

Disclosure Medicine Secret in Islamic Law

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Abstract

This article aims to explain the view of Islamic law relating to medicine secret, and states the views of the contemporary Islamic Jurisprudence on the matter. It also mentions Islamic legal rationale and exceptions for reveal secrecy. The study has used inductive approach to find the verses in the Quran as well as Hadiths referring to this issue in general, and the opinions of scholars, and analyze and compare them in order to arrive at more proper opinion among them. The study found that medical secrecy is the right of the patient, the doctor may not disclose it without patient's prior consent, or he is allowed to disclose it only in certain exceptional cases. It also found that revealing medical secrecy could amount a crime under the Islamic law, which is deserves punishment, and compensation in cases of physical damages to the patient.

Introduction

Islam has been taking care of all human rights, and trying to protect it, because it is considered by the secretariat. Keeping of secrets is a natural right of humanity which emphasized by Islamic legislation, the religious verses and purposes of religion (Maqasid of Sharia) has shown the importance of this aspect.

The Islamic tenets emphasize that the secrets concerning individual, family, tribe, country etc should be kept hidden to protect from forthcoming problems. The psychologists also focus on the fact that secrets of their clients unearthed during treatment, should be kept secret. The present article is focusing on the confidentiality aspect of human nature in terms of Islamic tenets and psychology.

Additionally, Privacy is one of the accepted rules of professional social work that affect the relationship between social worker and client, social worker providing individual interests, social interests, as well as references. Religious teachings also emphasized the necessity of secrecy, revealing the secrets of the deadly sins committed, the punishment has been deserved hereafter.

There are different secrets which are considered as individual secrets, such as economy secrets, political secrets, communication secrets, administrative secrets, professional secrets, and Medicine secrets category of professional secrets. Also some secrets that are deemed ordinary

matters disclosure of which does not harm dignity, nevertheless, it is better not to be revealed except by permission of the one to whom a secret belongs.

Doctors in the past and the present have been among the first of those who are entrusted with people's secrets. Those taking up this profession are committed to keeping secrets throughout time; this responsibility will be upon whom working in this field. Revealing patient secrets violates fidelity which is the private and privileged relationship of trust between the patient and the caregiver. Revealing secrets harms the patient under the principle of Injury, qa'idat dharar.

However, Patients have a right to expect that their information will be kept in strict confidence by their doctors. As part of the privilege of the doctor patient relationship, the doctor has a responsibility to protect the patient's right of confidentiality.

Moreover, Modern medical ethics base this duty on respect for the autonomy of the patient, on the loyalty owed by the physician, and on the possibility that disregard of confidentiality would discourage patients from revealing useful diagnostic information and encourage others to use medical information to abuse patients.

Imam Mawardi says that confidentiality is strength of a man through which he can keep from disclosing other's personal stuff and successfully achieves his goal (Mawardi, 1981, p90).

1-1: Importance of the subject:

The secret is the most important thing for a patient, because it keeps the life of the patient, also it is the most important thing in the relationship between doctors and patient in our religion tolerant and all international and local norms, which gave it a special sanctity, it represents the core of the profession of doctor's substrate.

Additionally, the importance of the mystery of the patient is to punish the doctors who disclose the secret of his patient without the need for it.

The divulgence of patient causes detriments in most cases, and the Muslim should not do things to the detriment of human. It is not permissible for anyone to willfully harm or be the cause of harm to anybody at the world, because Allah (S.B.W) says at Surratt Ahzab: (and those who annoy the believing men and the believing women without their earning it shall surely bear the guilt of calumny and manifest sin). S33:v58.

The mystery of the patient from the mysterious things that are difficult to define the concept, it varies depending on the time, place and people and events and diseases, and such things need to be clarified.

Thus the concept of confidentiality could be defined as patients voluntarily allow physicians to access their private information in the trust that it will not be disclosed to others. This confidentiality must be maintained within the confines of the Law even after death of the patient. In routine hospital practice many persons have access to confidential information, but all are enjoined to keep such information confidential.

1-2: Islamic ethics:

Islam holds that ethics cannot be divorced from morality; also ethics cannot be divorced from Law. Islamic Law is a compendium of ethics, morality, and legal rules. The purposes of the Law, *maqasid al shari'at* (Al Shatibi), the principles of the Law, *qawa'id al fiqh* (Al Nadawi, 1414H), and the regulations of the Law, *dhawaabit al fiqh*, are therefore the basis of ethics. Islam holds that the human mind, unless corrupted by *shaitan*, is capable to working out rationally what is right and what is wrong for most problems of life. There are however a few gray areas for which moral reasoning needs to be guided by revelation, *wahy*, to reach correct conclusions.

