



## Editorial Note

### The Applications of *Maqasid Al-Shari'ah* in Medicine: An Overview

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#### Abstract

*Maasid al-shari'ah* or the objectives of the Islamic law and medicine share inherent intersections, and sometimes work as integral subjects, the ultimate aim of which is “*harm reduction*” and “*promotion of wellbeing*” in life. The *maqasid al-shari'ah* does this by providing values and principles of good conducts, while medicine achieves this aim through practical and hands on healthcare services. The paper uses analytical method and presents a concise overview of the Islamic medical ethics, with the focus on the applications of *maqasid al-shari'ah* in medical services. Besides the literature review, the paper highlights the basic contents and fields of both medicine and objectives of the Islamic law. The paper then identifies and analyses eleven areas of medical practices in which the values of *maqasid al-shari'ah* can be applied. Conclusions drawn from these analyses are illustrated at the end of the paper.

**Keyword:** *shari'ah*, objectives, medical practices, applications, values guided healthcare

#### Abstrak

Maasid al-shari'ah atau objektif undang-undang Islam dan perubatan berkongsi persilangan yang wujud, dan kadang-kadang berfungsi sebagai subjek integral, matlamat utama adalah "pengurangan kemudaratan" dan "promosi kesejahteraan" dalam kehidupan. Maqasid al-shari'ah bertujuan dengan menyediakan nilai-nilai dan prinsip-prinsip kelakuan yang baik, manakala perubatan mencapai tujuan ini melalui praktikal dan aplikasi amali pada perkhidmatan penjagaan kesihatan. Kajian ini menggunakan kaedah analisis dan membentangkan gambaran keseluruhan secara ringkas dan padat tentang etika perubatan Islam, dengan fokus pada aplikasi maqasid al-shari'ah dalam perkhidmatan perubatan. Di samping kajian semula kesusasteraan, penyelidikan ini menekankan kandungan asas dan kedua-dua bidang perubatan dan objektif undang-undang Islam. Kajian ini mengenal pasti dan menganalisis sebelas bidang amalan perubatan di mana nilai maqasid al-shari'ah boleh digunapakai. Kesimpulan dari analisis ini digambarkan pada bahagian akhir penyelidikan.

**Kata kunci:** syari'ah, objektif, amalan perubatan, aplikasi, nilai berpanduan penjagaan kesihatan

#### Introduction

Since the early history of the Islamic tradition, the connection between Islamic value system (*shari'ah*) and medicine was the subject of scholarly study.<sup>1</sup> Early Muslim physicians like Ibn Sina (d.925 C.E)<sup>2</sup> and al-Razi (d.103 C.E),<sup>3</sup> are among noticeable medical professionals who have highlighted the role of Islamic values in medicine and healthcare. In his encyclopedic

work on medicine and health (*al-qanūn fī al-tibb*), Ibn Sina allocates a considerable portion of his attention to the importance and the role of moral conducts in medicine, while in his monumental work on medicine (*al-hawī fī al-tibb*), al-Razi gives similar emphasis on ethical norms in medical practices. Among the earliest academic works written on medical ethics in the Islamic history is *Adab al-Tabib* or *Morality of a Physician*,<sup>4</sup> written by Ishaq Ibn al-Ruhawi, which addressed vast area and number of topics related to medical ethics. Contemporary Muslim writers in the field have also studied the applications of *maqasid al-shari'an* in rapidly growing healthcare practices. The writings of the Muslim scholars in the application of *shari'ah* values in healthcare have covered a wide spectrum, ranging from the principles of medical ethics to the practices of *shari'ah* complaint hospital. For instance, in his book on contemporary issues of woman (*masā'il shar'iyyah fī qadāya al-mar'ah*),<sup>5</sup> as well as his other book about Islamic legal issues on organ transplantation (*qadāya fihiyyah fī naql al-'ada al-Bashariyyah*),<sup>6</sup> Arif Ali Arif has addressed various ethical issues in medicine from Islamic perspective. Another important series which includes variety of important academic works is the journal of the Islamic *Fiqh* Academy (*majalah majma'a al-miqh al-Islāmiyyi*),<sup>7</sup> of the Organization of the Islamic Countries, in Jeddah. The journal consists of scholarly researches and academic papers written by leading contemporary Muslim jurists and scholars, who attended the international *fiqh* conferences organized occasionally by the Islamic *Fiqh* Academy on various raising *fiqh* matters, including bioethical issues like organ transplant, tissue engineering, surrogate mother and test tube babies, artificial insemination, stem cell researches, cloning and ethical concerns about the scientific researches involving human subjects. In her book "*Nursing Law and Ethics*",<sup>8</sup> Puteri Nemie, discusses recent development in the provision of healthcare and the demands for law and ethics in given scenarios and cases. The book specifically addresses this section of nursing, the scope of which is increasingly expanding and growing ethical and legal concerns, but chapter 10 of the book focuses on the Islamic medical law and ethics, in which the author diligently provided a concise and important illustration of *maqasid al-shari'ah*, Islamic legal maxims, and classification of Islamic legal rulings. Important discussions on the *shari'ah* applications healthcare practices are found in Aasim Padela's work "*The Essential Dimensions of Health According to the Maqasid al-Shari'ah Frameworks of Abu Ishaq al-Shatibi and Jamal-al-Din-Atiyah*".<sup>9</sup> The author diligently examines *maqasid* for applicability to the healthcare context, specially through and within the opinions of Muslim scholars Abu Ishaq al-Shatibi and Jamal-al-Din-Atiyah (Gamal Eldin Attia). A related discussion is found in "*Secularism in Medicine from Maqasid Al-Syariah*" by Amiruddin and Abdul Aziz (2017).<sup>10</sup> The paper aims to address the influences of secular worldviews on medicine, and the need for *shari'ah* guided medical practices. In their article entitled "*An Overview of the Application of Maqasid Al-Shariah into Cartilage Tissue Engineering*",<sup>11</sup> Munirah (et al.), addressed practices of tissue engineering and alternative medicine through and within the aims of the Islamic law. Though the paper does not touch the connection between *maqasid al-shari'ah* and clinical practices of medicine, the paper has presented rich and interesting discussion on the connection between these two subjects. In their article "*An Overview of Shari'ah Compliant Healthcare Services In Malaysia*", Zawawi and Othman (2017),<sup>12</sup> addresses the needs for *Shari'ah*-compliant healthcare services. The paper also highlights various issues that are raised time and again in this regard like "privacy issues during treatment, cross-gender interactions between patients and medical practitioners as well as the status of the

pharmaceuticals provided as treatment.” Another interesting piece of work is written by Shariff and others (2017), on a practical account of *shari'ah* compliant hospital through and within *An-Nur Specialist Hospital's Experience*. Though this paper illustrates practices of *'ibadah* friendly healthcare services, yet the role of *maqasid al-shari'ah* in medicine is not directly addressed.

These and other available literature on the application of *maqasid al-shari'ah* in medicine could be classified into four categories. (i) Articles that address *shari'ah* applications in the area of decision making in given medical/biomedical practices and treatments, such as contraceptives and birth control practices, research and clinical trials, abortion, artificial insemination and organ transplantations. (ii) Muslim writers in this field also addressed *shari'ah* applications in developing medical knowledge by discovering functions and structures of laws of nature, including that of living things and biosciences. (iii) Professional ethics in medicine such as the *Ihsan*-based attitudes including showing care, honesty, kindness and compassion to patients, or *itqan*-based medical skills such as perfection, quality, punctuality, justice, fairness, dedication and commitment, is another area which Muslim writers in this field explained from and within the *shari'ah* principles. (iv) Muslim scholars' academic discussions about the applications of *maqasid al-shari'ah* in medicine cover the subjects of *shari'ah*-compliant hospital, the bottom-line of which is to provide conducive and value-added healthcare services to everyone particularly faithful patients. The details and examples of the four major areas, are illustrated in the following sections of the paper.

