected and convicted criminals.

### **Confidentiality with Limits**

Limited confidentiality means that though the privacy of a patient should be protected, its breaching is allowed for certain people in specific situations to a certain extent. The major justifications for breaching are related to the protection of the benefits of healthcare providers, patients, third parties and society in general and for their prevention from harm. Lachmann (2003) who states 'neither philosophy, religion nor law recognises an absolute right to confidentiality. It should not become a fetish to be pursued for other purposes and at any cost' (Lachmann, 2003: 2 & 3).

A good number of people among healthcare professionals and hospital administrative personals have legitimate access to examine the hospital records of respective patients. All of them may be involved in providing or supporting their patients' healthcare services in one way or another (Siegler, 1995: 148). Sometimes, a patient's personal interest in keeping the information secret will conflict in receiving the best possible treatment because the best treatments largely require for a team of caregivers and the details of a patient should be divulged to all members of the team in order to ensure the safety of the patient. Since the best treatments are expensive, it becomes imperative to divulge the details to the responsible third party for the facilitation of the payment.

In some occasions, the health professionals are supposed to reveal some reports to concerned third party because of the existence

of imminent threat from the patient to them (Goldstein 1999).<sup>5</sup> The caregiver has the duty to rescue others who are at risk of harm when he has a certain knowledge about it. The duty of saving others is as important as the maintenance of confidentiality and the caregiver must navigate legal and moral values to balance between the two 'ought's'.<sup>6</sup> Indeed, confidentiality is vital in the maintenance of the four basic principles of respect for autonomy, beneficence, non-maleficence and justice in the physician-patient relationship. However, based on the universal and primordial principle *primum non nocere* i.e. 'first, do no harm', the caregiver has the duty to avoid the affliction of harm to others by a compromise with confidentiality (Beauchamp & Childress, 2001).

Police officers and law enforcement authorities sometimes require medical reports of suspected or convicted criminals. It is mainly to obtain evidence in the case of a crime, which is a necessary situation where public interest in disclosure will outweigh private interest in confidentiality. There is not much real life evidence to prove that patients will hold themselves back from seeking care from health professionals due to the fear of disclosure of information (Abbo, 2006: 34-36).

In the case of genetic disorders, absolute confidentiality could cause harm to the family members who do not know. Genetic information is not solely confidential information but it is a shared right of all family members who have a blood relationship with the patient (Kent, 2003: 16-18). Therefore, individual confidentiality should be compromised against the potential harm of direct relatives (Crook, 2013: 115). Undoubtedly, public good is as vital as keeping confidentiality. During 1903-1912, the American Medical Association (AMA) announced the implementation of absolutist approach to confidentiality. But, physicians showed their indifference to it because there was a real chance of putting the public at risk, especially in the case of communicable diseases (Baker, 2006: 39-41).

The views and facts mentioned above show the justification for the ethicists and scholars who support the idea of restricted confidentiality.

### **Absolute Medical Confidentiality**

In the view of the second group, confidentiality should be a non-variable and absolute obligation for protecting the benefits of physicians, patients and other people. If the confidentiality is not absolute then the

significant dynamics of physician-patient relationship such as autonomy of the patient, respect for his or her personality and trust in physician will cease to function. The injuries inflicted on the confidant by a breach of confidentiality and honesty of therapeutic relationships are more superior than the 'potential harm' protected by the divulgence of privacy of the patient. Posthumous divulging of the secrets of patients is also not allowed because it may be harmful for surviving relatives or others.

The argument that caregivers' disclosure will serve patients' best interests cannot be backed because autonomous individuals are not to be forced for certain interests but they are allowed to make their own decisions. So, confidentiality should not be violated in the name of patients' benefits so long as they are rationally competent individuals. Another major exception invoked against absolute confidentiality revolves around the saving of innocent third parties from impending harm by patients. This justification is not valid because if patients get to know that caregivers will breach their secrets, then they will not reveal the truth but will talk about what benefits them or will evade treatment completely. It means the consequences are worse by losing the trust in physicians. Due to the fear of disclosure if a syphilitic patient stops consulting with the physician and it causes harm to him, his spouse and others is more dangerous than harms of disclosure. Rather, professionals have to treat the patient and advise him without informing the partner or trying to get the consent for disclosure.

