

PATIENT AUTONOMY: JUXTAPOSING THE PREDOMINANT BIOETHICAL PRINCIPLES WITH THE ISLAMIC LAW MODEL*

Abstract

Respect for Patient Autonomy has replaced the old principle of Paternalism in medical law and ethics. Paternalism is the opposite of autonomy and it holds that the physician by virtue of knowledge and skill is able to override the patient's autonomous decision in determining what course of action is best for the patient. An incident of the right to autonomy is the right of a patient to reject medical or surgical treatment for any reason or no reason at all, even if such decision could lead to the patient's death. This work, embracing doctrinal research technique evaluates the extent of a patient's freedom of objection to restorative medical or surgical procedure under Islamic jurisprudence. The work discovers that whereas western bioethical principles are founded on human reasoning and prioritizes absolute right to self determination. Ethical considerations under Islamic law are of divine origin and human life and health are regarded as a trust which should not be jeopardized at will without a genuine basis. It is observed also that contemporary bioethical principles are sometimes of limited help in resolving certain dilemmas and maybe inherently conflicting whereas Islamic jurisprudence presents a more holistic moral compass in resolving this dilemma.

Keywords: Patient Autonomy, Principilism, Islamic law, informed consent

1. Introduction

Patient autonomy simply refers to the right of a patient to determine if to be treated or how to be treated. Thus, a patient cannot generally be treated without giving consent. The doctrine of patient autonomy originated in the realm of medical research as a prerequisite and etiquette to protect human subjects. But it has gained recognition as a basic condition for all medical procedures or investigation. Also, the concept of '*Principilism*' as a bioethical which entails respect for autonomy, beneficence, non-maleficence, and justice were established as the four principles of ethics to guide the practice of medicine.¹ They are regarded as the ethical foundation of medical practice.² Research indicates that these principles have roots in Islam, with variations only in its purport, meaning and application.³ The World Health Report 2000 indicates that application of autonomy is 'universal,' whilst recognizing cultural diversity in its meaning, purport and application.⁴ Though, Western ethical principles and Islamic medical ethics are dissimilar in their underpinning precepts, but with key similarities in their practice. Their dissimilarities can be discerned through a process of juxtaposition.

2. Philosophical Foundations of the Western and Islamic Bioethical Principles

The concept of *Principilism* is a recent concept formulated in the 1970s to take care of newly emerging ethical dilemmas in medical practice. It is based on the philosophical ideals founded principally on human reason and experiences act as a framework 'that expresses the general values underlying rules in the common morality'. Human reasoning is regarded as superior and all-encompassing such that man single-handedly possesses the competence to formulate codes to regulate his life. The idea of life centres on and stresses materialism. It is individualism and rights centred, (the right to self-rule). Individual

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¹ R Gillon. 'Medical ethics: Four principles plus attention to scope.' *BMJ* 1994; 309:184-8.

² TL Beauchamp, L Walters. '*Contemporary issues in bioethics*.' 5th edition. Belmont, CA: Wadsworth; 1999; MA Habiba. 'Examining consent within the patient-doctor relationship.' *J Med Ethics*. 2000; 26:183-7.; EJ Emanuel, S Joffe. 'Ethics in oncology'. In: RC Bast, DW Kufe, RE Pollock et al., eds. *Cancer medicine*. 5th edition. Hamilton: B.C. Decker, Inc.; 2000:1145-63.; JW Berg, PS Applebaum, CW Lidz et al. 'Informed consent: legal theory and clinical practice.' Oxford: Oxford University Press; 2001.

³ S Aksoy, A Elmali. 'The core concept of the four principles of bioethics as found in Islamic tradition.' *Med Law* 2002; 21:211-24; AV Bommel. 'Medical ethics from the Muslim perspective'. *Acta Neurochir Suppl*. 1999;74:17-27; S Aksoy, A Tenik. 'The four principles of bioethics' as found in 13th century Muslim scholar Mawlana's teachings.' *BMC Med Ethics*. 2002; 3:E4.

⁴ L Justo, J Villarreal. 'Autonomy as a universal expectation: a review and a research proposal.' *Eubios J Asian Int Bioeth*. 2003;13:53-7.

interests or welfare dominates the collective public interest.⁵ This model proved largely ineffective because some scenarios emerged which necessitated the application of moral considerations. Several medical ethicists encountered challenges in applying the four ethical principles in complicated ethical situations. The principles have often been challenged for their want of any logical relationship with each other and their regular self and cross contradictions in their applications. Their postulations are feeble and contradictory because there is no single or broader moral theory from which they all originate.⁶ Also, these ethical precepts are neither legally binding nor morally enforceable by conscience.