### ***Shari'ah*: the scope and aims of the Islamic value system**

The Arabic term *sharī'ah* is derived from the Arabic root *shara'a* which basically mean straight “pathway to be followed”,<sup>13</sup> or “path to

the waterhole”, particularly the waterhole in a desert environment.”<sup>14</sup> In the Qur'an, the term “*shari'ah*” carries two complementary senses; a more inclusive and generic sense of “*rightly established religion*”, as stated in chapter 42, verse 13 and chapter 45, verse 18 of the Qur'an, and specific sense a “*law or social order*”, as stated in chapter 5, verse 48. In the Islamic tradition, the former sense is used to speak about Islam as a religion, and thus covers the whole teachings of Islam including devotional (*'aqa'id*), devotional (*'ibadat*) and laws of social order (*shari'ah* law), while the later sense of term specifically signifies the laws and the social order of Islam. In its conceptual meaning, the term *shari'ah* means

“the total sum of rules that are ordained by God and promulgated through His prophet (s. a. w.) to His servants in order to be believed and practised (upheld) by them so as to become prosperous in this word and attain felicity in the hereafter.”<sup>15</sup>

In this sense, it does not represent only legal commands and prohibitions, or crimes and punishments, but indeed at “a bulk of its contents are devoted to teach the faith, as well as ethics and laws of governance, therefore, the *shari'a* as a system of divinely inspired code of conduct does not only embrace a legal blueprint for social control, but most important it also guides man in his ideological, moral and all temporal affairs.”<sup>16</sup> In term of scope, Muslim scholars often classify *sharī'ah* values into two major components, namely; beliefs (*'aqa'id*) and practical ideals (*ahkam 'amaliyyah*) (Ibn Ashur, 2006).<sup>17</sup> The content of *'aqa'id*, the beliefs, deals with the fundamental convictions, creeds and articles of faith, generally known as pillars of Islam (*arkan al-islam*), and pillars of faith (*arkan al-iman*), which together form the Islamic ideas of existence, i.e., worldview (*ru'yah al-Islām lil-wujūd*),<sup>18</sup> through which a Muslim understands

life, interpreted it, and relates himself to the greater order of existence. Practical ideals (*ahkam 'amaliyyah*) form the values of life, and consists of two kinds of teachings;<sup>19</sup> ideals that address inner behaviour (*'amal al-qulub*), the aim of which is character purification (*tahdhīb al-akhlāq*), and ideals that are set to govern observable behaviour of a man and a woman (*af'al al-'ibad*). Ideals of character purification are set to shape the ethical dimensions of the moral agents;<sup>20</sup> either by means of practicing structured forms of worship (*ibadat*) such as prescribed daily prayers (*sallah*) and fasting during the month of Ramadan (*sowm*), or in the form of practicing good morals (*makarim al-akhlaq*) like remembrance of God (*zikrullah*), God-consciousness (*taqwa*), honesty (*ikhlas*), integrity (*amanah*), truthfulness (*sidq*), charity (*sadaqah*), etc. While the structured forms of character purification (*sallah*, *sowm*, etc) aim to enhance the moral agents' "spiritual-connection", manners of self-purification (*tazkiyyah al-nafs*) in the form of moral decency (*makarim al-akhlaq*) make the moral agents "well-connected" to his fellow man and woman, such as neighbours, workmates, etc., hence ideals of self-purification eventually aim to feed the soul and enrich the character of moral agent. *Shari'ah* ideals in the form of "laws", provides a system of values that is set to establish and govern the social order of the community, generally known as *al-ahkam alshar'iyyah* or *shari'ah* laws. It covers rules of performing daily rituals and religious practices (*fiqh al-'ibādah*), regulations about trade, business, management, organisations, financial transactions (*fiqh al-mu'amalah*), family law (*ahkām al-usrah*) and the laws of political and public administration (*al-siyāsah al-shar'iyyah*). Hence, these two forms of *shari'ah* ideals, namely; "ideals of character purification" and "ideals of social order" are eventually two dimensions of the same coin that is, the practical account (*al-ahkam al'amaliyyah*) of the Islamic way of life, the fulfilment of which is demanded

in the Qur'an as well as in the *Sunnah* of the Prophet (s. a. w.). This type of classification of *shari'ah* rules is often opted, for the sake of reading and learning the contents of the *shari'ah* values, yet these categories and themes are all interwoven, in such that way that sometimes it is hard to draw the dividing line between these categories;

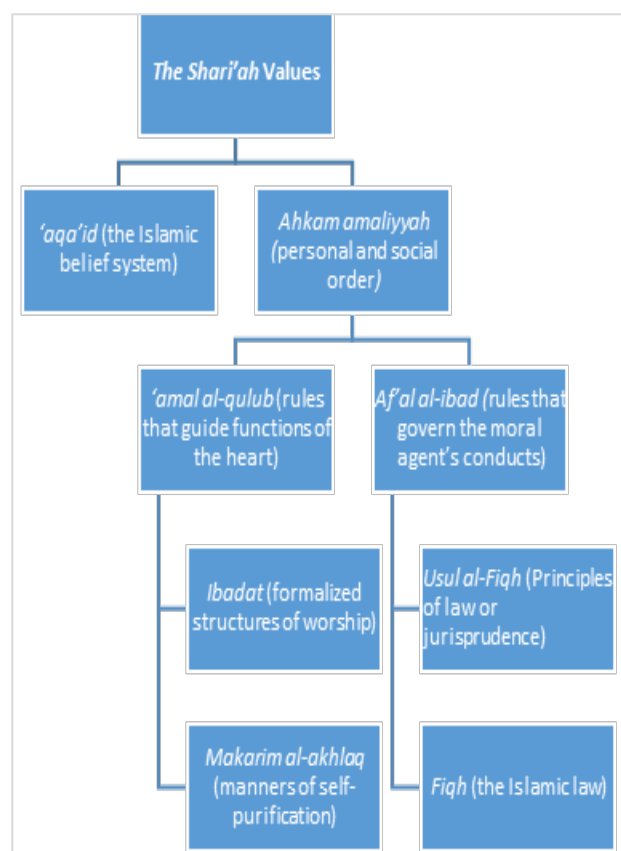


Figure1 : An outline of shari'ah values

Though practiced in different occasions and applied in various forms; wherein some of these teachings serve devotional practices, others address manners and social laws, yet these categories of *shari'ah* values are unified by source and purpose. The source of these values is the Qur'an, which is the final revelation of Almighty, Allah (s. w. t.), revealed to Prophet Muhammed (s. a. w.), and the *Sunnah*, which is the way of life of Prophet (s. a. w.), who explain the teachings of the Qur'an in words and actions. Besides the

source, these values are also unified by aim, whereby as mentioned in chapter 57, verse 27, and chapter 17, verse 9, these laws of the *shari'ah* are set to guide the mind (*hidayah*) to the “most right” and most “balanced” way of life. According to Muslim exegetes and jurists like Ibn Ashur (d.1973),<sup>21</sup> the *shari'ah*, does this either by “prevention of perceived and real harms (*daf'u al-darar*)”, or by means of “attainment of potential and actual benefits of life (*tahqiq al-maslaha*)”.

This process of harm prevention and securing interest, is generally known as *maqasid al-shari'ah*, i.e., objectives of the Islamic law, the ultimate goals, in which the Islamic Divine law aims to achieve in relation to man's interest. The word *maqāṣid* (singular *maqṣad*) is derived from the Arabic root of *qaṣada*, which denotes a goal, objective, aim or purpose. Muslim jurists like Imam Al-Shatibi (d. 1388), describes it as “the attainment of good, welfare, advantage, benefits and prevention of evil, injury, or harm.”<sup>22</sup> To achieve such goals, the *shari'ah* permitted human conducts that are set to facilitate positive and good outcomes in life, while it has prohibited conducts that cause harm in all aspects of life. This process of harm prevention and preservation of wellbeing is achieved through three stages; *first*, serving the essential interest of man and woman (*al-daruriyat*), the absence of which pose a serious threat to life. *Second*, the *shari'ah* also serves the secondary needs (*al-hajiyat*), the absence of which causes difficulties in life. *Third*, it also serves the complementary interests (*al-tahsinayat*) of life, which serves beautification and perfection of given tasks and duties.

