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Research Article

The concept of arbitrariness in the application of rights within the context of sharia and legal systems

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ABSTRACT

This study aims to provide a comprehensive analysis and application of the theory of arbitrariness in the utilization of rights within the context of Sharia and legal systems. Specifically, it focuses on the arbitrariness exhibited by medical professionals as a model for understanding this concept. The primary objective is to elucidate the theory of arbitrariness in the utilization of rights between Sharia and legal systems, as well as the specific manifestation of arbitrariness within the medical profession. One illustrative instance. In light of this rationale, the present analysis undertakes a categorization of the theory pertaining to the arbitrariness in the use of rights, specifically within the context of Sharia and legal systems. The next discussion will delve into the arbitrariness that ensues from the interplay between Sharia and legal frameworks, with a particular emphasis on the discretionary powers wielded by medical practitioners. The text was separated into three distinct portions. In the first segment, Muhanna spoke upon the veracity of the idea, dividing it into two distinct subjects. In the first segment, the author expounded upon the concept of arbitrariness as it pertains to the use of language and terminology. In the following part, the author discussed the legal evidence that substantiates the idea. In the subsequent phase, an analysis was conducted on the controls and circumstances pertaining to the theory and its applications, which were further categorized into two distinct requisites. In the first part, an exposition was provided about the pillars, elements, and foundations that have been created for the theory of arbitrariness. In the following part, an analysis was conducted about the theoretical implications of the subject matter. In the following part, an exposition was provided about the concept of physician arbitrariness. In the first part, I explicated the notion of physician arbitrariness. In the subsequent portion, an analysis was conducted on the mistake that transpired inside the medical field, along with its consequential impact. This examination was further categorized into two distinct branches: the first segment including its definition, foundational principles, evaluative criteria, various classifications, and underlying factors. In the following part, an elucidation is provided on the consequences arising from medical errors, including two distinct concerns: The first concern pertained to the medical mistake perpetrated by the physician, but the subsequent concern elucidated the ramifications resulting from that blunder. In the concluding section, an overview of the suggestions and findings derived from this little research endeavor was provided.

Keywords: Arbitrariness, Theory Pertaining, Legal Frameworks

INTRODUCTION

It is evident that Islamic law, predating human-constructed legal systems, had a profound preoccupation with the concept of arbitrariness in the exercise of rights, as reflected in the legal maxim, "La darar wa la dirar The curtailment of an individual's rights occurs when they exercise their rights in a manner that avoids causing damage to others, regardless of whether their aim is to do harm, they beyond customary boundaries, or their actions are incompatible with the collective welfare of society. The act of abusing one's right is seen as a deviation from the boundaries that pertain to the right in question. Undoubtedly, it is essential to acknowledge the entitlement of Muslims to exercise their individual rights, provided that such exercise of rights does not infringe upon the well-being and interests of others. The proprietor has the entitlement to construct whatever structure of their choosing on their property, while their adjacent landowner possesses the right to be safeguarded from any adverse effects resulting from such construction, including the infringement upon their legitimate interests, such as the exposure of their private body parts. It may be inferred from this analysis that the exercise of a legal right is not unrestricted, but rather subject to certain limitations. These limitations are designed to mitigate any potential damage that may arise from such exercise, and one of these limitations is the absence of any intention to do harm. According to the divine proclamation, God Almighty advises individuals who are contemplating divorce to treat women with love and respect, either by maintaining a harmonious relationship or by allowing them to go amicably. It is emphasized that individuals should refrain from coercive measures that may lead to the transgression of

