



Medical Confidentiality Ethics: The Genesis of an Islamic Juristic Perspective

Sayyed Mohamed Muhsin¹

Accepted: 11 June 2021 / Published online: 28 June 2021

© The Author(s), under exclusive licence to Springer Science+Business Media, LLC, part of Springer Nature 2021

Abstract

The *Shari‘ah* affords considerable concern for human emotions, with its rulings seeking to remove the deliberate and accidental types of harm that may be inflicted on individuals or society. The principle of medical confidentiality protects patients’ dignity and avoids potential harm if otherwise practised. Texts from the Quran and Sunnah substantiate that unjustified disclosure of secrets is prohibited and whoever breaches confidentiality is to be punished. This paper explores the origins of Islamic ethical framework vis-à-vis dealing with privacy, particularly confidential information acquired by health professionals. For that, this paper attempts to explore various *āyāt* (Quranic verses) and *aḥādīth* (Prophetic traditions) related to privacy, and thus to analogically deduct various aspects of confidentiality in the context of medical ethics. As a result, it aims to discourse on key principles of medical confidentiality from an Islamic juristic perspective, discussing its types and conditions.

Keywords Medical confidentiality · Ethics · The Quran · Disclosure · Health care

Introduction

Dignity and privacy are two fundamental rights held by all individuals; therefore, they are bioethics’ core elements as well. For an effective and efficient medical practice, confidentiality is inevitable and viewed “as sacrosanct as the priest’s confessional” (Clegg, 1958). The medical confidentiality protects patients’ dignity as human beings and avoids potential harm if otherwise practised. Many jurisdictions maintain confidentiality by imposing penalties for violations of privacy.

However, the fact that medical confidentiality is not as straightforward as it is thought needs an in-depth exploration of the subject, looking to its different ethical

✉ Sayyed Mohamed Muhsin
muhsin@iium.edu.my; sayedmuhsinvt@gmail.com

¹ Department of Fiqh and Uṣūl al-Fiqh, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, Gombak, Malaysia

and religious dimensions. Presently, there is much difficulty in protecting privacy rights. To make matters worse, modern systems of medicine have made confidentiality more complex. At a hospital, hundreds of employees ranging from X-ray technicians to billing clerks are privy to patients' private information in a short time. As such, professionals and institutions cannot control the use of private information.

The deep interrelation between medicine and religion dates to ancient times when priests used to do physicians' job. Christian, Islamic, and Jewish scholars have played their paramount role in the origin and growth of bioethics by primarily emphasizing care and compassion for all walks of life (Gustafson, 1975).

In Islam, human life is perceived as a unique blessing from Allah, and therefore, it needs to be honoured and protected. "If anyone slays a human being, unless it be [in punishment] for murder or spreading corruption on earth, it shall be as though he had slain all mankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all mankind" (Quran, 5: 32). Though this verse is applied in general, it directly serves as a governing rule for those working in health care since they deal with human life in the first place. Besides, Islam considers seeking treatment as a recommended and meritorious duty on every sick person. Prophet Muhammad says, "Never Allah sent a disease without sending its cure" (al-Bukhārī, 1987 AH).

From an Islamic perspective, medical ethics is all about the inner and outer disposition of physician towards patients. His demeanour and approach towards patients reflect his relationship with God in fulfilling his responsibilities. *Iḥsān* (doing what is beautiful) means "worshipping God as if you are seeing Him, for though you do not see Him, He, verily, sees you" (al-Bukhārī, 1987 AH). It is deeply linked to Islamic ethics because it entails a perfect and professional way of acts from a Muslim.

Broadly speaking, Islamic discourse on ethics is scattered into different subjects, including Islamic jurisprudence, Quranic exegesis, and scholastic theology (Sid-diqui, 1997, pp. 424–431). The Islamic ethical framework, an inevitable part of the *Sharī'ah*, operates as a governing rule to regulate daily routines, professional duties, and interpersonal relationships. The *Sharī'ah* proffers guidelines for contemporary issues, as the duty of *fuqaha* is to derive legal rulings from the texts for emerging matters. The Quran declares, "no single thing have We neglected in Our decree" (6: 38). Since the *Sharī'ah* offers deep care and concern for human emotions, it gives substantial importance for his privacy and its preservation from all forms of illegitimate intrusions (Baḥr, 1983, p. 35; Al-Najjār, 1990, p. 300). It unequivocally demands respect for individual safety and privacy. Texts from the Quran and Sunnah substantiate that unjustified disclosure of secrets is prohibited, and whoever breaches confidentiality is to be punished here and hereafter.