These stages of serving the essentials, the needs, and complementary aspects of life, are together known as *maqasid al-shari'ah*, i.e., the ultimate objectives of the Islamic Law. The essential aims of the *Islamic law* are to

preserve life (*nafs*), the mind (*'aql*), religion (*din*), ancestry (*nasab*) and property (*al-mal*), known in the Islamic tradition as *al-daruriyat al-khamsah* (the five essential aims) or as the five general principles (*al-kulliyat al-khamsah*). The primary aim of the Islamic law is to preserve these five dimensions of human life, which together form “the absolute requirements to the survival and spiritual-wellbeing of individuals, to the extent that their destruction or collapse would precipitate chaos and the demise of normal order in society.”<sup>23</sup> For instance, theft, adultery and drinking alcohol are all prohibited as these conducts pose “a threat to the immunity of private property, the wellbeing of the family and the integrity of the human intellect, respectively”.<sup>24</sup> To ease difficulties and manage conflicts that might arise from applications of given principles in given real cases, rules of the second stage of *maqasid al-shari'ah*, are applied, a field that is generally known as concessions (*al-rukhas*). The third stage of *maqasid al-shari'ah*, namely *al-tahsinayat* aims to secure the complementary needs that are set to make actions and tasks beautiful.

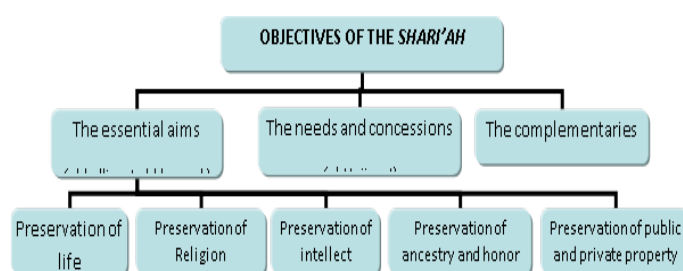


Figure: 2 ultimate aims of the Islamic law

### Medicine: the concept and scope of healing

English dictionaries often mention that the word ‘medicine’ is derived from the Latin root “*medicus*”, i.e., “a physician”,<sup>25</sup> or medical practitioner, a medical doctor, whose task is to promote, maintain or restore health, through

different ways and practices such as diagnosis and treatments. Medicine is generally understood as “the sciences and practices of diagnosis, treatment and prevention of diseases”;<sup>26</sup> it covers various fields of sciences and practices, which primarily intends to maintain and restore health. It does this through preventive measures such as vaccines and other forms of immunization or by treatments of given illnesses such as medications, counseling and surgical operations. Medical treatment and healthcare services are rapidly advancing in terms of extending the scope of medicine beyond its traditional focus of doctor-patient relationship, to include topics like cosmetic surgery or in terms of applications of technology in healthcare services. Besides the conventional practices and treatments, the field of medicine has benefited significantly from modern advances of technology, whereby in modern times, medicine diagnoses and treats given illnesses and injuries through variety of medical technologies and biomedical sciences. Modern breakthroughs in technology have noticeably improved medical services of diagnosing, surgery, radiotherapy, as well as pharmaceuticals and drug making procedures.

The scope of modern medicine covers wider interdisciplinary subjects such as behavioral sciences and nursing, psychotherapy, laboratory sciences, radiography, dietitians, bioengineering, surgical operations, occupational therapy, pharmacy, physiotherapy, etc. These fields of medicine are interdependent, and often function interactively to handle given ailment; for instance, cardiologists often work with surgeons and radiologists to diagnose and treat existing illness or on subsequent complications. The practices and knowledge of medicine are often classified into primary medical sciences and medical specialities; the former is provided to all medical doctors as a general medical education, while medical specialty refers to medical knowledge and practices that are focused on a

defined or specific diseases or groups of patients such as oncology (cancer), pediatrics (children), pathology (laboratory medicine) and family medicine (primary care). For primary medical sciences constitute the general medical education, physicians often seek to further their medical knowledge and skill on specific area of medicine, specializing in diagnosing and treating certain diseases and health conditions. Basic medical sciences cover subjects like anatomy, epidemiology, embryology, molecular biology, histology, endocrinology, nutrition sciences, biochemistry, physiology, biophysics, immunology, biostatistics, cytology, pathology, toxicology, microbiology, neurosciences, pharmacology, etc., which are all meant to give medical students primary and fundamental medical knowledge. Medical specialities also covers range of specific skills and arts, some of which are allergy & immunology, anesthesiology, dermatology, diagnostic radiology, emergency medicine, family medicine, internal medicine, medical genetics, neurology, nuclear medicine, obstetrics and gynecology, ophthalmology, pathology, pediatrics, physical medicine & rehabilitation, preventive medicine, psychiatry, radiation oncology, surgery, urology, etc. While the subjects and practices of medicine are increasingly growing, so does its ethical and legal challenges too. In line with the search for values in healthcare practices, the applications of Islamic value system, particularly values of *maqasid al-shari'ah*, is addressed in the following section.

### **Applications of *maqasid al-shari'ah* values in healing practices**

Among the major principles of *maqasid al-shari'ah*, is the principle of “*lifesaving*”; therefore, as mentioned in chapter 5, verse 32, chapter 4, verse 4, chapter 2 verse 195, and elsewhere in the Qur'an, all forms of implicitly and explicitly “*taking life*”, such as murdering, euthanasia, abortion, genocide, homicide and



suicide, are all prohibited. Not only these forms of taking life are outlawed, but considered as capital offences, which comes with severe capital punishments, including death penalty (*qisas*) in the proven cases of murdering.<sup>27</sup> Taking someone's life is permitted only if it is in the form of penalty of a murderer, as a form of "*life for life*", but still this has to be according to due fair trial, in the court of law, and proven guilty of murdering beyond reasonable doubts. In relation to medicine and healthcare, this principle of *maqasid al-shari'ah* is very much appreciated in the discussions of clinical cases that involve abortion and termination of growing life, euthanasia and removal of life supports, cessation of treatments and cases with do not resuscitate orders, etc. Surely these types of clinical practices involve taking life and thus contradict with the *shari'ah* principle of lifesaving.

Based on the *shari'ah* value of lifesaving, medical practices that lead to "*taking life*" are prohibited such as "*euthanasia and abortion*". Euthanasia is intentionally ending the life of a terminally ill person; it primarily involves individuals who are suffering from a terminal illness or an incurable condition. Regardless of its forms and justification, euthanasia, or mercy killing runs counter to the Islamic principle of life preservation. Some may argue that the intention of conducting euthanasia is to assist a terminally ill patient to die in a dignified manner, or that its intention is to reduce his or her long term pains by ending his or her life. Yet, in the Islamic law, euthanasia violates at least four major Islamic principles;

i. Euthanasia is tantamount to murder, as stated in chapter 5, verse 32, and chapter 4, verse 29, and elsewhere in the Qur'an, all forms of murder, as well as all means of murdering are prohibited.

ii. Among the basic teachings of Islam is mercy (*rahmah*) and kindness (*rifq*) to everyone, particularly for those who are in a difficulty positions such as the needy and the

patients; thus as euthanasia involves cruelty and taking terminally ill patients' life, therefore it contradicts with Islamic values of treating given matters with *rahmah* and *rifq*, hence the Islamic law prohibits it.

iii. Euthanasia is marked by the character of being hopeless and the mode of giving up life, particularly for those patients who are suffering from terminal illnesses. However, as mentioned in chapter 12, verse 87, and chapter 15, verses 55-56, losing hope runs counter to the Islamic principle of being hopeful (*raja*) about the mercy of God regardless of the hardship and difficulties, therefore losing hope in life cannot be the justification for euthanasia.

iv. Decisions of euthanasia are often made with the justifications that, medications of given terminal illness are not available, hence instead of letting given patients suffer with this terminal illness for another, let us say, one or two years, as a form of harm reduction, it is better to let the patient die now. But this type of justification is not acceptable in the Islamic tradition. This is because, such decision is made with the assumption that the patient will eventually die for this illness, however this is just an assumption (*zanni*) and uncertainty (*shakk*), about the medical condition of this patient in the future. Perhaps healthcare providers do not have medications for given terminal illness at that time, but one might never know that, medical researches might come up with the right medications for the terminal illness tomorrow or so. Hence, as euthanasia is based on "*doubts and probability*" and not "*certainty*", it runs counter to the Islamic principle that requires to take moral decisions with certainty (*yaqin*).