On the other hand, The Islamic ethical principles, derives from God's (Allah) revelation to His Apostle. Therefore, the supernatural stipulations become the guiding principle. It is a divine decree, which is founded or based on concept of the unity of God, the Originator and Lawgiver. It recognizes moral precepts applicable to all spheres of human life directly including that of medical practice or biomedical research. The general basis of all beliefs or practices being the cultivation of monotheistic culture, with the objective of creating tranquillity within the individual self, family, and general society by a deliberate submission to the will and actualization of the commandments of God.

Bioethical principles are derived and implemented within general values provided by the three sources of Islamic law. The first and the highest source is the Qur'an, (Allah's words revealed to Prophet Muhammad through Angel Jibreel) which entails & provides for all aspects of human living. The second Source is the Hadith/Sunnah, (the Sayings, traditions, or approvals of Prophet Muhammad). The third is *Ijtihad*, (the concerted effort of qualified Muslim jurists to derive the applicable legal ruling to an issue).⁷ Islamic law stipulates the duty of the individual, the family or the Public, and the Health care provider in all facets of life including birth, ill health, and demise. It is the major influence on all public and private activities. There is no distinction between affairs of State or Public (or governance) and religion, and no part of the human life is regarded as wholly outside or separated from religious regulations.⁸ Thus, Islam is not just a religion in the ordinary sense of the term, but a comprehensive ideology and way of life. Islam is a cosmopolitan religion that is timelessly transcendent and relevant. Its ordinances are intended at ensuring the collective welfare of mankind. It also stresses the pre-eminence of morality over temporal advantages a person stands to benefit.

3. Autonomy

Out of the four components of Principlism, respect for Autonomy (self-rule or determination) is regarded as the most pre-eminent ethical principle that dominates and supersedes all others.⁹ It is founded on the conception that individuals possess innate value that ensure or maintains his capacity to make independent choices that legitimizes resultant actions. Autonomy represents the individual's freedom to elect and execute his or her decisions, reached freely on the basis knowledge. This concept is equally intended to safeguard patients from paternalistic encroachment of their body. It is however deficient of a productive idea of a doctor-patient relationship when intended to further the patient's best interest, as required by the ethical theory of beneficence. Respect for autonomy in the Western tradition stresses 'individualism,' self-satisfaction and actualization.¹⁰ Thus, it generally precludes the intrusion of a third party to provide assistance without the express permission of the individual patient. This therefore illustrates situations where Respect for autonomy negates the ethical precept of beneficence.

4. Islamic Law approach to the Concept of Patient Autonomy

Islamic law does not leave man to behave, as he pleases, but rather provides a complete set of regulations for all spheres of living and a model is illustrated in the life of the Prophet. Islam equally allows man, the power of volition and liberty to either accept or decline the divine command: '*There*

⁵ United Nations Educational, Cultural and Scientific Organization (UNESCO). Universal Declaration on Bioethics and Human Rights. Paris: UNESCO; 2005.

⁶ D Clouser, G Bernard . 'A critique of principlism.' *J Med Philos.* 1990;15:219-36.

⁷ AS Dar, A Khitamy. Bioethics for clinicians. 21. *Islamic bioethics.* CMAJ. 2001;164:60-3.

⁸ AA Nanji, 'Medical ethics and the Islamic tradition.' *J Med Philos.* 1988;13:257-75.

⁹ HT Engelhardt. *The foundations of bioethics.* Oxford and New York: Oxford University Press; 1986.

¹⁰ P Marshall, B Koenig. 'Accounting for culture in a globalized bioethics.' *J Law Med Ethics.* 2004;32:252-66.

*shall be no compulsion in (acceptance of) religion: the right path has become clear from wrong'.¹¹ And did we not show him the two Paths (of good and evil)?¹² Meaning that, 'We have not abandoned him after bestowing on him the senses of thought and reason so that he may have to find out his own path, but We have also shown him and opened for him both the paths of good and evil, virtue and vice, so that he may evaluate them carefully and select or adopt either way on his own volition and responsibility. This same subject has been expressed in Surah AL-Insaan, Cap. 76: vs. 2-3, thus: 'Indeed We created man from a mixed sperm-drop, to test him, and so We made him capable of hearing and seeing. We showed him the way, whether to be grateful or disbelieving. Thus, the autonomy of man to select his own path is safeguarded, and is clearly apparent in the story of Prophet Adam, who freely elected to violate God's prohibition by consuming from the forbidden fruit of the Garden of paradise; in practice, for the doctor, where for instance, a patient elects to exercise autonomy in ensuring privacy so that, particularly for females, modesty can be protected. This may be evident by a request to be attended to by a doctor of the same-sex if possible, and where available, the request should be implemented. However, this may be disregarded in cases of extreme necessity, and thus if a physician or expert of the same sex as the patient is not available, Islamic law permits the patient to be treated by a doctor of the opposite sex.¹³ Islam recognizes Respect for autonomy as Allah appointed man as His vicegerent (representative) on earth and says: *We have honoured Adam's children.*¹⁴*