Medical ethics from Islamic and general perspectives are not separate and exclusive; rather, both share many themes and features. For example, Islamic medical ethics gives due attention to the four foundational principles in modern medical ethics: respect for autonomy, non-maleficence, beneficence, and justice (Beauchamp & Childress, 2001). However, the Islamic bioethical perspective is largely grounded on the textual references, making it religious and ethical simultaneously. The merit in

doing so is that if religious instructions are intertwined with ethics, then the confidence, sincerity, commitment, and decision-making of Islamic health professionals providing medical care will significantly impact recipients. However, it is essential to note that the beneficiaries of the Islamic ethical framework are not just Muslims alone; rather, it goes beyond religious boundaries. In other words, everyone can benefit from Islamic juristic principles, given that the recipients are convinced of Islam's universality and its orientation towards the benefit for all humanity. This aspect is pinpointed in Islamic ethics in general.

All the available studies on medical confidentiality survey the relevance of protecting patient privacy and duties of health care professionals concerning the same. However, in many cases, even though they discuss the exceptions when breaching confidentiality becomes acceptable, they fail to discourse the genesis of its Islamic ethical perspective. Books such as *Ifshā' al-Sirr al-Ṭibbī wa Atharuhu fī al-Fiqh al-Islāmī* by Aḥmad (2007) and articles like Ebrahim's (2011) *Confidentiality vis-à-vis HIV/AIDS and their Related Issues: A Case Study in the Light of Islamic Medical Jurisprudence* discuss multiple meanings of confidentiality in the context of Islamic law and expounds Islamic perspectives of medical confidentiality. They explain the situations wherein revealing patient's information, like premarital medical checkup report, psychological problems, contagious diseases, and report of birth and death, is permissible.

The book *Islamic Biomedical Ethics: Principles and Application* by Sachedina (2012) gives a new outlook of Islamic biomedical ethics based on legal theories and moral reasoning to make decisions without compromising the *Sharī'ah* principles. The co-authored book, *Contemporary Bioethics: Islamic Perspective* by Mohammad Ali Al-Bar and Hassan Chamsi-Pasha (2015), deliberates on common sources and origins of ethical principles in Islam, followed by a discussion on the ethical virtues of health care, including integrity and conscientiousness. Tavaokkoli and Nejdarsarvari (2015) explicate in their article, *Analysis of Medical Confidentiality from the Islamic Ethics Perspective*, the ongoing trend of breaching confidentiality in the present world. They further discuss the Islamic concept of confidentiality and the benefits of keeping information confidential.

In summary, based on the investigation of literature related to the current study, it is apparent that some works deal with medical confidentiality from an Islamic perspective. However, no significant study has been found adequately dealing with the genesis of the Islamic juristic perspective of medical confidentiality. Therefore, this paper attempts to analyse the bases of confidentiality in Islam, primarily based on textual references, and place them in medical confidentiality contexts. Also, this research examines the types and conditions of medical confidentiality.

Overview of Medical Confidentiality

Due to the multiplicity of its nature, extent, and concept according to time, place, and individuals, it is difficult to give a standard definition for medical confidentiality. Privacy has a broader denotation than confidentiality. Further, in the health care

context, privacy and confidentiality are distinguished from each other as the former is the patient's right, whereas the latter is the professional's obligation.

The Arabic word *sirr* (plural: *asrār*), meaning 'secret', refers to "anything that needs to be concealed, as its disclosure leads to harm" (al-Najjār, 1990, p. 382). The Islamic Fiqh Academy explains confidentiality as "whatever someone reveals to somebody else with either a prior or subsequent request to keep it secret. This includes matters that are conventionally known to be confidential in nature. In addition, the term *sirr* also refers to a person's private matters or defects of which he is loath to make public" (Resolution No: 79/10/8). Hence, a matter is regarded confidential based on one of the three reasons, i.e. (1) the confider's request, (2) the custom, and (3) the party's objection to his information to be revealed.

Some Islamic jurists define medically confidential information as "anything that affects the ease of the patient, his dignity and family" (Ibn Adwal, 1997, p. 46). Another definition is "all matters that come to the knowledge of a physician, whether or not it relates to the patient's disease, treatment, and related situations, regardless of whether the physician gets the information from the patient or becomes privy to it during the patient's treatment" (Nujaydah, 1992, p. 149). From an Islamic juristic perspective, disclosure (*ifshā'*) means "allowing access to a third party" (Riyād, 1989, p.160) or "revealing one's secret to another" (Qāyid, 1987, p. 23). It also means "The deliberate revelation of a person's secret, which is entrusted in a situation where *Sharī'ah* neither stipulates disclosure nor allows" (Ibn Adwal, 1997, p. 20).

The duty of confidentiality is applied to all medical data directly or indirectly connected to the patient, such as matters related to diagnosis, prognosis, health status, medical condition, consultation, and treatment. Identifiable personal information including, but not limited to, written, oral, computerized, or visual clips, photographs, audio records, and laboratory reports are also regarded as confidential regardless of whether these are obtained formally or informally (Qāyid, 1987, p. 32).