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women's rights [1]. The passage explicitly forbids the use of the authority to revoke a marriage contract with the deliberate intention of causing injury to the wife. The current situation exhibits a notable disparity in the balance between the individual's personal interest in exercising their rights and the resultant damage inflicted upon others. For instance, consider a scenario where a homeowner deliberately plants a tree in close proximity to a neighboring house, so inadvertently providing an opportunity for potential burglars to gain access to their neighbor's property. Similarly, the exercise of the right in an arbitrary and illegal manner can result in harm to others. This concept is reflected in the words of the Prophet, may God bless him and grant him peace, who stated that fulfilling God's limits and remaining within them can be likened to a scenario where individuals on a ship shoot arrows, some hitting the top and others hitting the bottom. When those at the bottom retrieve their arrows from the water, they pass over those above them and express regret for not breaching their own portion, thereby avoiding harm to those above. If those above were to abandon their arrows and desires, they would face destruction. If all of them were brought into their possession, they would all be rescued and saved [2]. This implies that the individual situated underneath the vessel has the entitlement to only use their portion in a manner that does not inflict detriment onto others. It may be inferred from the aforementioned statement that both Sharia and legal systems ban the abuse of rights, regardless of whether the actions occur in private or public domains, and include inflicting damage to others. It is essential to establish a certain equilibrium between the exercise of individual rights while avoiding infringement upon the interests of others. Additionally, it is crucial to navigate the many valid jurisprudential theories in order to strike this balance effectively. This paper explores the theoretical underpinnings, historical origins, and practical implications of the concept known as the "abuse of rights." The foundations of this doctrine may be traced back to the Holy Qur'an and the Sunnah. Its applications have been extensive and diverse in the jurisprudence of the Companions and the jurisprudence of the Successors.

IMPORTANCE OF RESEARCH

The significance of this study lies in its ability to elucidate and demonstrate the magnitude of the practical relevance that exerts a substantial influence on Islamic law. If the objectives pursued by the law are deemed illegitimate, and the individuals responsible for drafting the legislation were intentional in incorporating principles from Islamic jurisprudence, particularly the principle that it should not infringe upon an individual's rightful claims unless it causes no harm to others, then the law is considered valid. This principle serves as a fundamental tenet in the notion of safeguarding against the misuse of rights, specifically pertaining to the regulation of rights within a community. The theory's significance is mostly derived from its practical application, which contributes to its overall value.

RESEARCH OBJECTIVES

1. The theory of arbitrariness in Islamic jurisprudence extends beyond transactions, as observed in positive laws, to encompass various domains within Islamic jurisprudence, including but not limited to transactions, family rulings, and punishments.
2. The present endeavor is to substitute and rephrase the validity of this idea, as determined by the Codification Committee for the Provisions of Islamic Sharia. This is particularly pertinent to the provisions about the use of rights in civil codes, as well as the many manifestations of misuse associated with its exercise. Trying to apply the theory in practice to the doctor and clarifying the legitimate and legal responsibility of the medical profession.
3. This document outlines the legal and civil liabilities that may result from a medical mistake committed by a doctor.
4. This paper aims to elucidate the consequences arising from medical errors.
5. The inquiry of the fundamental principles underlying responsibility in the context of medical errors.

RESEARCH PROBLEM

The inherent characteristics of rights, such as freedoms and powers, are not inherently absolute and do not arise only from monopolistic or dominating forces. In contrast, the owner is bestowed with the authority to exercise control over the item in any manner and at any time of their choosing. Nevertheless, in every instance, there are limitations imposed on its functionality to ensure that its proprietors do not engage in acts of extremism, disorderliness, and injury. The potential exists for the notion of arbitrariness in the use of rights to intersect with or present contradictions to the theory of mistake. Therefore, it is essential to elucidate these issues and expound upon the degree to which the idea of arbitrariness remains unaffected by errors.

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THE VERACITY OF THE HYPOTHESIS

DEFINING THEORIES IN LANGUAGE AND TERMINOLOGY AMONG ANCIENT AND CONTEMPORARY SCHOLARS

THEORY IN LANGUAGE

The matter at hand is one that lacks empirical evidence and remains unverifiable until substantiated by conclusive proof. The concept under consideration is that of a proposition, which refers to a statement that may be evaluated for truthfulness or falsehood by the one making the assertion.

THEORY IN TERMINOLOGY

Philosophers have conceptualized it as a collective body of beliefs or viewpoints that elucidate scientific and technical phenomena by investigating the inherent complexities within the connection between individuals and the subject matter, or even between the knower and the known, as well as the methods of acquiring knowledge, whether through innate capacities or external acquisition [3].