There is a high possibility for the physician to be at risk of real harm by the confider if disclosure causes harm to the latter. There is no adequate way of comparing amounts of 'harm inflicted' versus 'harm protected'. Therefore, it may lead to severe harms in an attempt to protect a trivial harm. In addition, the rights preserved are less convincing than the rights eroded. The disclosure of a patient's information is a betrayal in the doctor-patient relationship which is more important than beneficence or non-maleficence to others.

The views and facts mentioned above express the justifications for the ethicists and scholars who support the idea of absolute confidentiality.

### **Discussion**

The idea of absolute confidentiality aims to protect the trust and confidence in doctor-patient relationship so as to ensure an effective

delivery of healthcare. The disclosure of privacy is considered as treachery and will affect the therapeutic relationship and also will put the dignity of patient at stake. However, practical experiences are not much in favour of this absolute approach but allow in certain exceptional cases the breach of privacy whenever there is strong justification to do so.

The approach towards confidentiality with limits is in line with *maqāṣid* in terms of safeguarding the principles of doctor-patient relationship. In this regard, the approach of limited confidentiality becomes relevant which insists on the protection of privacy of patients to the greatest possible extent, which is included in *taḥsīniyyāt* and allows breaching as a response to any important situation like protection of human life, which is included in *darūriyyāt*. Extreme maintenance of confidentiality will culminate in the harm of one's health and that of others whereas destroying one's life is encroachment on key aspects of *maqāṣid*. Nevertheless, a diligent and scrupulous balance to secure the secrecy and control on those who have access is one of the most pragmatic solutions to address this ethical dilemma (Hallam, 1999: 13).

*Maqāṣid* scholars discuss these kinds of issues by considering the benefits and interests of patients, physicians, third parties and society in general and to analyse them under the gamut of spirit of Islamic law and *maqāṣid*, thus preferring what is more fitting to the spirit and objectives of *Shari'ah*. Limited confidentiality is desirable to solve many issues and to actualize the *maqāṣid*. However, medical confidentiality is a medium and the goal is effective delivery of healthcare, and thus protection of the human species. As medical confidentiality is a medium or support, it should not be a reason to disrupt achieving the real goal. As the *maqāṣid* maxim points, "complimentary becomes invalid if consideration of it results in the nullification of the goal" or "the medium is invalid if it leads to the nullification of the goal". As the above maxims point out, if the medium and goal contradict, the goal should be preferred for consideration.

The Council of the Islamic Fiqh Academy, holding its Eighth Session in Bandar Seri Begawan, Brunei Darussalam, from 1 to 7 Muharram 1414H (21-27 June 1993) had issued certain important juridical decisions concerning medical confidentiality from the Islamic perspective (Islamic Fiqh Academy, 1993). In the resolutions, the

Academy preferred the line of medical confidentiality with limits and explained the places where the divulging of information of a patient is allowed. The resolution particularly accorded weight to the concept of *maqāṣid* as it explained "In all such cases the objectives and priorities are set out by *Sharī'ah* in terms of preserving the faith, human life, reason, descendants and wealth" (Islamic Fiqh Academy, 1993).

This resolution especially the final sentence precisely proclaims the importance of ethical grounding in the light of *Maqāṣid* and its importance to solve the ethical dilemmas in healthcare.

