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CONCEPTUAL AND THEORETICAL APPROACHES TO THE RIGHTS OF MUSLIM PATIENTS UNDER SHARI'AH

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Abstract
Observance of the Muslim patients' rights faced several challenges chiefly due to lack of official recognition amongst the medical practitioners and other healthcare providers. In addressing the challenges, the article adopts doctrinal research methodology. The article, with the aid of the conceptual and theoretical approaches, shed light on the meaning and essence of the Muslim patients' rights. The article examines the concepts of medical treatment, halal medical service, same-sex medical treatment and opposite-sex medical treatment regarding the Muslim patients' rights. The article also examines the maqasid, sociological, utilitarian, client-centered therapy and divine command theories in relation to the Muslim patients' rights. Through the conceptual and the theoretical approaches, the article orchestrates that the Muslim patients' rights are genuine rights which the Muslim patients deserve because they are inseparable from their religious practices. The article recommends emulation of the 21st century all-inclusive medical law practice that gives room for the official recognition of the Muslim patients' rights in the country.

Keywords: Concepts, theories, approaches, muslim patients, rights and shari'ah

1. Introduction

Patient rights are globally recognised rights as part of the species of fundamental human rights. They are the rights accruable to humans in special circumstances. That is when they fall within the category of people tagged patients or better still medical patients. The global recognition of these rights supports the conventional patients' rights as against the Muslim patients' rights which spring purely from Islamic law jurisprudence. In Nigeria, the rights under the Muslim patients' rights are part and parcel of the Islamic law. Despite this undisputable fact, Muslim patients continue to face certain difficulty regarding the observance of these rights during medical treatments. The challenges traceable to the difficulty in the observance of these set of rights include lack of official recognition and lack of understanding of in-depth knowledge of the rights by most healthcare providers in the country. Hence, the Muslim patients' rights are perceived as strange and superfluous by the practitioners in the field of medicine and medical practices. Thus, this article seeks to bring the discussion and knowledge of the Muslim patients' rights to the limelight via the conceptual and theoretical approaches to change the narrative.

2. Understanding the Muslim Patients' Rights

Muslim patients' rights are specie of rights distinct and separate from the conventional patients' rights.[1] This is because they are the set of rights denoted by the primary sources of Shari'ah.[2] These set of rights ensure that Muslims extend the practice of their religion to the sphere of the medical services and

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[1] Mohammed Abdurrokhman, and Waechyu Sulistiadi, 'Shariah Compliant Hospital as an Added Value: A Systematic Review' (*6th International Conference on Public Health*, held at Best Western Premier Hotel, Solo, Indonesia, from 23rd to 24th October 2019) 413-418 <https://media.neliti.com/media/publications/310086-shariah-compliant-hospital-as-an-added-value-a-systematic-review> accessed 20 February 2024.

[2] This refers to the Holy Qur'an and Sunnah

treatments. The definition of the concept of Muslim patients' rights (MPRs) cannot be subjected to a mathematical precision. This is because the MPRs can be viewed from any aspect of Shari'ah in the course of seeking medical treatments. They are any right of the Muslim patients that conform to the clear teaching of Shari'ah. They could also be such rights of Muslim patients which seek to avoid any anti-Shari'ah element in the course of medical services. In same token, MPRs could be rights exercisable by Muslim medical patients that are devoid of anything that could trigger the wrath of Allah in consequences. In summary, the MPRs are rights derivable from the tenets of Shari'ah which should be exercised by Muslim patients as part of their acts of '*ibadah* (worship) in the course of their interactions with medical personnel or healthcare providers except in rare/pardoned cases of *darurah* (necessity).[3]

The MPRs include right to same-gender medical treatment or services, right to separate wards for female and male patients, right to presence of *mahram* (close relative) during medical examinations or treatments, right to coverage of '*awrah* (private parts) during medical treatment, right not to be treated with prohibited substances under Shari'ah etc. Hence, these rights emanated from commandments of Allah (SWT) in the Shari'ah legislation. Importantly, the reality of the extant patients' rights laws in Nigeria is that they only captured the aspect of the conventional patients right and kept mute on the aspect of the Muslim patients' rights.[4] This is the root of the challenges militating against the observance of these species of rights in the country.

3. Conceptual Analysis

There are some related concepts important for the in-depth understanding of the Muslim patients' rights under Shari'ah. These concepts include the concept of medical treatment, the concept of *halal* medical service, the concepts of same-sex medical treatment and opposite-sex medical treatment. Understanding of the concepts exposes one to the actual appreciation of the issues surrounding the Muslim patients' rights. This is because the full grasp of the Muslim patients' rights requires holistic appreciation of the related concepts.

3.1 Concept of Medical Treatment under Shari'ah

Understanding the concept of medical treatments from the perspective of Shari'ah is very pivotal to the main theme of this article, i.e. the Muslim patients' rights. As generally understood across the universe, medicine is a noble and humane profession that tilts towards upholding the sanctity of life through its main aims of saving lives and finding cures for all kinds of ailments.[5] This general notation of medicine is derived from Shari'ah based on the various commandments of Allah (SWT).[6]

Shari'ah tilts towards ensuring that the medical profession is practised in conformity with the dictates, tenets and objectives of Allah (SWT).[7] It regulates the relationship between patients and medical personnel in compliance with the commandments of Allah (SWT).[8] Medical treatment permeates through all the nooks and crannies to ensure Shari'ah compliance, especially in the aspects of lawful and unlawful medical treatments.[9] The position of medical treatments under Shari'ah attests to the

[3] Shaharom Shariff, and Abdul Rashid Abdul Rahman, 'Shari'ah Compliant Hospitals; From Concept to Reality: Malaysian Experience' *Bangladesh Journal of Medical Science* 15(01) (2016) 1-4; Siti Arifin, *et al*, 'Understanding Doctors' and Nurses' Roles in the Islamic Medical Practice and Rukhsah Solah in Shariah-Compliant Hospital' *Malaysian Journal of Medicine and Health Sciences* 18(19) (2022) 93-98.