It should also be noted that the principles of confidentiality are applied to doctors who directly deal with patients and all health care members. Hence, the staff involved in treatment via handling, recording, storing, having access to records, or coming across any confidential information must abide by the duties of confidentiality and its ethical protocols. The same rules apply to students, trainees, and interns in the health care field.

Operation of Islamic Ethics

Akhlāq (morality) and *adab* (manners) are two frequently used terms to denote ethics. *Akhlāq* is moral philosophy, while *adab* is the actual practices of morality. *Adab* "addresses what is the proper, or improper, behaviour of man, while the first (*akhlāq*) addresses why such actions are proper or otherwise (Hashi, 2011, p. 122)". Noble character and ethics are considered as part of faith (*īmān*). In the light of a hadith, the central purpose of the Prophetic mission was to perfect moral character.

Good character refers to a good relationship with oneself, his Creator, and the creatures. Besides, one's perfection regarding his adherence to Islam is determined based on the excellence in his character. Encouraging believers to focus on behaviour, the Prophet promised great rewards in the hereafter. Notably, according to the Quran, worship is preordained for enrooting good manners in humankind. The five daily prayers restrain people from shameful and unjust deeds (Quran, 6: 45), whereas *zakāt* helps purify their wealth and improve character by being merciful and compassionate towards the underprivileged (Quran, 9: 103). In addition, *zakāt* restrains one from the evil of greed. Fasting helps elevate and sharpen the consciousness towards Allah and trains people to control their tongue from using it for bad causes (al-Bukhārī, 1987 AH).

*Maqāṣid*¹ have three levels namely *darūriyyāt* (necessities), *ḥājjiyyāt* (needs) and *taḥsīniyyāt* (embellishments). Ethics are primarily included in *taḥsīniyyāt*. Al-Rāzī explains that *taḥsīniyyāt* means to stabilize people's attitude towards noble character (Al-Rāzī, 1997). Similarly, al-Shāṭibī elucidates *taḥsīniyyāt* as the adherence to noble customs and fighting against evil characters (Al-Shāṭibī, 2004).

In the moral spectrum, actions are categorized into four types: (1) right and obligatory actions, (2) wrong and prohibited actions, (3) optional and morally neutral (neither wrong nor obligatory) actions, and (4) optional but morally meritorious and praiseworthy actions. Some of them are called supererogatory acts that are done as performance beyond what is owed and required. In Islamic law, human acts are widely categorized as permissible (*ḥalāl*) and forbidden (*ḥarām*). Both are further explained with five categories as follows: (1) obligatory (*wājib*), which refers to that must be done; the agent is rewarded upon its fulfilment and punished upon his failure to do; (2) recommended (*mustaḥabb*), which implies the acts that are encouraged to do and rewarded, though no punishment on not doing; (3) permissible (*mubāḥ*) which denotes neutral acts with an option of doing or ignoring based on personal choice, without reward or punishment; (4) forbidden (*ḥarām*) referring to the acts that are rewarded for not doing and punished upon doing; and (5) disliked (*makrūh*) refers to the acts that are discouraged from doing, from which the abstinence is promised of rewards, though no punishment upon doing.

The abovementioned five rules are also applied to medical confidentiality in terms of its disclosure and concealment according to situations it faces and consequences it causes.

¹ *Maqāṣid* are also consensually perceived as the five universal legal purposes: protecting religion, body, intellect, progeny, and wealth. Noticeably, all nations and communities have acknowledged the importance of these five foundational objectives. *Maqāṣid* is defined as "modalities intended by the *Sharī'ah* for people to achieve beneficial purposes, or to save the interests of the public in their specific actions". Concisely, *maqāṣid* are 'underlying values and purposes of the Islamic law' (Auda, 2008).

Islamic Textual Reference on Medical Confidentiality

Seeking Consent

The *Sharī'ah* unequivocally demands individual safety and privacy and acknowledges the importance of personal space; thus, it prohibits any intrusion and access without consent (Humaym, 1981). His home is a private place where others do not interfere in his matters. Due to this intrinsic nature of home, the Quran puts strict rules for asking permission before entering somebody's home and when any member of the same family enters each other's room (Quran: 27, 28, 58; al-Qurṭubī 1427 AH). The Prophet stated, "If you ask permission three times and you were not given, then you should turn back" (Muslim 2011, 2: 262). Based on this, al-Nawawī (d. 1277) points out that scholars perceive asking permission legally required (1421 AH). The main concern here is related to the prevention of the deliberate and unintended violation of privacy. As for medical confidentiality, it is meant to prevent unauthorized access to and unlawful disclosure of patient's information and protect patients from harm. In addition, this ruling shed light on the importance of seeking a patient's consent if any disclosure is needed for a better cause. To minimize problems of disclosing patient details, seeking explicit consent from the patient is required based on the legal and medical guidelines.