### **Conclusion**

The Qur'ān endorses 'justice' as the predominant purpose behind the Prophet Muhammad's (S.A.W.) mission. In dealing with human issues, the *maqāṣid* represent the manifestation of *Sharī'ah*'s ethical framework on which people have to rely upon. The summary of the conceptual framework of the *maqāṣid* is 'sustainable development and comprehensive success'. As far as Islam is concerned, the concept of ethics is overarching in that it encompasses all angles of life and it considers general medical ethics as a branch of other professional ethics but reframed within medical terminologies to fit medical applications.

Medicine plays a major role in the preservation of *ḍarūriyyāt* of the *maqāṣid*. In addition, the *maqāṣid*-grounding of ethics is also helpful to guide the healthcare providers from several unethical medical interventions. *Maqāṣid*-based maxims are instrumental for weighing different interests of people and deciding between any of them, thus to make decisions in conformity with the *Sharī'ah*. Notably, different categories of *maqāṣid* are important for comprehensive grounding of medical ethics.

Regarding the extent of medical confidentiality, one group argues for absolute medical confidentiality, which is in line with some aspects of *maqāṣid*. The second group also recognizes the importance of privacy in the doctor-patient relationship but with some limits for achieving certain higher goals. Analysing the arguments of the two groups on the extent of medical confidentiality, the approach of 'confidentiality with limits' seems to be more in line with *maqāṣid* and helpful to fulfil the larger needs of society.

This study is a practical model of integration between aspects of Islamic revealed knowledge and issues of medical science. It also shows the importance of *maqāṣid*-oriented methodology to solve many contentious issues. Since the *maqāṣid* gives utmost importance to five essentials namely, religion, body, intellect, progeny and wealth, it covers all aspects of life and helps determine the most ethical actions in accordance with the objectives of the *Sharī'ah* and the interests of the people.

### Endnotes

- 1 In this article, the Arabic word *Maqāṣid* used as plural noun for it mean "objectives".
- 2 Translation retrieved from the book, Jasser Auda, *Maqasid al-Sharī'ah as Philosophy of Islamic Law; A Systems Approach*, (London, Washington: IIIT, 2008), xxii.
- 3 Some examples of definitions are as follows: (1) Meaning of *Maqāṣid al-Sharī'ah* is the objectives and secrets of Islamic rulings intended by Shari' during its determination (Al-'Allāl al-Fāsī, *Maqāṣid al-Sharī'ah*, 7.); (2) *Maqāṣid al-Sharī'ah* is bringing benefits to the people and to ward off evil and detriments them (Yūsuf la-Qardāvi, *Fiqh al-Zakāt*, (Bayrūt: Mu'assat al-Risālah, 2000), 1: 31.); (3) Goals, objectives, results and meanings brought about by the *Sharī'ah*, and proven in rulings, and sought to be achieved and created and accessible at all times and places, see Muhammad al-Zuheli, *Maqāṣid al-Sharī'ah*, (Qatar: Kitāb al-Ummah, Wizārat al-Awqāf wa al-Shu'ūn al-Islamiyyah, 1423AH), 70.
- 4 He is the author of *Akhlaq al-Tabib* i.e. *Ethics of the Doctor*
- 5 In 1999, there was legislature announced in Maine (USA) that the medical information of a patient should not be divulged to anybody without his written consent. As an implementation of this law, the doctors and hospital authorities refused to share the information with relatives, priest and even with another doctors in the absence of written consent which culminated in catastrophic results. Evaluating the consequences, that law was replaced within 14 days.
- 6 Lucassen and Parker (2004) suggest the idea of balance between the interest of patient and the interests of family members in the issues of harms originate from genetics. Moreover, DNA and genetic code information do not belong to the patient only but all the relatives who have blood relationship. (Offit et al. 2004). Wolff et al. (2007) stated based on his empirical study that majority of members supported the idea of informing the presence of hereditary disorder within their family because the breaking of secrecy will be helpful to treat the hidden sicknesses.