[4] C Okorocha and O Nnebedum, 'The Introduction of Patient's Bill of Rights by the Consumer Protection Council: Impact on the Enforcement of Patient's Rights under the Nigerian Healthcare System' *Jackson, Etti & Edu* <https://jee.africa/the-introduction-of-ptient-bill-of-rights-by-the-consumer-protection-council-impact-on-the-enforcement-of-patient-rights-under-the-nigerian-healthcare-system/> accessed 8 December 2024

[5] Thomas Shcramme, and Steven Edwards, (eds.) *Handbook of the Philosophy of Medicine* (Springer Science Business Media Dordrecht, University of Liverpool, UK, 2016) 1-5

[6] Mohammad Shahar, 'The Role of Modern Medicine in Clarifying Definitions in Islamic Jurisprudence (*Ta'arifaat fil al-Fiqh*) *IMJM* 17(3) (2018) 113-117

[7] Ibid

[8] Hassan Chamsi-Pasha, and Mohammed Albar, 'Islamic Medical Jurisprudence Syllabus: A Review in Saudi Arabia' *Medical Journal Malaysia* 72(5) (2017) 278-281

[9] Ibid.

declaration by Allah (SWT) that Shari'ah is a complete code of life that touches on every subject of life.[10]

Thus, medical treatment under Shari'ah connotes Shari'ah-compliant medical treatments which are prescribed to all Muslims.[11] All spheres of medical treatments that a Muslim may seek are covered under Shari'ah, emphasising the Shari'ah principles of *halal* (permissible) and *haram* (forbidden).[12] This is because Shari'ah perceives seeking medical treatments as endeavours that should be undertaken purposely to seek the pleasure of Allah (SWT) and not to earn His wrath.[13] Hence, medical treatments under Shari'ah are treatments which strive to ensure that Muslims achieve *halal* medical practices or services as a form of extension of religious worship to earn a fulfilled and satisfactory life pleasing to Allah (SWT). Shari'ah influences medical treatment across Muslim countries, especially in the aspect of contemporary medical issues such as patient rights, doctor's obligations, medical negligence, novel fertility treatments, etc.

3.2 Concept of *Halal* Medical Services

The concept of *halal* medical services is a concept that springs from the Shari'ah principles of *halal* and *haram*. The concept of *halal* medical services entails that every aspect of medical services must be in strict compliance with the dictates and tenets of Shari'ah.[14] This concept encapsulates almost every facet of hospital management to ensure full Shari'ah compliance in medical and healthcare service delivery. The hospital setting, staffing and medical personnel must reflect Shari'ah compliance.[15] As much as the setting of the hospital is expected not to offend the Shari'ah principle of *haram,* so also, the staff and medical personnel must be adequately trained and be acquainted with Shari'ah values and ethics observable in medical services.[16]

To this end, the various Shari'ah rulings applicable to the doctor/patient relationship must be fully internalized and practicalised. Under the concept of *halal* medical services, the issues of male doctors treating female patients and female doctors treating male patients must be carefully and adequately addressed from Shari'ah's perspective. Apart from the foregoing, under Shari'ah *khalwah*[17] is prohibited. For medical service to be regarded as *halal*, it has to observe all Shari'ah rulings regarding *khalwah* during medical treatment or services.

Halal medical services under Shari'ah also entail Shari'ah topical guidelines regarding patients' rights, patients' duties as well and doctors' rights and duties.[18] The issues of rights and duties on the parts of the patients and medical personnel must be observed in strict compliance with the dictates of Shari'ah without defeating the *maqasid* Shari'ah. This is because the rights and duties in doctor/patient relationship have been extensively dealt with under Shari'ah. Thus, *halal* medical services tilt towards enforcing them as dictated under Shari'ah and not otherwise.

Medical services under Shari'ah placed obligation on the medical personnel to be acquainted with the adequate knowledge of Shari'ah *fiqh* surrounding medical services generally.[19] The obligation placed on the medical personnel does not mandate them to be *faqih* (Islamic jurist). However, they should be able to have access to the various sound Shari'ah rulings regarding their medical practices in the course