Another form of taking life that is related to medicine is abortion, which means the premature termination of a nonviable foetus from the uterus. As abortion, specially induced abortion, implies wilfully terminating growing life, and therefore taking life, the question is, can the moral principle of "*free-choice*", and the argument of

“my body my choice”, override the principle of preserving life or vice-versa? Modern debates for “the right of abortion”, or for “the child’s right to live”, are eventually a discussion between “prolife” versus “prochoice”, particularly if the former can be prioritized over the later or vice-versa. From the Islamic perspective, induced abortion is tantamount to taking life, hence regardless of the intentions and justifications prochoice contentions, it is prohibited, except in the cases in which continuity of such pregnancy constitutes a threat to the mother’s life. If let us say, mother’s life becomes at risk as a result of this pregnancy, based on the principle of committing the lesser harm (*al-darar al-akhaf*), as well as based on the principle of certainty cannot be overruled by doubt (*al-yaqin layuzalu bi al-shakk*), then only Muslim jurists agreed to proceed with abortion.<sup>28</sup> This is so because, in this case, losing mother’s life, means also losing the life of the nonviable growing embryo. So instead of letting both the mother and growing embryo die, the lesser is harm is to save one of them; hence abortion can be opted to save the mother’s life. Likewise, for mother’s life is certainly viable now, while the life of the growing embryo is not yet; in this case certainty overrules the uncertainty, whereby mother’s life is prioritized over the pregnancy. Other than this, Muslim jurist rejects all forms of induced abortion regardless of its justifications. Even in the cases in which pregnancy is as a result of rape or incest relationship, still Muslim jurists reject termination of growing life.

Second, preservation of “mental health” is another area of common interest for both medicine and *maqasid al-shari’ah*. Given the fact that among the unique attributes of man and woman is the faculty of the intellect, which implies the human consciousness that originates in the brain and is manifested especially in thought, perception, emotion, will, memory, and imagination, this faculty distinguishes mankind

from the rest of living things. With this faculty man and woman act rationally and make right choices in life; it allows man and woman, not only to understand and make sense in life, but to manage it. The absence of this faculty descends man and woman into a degree of irrational beings, an animal level or perhaps lowers than animal level. For human life without intellect falls beyond imagination, one of the essential aims of the Islamic law is to preserve the mind (*‘aql*). To do so, Islam puts in place laws and teachings that are set to preserve the mind from intoxication or any other forms of disrupting the regular functions of this faculty. As stated in chapter 5, verse no. 90,<sup>29</sup> and elsewhere in the Qur’an, the consumption of all types of intoxicants and mind-altering substances, including alcoholic drinks (*khamr*) and drug abuse (*muskirat*), are prohibited. Similarly, to appreciate the true functions of the mind, imitation (*taqlid*), arrogance (*takabur*) and other psychological attitude that are deemed obstacle to critical thinking and reasoning are also not acceptable in Islam. Based on this principle of the Islamic law, alcoholic substances as well as bio-products that alter the regular functions of the mind, run counter to the *shari’ah* aim of preserving mental health, hence the consumption of such substances are not permissible. Healthcare providers can benefit from the applications of principles in various practices of medicine, perhaps pharmacists and drug making pharmaceutical companies, psychiatrists and counsellors, as well as neurologists can all appreciate the applications of *shari’ah* values of preservation of the mind and mental health.

Third, another important dimension of the human life is the right to belief or the right to choose and practice the faith of choice. As this form an important universal right of man and woman, among basic pillars of the Islamic law is to preserve freedom of religion (*la ikraha fi al-din*). As stated in chapter 2, verse 256,<sup>30</sup> chapter



18, verse 29, and chapter 10, verse 99, and elsewhere in the Qur'an, the right of practicing the religion of choice is among the basic rights that are preserved in the Islamic law. Hence, it is immoral to inflict psychological, intellectual, or physical threats on anyone to belief in a faith that is not their choice. Coercive measures are therefore not the desirable ways to achieve belief in any given faith in any given circumstance. Not only the right to belief is preserved, but also the right to practice religious faiths; hence researchers in the field of biosciences, healthcare policy makers, clinicians, medical doctors and nurses are all required to respect this right, in terms of allowing their prospective customers to practice their religious faiths. In fact, as religious practices often help faithful patients to recover and gain power, healthcare centres are expected not only to respect patients' religiosity, but also to facilitate patients practicing their faith freely. Besides respecting patient's faith of choice, Muslim writers in the field medical ethics, applied this principle of *maqasid* in the discussions of setting *shari'ah*-compliant "healthcare facilities" like hospitals, clinic and nursing homes. This includes having providing related facilities (example prayer room) and guidelines of performing Islamic daily rituals (example *sallah*) while receiving related medical treatment in the healthcare facilities, so that the *spiritual-connectivity* of given patients are also facilitated. To serve religious rights that are set to honour the dignity and modesty decency of the person, this value of *maqasid al-shari'ah* has also been used in the discussions of *shari'ah*-compliant hospital in terms of observing rules of gender relations and respecting privacy ('*awrah*) of the patient during healthcare services.

*Fourth*, one of the basic rights of man and woman is "reproductive rights", in terms of having offspring and honoured intimate relationship. In line with this universal right, the *shari'ah* declares that, one of its major aims is to

preserve health posterior generations through honoured and dignified relationship (*hifz al-nasl*). Based on this principle, the *shari'ah* has set various rules that are designed to safeguard health reproductive rights, and honoured relationships as well as proper management of family life.<sup>31</sup> To do so, marriage between sane and sound man and woman is permitted and encouraged as a husband and wife. This type of marriage is expected to serve the psychological, physical and social needs of the family. As stated in chapter 16, verse 72,<sup>32</sup> chapter 2, verse 187,<sup>33</sup> and chapter 30, verse 21,<sup>34</sup> of the Qur'an, marriage implies protection of lineage and ancestry, and having dignified sexual intimacy (*libās* and *mut'ah*), as well as to dwell in tranquillity with each other (*sakīnah*) and to share affection and love (*mawaddah*), hence, decent marriage and family life between men and women is highly encouraged in Islam. For other types of marriage, such as gays and lesbians, temporary or casual marriages, term marriages and trial marriages, do not serve these needs, therefore the these types of marriages are counted as immoral and thus not permitted. In addition, sexual intercourse between married man and woman is permitted, while adultery and fornication are outlawed. As stated in the Divine Laws of the *sharī'ah*, besides being shameful (*fāhishah*) and evil (*maqtan*), adultery and fornication are the road to other evils (*sa'a sabīlan*); evil roads that corrupt family lineage and destroy the fabric of decent society.<sup>35</sup> The reason for this prohibition is because these types of conducts not only run counter to the spirit and the aims of the Islamic law, but also corrupt the foundation of the society. In addition, practices that dishonour the person and violate the rights of having health ancestry, such as surrogate mother, ovum and sperm donation, etc, are also prohibited.

Muslim jurists who wrote in this field have applied this *shari'ah* principle to address the

legitimacy of various healthcare services and practices that are related to reproductive rights and family health. In this principle, issues such as “surrogate mother”, “ovum donation” or “ovum selling”, “sperm donation” or “sperm selling”, “ovary and testicles transplantation”, are all addressed; Muslim jurists found that these practices violate the honour of family lineage and decent reproductions (*hafz al-nasl*), and thus are all prohibited. Indeed all forms of surrogate motherhood, ovum and sperm donations, as well as ovary or tactical transplantations are outlawed; the reason is because these type of medical practices contradict with the Islamic concept of health and dignified family lineage. In addition, Muslim jurists in the field acknowledged that, medical practices of infertility treatments that involve in vitro fertilization (IVF) and artificial insemination are permissible only for childless “married couples”, i.e., husband and wife, with “continued marriage contracts”. In the absence of legitimate marriage contracts, or in the instances in which married contract ended either by divorce or by death of one of the spouses, then IVF and artificial insemination are not permissible.