The explicit consent is granted when the patient clearly expresses, orally or through written format, that he has no objection to releasing the report. Conversely, implicit consent is granted if the patient gives clear signs through an incident or situation, such as entering the consultation room with his/her partner or appointing one's son as a surrogate decision-maker. In other words, when it seems reasonable to infer the patient's consent based on his actions, it is regarded as implicit. In both cases, using patient information is allowed only for what the consent is given for.

For the consent to be valid in health care, the following conditions should be met: (1) The consent has to be made with complete freedom, and the patient must be in a state of full consciousness; (2) the consent for disclosure should be from the patient himself; (3) it should be given before the disclosure; and (4) the consent has to be explicit or implicit with evidence (al-Najjār, 1990).

Legal Ruling on Medical Confidentiality

In the *Sharī'ah* perspective, a legal ruling on medical confidentiality is decreed based on two central aspects. First, secrets and personal matters are not to be disclosed as emphasized in the Quran and Sunnah. Second, the doctor–patient relationship is built on a medical contract that the patient's details are to be kept confidential. Consequently, any breach is regarded as a violation.

The two Quranic verses below shed light on the importance of fulfilling contracts: (1) "And fulfil (every) covenant. Verily, the covenant will be questioned about" (17: 34); and (2) "Verily, Allah commands that you should render back the trust (*amānah*) to those, to whom they are due" (4: 58). Allah prohibits violation of trust (al-Anfāl: 27), and whoever breaches it is answerable before God. Exegetists

comment that the *trust* mentioned in the verse includes secrets shared by a person. In addition, al-Rāzī (1997) emphasizes that this verse implicitly prohibits to disclose people's defects. Underscoring the Quran, the Prophet said, "Fulfil the trust of those who entrust you, and do not betray those who betray you" (Abū Dāwūd, 3: 289). Though trust embodies moral and material aspects, morality is given added significance, as it is difficult to duly compensate if violated. In *Sharī'ah*, fulfilling *amānah* (trust) such as keeping secret is obligatory while its disclosure is counted as *khiyānah* (betrayal), the opposite of *amānah* (al-Ṭabarī, 1968 AH). Since confidentiality is built upon trust, its unjustified breach is hypocrisy, which is not expected from a professional practitioner. As far as medical confidentiality is concerned, it is a promise and trust given by the professional to the patient, which should not be broken without a higher and valid cause.

The jurists of the four *Sunni* schools reached a consensus that all types of secrets need to be preserved without disclosing them. (al-Samarqandī, 1428 AH; al-Nafrawī, 1425 AH; al-Ghazālī, 1427 AH; Ibn Muffliḥ, 1428 AH; al-Rahibānī, 1421 AH; al-Mardāwī, 1419 AH). Therefore, an inexcusable disclosure of patient privacy is prohibited considering the textual evidence and the contractual obligation.

If a person can maintain confidentiality, it portrays his control over his lusts (ʿĪsā, 1993). Likewise, it is reasoned that someone trustworthy in keeping secrets is more potent than somebody who is faithful in financial transactions. Furthermore, some scholars regard disclosure of secrets among the major sins (al-Haytamī, 1397 AH). Thus, maintaining confidentiality is expected from everyone, and if he practises otherwise, it is primarily against the professional standards while it contrasts to religious demands of a practising Muslim.

Examples from the Prophetic Tradition

The Quran provides an allegory that underlines the importance of confidentiality observance. The word *sirr* (secret) has been used 32 times in the Quran in various forms and situations. Once, the Prophet confided a secret to his wife Ḥafṣah on the condition that she should not disclose it. However, she later disclosed it to ʿĀ'ishah, another wife of the Prophet. Allah described this as an act of transgression and commanded them to repent for breaching confidentiality. Subsequently, the Prophet stopped visiting his wives for one month as punishment for the disloyalty to his privacy (Quran, 66: 3–4). There are different opinions on the reason for Prophet's anguish, whereas according to the hadith reported by al-Bukharī, it is due to the mentioned reason (Book 46, Hadith 29). This incident legally advocates that any illegal breach of confidentiality is to be punished. Based on this, any breach of medical confidentiality also legalizes punishment because it discloses the privacy and violates the medical contract.

In Prophetic tradition, we find some examples that draw attention to the importance of respect for privacy and confidentiality maintenance. Once, the Prophet asked Anas, his young servant, to go a place to complete a task. Later, Anas' mother inquired him about the task, to which he replied that it was a secret. Understanding

the honesty of her son and his respect for confidentiality, she became happy and replied, “Son, never reveal the secrets of the Prophet to anyone” (Muslim, 2: 392; Al-‘Asqalānī, 1421 AH). This demonstrates how even the younger companions of the Prophet dealt with confidentiality. Seemingly, the secret concealed by Anas must be unimportant because serious secrets would not be revealed to him considering his age. Still, he gave utmost concern to privacy.