[10] Qur'an Chapter 6 (Al-An'am) verse 38
[11] Qur'an Chapter 33 (Al-Ahzab) verse 36
[12] Qur'an Chapter 59 (Al-Hashr) verse 7
[13] Qur'an Chapter 33 (Al-Ahzab) verse 36
[14] Suheil Laher, and Abdullah Aljoudi, *Islamic Medical Jurisprudence* (Saudi Society for Studies in Medical Jurisprudence, Imam Muhamad Ibn Saud Islamic University, 1436) 1-235
[15] Majdah Zawawi, and Khadijah Othman, 'An Overview of Shariah Compliant Healthcare Services in Malaysia' *Malaysian Journal of Consumer and Family Economics* (2018) 91-100.
[16] Ibid.
[17] *Khalwah* is used in this sense to mean a private seclusion which includes only the male doctor and female patient and vice versa without the presence of a third party usually referred to as *mahram* (close relation).
[18] Laher, and Aljoudi, (n 10) 1-235
[19] Ibid

of medical service delivery. Thus, *halal* medical services entail that medical personnel are aware of the consequences of their actions for which they are accountable. They therefore have duties to ensure at all times that their medical treatments or services do not offend the rules of Shari'ah. Within the realm of *halal* medical services, it does not behove a medical doctor to embark on medical treatment or service while he or she is not certain about the position of Shari'ah on it. Thus, a medical doctor who intends to offer *halal* medical services cannot do without having knowledge of Shari'ah or a competent Shari'ah advisor to avoid running afoul of Shari'ah in the course of the medical service delivery.[20]

It is therefore important to note that *halal* medical service under Shari'ah is all about rendering medical services with full consciousness of Allah (SWT). This extends to adopting all the Shari'ah principles and values in all aspects of medical operation to avoid abuse. Thus, Shari'ah forbids treatment of patients with prohibited substances in the course of any medical service to attain full compliance with Shari'ah tenets. This is because the essence of having *halal* medical services is to run away from any act that may incur the wrath of Allah while receiving medical treatment. To this end, *halal* medical service is a medical service which avoids prohibited substances and makes use of permitted substances in the course of medical services or treatments.

Halal medical services are synonymous with rendering medical services conforming to *maqasid* Shari'ah. This is because under Shari'ah such medical services should not be rendered to defeat the objectives of Shari'ah, that is, the intendment of Allah (SWT). Under *halal* medical services, it is a rule of practice that all the medical rules of ethics must reflect Shari'ah compliance. Therefore, the ethical principles in medical services such as autonomy,[21] beneficence,[22] non-maleficence[23] and justice[24] must adequately be practised in conformity with Shari'ah.

3.3. Shari'ah Concept of Same-Sex Medical Treatment

The defunct and general rule under Shari'ah is that for medical practices, it is same-sex medical treatment that is permissible.[25] This general rule distinguishes Shari'ah from all other conventional medical laws. The connotation of same-sex medical treatment can be explained in two folds. That is, what the same-sex medical treatment connotes is that the sex of the medical patient in question determines the sex of the doctor of medical personnel that should attend to him or her.

Therefore, where the medical patient seeking medical treatment is a male, a male doctor is enjoined by Shari'ah to treat him. This also extends to the paramedical staff that may be needed to attend to such male patient till full recovery.[26] In the same vein, where the medical patient in question is a female, the rule under Shari'ah dictates that only a female doctor should attend to such female medical patient. This same rule also extends to the effect that all paramedical staff that may have encounter with the female

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[20] Farrah Jamaludin, *et al*, 'Establishing a Sustainable Shari'ah Compliant Hospital in Malaysia: Exploring the Pertinent Concept' *International Conference on Environment, Social and Governance*, (2023) 670-685

[21] This is medical principle of ethic which is to the effect that a medical doctor enjoys autonomy as a profession in his or her field of medical practice. It must however, be noted that such independence given to or enjoyed by medical personnel are subject to overriding Shari'ah principles as enjoined in the primary sources of Shari'ah with respect to medical practices. See generally, Alexander Woodman, *et al*, 'Introduction to Islamic Medical Ethics' *Journal of the British Islamic Medical Association* 2(1) (2019) 3-4.

[22] This principle of medical ethic entails that a medical practitioner must be lenient, compassionate, merciful, loving, caring and humane towards medical patients within the dictates of Shari'ah. Invariably, a medical practitioner must use his medical knowledge to give beneficial treatment to the patients. See generally, Woodman, *et al*, (n 17) 3-4.

[23] Non-maleficence is like the beneficence in application. This principle is to the effect that in any circumstance during medical services or treatment, if two likely outcomes of lesser hardship and greater hardship are envisaged, the lesser hardship should be preferred to the greater hardship within the Prophetic admonition of "*Laa Darara Wa Laa Diraara* – do not inflict injury and do not reciprocate injury." See generally, Woodman, *et al*, (n 17) 3-4.

[24] As the name implies, a medical doctor must ensure that justice prevails in all his actions towards his medical patients. See generally, Woodman, *et al*, (n 17) 3-4.

[25] Laher, and Aljoudi, (n 10) 71

[26] Ibid

patient in the course of her medical treatment till recovery should equally be of same-sex with her as well.[27]

The idea of same-sex medical treatment springs from Shari'ah ethics and value system as ordained by Allah (SWT).[28] The rationale behind the rule of same-sex medical treatment under Shari'ah is to allow the patient to be free in the course of seeking medical personnel especially in terms of giving out vital confidential information thereby leading to fulfillment and satisfaction in medical service. This is best achieved when same-sex medical treatment is resorted to. Same-sex medical treatment also prevents apprehension of certain *fitnah* that could occur in the circumstances where opposite sexes mingle together.[29] This is because, Shari'ah outrightly frowns at the indiscriminate mixing up of opposite gender except in permitted cases involving *Mahram* and other permitted category of persons.[30] It is however important to note that the general rule of same-sex medical treatment can be relaxed in real cases of (*darurah*) necessity giving room for opposite-sex medical treatment though with certain stringent guidelines and conditions to be complied with.[31] This is because Allah (SWT) always desires ease for His creatures and not otherwise.[32]