## References

- G., Johnson & P. V., Johnson. (2007). *Making sense of medical ethics*. Oxford: Oxford university press.
- Abbo, E. D. (2006). Rare but routine, the physician's obligation to protect third parties, *The American Journal of Bioethics*, 6(2), 34–36.
- Aḥmad, 'Alī Muḥammad. (1428). *Ifshā' al-Sirr al-Ṭibbī wa Atharuhu fī al-Fiqh al-Islāmī*. Cairo: Dār al-Fikr al-Jāmi'ā.
- American Medical Association's Code of Medical Ethics. (2011). <http://www.ama-assn.org/ama/pub/category/4610.html>.
- Auda, Jasser. (2008). *Maqasid al-Sharī'ah as Philosophy of Islamic Law; A Systems Approach*. London, Washington: IIIT.
- 'Abd al-Majīd Muḥammad al-Zāhir, "al-Raysūni: Risālat la-Ṭibb", Published In al-Tajdīd, November, 28, 2013 <http://www.maghress.com/attajdid/109006>. Retrieved on December 12, 2016.
- Baker, R. (2006). Confidentiality in Professional Ethics. *The American Journal of Bioethics*, 6(2), 39–41.
- Balint, J. (2006). Should confidentiality in medicine be absolute?. *The American Journal of Bioethics*, 6(2), 19–20.
- Beauchamp, T. L., & Childress, J. F. (2001). *Principles of biomedical ethics (PBE)*. New York: OUP.
- Al-Bar, Mohammad Ali & Chamsi-Pasha, Hassan. (2015). *Contemporary Bioethics: Islamic Perspective*. The Netherlands: Springer.
- Al-Bazār, Abū Bakr bin 'Abd al-Khāliq. (2009). *Musnad al-Bazār*. Saudi Arabia: Maktbat al-'Ulūm wa al-Ḥikam.
- Boylan, M. (2006). "The duty to rescue and the limits of confidentiality". *The American Journal of Bioethics*, 6(2), 32–33.
- Brazier, M. (2003). *Medicine, patients and the law* (3rd ed.). London: Penguin.
- Al-Ghazālī, Abū Ḥāmid. (1413H). *al-Mustasfā fī 'Ilm al-Uṣūl*. Bayrūt: Dār al-Kutub al-Ilmiyyah.
- Al-Fāsī, 'Allāl. (1993). *Maqāsid al-Sharī'ah al-Islāmiyyah wa Makārimuhā*. Tunisia: Dār al-Gharb al-Islāmī.
- General Medical Council. (2000). *Confidentiality: Protecting and providing information*. London: General Medical Council.
- Ghaly, Mohammed (ed.). (2016). *Islamic Perspectives on the Principles of Biomedical Ethics*. UK: World Scientific Publishing.
- Gibson, E. (2006). Medical confidentiality and protection of third party interests. *The American Journal of Bioethics*, 6(2), 23–25.