Islamic law recognizes autonomy as dictated by the rule that no man should usurp (encroach) the right another without their authorization or consent.¹⁵ Islamic medical ethics is founded on rights and duties simultaneously (such as preservation life, seeking treatment) and social obligations of the people. Individual autonomy is subject to the greater good of the overriding Collective or Public interests.¹⁶ This contradicts the United Nations Educational, Scientific and Cultural Organization (UNESCO) proclamation that stresses the dominance individual interest over the Public interest.¹⁷ One of the fundamental aims of Islamic law is to prevent or mitigate harm to citizens and the public as well as averting all that negatively disturbs them, which is understood in western bioethical parlance as Non-maleficence.¹⁸ The distinction being that in Islamic medical jurisprudence, beneficence and non-maleficence may override individual autonomy in some situation.¹⁹ This is illustrated by the maxim that *'if a less substantial instance of harm and an outweighing benefit are in conflict, the harm is forgiven for the sake of the benefit.*²⁰ The rights of God, the general Public, as well as the individual are taken into account in making decisions, as the preeminent requirements of beneficence indicated in the promotion of virtue and non-maleficence indicated by the avoidance of harm.²¹ In the Islamic legal context, the principles do not repudiate, but supplement each other in ensuring a more constructive informed consent. In situations where the patient is incompetent to make choices, the principle of beneficence and respect for autonomy expects the doctor to exert frantic effort to ascertain what the patient could decide and what is in furtherance of his best interest. Islamic law stresses the importance of knowledge and research that are beneficial and promotive of the five purposes of the Law (*maqasid*

¹¹ (Qur'an [2:256].)

¹² (*Suratul Balad, Cap. 90 vs. 10*)

¹³ Y Mustafa., 'Islam and the four principles of medical ethics' (2013) *J Med Ethics* 1-5

¹⁴ The Glorious Qur'an, Chapter 17, Verse 70.

¹⁵ S Aksoy, A Elmali, 'The core concept of the four principles of bioethics as found in Islamic tradition.' *Med Law* 2002; 21:211-24.

¹⁶ S Aksoy, A Elmali . 'The core concept of the four principles of bioethics as found in Islamic tradition.' *Med Law* 2002; 21:211-24; S Aksoy, A Tenik . 'The 'four principles of bioethics' as found in 13th century Muslim scholar Mawlana's teachings.' *BMC Med Ethics*. 2002; 3:E4.

¹⁷ United Nations Educational, Cultural and Scientific Organization (UNESCO). *Universal Declaration on Bioethics and Human Rights*. Paris: UNESCO; 2005.

¹⁸ *The international Islamic code for medical and health ethics*. Kuwait: Islamic Organization for Medical Sciences; 2005; 2: 121-276.

¹⁹ M. Levey. 'Medical ethics of medieval Islam with special reference to Al-Ruhawi's 'Practical Ethics of the Physician.' *Transactions of the American Philosophical Society*. 1967; 57:Part 3.

²⁰ HE Fadel. 'Ethics of clinical research: an Islamic perspective.' *J Islam Med Assoc*. 2010;42:59-69.

²¹ A V Bommel. 'Medical ethics from the Muslim perspective.' *Acta Neurochir Suppl*. 1999;74:17-27 ;J A Carrese, LA Rhodes. 'Western bioethics on the Navajo reservation. Benefit or harm?' *JAMA*. 1995;274:826-29.

al-shari'a), namely the Preservation of Religion, Life, Progeny, Intellect, and Wealth.²² Thus, for any medical decision to be considered as ethical, it must promote one of the above purposes of the law. Islam enjoins biomedical research, which renders a public benefit and is of overwhelming advantage that outweighs the risks involved.²³ Allah says: *[Those who] ponder upon the creation of heaven and earth and say 'O God, you have not created this in vain.'*²⁴ The Prophet is reported to have said: *Allah has not sent any disease without sending a cure for it.*²⁵ This indicates the mandatory nature of Research, especially for health care providers to seek the most efficient treatment for illnesses. Islamic law is inherently progressive and adaptable, to the changing necessities of human life as illustrated by the maxim '*necessities override prohibitions.*'²⁶ Islamic medical ethics accentuates health maintenance and disease avoidance. Encouraging virtue and preventing vices are mandatory actions (*Wajib*) that should be implemented by people. Allah says: *Let there arise out of you, a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong. They are the ones to attain felicity.*²⁷