3.4 Shari'ah Concept of Opposite-Sex Medical Treatment

Shari'ah concept of opposite-sex medical treatment came to the fore in form of exception to the general rule which proposes the Shari'ah concept of same-sex medical treatment. Thus, the exception to the general rule of same-sex medical treatment is the opposite-sex medical treatment. As much as the rules of Shari'ah have been alleged to be rigid, this is an example to debunk the allegation that Shari'ah rules are never rigid.[33] Allah (SWT) knows better the conditions of His creatures and makes law to suit them. So, the concept of general rule and exception is very much deeply rooted in Shari'ah.[34] Thus, opposite-sex medical treatment connotes the two circumstances where a male medical practitioner is permitted to treat a female medical patient and where a female medical practitioner is permitted to treat a male medical patient.[35] This concept of opposite-sex medical treatment springs from the real cases of *darurah* (necessity) in conformity with a legal maxim under Shari'ah that *ad-darurah tubihu mahdhurat* (necessity makes unlawful things lawful).[36] The two circumstances of opposite-sex medical treatment are explained below.

3.4.1 Male Doctor Versus Female Patient

Shari'ah ordinarily does not allow a male doctor to treat a female patient. Reference to a male doctor here includes any medical paramedical staff that may be assigned or involved in the treatment of the female patient. The permission granted to a male doctor to treat a female patient is only cases of *darurah* (necessity). Thus, such male doctor has certain limits which he must not transgress.[37] That is; while undertaking the medical treatment or procedure for the female patient, he could only see as much of her body necessary for the medical treatment.[38]

Even though, the law frowns at the foregoing opposite-sex medical treatment, the relaxation of the general rule is hinged upon the fact that Allah (SWT) has not placed any difficulty for Muslims in their

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[27] Ibid, 73
[28] See Qur'an Chapter 24 (An-Nur) verses 30-31. See also, Quran Chapter 33 (Al-Ahzab) verse 50-60
[29] Ibid
[30] Laher, and Aljoudi, (n 10) 72-74
[31] Ibid
[32] See Qur'an Chapter 2 (Al-Baqara) verse 173 and 185
[33] R Nazeem, 'Islamic Law Vis-à-vis Common Law – Historical Analysis in Terms of Rigidity and Flexibility' *Hamdard Islamicus* (2015) XXXIX (4) 43-61
[34] MFM Ismail, *et al*, 'Knowledge, Attitude and Practice of Ruksah in Prayer Among Undergraduate Students at International Islamic University Malaysia Kuantan Campus' *International Journal of Care Scholars* (2021) 4(2) 3-7
[35] Laher, and Aljoudi, (n 10) 71, 73
[36] Ibid, 48-51
[37] Qur'an Chapter 65 (At-Talaq) verse 1
[38] Qur'an Chapter 2 (Al-Baqara) verse 173

religion.[39] The permissibility of the opposite-sex medical treatment is also sanctioned by virtue of the *qa'idah* (legal maxim) to the effect that *ad-darurah tubihu mahdhurat* (necessity makes unlawful things permissible). Under *ijma'* (consensus of Islamic scholars), the opposite-sex medical treatment is permissible provided the conditions precedent are satisfied.[40] Some of the conditions agreed upon by the scholars are:[41]

i. Presence of a third party which may be the patient husband or *mahram* to avoid *khalwa*;
ii. The medical doctor should not yield any feeling of lust and affection for the female patient;
iii. The medical doctor must not be a *kaafir* (non-Muslim) except where he is more competent and has great expertise in the required medical treatment than the available Muslim doctors;
iv. There is no competent female doctor available that can expertly and diligently undertake the required medical treatment or procedure;
v. The life of the female patient is at risk to the extent that further delay in sourcing for female doctor could endanger her life; and
vi. The male doctor should comply with the rule of lowering of gaze and should only touch or uncover part of her body sufficient for the medical treatment or procedure.

In view of the above conditions, it is discernible that resort to opposite-sex medical treatment as a form of exception to the general rule is to be observed as the last resort in the absence of any alternative.

3.4.2 Female Doctor Versus Male Patient

The rule allowing female doctor to treat male medical patient is an exceptional rule as well. This is because the general rule of same-sex medical treatment also affects the circumstance of a female doctor treating a male patient except there is situation of *darurah* (necessity). The permissibility of female doctor treating male patient is sanctioned under the Sunnah of the Prophet (PBUH). In one reported tradition, Anas bn Malik reported that the Prophet (PBUH) used to permit Umm Sulaym and some other women from Ansar to go to *Ghazwah* (Holy war) with them so that they could offer assistance in the aspects of giving water to the Muslim armies and treating the wounded among them.[42] In a similar tradition, Ar-Rubayyi bint Mu'awaidh posited that the Prophet (PBUH) used to allow them (women) to go to *Ghazwah* (Holy war) in company of Muslim armies purposely to provide them with water, treat the wounded amongst them and bring the slain back home.[43]