*Fifth*, as an essential aim of the Islamic law is to protect public and private properties (*hifz al-māl*), hence all forms of corruption and wealth mismanagement, including bribery, abuse of power and cheating in business and administration, as well as deceptive practices such as gambling and interest-based business dealing are prohibited so that both public and private properties are preserved. This does not however mean that Islam is anti-ownership of given property, nor does this imply that Islam prohibits wealth accumulation. Indeed ownership of property and accumulation of wealth by decent means of trade, business, leasing, employment, and through other legitimate practices, are permitted as long as earning

property and wealth does not involve corruptive and deceptive means mentioned above.

In the healthcare practices, this principle is very much realized in financial aspect of healthcare cost in terms of building hospitals, clinics, nursing homes, setting the price of the drugs and medicine, buying medical facilities and making or packaging drugs, as well as setting prices of consultations and surgical operations. The applications of this *shari'ah* principle are also realized in the financial implications of health insurances, marketing healthcare services and developing medical education in terms of learning and research explorations, which need to be set and managed in avoidable limits.

*Sixth*, prioritization in serving needs and thus easing the severity of more serious harms first is another aspect of the *shari'ah* aims, the applications of which cover wide area of healthcare services. This aspect of *shari'ah* aims is realized through concessions (*al-rukhas*), in which the *shari'ah* law aims to remove hardship that do not pose a threat to the very survival of the moral agents, but rather constitute server difficulties in life. The law commands the moral agents (*al-mukalafin*) to live and act through and within the moral rules and regulations that are set in the divine laws (*shari'ah*), yet in the instances in which fulfilling the given duties and obligations are accompanied with several difficulties and hardships (*mashaqah*), the *shari'ah* aims to facilitate and ease such conditions. As mentioned earlier, this is reflected in concessions (*rukhas*), such as the permissibility of combining or shortening *ṣalāh* (prayer) for the travellers (*musafir*) or permission of not fasting for the sick (*maridh*). This type of aims, which is known as *ḥājiyāt*, are different from essentials (*ḍarūriyāt*) in such a way that people can live without these concessions, but perhaps with some sort of hardship. Concessions are therefore needed occasionally, so that the

given hardships are dully addressed and dealt with. The *shari'a*, therefore, set specific rules to serve these conditions. According to the Islamic principle of harm reduction, harm must be eliminated (*al-dararu yuzal*) regardless of its source. It should be removed by all means; even in the cases in which ordinary means are not enough to eliminate given hardships, extraordinary ways are opted, whereby hardship begets facility (*al-mashaqqatu tujlab at-taysir*). In this respect, harm must be eliminated but not by means of another similar harm (*al-dararu yuzalu wa lakin la bi-darar mithluhu*). Yet in the situations of harm reduction, a specific harm is tolerated in order to prevent a more general one (*yutahammal al-darar al-khaas li-daf' al-darar al 'aam*). Good example of this principle is, the quarantine of H1N1 patients and limit their freedom of movement, in order to prevent the virus to spread in the public. Hence, violating the rights of free movement of specific H1N1 patient is tolerated to preserve the general interest of public health. Similarly, it is true that harm is eliminated to the extent that is possible (*ad-dararu yudfa'u bi-qadr al-imkaan*); if need be a greater harm is eliminated by means of a lesser harm- (*yuzal ad-darar al-ashaddu bid-darar al-akhaff*). Chemotherapy for cancer patients are among good examples of this principle; though chemotherapy is painful, yet this painful treatment is opted to treat the cancer. Though inflicting harm is not permissible, but in dealing with extraordinary conditions, to reduce the intensity of given server harms, if need be, the lesser harms are opted to reduce the harder ones, wherein necessity makes the unlawful lawful (*al-daruratu tubiyh al-mahzurah*). Nevertheless, *darurah* or necessity is not an open check, but it is measured in accordance with its true proportions (*al-daruratu tuqdaru bi-qadriha*). For instance, fasting the month of *Ramaḍān* is the duty of every Muslim, nevertheless the *shari'ah* permits travellers as well as those who cannot fast due to health reasons not to fast during the

month of *Ramadan*, unless and until such difficulties are overcome. Likewise, covering genitals (*'awrah*), is one of the essential teachings of moral decency in Islam, yet for the sake of medical treatment, it is permitted to unveil the *'awrah* and let healthcare providers check and prescribe related medications. This concession might also cover combining prayers (*salat*) for patients and healthcare providers during prolong surgical operations. Applications of this principle are realized in medicine, particularly in healthcare services in which harm reduction involves opting for lesser harm in solving greater ones. Good examples of this principle are found in reducing the harms of drug abusers and drug smugglers, or prescribing chemotherapy to deal given cancer.

*Seventh, tahsiniyyat* is another category of the *shari'ah* objectives,<sup>36</sup> which are in the nature of desirability as they seek to attain refinement and perfection in the customs, conducts, institutions, public administration and other aspects of life including healthcare services and developing medical knowledge.

*Eighth*, seeking remedy and mastering medical knowledge is another area which *maqsid* applications are observed, particularly in responding certain issues related to the meaning of "healing" in relation to "divine decree", as well as developing "medical knowledge". In this regard, two major concerns are often made by the follower of religious faiths; (i) the first issue is that, given the fact that most of religious tradition believes, though in different conceptions, the existence of Living Creator God, who is also the owner of everything and the Sovereign of all sovereignties. He is all-knowing, whereby no incident takes place without the knowledge of Almighty God, and thus everything in life is "divinely ordained", including conditions of health and ailments. Therefore, since everything is divinely ordained including given medical

conditions, then seeking medical treatment is therefore unnecessary, or perhaps sinful. Unnecessary because the conditions of health and sleekness are determined by God, therefore if God wants me to be sick, then let it be. Or perhaps it is sinful, because since it is God who make me sick, then seeking treatment means going against His will, and thus sinful. (ii) Closely related to this point are the ongoing discussions on “the role of medicine vs. faith”.<sup>37</sup> In these discussions, medical treatment is pointless because, since Almighty God, has the true power of healing and ailment, then why waste time and energy to seek therapeutic treatment of the given illnesses. In this case, prayers and seeking miraculous interventions of healing, not medications, are the right ways to treat the illnesses. Among major questions raised in this regard is, does the belief in the existence of Living Creator God, who decreed the destiny of everything, contradict with the practices of medical treatment? Similarly, does medical treatments of the given illness, contradict with the belief in God, who is, in most of religious faiths, the true healer?

In the Islamic tradition, the answer to these questions is simply “no”; whereby the belief in the existence of Living Creator God, who is the true healer, does not contradict with medication, for a number of reasons;

a. Seeking medication and healthcare is similar to “*earning*” wealth, wherein, though God is the Ultimate Provider (*al-razak*), yet man and woman are told to work and earn. For believing in the existence of God, who is the Ultimate Provider does not contradict with practices of earning wealth, seeking medication does not contradict with the belief in the Almighty, Allah (*s. w. t.*). Though as stated in chapter 26, verse 80, the “*ultimate healer*” is Allah (*s. w. t.*), nevertheless among the founding texts of Islam, are “seek remedies, (for) God never inflicts ailment without providing a cure for

it”,<sup>38</sup> whereby “He who put diseases on earth, has also put its remedy there”.<sup>39</sup> Almighty Allah (*s. w. t.*), provides remedy for each and every ailment, hence in the world of “*cause and effect*” man and woman and therefore duty-bounded, to seek healing treatment, with the trust in God, by means of understanding the structures and functions of living things (biosciences). The term “*seek remedy*” mentioned in these narration, includes various levels of seeking remedy for the given ailments. It could be in the form of developing medical knowledge by means of establishing medical schools, institutions and research centers that are set to “*master*” medical and healthcare practices. This is so because, as reported by Ibn Majah and others, “seeking knowledge is an obligation upon every Muslim”,<sup>40</sup> hence mastering medical knowledge and healthcare practices are not only permissible, but are part and parcel of religiously required obligations (*fardh*). This is so because seeking remedy is required to treat illness and thus save lives. Furthermore, in line with the *shari'ah* principle of “*mala yatimul al-wajibu ala bihi fahuwa wajib*, i.e., acquiring whatever that is necessary to achieve the required is also acquired”, mastering medical knowledge and developing healthcare services are therefore required (*fard*), so that harms are reduced, and thus lives are saved. Perhaps this is why in chapter 29, verse 20, and elsewhere in the Qur'an, man and woman are invited to travel through the earth (*siru fi alaradhi*) and observe the laws of Allah (*s. w. t.*) in nature (*al-sunan al-kawniyyah*) with a reasoning mind (*fanzuru kayfa bada' al-khalq*) of understanding essential forms, structures and functions life (biology).