In an incident, ‘Umar bin Khaṭṭab asked Uthmān if the latter would like to marry his daughter Ḥaḥṣah. However, Uthmān respectfully declined this offer saying, “I do not want to marry now”. Then, ‘Umar asked the same to Abū Bakar, to which he kept silent. Saddened by this, ‘Umar talked to the Prophet. The Prophet consoled him, “Allah will marry Uthmān to someone better than your daughter, and your daughter to someone better than Uthmān”. Later, the Prophet married Ḥaḥṣah while Uthmān married Ummu Kulthūm, the daughter of the Prophet. After both getting married, Abū Bakar revealed to ‘Umar, “I declined your offer because the Messenger of Allah had told me earlier that he wanted to marry Ḥaḥṣah. Therefore, I did not want to reveal his secret. Had the Messenger of Allah given up marrying Ḥaḥṣah, I would have definitely married her”. Here, Abū Bakar could have told ‘Umar about the Prophet’s wish, making ‘Umar happy without hurting the Prophet, but he did not reveal it.

Some days before his passing, the Prophet shared a secret with his daughter Fāṭimah, to which she could barely conceal her tears. Then, he shared another secret that made her cheerful. The first secret was that his passing was near, while the second one was that she would be the first from his family to follow him. Among others who were present on that occasion were ‘Ā’ishah, the Prophet’s wife, who wanted Fāṭimah to reveal the secret, but Fāṭimah declined it. However, later after the demise of the Prophet, ‘Ā’ishah again asked Fāṭimah to tell her about the secret, and only then she revealed it. The refusal at first was due to her respect for the secret of the Prophet, and the disclosure was considering the benefits of the *ummah*. The above-mentioned three incidents imply various approaches to keeping privacy, which can appropriately be placed in situations related to medical confidentiality. Mainly, these incidents emphasize the importance of respecting privacy and not disclosing them, even the matter is insignificant or unimportant. It is primarily because people cannot completely understand the intentions and concerns of the confider, then the ideal approach is to keep the secret as it is. In addition, if there is a greater benefit for others without causing harm to the confider, the disclosure is also allowed as the third incident implies. One of the valid justifications for revealing information in the case of medical confidentiality is overriding public interest.

Legitimate Disclosure

Certain types of disclosure are regarded legitimate with conditions. The primary criteria for the exception of confidentiality are derived from the following *ḥadīth*: The Prophet said, “(Secrets) of a meeting are *amānah* (trust) except three meetings in which they talk about plans for bloodshed, illicit sexual desire, and illegal usurping of wealth” (Sunan Abī Dāwūd, 4: 268). This *ḥadīth* explains that if the secrets are

about committing the mentioned major sins, it is legitimate to disclose them. This Prophetic tradition is a guiding principle for the valid exception of medical confidentiality practice, i.e. protecting patients and/or others from serious harm. Therefore, from *Shari'ah* perspective, medical confidentiality is not an absolute duty. Instead, it has certain limits that arise when breaching is inevitable to protect the patient's higher benefits, physician, and third party.

For example, in clinical practice, notification of communicable disease is an impeccable warrant to tolerate the sacrifice of confidentiality, and that is arguably meant to protect multiple public interests. The health worker will be regarded as negligent if he fails to disclose the contagious nature of the disease to those likely to be infected. He denies them the chance to take precautionary measures to protect themselves and the public. In infectious diseases, notifying the partners is to be ensured as they are at high risk of instant infection. Notably, some infectious diseases, such as sexually transmitted diseases, pose a threat to individuals, whereas some other types imperil a group or society, as in cholera or COVID-19; both types require proper disclosure to the concerned people. The contemporary jurists have explained that considering more harms in maintaining the confidentiality of HIV patient, the disclosure to those at the risk of infection is obligatory for the doctors.

Zaynab, the wife of 'Abd Allāh, accompanied another lady to visit the Prophet and clarify some doubts. However, when they found Bilāl sitting with the Prophet, they requested him to consult the Prophet on their behalf, on the condition that Bilāl should not reveal their names to the Prophet. Nevertheless, when the Prophet asked about their names after listening to Bilal, he revealed them. Regarding this disclosure, scholars differ in their explanations. First, Bilal knew that the condition was not binding; instead, they asked him not to reveal their names since they believed it irrelevant in that situation. Second, Bilāl realized that answering the Prophet's question is obligatory and more critical than keeping confidentiality demanded by the confider. Based on this, the legality of disclosing patient privacy is established if an overriding duty demands it. At times, protection of patient privacy is *prima facie* duty, whereas its disclosure is an actual duty.

As a significant step towards creating necessary medications and treatments, biomedical research is inevitable for society. It is an important method to get advanced treatments and protect people from experiencing dangerous circumstances. Research is one area where confidentiality needs to be reasonably breached for the higher purposes that otherwise cannot be attained. However, the disclosure must be within limits by not causing avoidable harm to the patient or others and not revealing more than what is needed (Ghiath Alahmad & Kris Dierickx, 2018).