Thus, under Sunnah, there is permission granted to women to treat men but in cases of *darurah* (necessity). Under *ijma'* (consensus of Islamic scholars), there is no disagreement in the cases of necessity for female doctor to treat male patient provided all the conditions attached are duly satisfied and fulfilled.[44] Thus, all the conditions stipulated above as conditions precedent for male doctor to treat female patient are equally applicable to the circumstances where the only available doctor to treat the male patient is a female doctor. The Shari'ah rules regarding *khalwah*, presence of *mahram*, limit as to the part of the body to be seen or touched, lowering of gaze etc should be observed in the event of female doctor treating male patient out of necessity. The rules to be complied with include:[45]

i. Presence of a third party which may be the patient wife or *mahram* to avoid *khalwa*;
ii. The medical doctor should not yield any feeling of lust and affection for the male patient;
iii. The medical doctor must not be a *kaafir* (non-Muslim) except where she is more competent and has great expertise in the required medical treatment than the available Muslim doctors;
iv. There is no competent male doctor available that can expertly and diligently undertake the required medical treatment or procedure;

[39] Ibid, verse 185.
[40] Laher, and Aljoudi, (n 10) 72
[41] Ibid.
[42] A Sabiq, *Fiqh us-Sunnah - Funerals and Dhikr Vol. IV*, (International Islamic Publishing House, Saudi Arabia, 1991) 7
[43] Ibid.
[44] Laher, and Aljoudi, (n 10) 74
[45] Ibid.

v. The life of the male patient is at risk to the extent that further delay in sourcing for male doctor could endanger his life; and
vi. The female doctor should comply with the rule of lowering of gaze and should only touch or uncover part of his body sufficient for the medical treatment or procedure.

4. Theoretical Framework on Muslim Patients' Rights

A number of theories are relevant to the topical discourse of the concept of Muslim patient rights under Shari'ah. The theories are formulated at different times purposely to advance certain courses. The theories thus serve as the basis of the practice of the course which they advance.[46] In the arena of topical issues of Muslim patient rights, certain theories readily come to mind. The theories include *maqasid* theory, sociological theory, patient-centered theory, utilitarian theory and divine command theory.

4.1 Maqasid Theory

Maqasid theory is a theory that springs from Shari'ah Jurisprudence.[47] In simpler term, it refers to theory of objectives of Shari'ah.[48] This is a theory that concerns itself with finding the objectives of Shari'ah as per legislations in the Qur'an[49] and Sunnah[50] in every situation and striving to achieve such objectives. The theory demonstrates that Shari'ah is not just legislated for the fun of it. It is legislated to achieve certain objectives. The objectives of Shari'ah are enormous and can be fathomed from the rationale behind every legislation.[51] It then means that behind every commandment of the Allah (SWT), there is purpose for the mankind. This *maqasid* theory has been used as yardstick to ascertaining the intendment of the Allah (SWT).[52] This is because Shari'ah is a body of law that cuts across every aspect of life of Muslims. Thus, the *maqasid* theory works as per given situations or circumstances being faced by Muslims in line with legislation over them.

Abu al-Hassan al-'Amiri muted the *maqasid* theory in the late 4th century when he introduced it while categorising human necessities as five.[53] After him, other scholars such as Al-Qadi 'Abdul Jabbar, al-Juwayni, al-Ghazali, Ibn Rushd, Ibn Al-Arabi etc.[54] Contemporarily, the *maqasid* theory is traceable to Al-Shatibi.[55] The theory propounded by Al-Shatibi is founded on promoting the good and preventing the harm. To this end, the simple intendment of Allah (SWT) in every legislation does not go beyond promoting what is good for the Muslims and preventing them from what may harm or cause destruction to them.[56] This is interrelated to the protection of Muslim patient rights under Shari'ah jurisprudence. The reason is that the hallmark of the protection of Muslim patient rights under Shari'ah is to promote the dignity of Muslim patients and prevent them from being exposed to evils that may surface in the course of seeking medical treatment. A case in point is the fact that the topical issue of Muslim patient rights involved in the Shari'ah concept of same-sex medical treatment is to safeguard Muslim men and women from the evil of *zina* (adultery) and other forms of *fahisha* (evil things).[57] In the same vein, the

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[46] OF Liadi, 'Sociological Theory: An Introduction' in AO Olutayo and O Akanle, (eds) *Sociological Theory for African Students* (1st edition) https://www.researchgate.net/publication283574841 accessed 8 November 2024
[47] HM Kamali, 'Maqasid Al-Shariah: The Objectives of Islamic Law' *Islamic Studies* (1999) 38(2) 193-206
[48] Ibid.
[49] T Islam, 'Expansion of Maqasid Thought beyond Maqasid Al-Shariah: Maqasid Al-Quran as a New Paradigm' *Hamdard Islamicus* (2022) XLV(4) 79-94
[50] M Hoque, *et al*, 'Exploring the Concept of Maqasid al-Shariah to understand the Higher Objectives of the Sunnah' *International Journal of Academic Research in Business and Social Sciences* (2023) 13(11) 767774
[51] Kamali (n 43)
[52] Ibid.
[53] ATM Monawar, *et al*, 'The Contributions of Classical Scholars to the Theory of Maqasid Al-Shari'ah' *Journal of Nusantara Studies* (2023) 8(2) 242-265
[54] Ibid
[55]His full name is Abu Ishaq Musa Ibn Muhammad al-Gharnathi al-Lakhmi. See generally, MA Bakar and AK Abdul Rahim, 'Maqasid Al-Shariah Theory: A Comparative Analysis between the Thought of Al-Shatibi and 'Izz Al-Din 'Abd Al-Salam' *International Journal of Academic Research in Business and Social Sciences* (2021) 11(8) 180-193
[56] Ibid.
[57] Qur'an Chapter 17 (Al-Isra') verse 32.

same *maqasid* equally played out in the Shari'ah concept of opposite-sex medical treatment when certain guidelines are laid down to avoid abuse and invitation to evil in the course of medical treatment.