And Islam considers medical ethics the same as ethics in other areas of life. There is no special code for physicians. What we call medical ethics is restating general ethical principles using medical terminology and with medical applications. The medical ethical codes can be derived from the basic law but the detailed applications require further intellectual effort, *ijtihad*, by physicians.

It seems that in Islam some ethical problems are solved via avoiding them. This is part of the Islamic teaching to avoid doubtful things. The prophet taught us to leave what causes us doubts to what does not cause such doubt: "*da' ma yuribuuka ila ma la yuriibuka*" (Bukhari, B2, p724).

The ethical theory of Islam is found in the 5 purposes of the Law, *maqasid al shari'at*. The five purposes are preservation of *ddiin*, life, progeny, intellect, and wealth. Any medical action must fulfill one of the above purposes if it is to be considered ethical. The basic relevant ethical principles of Islam to medical practice are derived from the 5 principles of the Law which are: intention, *qasd*; certainty, *yaqeen*; harm, *dharar*; hardship, *mashaqqat*; and custom, and *'aadat*.

In the Quran:

"We offered Trust to the Heavens, the Earth, and mountains, but they declined to bear it and were afraid of it, while Man undertook to bear it. He is so unjust and ignorant" (Al-Ahzaab:V72).

"God commands you to deliver trusts where they are due" (Al-Nisaa: V58).

In the Prophet's Tradition:

In an attributed tradition quoting Abu Sa'eed: "Among the worst people in God's estimate on the Day of Resurrection is a man who tells private things to his wife and she to him, and then he discloses her secret". (Muslim, B2, p1060).

Another version says: "One of the gravest cases of [betraying] trust in God's estimate on the Day of Resurrection is a man who tells private things to his wife and she to him, and then he discloses her secret" (Abu Dawood, B4, p268).

1-3: Virtue of keeping a secret

If a secret is of the kind that should not be publicly known, as we previously stated, and there is merit of not exposing a Muslim's Private Parts, and weaknesses in keeping it, as the above Hadith states "He who does not expose a Muslim, Allah will not expose him in this world and in the hereafter," and this is a right to every Muslim that should be observed by his brother Muslims. In Sunna, there is, for instance, the story of Ma'iz who admitted committing adultery (Haythami, B2, p120).

1-4: Respect for patient autonomy:

The principle of autonomy is derived from the *shari'at* principle of intention, *qa'idat al qasd*. Among all players in a medical scenario it is the individual patient who has the best and purest of intentions. He or she is best able to make decisions in the best interests of his or her life. Others may have other personal considerations that may bias their decision-making. It is for this reason that all decisions must be referred to the patient. No medical procedures can be carried out without informed consent except in cases of legal incompetence in which case the Law provides for other persons to make decisions on behalf of the incompetent patient.

Additionally, the meaning and the basis of right, autonomy and will the definition of "right" is that we consider rights as trumps against adequate reasons for political decisions. This means presenting rights theory as prevailing evidence against utilitarian view (Rasekh, 2001, p57-65). Therefore the informed consent for treatment is patient's right but exercising such right

requires patients' cooperation with physicians (Sovinski, 1998, p107-139). In many countries, applicants of some positions such as attorney, physician and registrar (registry office) should take a professional oath. Once they start their profession, they are prohibited from breaching their professional oath. Considering that the concept of the public order is more important than the imperative and mandatory laws, since violating any obligatory law does not mean that it is opposite to the public order, the maintenance of public order is to protect the public and their interests (Jafari, 1991, p65-66). It can be said that every rule related to the public order is an obvious example of the imperative laws. Evidently, good morals are an independent factor in limiting liberty of contracts that some people believe that it is not an obvious example of the public order. Although some other people believe that good morals are an example of public order, but due to its special importance in Iranian society, the legislators have preferred to mention it separately (Jafari, 2006, p717).

2-1: Bases of confidentiality:

Basis for medical confidentiality: it has psychological, social elements. The psychological basis is the private and privileged relationship of trust between the patient and the physician. In case the patients are not assured that information which revealed to physicians will be kept in confidence, they will not provide sufficient information to the physician for proper diagnosis. Such violation destroys future cooperation between them, because the patient will hold back some information from the caregiver thus impairing correct diagnosis.