Thus, it is mandatory for doctors to discourage or prevent risky or dangerous actions and conducts that frustrate individual and communal health, such as promiscuity, pollution, drug or substance abuse, and smoking.²⁸ These actions are limited to the realm of individual autonomy in the Western conception and are consequently considered as personal choices.²⁹ In Islamic Law, an individual's liberty of choice is limited by the harm it occasions to others and even the individual. Thus, individual's autonomy is constrained by the Islamic legislation on non-maleficence. Beneficence to others is a rewardable act of worship, as it is ordained by God³⁰ and the Prophet, who is reported to have said:

He who relieves the distress of a believer out of the travails of the world, Allah would relieve his suffering from the sufferings of the Day of Resurrection, and he who finds respite for one who is hard pressed, Allah would grant him ease in the Hereafter, and he who covers (the faults) of a Muslim, Allah would hide his faults in the world and in the Hereafter. Allah is in support of a servant as long as the servant is at the back of his brother.³¹

5. Limitations of Patient Autonomy

The bioethical perplexities currently emerging have occurred mainly due to contradictory thought systems, postulating conflicting human motivations and solution. Contemporary science emerged in the West in an atmosphere of antagonism of the church and was constructed based on a materialistic and temporal viewpoint. In other words, developments in science and technology grew with hostility against religion and faith. Some secularists opine that religion is merely an obstacle to liberty and realization of humanity and that adherence to the divine supernatural legislation would occasion adversity for the people.³² Advancements in the field of medicine are occasioning serious reconsiderations of the traditional norms. As science investigates the limits of human life, religious regulations appear even more crucial. Religion is rooted at the foundation of many cultures, and most religions stipulate regulations for analyzing and resolving moral issues to reach a proper outcome. Modern patients are

²² M. Al-Allaf. 'Islamic divine law (shari'ah). The objectives (maqasid) of the Islamic divine law'. Available from www.muslimphilosophy.com/ma/works/maqasid.pdf [Accessed 2011 Jan 10].

²³ HE Fadel. 'Ethics of clinical research: an Islamic perspective'. *J Islam Med Assoc.* 2010;42:59-69.; C. Weijer, B Dickens, EM Meslin. 'Bioethics for clinicians: 10. *Research ethics.*' *CMAJ.* 1997;156:1153-7.

²⁴ *The Glorious Qur'an*, Chapter 3, Verse 191.

²⁵ Sahih al-Bukhari. Kitab al-tibb. Bab ma anzala Allahu da' ilia anzala lahu shifa'. Hadith no. 5354; Sahih al-Bukhari Khan MM (translator). Vol 9, Book 71, *Hadith* No 582.

²⁶ HE Fadel. 'Ethics of clinical research: an Islamic perspective.' *J Islam Med Assoc.* 2010;42:59-69.

²⁷ *The Glorious Qur'an*, Chapter 3, Verse 104.

²⁸ The international Islamic code for medical and health ethics. Kuwait: Islamic Organization for Medical Sciences; 2005; 2: 121-276.

²⁹ M Ip, T. Gilligan, B Koenig, TA Raffin. *Ethical decision-making in critical care in Hong Kong.* *Crit Care Med.* 1998;26:447-51.

³⁰ *The Glorious Qur'an*, Chapter 99, Verses 7-8.

³¹ Sahih Muslim. Kitab al-dhikr wal-du'a' wal-tawba wal-istighfar. Bab fadl al-ijtima'ala tilawa al-qur'an wa 'ala al-dhikr. Hadith no. 2699.; Sahih Muslim. Siddiqui AH (translator). Book 35, Number 6518:

³² ZR Al-Najjar. 'Islamizing the teaching of science: a model in challenge and response.' In AAA Sulayman. 'Islam: source and purpose of knowledge: proceedings and selected papers of Second Conference on Islamization of Knowledge 1402 AH/1982 AC.' Herndon, Virginia: International Institute of Islamic Thought; 1988: 133-51.

not merely passive subjects of Paternalistic medical decisions, but possess their own religious values and doctrines about how they would prefer to be treated by the health care providers. The dogmatic and uncritical dubbing of foreign ideas and practices have occasioned discord and conflict within various faiths. Instances of Cross-cultural collision (due to cultural diversity) are on the rise in the West, and have realized the need to re-evaluate their existing social structures and policies.³³

The World Health Report 2000 indicates an expectation by the WHO that individual autonomy would be universally acceptable despite recognizing the cultural diversity that influences its application.¹⁰ Over the last 10 years, a plethora of scholars have made a case for the global recognition of a universal standards for bioethics,³⁴ while others have posited that it is imperialistic and unethical to overlook the traditional norms and moral values of a major part of the world, while imposing other foreign dominant cultural values on all.³⁵ Particularly, Autonomy in the West is prevalent & dominant in all spheres of social and individual life, including issues of life and death. Individuals possess virtually absolute liberty to deal with their bodies as they please.³⁶ The same freedom of self-rule is employed to justify Euthanasia in western societies.³⁷ This conflicts with non-Western norms, which portends that collective decision making and spiritual considerations should have relevant contributions in personal choice making.³⁸ End-of life decisions, that enjoys wide acceptability in the West, is perceived quite differently by non-western Cultures, especially Islam, which believes in 'life after death.'