4.2 Sociological Theory

Sociological theory is the theory that focuses its attention on social phenomena and occurrences.[58] The theory is to the effect that the social occurrences and situations in society are of utmost importance. This theory holds society in high esteem. It is a theory that focuses on the large interest of the populace in society as against the insignificant interests of the few.[59] This theory is thus concerned with investigating social problems and the dire need to find solution to the problem for the benefit of the people in the society.

Auguste Comte,[60] perceived as the father of sociology, is believed to be the pioneer propounder of sociological theory. He laid the groundwork for sociological theory which other philosophers[61] after him built upon. Essein summed up as follows:[62]

> Proponents of this school of thought tend to capture law in a broader social context rather than as a separate and distinct phenomenon that is independent of other means of social control. The sociological school of thought is therefore, "a systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience" The sociological school is rooted in the works of sociologists and jurists like Max Weber, Emile Durkheim, Leon Perozycki, Eugen Ehrlich, George Gun itch, Roscoe Pound. Leon Diguit and others

By sociological theory, societal problems require societal solution for perfect balance. This sociological theory has relationship with the topical issue of Muslim patient rights. The reason is that the non-protection of Muslim patient rights in Nigeria remains societal problem that requires societal attention. The issue of Muslim patient rights is therefore an issue that affects Muslim *Ummah* in Nigeria. From sociological theory point of view, the non-protection of Muslim rights in Nigeria despite the substantial Muslim population in the country does not augur.

4.3 Theory of Client-Centered Therapy

Client-centered therapy theory enjoys two connotations. It is by extension referred to as person-centered therapy and patient-centered therapy.[63] This theory is to the effect that the dominant approach of medical experts in the course of the treatment of patients without the inputs of the patient is grossly improper.[64] The theory states that for adequate and all-encompassing medical treatment, patient must equally take active roles to achieve the desired results. The fulcrum of this theory is geared towards ensuring patient's satisfaction in terms of personal feelings, trusts, cultural, social psychological and religious beliefs.[65] The theory of client-centered theory is credited to Carl Ransom Rogers who believed that in the course of patient's treatment, patient-centered care is of utmost concern in order for the medical experts to earn the requisite trusts from the medical patients.[66] Rogers was of the opinion that medical experts are potential client-care experts in their field of medicine.[67]

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[58] EO Wahab, 'Introduction to Sociological Theory' https://www.researchgate.net/publication/370873622 accessed 8 November 2024
[59] Liadi, (n 10)
[60] Ibid.
[61] Herbert Spencer (1820-1908), Emile Durkheim (1858-1917) etc.
[62] JP Esien, 'An Appraisal of the Sociological School of Law in the Context of Contemporary Nigeria' *Bassey Andah Journal* (2014-2015) 7-8, 55-65
[63] MC Witty, 'Client-Centered Therapy' 35-48 https://www.researchgate.net/publication/226947646 accessed 8 November 2024
[64] Ibid.
[65] NA Nsiga, 'Person (Client) Centered Theory' 1-13 <htpps://www.academia.edu_CLIENT_CENTERED_THEORY> accessed 8 November 2024
[66] Ibid.
[67] L Yao and R Kabir, 'Person-Centered Therapy (Rogerian Therapy)' <https://www.ncbi.nlm.nih.gov/books/NBKS589708> accessed 8 November 2024

Thus, their expertise without providing enabling environment properly so-called for the patients can disrupt treatment procedure whereby dissatisfied patients refuse to subject themselves for further or subsequent medical treatments. Rogers called on medical experts to shun the old style of domineering during medical treatment and embrace the new approach of patient-centered care muted by the client-centered therapy theory.[68] The theory aligns with the advocacy for Muslim patient rights in Nigeria from the perspective of this research. The reason is that Muslim patient rights are unique rights available under Shari'ah jurisprudence. It is unprofessional for medical experts in Nigeria not to honour the Muslim patient rights because this will go contrary to the objective of the so-called client-centered therapy theory which seeks to achieve utmost care and satisfaction for medical patients in the course medical treatment by doctors.

4.4 Utilitarian Theory

Utilitarian theory is significant because it contends towards preferring actions that tilt towards the greatest good, well-being, happiness of everyone.[69] This theory kicks against every action that produces negative or harmful effects on the people. Thus, utilitarian theory is all about bringing benefits to people in a way that secures people's happiness.[70] This theory is propounded by Jeremy Bentham and John Stuart because of their concerns for law and social reforms for the benefits of all individuals in the society.[71] Pradeep commented on Bentham's influence on the legal theory in the following words:[72]

> As a legal reformer who is interested in the reform of law, he stressed on the evaluation aspect of the law based on the doctrine of utility to which law ought to conform calling it to be the science of legislation or censorial jurisprudence. Mankind was exposed to conflicting moralities of either legitimately choosing to follow or rejecting such laws. In the cases when natural law is violated, some scientific or rational standards shall be found out by considering utility of each law. Bentham by giving credit to Priestley as the fist 'first person who taught him to pronounce this scared truth by facilitating for the formation of principle of the greatest happiness of the greatest number.