Principles of Harm Elimination in Medical Confidentiality

Most, if not all, legal mandates and professional guidelines acknowledge the protection of patients and others from serious harm as a valid justification to breach confidentiality. In addition, nearly all cases wherein the breach of confidence are justified are based on eliminating the risk of serious harm to the patient or others in one way or another. According to the World Medical Association, the legality of medical

confidentiality disclosure is established in some situations, which include: (1) if the patient consents; (2) if the disclosure of confidentiality is the only way to prevent a real and imminent threat of harm to the patient or others; and (3) if the law demands the disclosure (Williams, 2015).

Having studied medical confidentiality from a *Sharī‘ah* perspective, the Islamic Fiqh Academy encapsulates exceptions for medical confidentiality observance into two situations. First, a breach is tolerated if confidentiality protection poses more significant harm than the disclosure would. Second, a breach is accepted if it is in line with a public interest that outweighs the individual benefit gained from confidentiality protection (Resolution No: 79/10/8).

The abovementioned organizations identified the prevention of harm as a valid reason to breach the confidentiality of the patient. Likewise, several legal bodies and ethical committees from various countries also explained the prevention of harm as a justified excuse from observing medical confidentiality.

The Islamic ruling over the disclosure of privacy is based on the harm it produces. As al-Ghazālī (d. 1111) explains, disclosing privacy is a sign of disloyalty. Meanwhile, the disclosure is prohibited if it poses harm, and it is a wicked act if it is disclosed without any risk of harm being present.

As part of protecting people’s privacy and dignity, the *Sharī‘ah* prohibits slander, cursing and insulting, backbiting, gossiping, and defaming. It is because secret is a dangerous weapon against a person. That is why jurists have strictly mentioned that one must choose a trustworthy and reliable one to share his secrets. The seriousness of confidentiality increases if its disclosure causes harm to any one of the five essential objectives of the *Sharī‘ah*.

Confidentiality after the death of Patient

The duty of confidentiality extends to even after the death of the patient. The Prophet has asked to “recall the virtues of the dead and avoid speaking of his bad matters” (Sunan Abī Dāwūd, 4: 275). Likewise, another ḥadīth states, “Whoever washes a dead and hides him (his defects), he is forgiven 40 times”. The *Fuqahā’* have stressed that the secrets of the dead should be concealed, and it is strictly prohibited to disclose any defects of the deceased if somebody happens to know about them. Notably, it also sheds light on the legality of disclosing positive things, as long as they are beneficial to the deceased. On certain occasions, matters like post-mortem results are subject to certain exceptions and can be disclosed for meeting certain ethically justifiable and more vital social concerns.

Types and Conditions of Medical Confidentiality

Based on the origin and nature of the prohibition against the disclosure, Islamic jurists have classified secrets into three groups as follows:

1. Secrets demanded by the *Sharī‘ah*: The *Sharī‘ah* demands that some issues—like marital secrets—be kept confidential for the fulfilment of legitimate interests.
2. Secrets required by concerned parties: If the confider asks explicitly or implicitly to keep his words secret, its disclosure is deemed an act of dishonesty and a breach of trust.
3. Secrets determined by profession: Certain matters are regarded as secrets by the nature of a profession, like the job of a physician, *muftī*, advocate, and banker. The medical profession’s nature demands the duty of confidentiality by the nature of profession (Nujaydah, 1992). In other words, any job that entails direct or indirect access to personal matters demands the duty of confidentiality.

The importance of medical confidentiality is that it is protected by the abovementioned three factors, i.e. *Sharī‘ah*, concerned parties, and profession.

With regards to the confider, privacy is categorized into (1) general secrets and (2) specific secrets. The former is meant to benefit a group of people or nation, while the latter is for the benefit of a particular person or to respect his interests. Therefore, medical confidentiality is a general secret from the view that it is upheld by the public interest. At the same time, it is a private secret because its immediate beneficiary is an individual and his relatives.

Conditions of Medical Confidentiality

In the *ḥadīth*, “If a man tells you something then looks around, it is a trust” (Abū Dāwūd, 4: 268.), the Prophet explains an axiomatic factor to decide if a matter is confidential or not. A person’s gesture of looking around implies that he ensures the absence of any third party overhearing his words. A matter is regarded as confidential from the *Sharī‘ah* perspective if it meets four conditions:

1. An individual or a small group knows the private matter. If the matter is known to the public, it is no longer a secret. (Aḥmad, 2002).
2. The disclosure of the matter is likely to cause harm to any person. It is viewed that the prohibition of disclosure in all situations revolves around the presence and absence of harm. In other words, disclosure is prohibited whenever harm is predicted and if otherwise, it is allowed.
3. If the information is shared in a confidential relationship, it automatically becomes confidential.
4. The information itself is of a private, personal, or intimate nature.