In Islamic viewpoint, life is an inviolable trust from the Creator (Allah). It must be safeguarded with great care. Individual well-being is regarded as a religious responsibility, and the seeking of cure is mandatory.³⁹ The preservation of human life is regarded as one of the greatest virtues and obligation regardless of sex, age, race, religion, origin, status, or productivity of life.⁴⁰ Due to the same perspective and consideration, suicide is totally forbidden: *Do not kill yourselves: for verily Allah is to you Most Merciful.*⁴¹ When doctors have confirmed that ailment of the Patient is terminal and that treatment would no longer be beneficial to the patient, they are enjoined to give glad tidings and utter comforting words to the patient. Allah says: *O you who believe! Fear Allah and be with those who are true (in word and deed).*⁴² Allah also says: *When their appointed time comes, they shall not be able to put it back or forward by a single moment.*⁴³ Speaking the truth is a moral obligation. However, doctors should apply their professional judgment in revealing an unfavourable diagnosis that may adversely impact on the psychology and health of the patient.⁴⁴ They should prepare the patient's and family's hope for more realistic and plausible outcomes by rendering spiritual, psychological, and social support and providing palliative care.

³³ JA Carrese, LA Rhodes., 'Western bioethics on the Navajo reservation. Benefit or harm?' *JAMA*. 1995;274:826-29.; LJ Blackhall, ST Murphy, G Frank, et al. 'Ethnicity and attitudes toward patient autonomy'. *JAMA*. 1995;274:820-5; 33; LJ Blackhall, ST Murphy, G Frank, et al. 'Ethnicity and attitudes toward patient autonomy.' *JAMA*. 1995;274:820-5.

³⁴ S.R. Benatar. 'Achieving gold standards in ethics and human rights in medical practice.' *PLoS Med*. 2005;2:e260; JY Kim. 'Dying for growth: global inequality and the health of the poor.' Monroe, Maine: Common Courage Press; 2000. P Farmer. 'Infections and inequalities: the modern plagues.' Berkeley, California: University of California Press; 2001.

³⁵ V. Adams. 'Randomized controlled crime: post-colonial sciences in alternative medicine research.' *Soc Stud Sci*. 2002;32:659-90.; L. Cohen. 'Where it hurts: Indian material for an ethics of organ transplantation. *Daedalus*. 1999;128:135-65.; L. Butt. 'The suffering stranger: medical anthropology and international morality'. *Med Anthropol*. 2002;21:1-24; discussion 25-33.; L. Turner . 'From the local to the global: bioethics and the concept of culture.' *J Med Philos*. 2005;30:305-20.

³⁶ J. Harris. *The value of life: an introduction to medical ethics*. London: Routledge; 1985.

³⁷ J.A. Branch. Autonomy and the health sciences: clarifying a broad concept. *Integr*. 2003;2:20-33.

³⁸ J.D Blum, N. Talib, P. Carstens, et al. 'Rights of patients: comparative perspectives from five countries.' *Med Law*. 2003;22:451-71.

³⁹ AS Dar, A Khitamy. 'Bioethics for clinicians.' 21. *Islamic bioethics*. CMAJ. 2001;164:60-3.

⁴⁰ K M Hedayat, R. Pirzadeh. 'Issues in Islamic bio-medical ethics: a primer for the paediatrician'. *Paediatrics*. 2001; 108:965-71.

⁴¹ *The Glorious Qur'an*, Chapter 4, Verse 29.

⁴² *Ibid*, Chapter 9, Verse 119.

⁴³ *Ibid*, Chapter 16, Verse 61.

⁴⁴ JA Carrese, 'Rhodes LA. Western bioethics on the Navajo reservation. Benefit or harm?' *JAMA*. 1995;274:826-29.