Accordingly, within the perception of the adherents of the utilitarian theory, any law that does not give satisfaction to the people cannot be considered a good law.[73] It must therefore be noted that what brings about satisfaction is determined by the public benefits in a given society.[74] Happiness according to the utilitarian theory is determined by derivation of more pleasure with less pain. Good actions, laws or reforms under this theory are those whose benefits outweighs harms.[75]

The relationship of this theory with the concept of Muslim patient rights is that by the protection of Muslim patient rights, Muslim patients would no doubt derive joy, happiness and satisfactions. This comes forth out of the sheer joy of ability to satisfactorily extend their religious practices to the arena of medical treatment. The reason is that Allah (SWT) Himself declares that obedience to His commandment brings forth rest of mind to the believers.[76] This is exactly what the utilitarian theory seeks to achieve.

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[68] Ibid.
[69] IA Kanu and EJO Ndubisi, 'Utilitarian Ethical Theory vis-à-vis the Contemporary Society: An Evaluation' 213-222 <https://www.researchgate.net/publication/367654951> accessed 8 November 2024
[70] Ibid.
[71] Ibid.
[72] MD Pradeep, 'The Utilitarian Theory of Law – An Analysis' *Quality in Higher Education Challenges & Opportunities* (2018) 224-233
[73] A Basheer, *et al*, 'Bentham's Utilitarianism Ethical Theory and its Application in the Triage System: A Scholarly Philosophical Paper' *Jordan Journal of Nursing Research* (2024) 1-6
[74] Ibid.
[75] Kanu and Ndubisi, (n 65)
[76] Basheer, (n 69).

4.5 Divine Command Theory

The divine command theory places primacy on the obedience to the commandments of the Supreme-being which is God.[77] The theory portends that whatever command from God is best and moral.[78] Thus, this theory asserts that morality is traceable or attributable to God. In the same token, the theory states further that moral obligations implicate obedience to the commandments of God. The divine command theory separates God from any form of Immorality with the implication that whatever emanates from God is pure and moral. [79]

Application of this theory is dependent on a particular religion in focus. But the bottom line is that all religions advocate that ultimate morality vis-à-vis moral obligation depends on the commands from God.[80] The theory is interesting in the sense that it implicates that God knows what is best and does what is just in accordance with His various commandments. Thus, the simple way to follow the way of morality is to be obedient to the commandments of God. The relevance of this theory to the concept of Muslim patient rights lies in the fact that Muslim patient rights derived their sources from the commandment of Allah under Shari'ah which Muslims do not have any discretion but to obey. Hence, protection of Muslim patient rights would go a long way in ensuring morality during patient's medical treatment. This is simply because, the Muslims patient rights are the products of Allah's divine commandments.

5. Adopted Theories for the Muslim Patients' Rights

This article examines five (5) related theories which are the *Maqasid* theory, sociological theory, theory of client-centered therapy, utilitarian theory and divine command theory. The article adopts *Maqasid* theory and divine command theory. The *Maqasid* theory concerns itself with ascertaining the intendment of Allah (SWT) under Shari'ah while the divine command theory promotes obedience to the commandment of Allah as a way of achieving best outcome in life and in the hereafter. The two (2) theories have direct relevance to the topical issue of the Muslim patients' rights. This is because issue of patient rights springs from Shari'ah legislation which comes with binding force. Allah ordains in the Holy Qur'an:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى ٱللَّهُ وَرَسُولُهُۥٓ أَمْرًا أَن يَكُونَ لَهُمُ
ٱلْخِيَرَةُ مِنْ أَمْرِهِمْ ۗ وَمَن يَعْصِ ٱللَّهَ وَرَسُولَهُۥ فَقَدْ ضَلَّ ضَلَٰلًا مُّبِينًا

> It is not for a believing man or a believing woman when Allah and His Messenger has decided a matter, they should [thereafter] have any choice about their affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error.

6. Significance of the Muslim Patients' Rights

Significance of patients' rights in under the Shari'ah legal framework cannot be over-emphasized. This is because Shari'ah-compliant patients' rights attract many rewarding benefits to Muslim patients. A cursory look at some of the patients' rights highlighted above leads one to concede to the fact that the observance of the patients' rights usually draws Muslim patients closer to Allah (SWT) despite the trial of Allah which they are facing during ill-health that brought them to the hospital. This is because, within the purview of the sound *fiqh* of Shari'ah, sickness or diseases are perceived as parts of the trial from Allah (SWT).[81] At the time of any trial a Muslim faces, he or she is expected to be patient and turn to Allah (SWT) for ultimate relief. Thus, the Muslim patients' rights tilt towards drawing Muslim patients closer to Allah (SWT) notwithstanding the predicament of ill-health or sickness being faced. For instance, during medical treatment, it is possible for a Muslim patient to be exposed to anti-Shari'ah

[77] MW Austin, 'Divine Command Theory' *Encyclopedia of Philosophy* https://iep.utm.edu/divne-command-theory/ accessed 8 November 2024
[78] Ibid.
[79] M al-Attar, 'The Ethics and Metaphysics of Divine Command Theory' 315-324 <https://www.academia.edu/18572955/The_Ethics_and_Metaphysics)of_Divne_Command_Theory> accessed 8 November 2024.
[80] Ibid.
[81] Qur'an Chapter 2 (Al-Baqara) 155

treatments that might eventually lead him or her to *shirk* (associating partner with Allah) thereby drawing him or her far away from Allah (SWT) with grave consequences. However, with the observance of the Muslim patients' rights, such situation would be avoided.