b. Seeking medical remedies could be in the form of applying certain practices and drugs to heal illnesses. In relation to this, Islam encourages a variety of medical treatments that are set to reverse disease pathology, mitigate its effects or stop further progress of its effect; it also permits using natural plants and products, as well as medically manufactured drugs for medication and surgical operations which are designed to

correct reformatory baths of the body or to remove diseased tissues or perhaps to replace damaged cells and organs of the body. Muslim historians, as well as scholars of *hadith* (the tradition of the Prophet *s. a. w.*), recorded a number of therapeutics practices and medicine, which Prophet Muhammad (*s. a. w.*), practiced or recommended, including among others, cupping therapy (*al-hijmah*), or consuming honey (*'asal*), olive oil (*zayt zaitūn*), and black seeds (*habah al-sawdā*), and etc, as a form of therapeutic treatment.<sup>41</sup>

Therefore from *maqasid* perspective, there is no contradiction in believing the existence of Allah, the Lord of everything and everyone, who is all-Knowing, and seeking remedy; in terms of mastering medical knowledge or in terms of seeking treatment of given ailments.

*Ninth, maqasid al-shari'ah* provides “legally-binding” code of medical ethics to the rapidly expanding healthcare services. This is so because, to cope with the challenges of rapidly growing medical and healthcare service, the scientific and ethical communities have since early ages provided various codes of ethics including Hippocratic Oath, the Nuremberg Code (1947), the Declaration of Helsinki (1964), Belmont Report (1979), etc. Though these ethical codes were designed in different ages and circumstances, but the codes share not only “common purpose”, but also share the “basic contents” of its guidelines. With regards to the purpose, these codes function as a “guide”, for safe and fair medical practices in healthcare settings. Likewise, though some of these codes are lengthier than others, and formed in different places and ages, these code of medical ethics share at least four elements in common, namely, (a) the respect for autonomy, (b) non-maleficence, (c) beneficence and (d) justice. These values form the backbone and the essential elements of existing biomedical codes of conducts, to the extent that they form global recognized principles of “*medical ethics*”.

As illustrated in the writings of the Muslim jurists on this subject, these four values of medical ethics are generally compatible with *maqasid al-shari'ah* principle of harm prevention and realization of benefits (*dafu' al-darar and tahqiq al-maslaha*). For instance the first principle, respect for autonomy, is the base for all transactions and dealings, an area that is known in the Islamic jurisprudence as *al-uqud*, i.e., contracts.<sup>42</sup> The bottom line of this area of Islamic law addresses the need for autonomy in dealings to achieve informed consents with sane and sound clients on given transactions and practices in medical practices, business transactions and in employments and other social responsibilities. In the Islamic tradition, transaction and dealings (*al-mu'amalat*) are valid only, if consented by related parts freely, hence respect of autonomy is a value that form an essential element in the Islamic law, but with certain rules and limitation as would be discussed soon. The second and third values are also compatible with *maqasid al-shari'ah*; indeed these two values are stated in the well-known Prophetic narration “*la darara wala dirara*, i.e., harm should not be inflicted, not reciprocated”.<sup>43</sup> This and related founding texts of Islam, require not only to prevent harm, but to also to willingly benefit others. In addition, as stated in chapter 5, verse 8, chapter 16, verse 90, and elsewhere in the Qur'an, justice to everyone and in all circumstances, is part and parcel of the Islamic value system, hence should be observed in all dealings, including healthcare services.

Though these four principles of conventional code of medical ethics are compatible with *maqasid al-shari'ah*, Muslim jurists often mention two shortcomings of the traditional code of medical ethics;

- i. The existing four principles of medical code of conduct, form an ethical guideline, a kind of general recommendations, which are not backed or solemnized by law. It is true these

four principles together form a base and common reference, to which clinicians and medical researchers can refer to, but not connected to a binding higher authority, and in most cases these principles are not legally binding and hence they are not followed. Muslim jurists noted the fact that, in Islam, ethical values that address practices and dealings (*mu'amalat*) are backed by law, whereby respecting the autonomy of the given clients in public and private dealings is a moral value that is also legally binding, in the absence of which all dealings are null and void. Similarly, in the Islamic ethics, inflicting harm, intentionally or unintentionally, is not only immoral conduct but it is also a punishable crime by law; the type of punishment depends on the degree and the level of the inflicted harm. While inflicting harm is immoral and illegal, those in a position of trust, such as healthcare providers, researchers, etc., are also morally and legally required to fulfill their duties (*ma'uliyah*) without negligence (*'adam al-ihmal*), and thus serve in the interest of their clients.

- ii. In the view of Muslim jurists who wrote in this field, another area of shortcoming of the current code of medical ethics is that, beneficence and the actions of promoting the well-being of the patient are good. But these elements are stated in these codes with general terms, and lacks due specifications. To begin with, who decides the nature and type of "*beneficence*"; the patients, the healthcare providers, or the legal authority? For instance, how does beneficence relation to medical services like cosmetic surgery and sterilization? What happens if a given clients request for abortion or euthanasia? For cosmetic surgery, which is often driven by lack of confidence in oneself and appearance, does it fit in healthcare scope of promoting the well-being of given clients? Similarly, abortion and euthanasia imply taking life and thus similar to murdering. Because, the current code of medical ethics does not specify the term "*beneficence*", Muslim jurists often advice to understand the elements of current code of medical ethics

through and within the principles of *maqasid al-shari'ah*. This is to say;

- a) The first principle "*respect for autonomy*" is governed by the *shari'ah* principle that states to put the authority of the Divine Commands over other laws and authorities (*la ta'ata li makhlugin fi ma'siyat al-khaliq*), wherein the moral agents' desires and wants are guided and ruled by the authority of the Divine Commands. For Almighty Allah (s. w. t.) is the ultimate law giver (*Allahu huwa al-shari'*), the autonomy of the clients and patients are respected, as long as it does not contradict with the principles of *maqasid al-shari'ah*. Hence, in the Islamic tradition, "free choice" and the "autonomy" of the patient, cannot justify the morality of medical practices like abortion, euthanasia, gender reassignment, cosmetic surgery, etc. The principle of respecting the autonomy of the patient, sounds good, but what happens if it contradicts with the principles of the "sanctity of life" such as in the case of euthanasia and abortion. In the Islamic tradition, people are free to make given choices in life, but not at the expenses of responsibility. Hence, patient' autonomy is respected, but not to the extent of taking his or her life, or the life of others; euthanasia and abortions are therefore not justified by the principle of patient's autonomy. According to *maqasid al-shari'ah*, no one is autonomous to take someone life, unless it is life for life, as discussed elsewhere in this article.