In many parts of the world, such as Asia and Africa, social and family and collective norms may affect the individual's exercise of autonomy.⁴⁵ Islam recognizes the family as an essential sociocultural Unit. It aims also ensure respect for autonomy and familial integrity, as the individual's wellbeing is ultimately connected to his or her family and community. Maintaining family relations and dutifulness are regarded a moral ordainment from God. *Those who join together those things which Allah hath commanded to be joined...*⁴⁶ The Prophet said: *The best of you are the ones who treat their families best.*⁴⁷ Some researchers opine that the family-oriented tradition infringes individual autonomy.⁴⁸ This contention is faulty because autonomy and the three other ethical principles of Principilism ought not to be mutually exclusive. Only few patients are truly able to make truly or totally autonomous decision every time. A doctor may decline a patient's medical decision that is without any scientific or logical justification, especially if it is hazardous, as required by the ethical rule of non-maleficence. A physician may equally decline to respect a patient's choice for a particular treatment if it is opposed to his conscience. In such cases, the doctor should try to discourage patients from illogical choices and suggest or advocate what they feel is in the patient's best interest, as required by the principle of beneficence. Also, complicated decisions, along with diminished comprehension ability, often prevent fully autonomous choices.⁴⁹ After a free interaction, a patient's choice to consent to the doctor's best judgment does not connote that patient autonomy has been infringed or denied.⁵⁰ When a patient is incompetent to make an independent choice or makes disputable decisions, the parents/guardian or the relevant health care provider should be authorized to decide in the best interests of the patient. A beneficent act or counsel of a doctor or family member should not be perceived as inconsistent with a patient's autonomy. The condition is that there should be a free interaction among all concerned with a collective ratified aim. Thus, autonomy must be viewed from a cross-cultural perspective of dialogue, rather than being a Western cultural monologue that is independent of universal cultural interactions.⁵¹

It is now generally agreed that ethical considerations are part and parcel of medical practice. Absence of a moral impetus or faith-based guidance and the predominant materialism may evolve a diminished sense of obligation and empathy in dealing with the available resources, and life. Principles and regulations alone are insufficient protection against possible cases of abuse of patients by some physicians for treatment or research. The Islamic ideals of God (Creator), Virtue and vices, the Hereafter, and so on are all intended at ensuring adequate guidance to man's conduct at the individual and collective level. The Muslim mind-set should be more conscious and protective because it centres on life in this world as a preliminary to the Hereafter and that every account or returns of worldly stewardship would be rendered before God.⁵² *(Yet) is each individual in pledge for his deeds.* Thus, Muslims are urged to be sincere, humble, and regularly avoid worldly temptations so as to earn the pleasure of the Almighty Allah. The Prophet was reported to have said: *If you forsake yearning for the material goods of the world, God will love you. If you forsake desire for the property of other people, people will love you.*⁵³ Ethics ought to be an innate aspect of every conduct of a Muslim, which will be regarded as a rewardable *'ibada* (religious act of worship) if intended and implemented for divine pleasure. As a result, the doctor -patient relationship and ethical lines are more efficiently safeguarded in Islamic model compared to Western models.

⁴⁵ J.D. Blum, N. Talib, P. Carstens, et al. 'Rights of patients: comparative perspectives from five countries. *Med Law.*' 2003;22:451-71.; The Glorious Qur'an, Chapter 4, Verse 29;The Glorious Qur'an, Chapter 9, Verse 119;The Glorious Qur'an, Chapter 16, Verse 61.; RM Yousuf, AR Fauzi, SH How, et al. 'Awareness, knowledge and attitude towards informed consent among doctors in two different cultures in Asia: a cross-sectional comparative study in Malaysia and Kashmir, India.' *Singapore Med J.* 2007;48:559-65.; MC Pang. 'Protective truthfulness: the Chinese way of safeguarding patients in informed treatment decisions.' *J Med Ethics.* 1999;25:247-53; AM Rashad, PF MacVane, M Haith-Cooper. 'Obtaining informed consent in an Egyptian research study'. *Nurs Ethics.* 2004;11:394-99.

⁴⁶ *The Glorious Qur'an*, Chapter 13, Verse 21.

⁴⁷ Sunan al-Tirmidhi. *Abwab al-manaqib 'an Rasal Allah*;Eyl' Bab ma ja' fi fadl man ra'a al-Nabiy ,21?..11 wa Sahbih. Hadith number 3985.

⁴⁸ K. Bowman 'What are the limits of bioethics in a culturally pluralistic society?' *J Law Med Ethics.* 2004;32:664-9.

⁴⁹ J. Lynn. 'Measuring quality of care at the end of life: a statement of principles.' *J Am Geriatrics Soc.* 1999;45:526-7.

⁵⁰ A. Meise, M. Kuczewski. 'Legal and ethical myths about informed consent.' *Arch Intern Med*; 1996;156:2521-6.

⁵¹ K. Bowman 'What are the limits of bioethics in a culturally pluralistic society?' *J Law Med Ethics.* 2004;32:664-9.

⁵² *The Glorious Qur'an*, Chapter 52, Verse 21.