Having surveyed the conditions, it is obvious that a matter is subject to medical confidentiality based on the following three elements:

1. The health care professional acquires this information through the course of his profession as well as in his capacity as a health care provider. It is not confined only to what the patient reveals, instead of to all that the physician knows by the privilege of his job, treatment, or consultation with the patient, including the information that the patient may not be privy to. This information does not include those acquired via reasons other than the health care duty.
2. Patient's interest to keep the matter as secret.
3. The information is not already known to the public.

Concluding Remarks

From the Islamic ethics perspective, medical confidentiality is of great importance as it directly deals with effective health care delivery. Earlier and contemporary jurists have specifically explained the obligatory duty for medical workers regarding confidentiality.

The texts from the Quran and *aḥādīth* underscore the necessity of confidentiality in all aspects of health care even after the death of patients. However, it is not an absolute duty but restricted with limits; its breaching is allowed to meet specific higher objectives. In *Sharī'ah*, elimination of harm is a fundamental requirement upon every capable human being. Remarkably, Islamic ethics and medical ethics share several common features, being harm elimination a central value in both. The frequent phrase articulated in discussions surrounding the validity in disclosure of confidential medical information is 'prevention of serious harm'. In other words, protecting patients or others from serious harm is generally deemed a justified warrant to breach confidentiality. However, since confidentiality is an essential principle in medical practice, disclosure can only be considered a final choice, which is to be exercised only after other alternatives are exhausted.

All data, received by health care professionals while at job, which the patient and his relatives do not agree to disclose, are considered medically confidential. In *Sharī'ah* perspective, a legal ruling on medical confidentiality is decreed based on two central aspects: (1) All secrets are not to be disclosed, and (2) medical contracts require patient information to be kept secret. The seriousness of confidentiality increases if the disclosure poses harm to the *ḍarūriyyāt* (essentials) in *maqāsid al-sharī'ah*. In light of juristic discourses, a matter is regarded medically confidential if it meets three conditions: (1) A health worker gathers the information as a part of his profession, (2) the patient's interest in the concealment, and (3) the information is unknown to the public.

Looking at the types of secrets according to their origin and nature of the prohibition against the disclosure, medical confidentiality appears to be protected by three significant factors which are (1) demand of *Sharī'ah*, (2) need of the concerned party, and (3) requirement of the profession. In addition, medical confidentiality is deemed general secret as it is a public interest, while it is also a private secret as the immediate beneficiary is an individual and his relatives.

Acknowledgements I would like to thank the anonymous reviewers for their helpful comments on earlier drafts of this manuscript.

Declarations

Conflict of interest I confirm that I have no conflict of interests.