Obeying Allah's commandments at the time of trial during sickness or ill-health is another significance of patient rights under Shari'ah medical jurisprudence.[82] The fact that a Muslim faces trial from Allah does not give him *khiyar* (choices) to disobey the commandments of Allah upon them.[83] Thus, a combination of recognised patient rights under Shari'ah protects Muslim patient from deviating from the commandment of Allah by ensuring that despite their current health challenges, they held firm to the upholding of the commandments of Allah (SWT). For instance, Allah (SWT) forbade *khalwa* (seclusion with non-*mahram*) and indiscriminate revealing of one's private parts to those who have no right to see them. Thus, some of the patient rights strive to guard against violation of such commandments of Allah (SWT) amongst others.

Avoiding *haram* and being satisfied with what Allah (SWT) has permitted (*halal*) within the limits set by Allah (SWT) is also one of the significance of the patient rights protected under Shari'ah. A Muslim patient is not allowed to be desperate for healing (*shifa*) by subjecting him or herself to medical treatments that are lawful under Shari'ah. The sound *aqeedah* (religious ideology) of any Muslim is that there is nobody that cures but Allah (SWT).[84] Merely seeking medical treatment, even though *wajib* (obligatory), it is just *sabab shifah* (cause that leads to healing by the Will of Allah).[85] Thus, the Shari'ah clear principle of *halal* and *haram* must be observed by Muslim patients except in cases of *darurah*.[86] Thus, a number of patient rights guaranteed to the patient under Shari'ah takes cognizance of Shari'ah principles of *halal* and *haram* due to their clear implications under Shari'ah.

Observance of the patient rights under Shari'ah prevent Muslim patients from committing sins and to avoid *fitnah*.[87] The various rights which are related to refusal of treatment on the ground of prohibited contents, right to demand same-sex medical treatment, rights to privacy, right to be assisted to perform *wudu* in deserving situation amongst other place a Muslim medical patient in a vantage position that makes him to avoid *fitnah* and sins. This is because, every aspect of Muslim life is regulated by Shari'ah even at the time of seeking medical treatments during ill-health or sickness. Therefore, most of the rights reserved for medical patient under Shari'ah are geared towards avoiding sins and *fitnah* that may make them fall into temptation of sins.

The ultimate aim of creation by Allah (SWT) is worship, thus, a number of rights enjoyable by patients under Shari'ah take cognizance of religious worship. The rights of patient under Shari'ah are exhibition of religious practice during the course medical treatment.[88] Allah has declared in the Qur'an that He loves those who are conscious of Him at all time.[89] Hence, the patient rights derived from the sources of Shari'ah is deeply rooted in advancing and instilling consciousness of Allah on Muslim medical patients. This is especially aimed at bedridden Muslim patients never to derogate from Allah (SWT) and His mercy till death owing to the clear commandment of Allah that all his servants should worship Him till their last breath. Dignity, honour and chastity are held in high esteem under Shari'ah. Some of the underlining *hikmah* (wisdom) behind the various rights of Muslim medical patients is to preserve their honour, dignity and chastity of Muslim.[90] Thus, a cursory look at the rights of patient under Shari'ah would make one to further appreciate the way and manner Allah (SWT) has specially honoured the children of Adam as stipulated in the glorious Qur'an.[91]

[82] Sabiq, (n 38) 1-3
[83] Qur'an Chapter 33 (Al-Ahzab) 36
[84] Ibid, 5-9
[85] ibid
[86] ibid
[87] Qur'an Chapter 53 (An-Najm) 32
[88] Qur'an Chapter 2 (Al-Baqara) 208
[89] Qur'an Chapter 9 (At-Taubah) 4
[90] Qur'an Chapter 23 (Al-Mu'minun) 5-6
[91] Qur'an Chapter 17 (Al-Isra) 70

7. Conclusion

The article adopts conceptual and theoretical approaches to bring the salient discussions of the Muslim patients' rights to the limelight. The reason is that such rights are still not popular in the medical realm in the country. The article thus orchestrated that Muslim patients' rights are better understood from the in-depth understanding of the concepts of treatments and halal medical services under Shari'ah. Thus, under these two concepts are the foundations of the Shari'ah concepts of same-sex medical treatment which is the general rule and the exceptional opposite-sex medical treatment which operates under strict conditions laid down in Islamic jurisprudence.

Theoretically, the specie of the Muslim patients' rights are justified under the Shari'ah related theories such as *maqasid* and divine command theories as well as under the non-Shari'ah related theories like sociological theory, utilitarian theory and client-centered therapy. The outcome of the efforts in this article boils down to the fact that it is high time Nigerian medical law and practices welcomed the 21st century approach of the all-inclusion. This can translate into the all-inclusive medical practices that incorporate not only the Muslims patients' rights but also values every aspect of the patient-doctor relationship that that tilts towards the patients' satisfactions socially, religiously, culturally and socially during medical treatment.