On the other hand, medical confidentiality one of the accepted rules of professional social work, that affect how the relationship between social worker and client. Islam teachings also emphasized the necessity of secrecy, revealing the secrets of the deadly sins committed, the punishment has been deserved hereafter, Allah (S.B.W.T) says at Surratt Al Tahrīm:

(The Prophet confided a certain matter to one of his wives but thereafter she disclosed it, then Allah revealed what she had done to him. He made part of it known and another part not. And when he acquainted her with it, she said: 'Who has told you this?' He replied: 'I was told of it by the Knower, the Aware. If both of you (wives) turn to Allah in repentance, even though your hearts inclined; but if you support one another against him, (know that) Allah is his Guardian, and Gabriel, and the righteous among the believers; and thereafter the angels are his reinforces). S64, V3,4.

Narrated Abdullah Ibn Umar, May Allah is pleased with him Umar Ibn AlKhattab said, "When Hafsa bint Umar became a widow after the death of her husband I went to Uthman Ibn Affan and presented Hafsa (for marriage) to him. He said, "I will think it over". I waited for a few days, then he met me and said, "It seems that it is not possible", Umar further said, "I met Abu Bakr Assiddiq and said to him, "If you wish I will marry my daughter Hafsa to you". Abu Bakr kept quiet and did not say anything to me in reply. I became angrier with him than with Uthman. I waited for a few days and then Allah's Messenger, may the blessings and peace of Allah be upon him, asked for her hand, and I gave her in marriage to him. Afterwards I met Abu Bakr who said, "Perhaps you became angry with me when you presented Hafsa to me and I did not give you a reply?" I said, "Yes ". Abu Bakr said, "Nothing stopped me to respond to your offer except that I knew that Allah's Messenger, may the blessings and peace of Allah be upon him, has mentioned her, and I never wanted to let out the secret of Allah's Messenger, And if Allah's Messenger, had refused her, I would have accepted her (Al Bukhari, B9, p176).

2-2: Principles of the law for confidentiality:

Revealing patient secrets violates fidelity which is the private and privileged relationship of trust between the patient and the caregiver. Revealing secrets harms the patient under the principle of Injury, *qa'idat dharar*. Under the principle of hardship, *qa'idat al mashaqqa*, secrets may be revealed under necessity, *dharuurat*. The injunction to keep secrets is binding on both the caregiver and the patient. The patient should not make unnecessary revelation of negative things about himself or herself, *satr al mumin ala nafsihi* (Al Bukhari, B5, p2254). In cases of court litigation, The caregiver could testify in criminal cases that involve *dhulm*. The Qur'an forbids the revelation of the shameful unless there is *dhulm*. (S4: V148, S24: V19). The caregiver cannot give false testimony (Al Bukhari, B2, p939).

Principles of the law, *qawaid al sharia*: Five principles are recognized by most scholars: intention, *qasd*; certainty, *yaqeen*; harm, *dharar*; Hardship, *mashaqqat*; and custom or precedent, *aadat*. Each of the 5 principles is a group of legal rulings or axioms that share a common derivation by analogy, *qiyaas*. Purposes and principles of the law in transplantation: The following is a summary analysis of how the Purposes and Principles of the Law can be

applied to the legal and ethical issues of transplantation. Under the purpose of maintaining life, *hifdh al nafs*, there should be no injury to the health and human dignity of both the donor and the recipient. The associated side effects, complications, and abuses for both the recipient and the donor are treated under 2 Principles of Law: hardship, *mashaqqa*, and injury, *dharar*. Under the principle of hardship, necessity and hardship legalize what would otherwise be objectionable or risky, *al dharuurat tubiihu al mahdhuuraat*; lessening donor risk has precedence over benefit to the recipient, *dariu al mafasid muqaddamu ala jalbi al masaalih*; and the complications and side effects to the recipient must be a lesser harm than the original disease, *ikhtiyaar ahwan al sharrain*. Under the principle of injury, transplantation relieves an injury to the body, *al dharar yuzaal*, in as far as is possible, *bi qadr al imkaan*, but its complications and side effects should be of lesser degree than the original injury, *al dharar la yuzaal bi mithlihi*. Abuse of transplantation by abducting or assassinating people for their organs could lead to complete prohibition under the principles of dominance of public over individual interest, *al maslahat al aamat muqaddamat ala al maslahat al khhayat*; Prevention of harm has priority over getting a benefit, *dar'u al mafaasid awla min jalbi al masaalih*; and preempting evil, *dariu al mafasid*. The principles of custom and certainty are invoked in the definition of death and thus the earliest time for organ harvesting. Under the principle of custom, *al aadat*, braindeath does not fulfill the criteria of being a widespread, uniform, and predominant customary definition of death which is considered a valid custom, *alaadat muhakkamat*. The success of biotechnology in transplantation and other fields introduces a strong doubt, *shakk*, in the irreversibility of brain death. Under the principle of certainty, *yaqeen*, existing customary definition of death should continue in force until there is compelling evidence otherwise, *al asl baqau ma kaana ala ma kaana*. Selling organs could open the door to criminal commercial exploitation and may be forbidden under the purpose of maintaining life, the principle of preventing injury, the principle of closing the door to evil, *sadd al dharia*, and the principle of motive. Protecting innocent people from criminal exploitation is a public interest that has priority over the health interests of the organ recipient. The principle of motive, *qasd*, will have to be invoked to forbid transplantation altogether if it is abused and is commercialized for individual benefit because the purpose will no longer be noble but selfish. Matters are to be judged by the underlying motive and not the outward appearances, *al umru bi maqasidiha*. The concepts of legal competence, *ahliyyat*, and free consent, *adam al ikraah*, are invoked for organ donors. In order to avoid any doubts, decisions about donation of organs