- b) It is true that in Islam, governing values and laws of social order are set to serve the well-being of the moral agents, wherein the *shari'ah* aims to secure benefit (*maslaha*) and prevent harm (*daru' almafsadah*), which includes the second and third values of the conventional code of medical ethics. However, unlike the conventional code of medical ethics, for the sake of achieving true and genuine benefits, the *shari'ah* presents a typological account of well-beings. Muslim jurists (*fuqahā'*) divided benefits (*maslahah*), into three



types; accredited interest (*maṣālahah mu'tabarah*),<sup>44</sup> discredited interest (*maṣālahah mulghah*)<sup>45</sup> and unrestricted interest (*maṣṣālahah mursalah*).<sup>46</sup> Accredited *maṣlahah* is the benefit that is approved by the rules of the *shari'ah* such as the benefits gained from trade, business, legal marriage, employments, and other kinds of lawful activities and professions. Furthermore, discredited *maṣlahah* applies to benefits that are nullified by the *shari'ah* either explicitly or implicitly. This includes benefits that are gained through unlawful means such as corruption, cheating, bribery, gambling or business transactions that contain an element of *riba*, and etc. Any gains or benefits that are achieved through deception and cheating, are disapproved benefit. The third type of *maṣlahah* is the interest which is neither explicitly required, nor nullified by the *shari'ah*, and does not contradict neither the texts nor the general principles of *shari'ah*. Usually, this kind of *maṣlahah* is recognized as valid interest as long as it serves the common good. The examples of unrestricted interest are found in the formation of modern institutions of education, systems of social administration and means of transactions, which do not contradict the definitive texts and general principles of the *shari'ah*. In relation to healthcare, though according to conventional code of medical ethics, medical practices like cosmetic surgery, ovum and sperm donations, as well as surrogate mother, sounds to be ethically permissible as long as the autonomy of the person is respected and in accordance with the values of beneficence and non-maleficence. However, according to the *maqasid al-shari'ah*, these types of medical practices are not permissible, the reason is because, these practices form violation of basic aims of the *shari'ah*, and thus fall into the category of disapproved beneficence. Hence, though the *shari'ah* finds values of beneficence and non-maleficence compatible to its principles of harm prevention and securing benefits, yet

the *shari'ah* finds the way these values are stated in traditional code of medical ethics is insufficient and thus not enough to serve the practices of this field.

*Tenth*, professionalism and moral excellence is another area in which the *shari'ah* helps practicing medical ethics. Beside the recommendation of seeking remedy (*tadawi*) for the given ailments, and the command of “inflicting no harm, nor reciprocating it”, in all medical and healthcare practices, another area in which *maqasid al-shari'ah* serves medicine, is found in the *shari'ah* commands in which moral agents are commanded to aim for *itqan*-and *ihsan*-based professionalism including healthcare services. The Prophet (s. a. w.) once said “Almighty Allah (s. w. t.) loves to see one's tasks done at the highest level of quality or *itqan*”.<sup>47</sup> The root of *itqan* is *atqana*, which means to “excel” or “precision” in doing something, or fulfilling the given duties exceptionally. *Itqan* means to achieve the optimal and perfect quality of the given tasks and services. Indeed, the behavior of aiming for “quality” in handling the given duties and tasks, is part of the Islamic teachings. Furthermore, besides perfection, to achieve quality of work, as stated chapter 16, verse 90, moral agents ought to aim for “excellence, i.e., *ihsan*”, the outstanding quality of given products and tasks, as well as “justice”, the behavior of putting things in their right place with due proportions. In line with this verse and similar verse of the Qur'an, the Prophet (s. a. w.) once stated that “Allah has written (ordered) excellence on everything, so if you kill you should attain excellence...”.<sup>48</sup> The term *ihsan* is originally derived from the Arabic root of *hasan*, which means beauty; hence *ihsan* means making something beautiful or excellent. The person who makes *ihsan* is *muhsin*, which means “beauty maker”. Like other professional dealings, Islamic ethics requires healthcare providers to aim for excellence in their medical services including

filling and documenting patients' information in a secure and safe place, diagnosing, and prescribing medications and treatment, all should be done with the value of excellence (*ihsan*). *Itqan*-based attitudes including honesty (*ikhlas*), kindness (*rifq*), trustworthy (*amanah*), and compassion (*rahmah*), as well as *itqan* based professional skills such as precision, quality, punctuality, justice, fairness, dedication and commitment, are all part and parcel of the Islamic professional ethics.

Eleventh, serving the spiritual needs of patients is another area in which the *maqasid al-shari'ah* principles are concerned. The *shari'ah* is concerned about whether or not the available healthcare facilities and services are conducive enough to religious practices that are intended to upgrade the patients' as well as healthcare providers' "spiritual connectivity". This could be like having prayer rooms (*musllah*), reminders of prayer times, helping and assisting given patients to practice their faith, while in hospital, as well as providing, on regular basis or occasionally, preaches and sermons for given patients. As followers of religious faiths form the majority of our populations today, having spiritual healers and religious consolers, such as *imams*, in healthcare facilities, seems to be inevitable. Among collective obligations in Islam is managing the body of the dead person, known as *Janazah*, i.e., funerals, which includes certain ritual procedures including bathing and shrouding the body,

followed by *Sallah* (prayer), then burial as early as possible. Burial services which involve certain specific rites and protocols, is expected to be provided by healthcare facilities, so not only the patients are served during their sickness, but also after death.

## Conclusion

The objectives of the Islamic law (*maqasid al-shari'ah*) and the subjects of medicine are inherently connected. Indeed, principles of *maqasid al-shari'ah* are set to prevent harm (*dafu' al-darar*) and realization of benefits (*tahqiq al-maslaha*), while the essential aim of medicine is to diagnose and treat illness, and thus reduce harm; therefore "harm reduction" forms inherently shared objective of both subjects. For harm reduction and preservation of life constitute an ultimate goal of both fields, though in different approaches, these two subjects eventually promote the wellbeing of the community; the *shari'ah* does this by setting the laws of wellbeing, such as the laws of life preservation (*hifz al-nafs*), the laws of mental



Figure3 *shari'ah* applications in healthcare services

health (*hafz al-'aql*) and preservation of honour and privacy (*hifz al-nasal*), while medicine achieves this through healing practices of diseases. Medicine provides the practical and hands-on knowledge of wellbeing, while *maqasid al-shari'ah* provides the theoretical models and values of same aim. This paper addressed at least eleven (11) areas of this connection. Besides the areas of preservation of life, mental health, the rights of worship, reproductive rights, and wealth, the *shari'ah* also helps healthcare services in the areas of making excellent services (*tahsiniyat*) and prioritization in given extraordinary situations (*hajiyyat*). While responding to concerns made about seeking treatment with the belief that God is the Ultimate Healer (*huwa al-shafi*), the *maqasid al-shari'ah* also provides legally binding ethical code in healthcare services. Professionalism and excellence in healthcare services is another area of common interest of these two subjects.

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<sup>1</sup> Further discussions about the history of Muslim scholars' discussion about the role of values in medicine are found in; Mortaza, Aminul, *History of Islamic Medicine*, (Birmingham, UK: Koros Press Limited, 2014); Muhammad Salim Khan, *An Introduction to Islamic Medicine* (Bahr Press, 2009).

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<sup>3</sup> Muhamed b. Zakariya al-Razi, *Al-Hawī fī al-Ṭibb*, (Beirut: Dār Ihya al-Turāth al-'Arabī, 2002).

<sup>4</sup> Ishaq Ibn Ali al-Ruhawi, *Adab al-Ṭabīb*, (Riyad: Markaz al-Malik Faysal li-al-Buhūth wa al-Dirāsāt al-Islāmiyyah, 1992).

<sup>5</sup> Arif Ali Arif, *Masā'il Shar'iyyah fī Qadāya al-Mar'ah* (Kuala Lumpur: IIUM Press, 2011); Arif Ali Arif, *Qadāya Fiqhiyyah fī Naql al-'Ada al-Bashariyyah* (Kuala Lumpur: IIUM Press, 2011).

<sup>6</sup> Arif Ali Arif, *Masā'il Shar'iyyah fī Qadāya al-Mar'ah* (Kuala Lumpur: IIUM Press, 2011); Arif Ali Arif, *Qadāya Fiqhiyyah fī Naql al-'Ada al-Bashariyyah* (Kuala Lumpur: IIUM Press, 2011).