⁵³ Sunan Ibn majah. *Kitab al-zuhd.* Bab al-zuhd fi al-dunya. Hadith no. 4102.

In conclusion, the idea of a unified or universal guideline of bioethics seems needless. Medical ethics needs to widen its reach and recognize cultural variations and moral standard of other cultures. Although autonomy still occupies a high pedestal in Bioethics, it should not be an unfettered choice of the patient to make even unreasonable or detrimental choices, but rather a joint obligation between the patient, family, and the physician. Doctor's involvement and beneficence promotes a patient's ability to make independent decisions. Respecting patient autonomy does not indicate that the physician's expertise, experience or reasoning should be neglected. It should revolve around a mutually agreed upon common objective, taking into account the patient's cultural, psychological, and spiritual needs. The final decision must be taken by the person concerned.

6. Islamic Law Approach to the Right of Objection to Medical Treatments

As a General rule, the application of medicinal therapy or treatment or the seeking of it is permitted, on the authority of the hadeeth narrated by Abu'l-Darda' (may Allaah be pleased with him) who said: 'The Messenger of Allaah (peace and blessings of Allaah be upon him) said: *'Allaah has brought down the ailment and the cure, and has made for cure for every ailment. So treat diseases, but do not use anything prohibited (Reported by Abu Dawood, 3376)*, and the hadeeth Narrated by Usaamah ibn Shurayk (may Allaah be pleased with him) who said: *'The Bedouin asked, 'O Messenger of Allaah, should we not treat illnesses?' He said: 'Treat illnesses, for Allaah did not make any ailment except He has also created the remedy, except for one illness.'* They asked, *'O Messenger of Allaah, what is it?' He said: 'Old age.'*⁵⁴ The majority of schools (Hanafi and Maaliki) opined that medical treatment is mubaah (permissible). The Shaafi'is, and al-Qaadi, Ibn 'Aqeel and Ibn al-Jawzi of the Hanbali School, opine that it is mustahabb (recommended), because of the hadeeth *'Allaah has brought down the illness as well as the cure, and has made for every ailment its cure. So treat ailments, but do not use anything haraam,'* along with other ahaadeeth which contain the order to seek treatment. They opine that: Because the Prophet (peace and blessings of Allaah be upon him) applied cupping and other types of treatment evidences the permissibility medical treatment. According to the Shaafi'i School, treatment is regarded as *mustahabb* in the absence of the certainty of its benefit, but when treatment would be beneficial (such as dressing an injury), then it is *waajib* or Mandatory (an instance could be blood transfusions in certain circumstances).⁵⁵ According to the Hanafi jurisprudence, there is a distinction between medical treatments whose curative prowess possess are definite and those that are uncertain. Treatments whose curative effects are certain, are obligatory and cannot be declined. However, the curative effect of several other medical treatments, are not assured. Generally, therefore, it is permissible to refuse the probabilistic classes of treatments and there is not a universal principle that mandates the acceptance of any and all treatments.

Man is duty bound to care for his body, as it is a sacred trust from the Almighty Creator. However, that does not imply he is mandated to do so by any and all means necessary. For instance, where a patient is unconscious and can no longer breathe unaided or feed on their own and without depending on ventilation or artificial nutrition and hydration for living, without any possibility of recovery. It is therefore permissible to 'pull the plug' in such scenarios. Converse, it is prohibited for a person deliberately engage in acts that would actively worsen one's health condition.⁵⁶ According to Mufti Ebrahim Desai, the purpose of the Shari'ah is the protection and maintenance certain core areas such as life, Resources, dignity and honour, sanity, etc. If these purposes are threatened, the law permits and encourages serious measures to be employed for their safeguard and reinstatement. For instance, A person facing risk of loss of property (due to robbery, etc.), is allowed to kill, maim or disable his

⁵⁴ (Reported by al-Tirmidhi, 4/383, no. 1961. He said: This is a saheeh hasan hadeeth. See also Saheeh al-Jaami', 2930).

⁵⁵ (See Haashiyat Ibn 'Aabideen, 5/215, 249; al-Hidaayah Takmilat Fath al-Qadeer, 8/134; al-Fawaakih al-Dawaani, 2/440; Rawdah al-Taalibeen, 2/96; Kashshaaf al-Qinaa', 2/76; al-Insaaaf, 2/463; al-Aadaab al-Shar'iyyah, 2/359ff, Haashiyat al-Jumal, 2/134).

⁵⁶ Is it permissible to refuse medical treatment for a treatable disease and allow myself to die?

Available at

<https://www.reddit.com/r/islam/comments/2tofas/is_it_permissible_to_refuse_medical_treatment_for/> Accessed on 25 October 2018.

attacker, in order to protect property. If a modest lady is falsely alleged of sexual indecency, the false accuser is liable to canning and disqualification from rendering testimony as punishment, etc.