should be made only by those giving the organs not because they own the organs but because, of all the players involved, they are the most intimately concerned and have no conflict of interest. They must, however, fulfill the conditions of legal competence which are: adulthood, soundness of mind, and no coercion. This practically excludes harvesting organs of minor children, the insane, or the unconscious.

3-1: When is Disclosure of Secrets Permissible?

As part of the professional contract between the physician and the patient, the physician must tell the whole truth. Patients have the right to know the risks and benefits of medical procedure in order for them to make an autonomous informed consent. The physician should be guided in his communication by the background and understanding of a patient. Some patients can be given a lot of information and they do not get disturbed. Some types of information agitate patients. The prophet enjoined talking to each person according to his ability to understand, *kalaam al naas hasba 'uquulihim*.

Secrets that the Sharia makes obligatory to keep as previously explained should not be disclosed except in certain cases:

1. Termination of Secrecy: If a secret is announced by someone other than the entrusted person, the latter is not to blame if he discloses it. Termination of secrecy is governed by the following:

- a. That the one to whom the secret belongs discloses it; consequently it is no longer a secret. Therefore, there is no harm in revealing it. Nevertheless, some details that have not been disclosed may still be secret if he hates revealing them or if disclosure will bring him harm. Hence, whoever commits a vile deed and openly says he so did, is excluded from those whose secrets should be kept, because he was first to disclose his own secret and never cared about what is said to him. The Prophet said, *"All the sins of my followers will be forgiven except those of the Mujahirin"* (those who commit a sin openly or disclose their sins to the people). An example of such disclosure is that a person commits a sin at night and though Allah, screens it from the public eye, then he comes in the morning and says: *"I did such and such (evil) deed yesterday, though he spent his night screened by his Lord (none knowing about his sin). And in the morning he removes Allah's screen from him"*. (Agreed upon). If a man is tempted to a sin and is not witnessed save by Allah, he should keep his

action veiled by the screen of Allah and turn to Him in repentance. But if he goes around uncovering the screen of Allah drawn upon him, telling this person and that about his ignoble deed. It is, and then as if he was seeking praise for the ignominy and bragging about the sin: Yet, by behaving so he becomes more and more detestable. Not exposing him will consequently be insignificant, since the lawfulness of keeping a secret and not exposing the sinner ends if he is one of those who rarely fall into sin and whose overt conduct is good and agreeable. Allah, highly exalted be He, said: (As for those of your women who are guilty of lewdness, call to witness four of you against them. And if they testify (to the truth of the allegation) then confine them to the houses until death takes them or (until) Allah appoints for them a way through new legislation). (S4:V15) Witnesses apparently are requested in this case to testify against the woman who is habitually sinning and is known for that. This reading of the verse is in conformity with what is known in the Sharia that a sinner who has turned repentant must not be exposed.

- b. When detriments and disadvantages that may befall the one for whom a secret is kept or anyone else no longer exist in any form, whether physically, psychologically, morally or financially. This is the case if the reason for lawfulness of secrecy is to prevent a harm that may ensue. But if the secret is to be kept because it is a trust, the lawfulness of keeping it does not cease unless the one to whom the secret belongs permits that it can be made known or he himself discloses it.
 - c. When the one to whom the secret belongs permits disclosure. If he does so, the keeper of a secret is at liberty. But if he tells it to someone, he should do so in the best manner and select the best parts of what he has heard.
 - d. When obligation to keep a secret ends at a certain date, and this is due.
 - e. When the status of the one to whom the secret belongs changes from those whose secret is lawfully permitted to be kept to those whose secrets should lawfully be exposed; as it is the case when one commits apostasy, or indulges in announcing his own sins.
2. Death of one which a secret belongs: In this case harm resulting from disclosure of secret often ceases to exist. Yet, there is more to it. Ibn Hajar reported: When he dies, keeping

that which has been necessary during his lifetime is no more so, except if there is something offensive. He further added: The question, it seems, has three aspects: it is admissible, probably recommendable when it involves something that means praising for a good deed or a virtue, or the like. It is disliked, when it involves talking about the misdeeds of a dead person; And it may be obligatory when it involves something one is morally bound to mention (Al Ghazali, 5/958). I add that such a right may be due to the deceased in the first place: which may, for instance, be a trust he has covertly left to someone's care and requested that the matter should not be made known. So the keeper must hand it over to the legatees.