- Gilbar, R. (2007). "Communicating genetic information in the family; the familial relationship as the forgotten factor". *Journal of Medical Ethics*, 33, 390–393.
- Gillon, R. (2004). Telling the truth, confidentiality, consent and respect for autonomy, J. Harris (ed.), *Bioethics* (pp. 507–528). Oxford: Oxford University Press.
- Goldstein, A. (1999). "Long reach into patient's privacy, new uses of data illustrate potential benefit and hazards". *Washington Post* Aug 23.
- Gostin, L. O. (2001). "Health information: Reconciling personal privacy with the public good of human health". *Health Care Analysis*, 9, 321–335.
- Guedi, M., Sastre, M. T. M., Mullet, E., & Sorum, P. C. (2006). "Do French lay people and health professionals find it acceptable to break confidentiality to protect a patient's wife from a sexually transmitted disease?" *Journal of Medical Ethics*, 32, 414–419.
- Hallam, K. (1999). "Feds: Price of privacy may be too high. FBI, Justice Department say patient confidentiality bills would threaten fraud crackdown". *Modern Healthcare*, 29(18), 12–13.
- Hāmid, Yūsuf. (). *al-Maqāṣid al-‘Āmmah li al-Sharī‘ah al-Islamiyyah*. Sudan: Dār al-Sudāniyyah li al-Kutub.
- Ibn ‘Āshūr, Muḥammad al-Tāhir. (2001). *Maqāṣid al-Sharī‘ah al-Islāmiyyah*. ed. Mohamed El-Tahir El-Mesawi. Jordan: Dār al-Nafāis al-‘Ālam.
- Ibn Mājah. (1989). *Sunan Ibn Mājah*. Beirut: Maktabat Abī al-Ma‘āfi.
- Ibn al-Qayyim, Shams al-Dīn. (1973). *I‘lām al-Muwaqqi‘īn ‘an Rabb al-‘Ālamīn*, ed. Taha Abd al-Ra‘ūf . Beirut: Dār al-Jil.
- Muḥammad ibn al-Qayyim. (1428 AH). *Al-Ṭuruq al-Ḥukūmiyyah fī al-Siyāsah al-Shar‘iyyah*. Beirut: Dar al- Kutub al- Ilmiyyah.
- Ibn Kathīr, Ismā‘īl bin ‘Umar. (1999). *Tafsīr al-Qur‘ān al-‘Azīm*. Riyadh: Dār al-Taybah.
- Ibn Abī Usaybi‘ah, Muwaffiq al-Dīn. (n.d.). *Uyūn al-Anbā‘ fī Ṭabaqāt al-A‘tibbā‘*. Beirut: Dār Maktabat al-Ḥayāt.
- Jones, C. (2003). "The utilitarian argument for medical confidentiality: A pilot study of patients' views". *Journal of Medical Ethics*, 29, 348–352.
- Al-Khādīmī, Nūr al-Dīn. (1419AH). *Al-Ijtihād al-Maqāṣidī: Dawābituhu wa Majālātuhu*, Qatar: Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyyah.
- Kasule, Omar Hasan. "Medical Ethics: Theories And Principles", *i-epistemology.net*, Presented at a National Symposium on medical ethics held at the Bangladesh Institute of Advanced Management Dhaka on Saturday 5th April 2008. <http://i-epistemology.net/v1/omar-hasan-kasule/25-medical-ethics--theories-and-principles.html> (accessed 31 August, 2016).

- Kent, A. (2003). "Consent and confidentiality in genetics: Whose information is it anyway?" *Journal of Medical Ethics*, 29, 16–18.
- Knowles, A., & McMahon, M. (1995). "Expectations and preferences regarding confidentiality in the psychologist-client relationship". *Australian Psychologist*, 30, 175–178.
- Kottow, M. H. (1986). "Medical confidentiality: An intransigent and absolute obligation". *Journal of Medical Ethics*, 12(3), 117–122.
- Higgins, G. L. (1989). The history of confidentiality in medicine. *Canadian family Physician*, 35, 921-924.
- Kamali, Mohammad Hashim. (2008). *Sharī'ah Law: an Introduction*. Oxford: Oneworld.
- Kasule, Omar Hasan. (2008.). *Medical Ethics: Theories and Principles*, *i-epistemology.net*, (accessed 31 August, 2016).
- MOH Portal, *Patient's Bill of Rights and Responsibilities*, <http://www.moh.gov.sa/en/HealthAwareness/EducationalContent/HealthTips/Pages/Tips-2011-1-29-001.aspx>. Retrieved on November 28, 2015.
- Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition*. (2003). Retrieved on March 25 2016 from <http://medical-dictionary.thefreedictionary.com/confidentiality>
- Mohamed el-Tahir el-Mesawi. (2003). *Maqāṣid al-Sharī'ah and Human Socio-Ethical Order: An Inquiry into the Islamic Foundations of Human Society with Special Reference to the Work of Muḥammad al- Ṭāhir Ibn 'Āshūr on the Sharī'ah Purposes*. Unpublished Ph.D thesis. Kuala Lumpur: IIUM Library.
- Muslim, Abū al-Ḥusayn. (2011). *Ṣaḥīḥ Muslim*. Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīdah.
- Al-Nasā'ī, Aḥmad. (1986). *Al-Mujtabā min al-Sunan*. (Syria: Maktab al-Maṭbū'āt al-Islāmiyyah.
- Offit, K., Groeger, E., Turner, S., Wadsworth, E. A., & Weiser, M. A. (2004). "The 'duty to warn' a patient's family members about hereditary disease risks". *Journal of the American Medical Association*, 292, 1469–1473.
- Post, S. G. (2004). *Encyclopedia of bioethics* (3rd edn.). Michigan: Macmillan reference.
- Al-Qādir, Būmadān 'Abd. (2011). *Al-Mas'ūliyyāt al-Jazā'iyyah li al-Ṭabīb 'an Ifshā' al-Sirr al-Ṭibbī*. Unpublished M.A. thesis, Jāmi'āt Mawlīd MañmarÊ, al-Jazā'ir.
- Al-Qurah Dāghī, 'Alī Muhyiddīn. (2006). *Maqāṣid al-Sharī'ah fī al-Ṭibb: Fiḥ al-Qaḍāyā al-Ṭibbiyyah al-Mu'āṣirah*. 2<sup>nd</sup> edn. Beirut: DĀr al-BashĀ'ir.