<sup>7</sup> *Majalah Majma'a al-Fiqh al-Islāmiyyi* (OIC: al-Dawrah al-Rābi'ah li-Mu'tamar Majalah Majma'a al-Fiqh al-Islāmiyyi, vol. 1, 4<sup>th</sup> issue 1988). *Majalah al-Majma' al-Fiqh al-Islāmiyyi*, (al-Dawrah al-Thāniyyah, Vol.2, 1407 A.H

<sup>8</sup> Puteri Nemie Jahn, *Nursing Ethics and Law*, (Malaysia: International Law Book Services, 2012)

<sup>9</sup> Aasim Padela "The Essential Dimensions of Health According to the *Maqasid al-Shari'ah* Frameworks of Abu Ishaq al-Shatibi and Jamal-al-Din- 'Atiyah" *International Medical Journal Malaysia*, vol.17, special issue 1, 2018, pp.49-58.

<sup>10</sup> Salman Amiruddin and Sumayyah Abdul Aziz *Secularism in Medicine from Maqasid Al-Syariah* (International Journal of Academic Research in Business and Social Sciences, 2017, Vol. 7, No. 12).

<sup>11</sup> Munirah Sha'ban (and others), *An Overview of the Application of Maqasid Al-Shariah into Cartilage Tissue Engineering*", *International Medical Journal Malaysia*, vol.17, special issue 1, 2018, pp.151-156

<sup>12</sup> Majdah Zawawi and Khadijah Othman, *Malaysian Journal of Consumer and Family Economics*, volume 20, special edition 1, 2017, pp. 90-100.

<sup>13</sup> Mohammad Ya'qub al-Fayruz Abadi, *al-Qāmūs al-Muḥīt* (Beirut: Dār al-Fikr, 1978); Al-Hussain Mohammad al-Raghib al-Asfahani, *Mufradāt al-Fāz al-Qur'ān* (Damascus: Dār al-Qalam, 2002), pp. 450-451.

<sup>14</sup> Al-Asfahani, op cit., p. 525.

<sup>15</sup> Mahmoud Mohammad al-Tantawi, *al-Madkhal 'Ilā al-Fiqh al-Islām* (Egypt: Maktabah Wahbah, 1987), p. 11., quoted in: Haneef, op. cit., p. 35.

<sup>16</sup> Haneef, op. cit., pp. 35-36.

<sup>17</sup> Ibn Ashur, Muhammad al-Tahir, *Maqasid al-Shari'ah al-Islamiyyah*, (Al-Basa,ir Lil Intaj al-Ilmiyyi, 1<sup>st</sup> ed., 1998).

<sup>18</sup> Further detail on this topic are found in; Al-Attas, Seyd Muhammad Naquib, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1995).

<sup>19</sup> Further detail on this topic are found in; Hashi, Abdurezak A., *Professional Ethics: Its Foundations and Practices* (Kuala Lumpur: IIUM Press, 2018)

<sup>20</sup> This shaping is achieved either by means of psychological experience, such as contemplations and meditations exercised by given religious devotees, or by means of giving a system of

values that are set to govern the social order of the society.

<sup>21</sup> Ibn Ashur, *Maqasid al-Shari'ah al-Islamiyyah*, op. cit.

<sup>22</sup> Abu Ishaq Al-Shatibi, *al-Muwaffaqāt fī Uṣūl al-Shari'ah*, 1st ed. (Beirut: Dār Al-kutub Al-'ilmiyyah, 2004) p. 220.

<sup>23</sup> Mohamad Hashim Kamali, *Principles of Islamic Jurisprudence*, 2nd ed. (Kuala Lumpur: Ilmi'ah Publishers, 1999) p. 397.

<sup>24</sup> Kamali, op cit., p. 398.

<sup>25</sup> Entry "medicine", Cambridge Dictionary, available at: <https://dictionary.cambridge.org/dictionary/english/medicine>, accessed on 7<sup>th</sup> January, 2020.

<sup>26</sup> Aldridge, Susan, *Medicine*, (Chicago Review Press, 2009); Fishman, Mark C., *Medicine*, Philadelphia: Lippincott Williams & Wilkin, 5<sup>th</sup> ed., 2004

<sup>27</sup> The Qur'an (2: 178-179):

<sup>28</sup> Mohd Ali al-Bar, *Mushkilat al-Ijhād, Dirāsah Ṭibiyyah Fiqhiyyah* (Jeddah: Al-Dār al-Saudiyyah, 1985), pp. 39-45; Al-Shiekh Yusuf al-Qardawi, *al-Halāl wa al-Harām* (Cairo: Maktabah Wahbah, 1993).

<sup>29</sup> The Qur'an (5:90):

"O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination,- of Satan's handwork: eschew such (abomination), that ye may prosper."

<sup>30</sup> The Qur'an (2:256);

"Let there be no compulsion in religion: Truth stands out clear from Error whoever rejects evil and believes in Allah hath grasped the most trust worthy hand-hold that never breaks. And Allah heareth and knoweth all things"

<sup>31</sup> This is because according to the Islamic perspective, the protection of the family institution which includes preservation of ancestral lineage and offspring, contributes to enhancing the individual's self-esteem and self-actualisation. This is because proper affiliation to family and the protection given by parents in the early age of childhood are rudimentary components of the child's psychological development.



<sup>32</sup> The Qur'an (16:72):

"And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: will they then believe in vain things, and be ungrateful for Allah's favours."

<sup>33</sup> The Qur'an (2:187):

"Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves; but He turned to you and forgave you; so now associate with them, and seek what Allah Hath ordained for you, and eat and drink, until the white thread of dawn appear to you distinct from its black thread; then complete your fast Till the night appears; but do not associate with your wives while ye are in retreat in the mosques. Those are Limits (set by) Allah. Approach not nigh thereto. Thus doth Allah make clear His Signs to men: that they may learn self-restraint."

<sup>34</sup> The Qur'an (30:21):

"And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect."

<sup>35</sup> The Qur'an (17:32):

"Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils)"

<sup>36</sup> Details about these objectives are found in Al-Shatibiyyi, Abu Ishaq, *al-Muwafaqat fi Usul al-Shari'ah*, (Beirut: Dar al-Kutub al-Ilmiyyah, 1<sup>st</sup> ed., 2004). Ibn 'Ashur, Mohammed al-Tahir, *Maqasid al-Shari'ah al-Islamiyyah*, (edited), al-Misiwiyyi, Mohammed al-Tahir, (Al-Basa'ir Lil Intaj al-'Ilmiya, 1<sup>st</sup> ed. 1998).

<sup>37</sup> "The role of medicine and vs. faith", <https://www.versebyverseministry.org/bible-answers/should-a-christian-take-drugs-for-depression-adhd-etc>, accessed 26/12/2019.

<sup>38</sup> As reported by Abi Hurayrah, (r. a.)

"عن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم أنه قال: "ما أنزل الله داءً إلا أنزل له شفاءً".

<sup>39</sup> Reported by al-Termiziyyi.

<sup>40</sup> Reported by Ibn Majah (Hadith no. 224)

<sup>41</sup> Further details about the Prophetic medicine are found in Ibn Qayyim al-Jawziyyah, Mohd b. Abi Baker, *al-Tibb al-Nabawiyyi*, (Cairo: Dār al-Ḥadīth, 2008); and al-Zahabi, Mohd b. Ahmad, *al-Tibb al-Nabawiyyi*, (Cairo: Maktabah al-Qur'an, 1989).

<sup>42</sup> Shahrul Azman Abd. Razak, *Combination of Contracts in Islamic Finance*, (Kuala Lumpur : IBFIM, 2016); Rayner, S. E. (Susan E.), *The Theory of contracts in Islamic law : a comparative analysis with particular reference to the modern legislation in Kuwait, Bahrain, and the United Arab Emirates* (London: Graham & Trotman, 1991).

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<sup>44</sup> Further reading are found in: Ibn Ashur, Muhamad al-Tahir, *Maqasid al-Shari'ah al-Islamiyyah*, (Al-Basa'ir Lil Intaj al-Ilmiyyi, 1<sup>st</sup> ed., 1998), pp. 210-211.

<sup>45</sup> Ibn Ashur, Muhamad al-Tahir, op.cit., p. 211.

<sup>46</sup> Ibn Ashur, Muhamad al-Tahir, op.cit., pp. 210-211.

<sup>47</sup> Reported by al-Baihaqi, in the chapter of "branches of faith"

<sup>48</sup> Reported by Imam Muslim, *hadith* no; 3729.

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