3. When keeping is more harmful than disclosing: Hence Hadith scholars have uncovered the biographies of transmitters and certain incidents concerning them that are indicative of transgression, lack of faith, or no objection to telling lies or the like, not for the purpose of defaming Muslims but in order that those transmitters may be foiled, and people may not be deceived by the Hadiths they relate and take them as sound; Whereas they are either defective or forged. To allow the lie to exist and make legal consequences on the basis of Hadiths that are falsely ascribed to the Prophet is more harmful than disclosing lies of liars.

Prevention of hazards: If disclosure must be resorted to so as to save a Muslim from being killed or by telling a reliable person that a woman is alone with a man in order to commit adultery spying by way of exception, is rightful, as Al Nawawi quoted 'Al Ahkam Al Sultaniya' (The Ruler's Provisions) and deemed it "Good" (Al Ghazali 5/960) Jabir related that the Prophet said: *"Gatherings are a trust, so he who attends should not reveal a talk except in matters that are impermissible to be kept secret being detrimental to Muslims"*. Yet, this is a defective Hadith. (Abu Dawood, B4, p268): no comment on the part of Abu Dawud indicates that he takes it as an "approved" Hadith' said Al Zubaidi (Al Ghazali, B5, p278). The hadith means that when a Muslim attends a meeting and finds "present company" indulged in a vile act, he should not expose them nor disclose what he has seen except if it is one of the three cases stated, for it is a big evil and not exposing it will be greatly harmful (Ibn Hajar, 9,177-178).

Conclusion:

From the results of the present study: Confidentiality is very much important in all aspects of life. Islam gives preference to confidentiality. It is also considered main thing in psychology. Keeping confidentiality of one another is the main source of good relationships.

The important issue for physicians is that sometimes a physician is obliged to disclose patients' secrets due to necessity, and failure to do so may have risk of harm to the patient or others. This raises a conflict for the physician; "necessity" and "respect for the patient" at the same time (to treat the patient with respect and dignity and to keep patient's secrets confidential and necessity to prevent harm to patient or others).

Additionally, Confidentiality is very much important in institutional and national issues. There are many benefits of confidentiality which are as follows:

1. The one who keeps secrets achieves his objective.
2. Keeping secrets is the sign of honesty and honesty is the sign of faith.
3. Keeping secret is one of the quality of humans through which they reaches the peak point.
4. Trust on a person increases if he keeps the secret of his friends. Love increases among the people by keeping the secrets.

Secrets should not be disclosed except in certain cases, inter alia:

1. Termination of Secrecy.
2. Death of one which a secret belongs.
3. When keeping is more harmful than disclosing.

If one does not keep confidentiality it is very much harmful for him/her and also to others and become a cause of great loss.

Suggestions

The presentations from the perspective of ethics and professional social work in order to promote the application of the principle of religious texts, verses and sayings of consideration is given based on how many proposals can be referred to observe the Islamic professional because in today's academic and business environment of secrecy is necessary as it is not worthy and important and because of the importance of moral and religious principle entirely based on Quran and Hadith is offered to students, this could be the reason for the lack of attention to the principle of confidentiality. Therefore, the following suggestions are to improve the delivery of services to clients in the considered:

As noted in this paper the adaptive synchronization between Islamic ethics and principles of the rule is privacy professional social work, therefore, it is recommended that professors teach courses in the social work curriculum of

professional secrecy, to the point of view of Islamic morality and Islam, hereafter, because the rewards and punishments that maintain and disclose the secrets of own people there could be enforced by current students and employees to observe this principle are by current students and tomorrow employees. With the progress of science and the formation of electronic records, the use of Internet and cyberspace to expose secrets and private matters with which they are not interested in exposing the social workers in this area requires further attention. As noted by the word of professional secrecy word is so ingrained proper training to social workers in order to identify and understand the specific time and expose the secret circle of people who know the secret can be disclosed to keep the attention of the original.

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