- Al-Qarḍāvi, Yūsuf. (2000). *Fiqh al-Zakāt*. (Beirut: Mu'assat al-Risālah.
- Al-Qurṭubī, Muḥammad bin Aḥmad. (1964). *al-Jāmi' li Aḥkām al-Qur'ān*. Cairo: Dār al-Kutub al-Miṣriyyah.
- Al-Rāzī, Fakhr al-Dīn Muḥammad. (2000). *Maḥāṣil al-Ghayb*. Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Rāzī, *al-Maḥṣūl fī 'Ilm al-Uṣūl*, (Mu'assasat al-Risalah, 1997)
- Raysūni, Aḥmad. *Al-Akhlāq fī al-Ṭibb: Ta'sīṣ Maqāṣidī*. <http://iumsonline.org/portal/ar->. 12-12-2015
- Sachedina, Abdulaziz. (2012). *Islamic Biomedical Ethics: Principles and Application*. Oxford: Oxford University Press.
- Al-Shāṭibī, Ibrāhīm bin Mūsā. (n.d.). *al-Muwāfaqāt*. Cairo: Dār al-Fikr al-'Arabī.
- Al-Shāṭibī, Ibrāhīm bin Mūsā. (n.d.). *al-I'tiṣām*. Beirut: Dār al-Ma'rifah.
- Siegler, M. (1982). Confidentiality in medicine: a decrepit concept, *New England Journal of Medicine*, 307, 1518–1521.
- Srinivas, Nimisha and Biswas, Arpita. (2012). Protecting Patient Information in India: Data Privacy Law And Its Challenges. *NUJS Law Review*, pp. 411-424.
- Kurpad, Sunita Simon., Machad, Tanya., & Galgali, R B. (2010). Is there an elephant in the room? Boundary violations in the doctor-patient relationship in India. *Indian Journal of Medical Ethics*, 8 (2).
- Thomas, Joseph. (2009). Ethical and legal issues in medical practice. *Indian Journal Urology* 25 (3).
- Taber's Cyclopedic Medical Dictionary; 2005.
- Williams, John R. (2015). *Medical Ethics Manual* (3<sup>rd</sup> edn.). France: World Medical Association.
- Zakariaya, Luqman. (2015). *Legal Maxims in Islamic Criminal Law: Theory and Application*. Leiden: Brill.
- Muhammad al-Zuhayli. (1423AH). *Maqāṣid al-Sharī'ah*. Qatar: Kitāb al-Ummah, Wizārat al-Awqāf wa al-Shu'ūn al-Islamiyyah.

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