References

- Ahmad, 'Alī Muḥammad. (2007). *Ifshā' al-Sirr al-Ṭibbī wa Atharuhu fī al-Fiqh al-Islāmī*. Dār al-Fikr al-Jāmi'ī.
- Ahmad, Mūsā 'Abbās. (2002). *Asbāb al-Ibāḥah fī Jarā'im al-I'tidā' 'alā al-Sharaf*. Cairo: Kuliyat al-Sharī'ah wa al-Qānūn.
- Alahmad, G., & Dierickx, K. (2018). Ethics of research biobanks: Islamic perspectives. *Biopreservation and Biobanking*, 16(3), 179–185. <https://doi.org/10.1089/bio.2017.0067>
- Al-'Asqalānī, I. H. (1421 AH). *Faḥḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*. Riyadh: Dār al-Salām.
- Al-Bukhārī, Muḥammad bin Ismā'īl, *al-Jāmi' al-Ṣaḥīḥ* (Cairo: Dār al-Sha'b, 1987).
- Al-Bar, M. A., & Chamsi-Pasha, H. (2015). *Contemporary bioethics: Islamic perspective*. Springer (Open Access). Doi: <https://doi.org/10.1007/978-3-319-18428-9>
- Al-Ghazālī, Abū Ḥāmid. (1427 AH). *Iḥyā' 'Ulūm al-Dīn*. Demascus: Dār al-Fikr.
- Al-Khaḍīrī Y. I. (2012). *Ifshā' al-Asrār al-Ṭibbiyyah Wa al-Tijāriyyah: Risālah Fiqhiyyah Taṭbīqiyya*. PhD diss., Riyadh: Jāmi'at al-Imām Muḥammad bin Sa'ūd al-Islāmiyyah.
- Al-Mardāwī, 'A. D. (1419 AH). *Al-Inṣāf fī Ma'rifaṭ al-Rājiḥ min al-Khilāf*. KSA: Wizārat al-Shu'ūn al-Islāmiyyah.
- Al-Najjār, 'A. Abd Allāh Mabruk (1990). *al-Darar al-Adabī wa Madā Ḍamānuhu fī al-Fiqh al-Islāmī wa la-Qānūn: Dirāsah Muqararanah*. Cairo: Dār al-Nahḍah al-'Arabiyyah.
- Al-Rāzī, F. (1997). *al-Maḥṣūl fī 'Ilm al-Uṣūl*. Beirut: Mu'assasat al-Risālah.
- Al-Samarqandī, I. Z. (1428 AH). *Shar'at al-Islām ila Dār al-Salām*. Lebanon: Dār al-Bashā'ir al-Islāmiyyah.
- Al-Shāṭibī, A. I. (2004). *al-Muwāfaqāt*. Dār al-Fikr al-'Arabī.
- Al-Ṭabarī, A. J. M. (1968). *Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān* (3rd ed.). Maktabat Muṣṭafā al-Ḥalabī.
- Auda, J. (2008). *Maqasid al-Sharī'ah as philosophy of islamic law; a systems approach*. London, Washington: IIIT.
- Baḥr, M. K. (1983). *Ḥimāyat al-Ḥayāt al-Khāṣṣah fī al-Qānūn al-Jinā'ī Dirāsah Muqararanah*. Cairo: Dār al-Nahḍah al-'Arabiyyah.
- Beauchamp, T. L., & Childress, J. F. (2001). *Principles of biomedical ethics*. Oxford University Press. <https://doi.org/10.1136/jme.28.5.332-a>
- Clegg, H. A. (1958). Professional ethics. *British Medical Journal*, 1 (Suppl 2787), 341–345. PMID: PMC2029273, PMID: 13536544. <http://europepmc.org/backend/ptpmrender.fcgi?accid=PMC2029273&blobtype=pdf>
- Ebrahim, A. F. M. (2011). Confidentiality vis-a-vis HIV/AIDS and other related issues: A case study in the light of Islamic medical jurisprudence. *Asian Bioethics Review*, 3(4), 333–341. <https://doi.org/10.1353/asb.2011.0040>
- Ghaly, Mohammed (ed.). (2016). *Islamic Perspectives on the Principles of Biomedical Ethics*. London: World Scientific Publishing. <https://www.worldscientific.com/doi/pdf/10.1142/q0014>
- Gustafson, J. M. (1975). *The contributions of theology to medical ethics*. Marquette: Marquette University Press. <https://doi.org/10.1353/pbm.1976.0044>
- Hashi, A. A. (2011). Islamic ethics: An outline of its principles and scope. *Revelation and Science*, 1(3), 122–130.
- Ibn Adwal, S. (1997). *Katmān al-Sirr wa Ifshā' uhu fī al-Fiqh al-Islāmī*. Jordan: Dār al-Nafā'is.
- Muḥammad, 'Abd al-Laṭīf Humaym. (1981). *Jarā'im al-I'tidā' 'alā al-Ḥayāt al-Khāṣṣah 'al-Ḥaqq fī al-Khuṣūṣiyyah' wa 'Uqūbatuhā fī al-Sharī'ah al-Islāmiyyah*. MA Thesis. Cairo: Kuliyat al-Sharī'ah wa al-Qānūn.
- Mufliḥ, I., Muḥammad, A. A. A. (1985). *al-Furū' fī Fiqh al-Ḥanbalī* (4th ed.). Beirut: 'Ālam al-Kutub.
- Mufliḥ, I. Al-Dīn, S. (1428 AH). *Al-Nukat wa al-Fawā'id al-Saniyyah 'alā Mushkal al-Muḥarrar*. Beirut: Mu'assasat al-Risālah.
- Muslim, A. Ḥ. (2011). *Ṣaḥīḥ Muslim*. Beirut: Dār al-Jīl wa Dār al-Āfaq al-Jadīdah.

- Nujaydah, A. H. (1992). *Iltizāmāt al-Ṭabīb fī al-‘Amla al-Ṭibbī*. Dār al-Nahḍah al-‘Arabiyyah.
- Qāyid, U. (1987). *Al-Mas’ūliyyat al-Jinā’iyyah al al-Ṭabīb ‘an Ifhsā’ al-Sirr al-Mihmah: Dirāsah Muqāranah*. Cairo: Dār-Nahḍah al-‘Arabiyyah.
- Riyād, M. (1989). *al-Mas’ūliyyat al-Jinā’iyyah li al-Aṭibbā’ wa al-Ṣayādilah*. Dār al-Maṭbū‘āt al-Jāmi‘h al-Iskandariyyah.
- Sachedina, A. (2012). *Islamic biomedical ethics: Principles and application*. Oxford: Oxford University Press. https://doi.org/10.1111/j.1468-2265.2012.00757_12.x
- Siddiqui, A. (1997). Ethics in Islam: Key concepts and contemporary challenges. *Journal of Moral Education*, 26(4), 424–431. <https://doi.org/10.1080/0305724970260403>.
- Tavaokkoli, S. N., & Nejadsarvari, N. (2015). Analysis of medical confidentiality from the islamic ethics perspective. *Journal of Religion and Health*, 54(2), 427–434. <https://doi.org/10.1007/s10943-013-9795-x>
- Williams, J. R. (2015). *Medical ethics manual* (3rd ed.). Ferney-Voltaire: World Medical Association.

Publisher’s Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.