Also, concerning the protection of life, many regulations of the Shari'ah have been established or maintained for that purpose. The human Life and the body which is a vehicle transporting and harbouring the soul, are the exclusive property of Allah. Consequently, it is perceived in the ability of Humans as trustees concerning the trusts. For the maintenance of life, Islam has accorded sufficient flexibility and some lifts prohibitions mandated by extreme necessity.⁵⁷ Such situation evidences of the essence attached to the preservation of life in the Sharia. Therefore, if the prohibition of items which are ordinarily forbidden is relaxed for the protection of life, definitely, it follows logically that where the refusal of medical treatment, which is a tradition of the Prophet [pbuh], would occasion a loss of life, the seeking of treatment thus also becomes obligatory.⁵⁸

Summarily, seeking treatment is generally not mandatory according to some jurisprudential schools, some scholars rely on the hadith of the woman suffering from epilepsy who approached the Prophet seeking cure as additional evidence that it is not mandatory to seek treatment⁵⁹ except – as opined by some school, where the treatment would certainly benefit. Where, there is no certainty of benefit, or where it is likely to occasion suffering on the patient, it is permissible to reject treatment.⁶⁰

7. Conclusion

Informed Consent is presently acknowledged as a foundation of medical practice. It is a product of the four key precepts of medical ethics, which are Respect for patient autonomy, non-maleficence, beneficence, and Justice. Islamic law equally maintains and supports the fundamental ideals of these four essential ethical principles, but with little variations in their purport and application. In the World Health Report 2000, the World Health Organization opined that the recognition or wish of for self-determination was of cosmopolitan application, while recognizing cultural diversity, relativism or pluralism in its understanding and execution. The idea of self-rule applies well in anchoring the privileges of patients against paternalistic encroachment and in instances of negligence. However, strict adherence towards the Western grounded reasoning of bioethics and self-rule is deficient in resolving moral predicaments arising in the present-day medical practice, as it precludes the role of religion or faith as a supernatural force in human life. In Western bioethics, the concept of individualism and autonomy dominates virtually all decisions in social and individual life, an idea incompatible with the values of numerous Non-western societies. In Islamic bioethics, the Right of Allah (the law giver), the Society, and the individual do come under consideration. Islamic law stresses the maintenance of wellbeing and the avoidance of ailments, making it mandatory for a doctor to prevent situations that would undermine individual health of the patient or general wellbeing of the community. Islamic law urges people to get engaged with medical research, which has an open advantage and justifies the dangers of partaking or engaging in them. It is suggested that the four main principles of bioethics should be reviewed to reflect more universally accepted cultural and moral norms to legitimise its application in an undeniably multicultural world.⁶¹ Islamic law approach also offers useful guidance in resolving the dilemmas inherent in a principle of absolute respect for patient autonomy in situations that clearly negates the patients best interests.

⁵⁷ (Raddul Muhtar vol.2 pg.134; HM Saeed)

⁵⁸E. Desai, 'the legality of refusal of medical treatment' Available at <<http://ya-mujeeb.com/index.php/sharai-masaeel/jurisprudence-and-rulings/i-was-wondering-if-it-is-haram-to-refuse-medical-treatment-for-an-illness>> accessed on 25 October 2018

⁵⁹ Ibn 'Abbas once told to me ('Ata bin Abi Rabah), 'Shall I reveal to you a lady from the people of Paradise?'

I replied, 'Yes.' He said, 'This black woman approached the Prophet (peace be upon him) and said, 'I suffer from epilepsy and my body becomes uncovered when I get attacks; please pray to Allah for me (that my affliction may stop).' The Prophet (peace be upon him) said (to the lady), 'If you will, be perseverant and you shall have (enter) Paradise; and if you please, I will beseech Allah to heal you.' She said, 'I shall be patient,' and added, 'but by body becomes revealed, so please beseech Allah on my behalf so that I may not become uncovered.' So he prayed to Allah for her.' Bukhari Book 7 Volume 70 Hadith 555

⁶⁰M. S. Al-Munajjid 'Ruling on medical treatment'. Available at <<https://islamqa.info/en/answers/2438/ruling-on-medical-treatment>> accessed on 25 October 2018

⁶¹ M. Y. Rathor, M. F. AbdulRani, A. S. M. Shah, W. I. Leman, F. Akter, A. M. Omar, 'The Principle of Autonomy as Related to Personal Decision Making Concerning Health and Research from an 'Islamic Viewpoint' (2011) *JIMA* 43, 27-34. (Paper presented at the third Islam and Bioethics International Conference in Antalya, Turkey, on April 13-16, 2010)