THE HYPOTHESIS, IN ITS BROADEST INTERPRETATION

The concept being discussed is a comprehensive and objective legal system that encompasses numerous intricate aspects found within various branches of jurisprudence. These branches include the theory of rights, the theory of ownership, the theory of contracts, the theory of eligibility, the theory of guarantees, the theory of legal necessity, and the theory of legal supports. From factors such as invalidity, corruption, discontinuance, decision, and similar circumstances [4]. Regarding the Muslim jurists, it is evident that they did not use broad theories or issue-based statements as the foundation for formulating or determining judgements on jurisprudential matters. This approach aligns with the present legal methodology seen in the modern age. In contrast, it is seen that individuals adhere to the guidelines pertaining to general matters, specific matters, and subsidiary matters, while taking into account any relevant incidents that may have transpired. All these fields are governed by the general theory or principles. Through the examination of the decisions made by various branches, one can gain an understanding of the theory and its historical foundations. [5].

THE ABUSE OF A LEGAL RIGHT IS A FUNDAMENTAL CONCERN

THE LINGUISTIC AND TERMINOLOGICAL SIGNIFICANCE OF ARBITRARY

It is observed that arbitrariness occurs when an individual acts without sufficient knowledge or impact. In this context, a person who acts arbitrarily does not possess the intention to pursue what is right or arbitrary, and engages in the topic without careful consideration or premeditation [6]. It is widely acknowledged that language usage encompasses various patterns, including aimless and thoughtless actions, as well as instances of injustice and the act of diminishing others. In the context of Sharia, the term "arbitrariness" is commonly employed in three specific contexts.

1. The statements attributed to the Prophet, may peace and blessings be upon him, about those who have the audacity to offer religious legal opinions (fatwas): They embarked upon the task in a capricious manner, indicating their audacity and haughty indulgence in spite of their inadequate credentials.

2. In the narration of the Asif hadith, as conveyed by Abu Hurairah - may God be pleased with him - it is reported that an individual approached the Prophet - may God bless him and grant him peace - with a matter concerning his son. The man explained that his son had displayed arrogance towards a companion and had engaged in an adulterous relationship with the companion's wife. Upon learning that his son was liable to be stoned as per the prescribed punishment, the man opted to redeem his son's life by offering a hundred sheep as ransom. In light of having a female child, I sought counsel from individuals possessing expertise in religious matters. They advised me that my son should receive a punishment of one hundred lashes and a year-long banishment, while a woman should be subjected to stoning. Subsequently, the Messenger of God, may God's blessings and peace be upon him, declared his intention to adjudicate in accordance with the teachings outlined in the Book of God. The female offspring and the ovine creature need to be restored to your possession, but your male offspring should be subjected to a punitive measure of one hundred lashes and a period of banishment lasting for a duration of one year. Tomorrow, O Anis, it is advised that you approach the spouse of the aforementioned lady, and in the event of her admission of guilt, carry out the act of

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stoning as a form of punishment, In the context of the hadith, Al-Asif might be interpreted as either an undervalued hired worker or a sought-after hired worker who provides assistance [7].

3. The aforementioned statement attributed to the Prophet, along by the invocation of God's prayers and peace upon him, asserts that his intercession would not extend to an imam who exhibits rebellious behavior, Referring to a leader who is both unfair and lacking in justice. The responsibility for ensuring justice is with the imam in relation to the rights of the subjects. If an individual surpasses the aforementioned boundaries and infringes upon the rights of others, they might be characterized as arrogant, signifying their unfair and bewildered nature, hence rendering them undeserving of the Prophet's intervention [8].

Based on the analysis, it can be seen that within the realm of jurisprudential terminology, the term "arbitrariness" has been used to denote notions of injustice, unfairness, and a disregard for others. This semantic connotation aligns closely with its usage in general English. Based on our analysis, it can be inferred that arbitrariness is characterized by an individual's actions that include the unauthorized use of resources, potentially resulting in injury and perpetuating arbitrariness and injustice [8].

EXPLAIN THE CONCEPT OF AN ABUSED RIGHT

The jurists did not provide a precise delineation for the concept of "right," nonetheless, they used it in many connotations derived from its verbal signification. Hence, I have opted to investigate the authentic linguistic significance and applications of the jurists with the aim of formulating a precise definition of the concept of "right" within the realm of terminology.

THE RIGHT TO LANGUAGE

The term truth has several interpretations and connotations. The term it may be used to denote an entity that has a confirmed and unquestionable existence. The term truth is recognized as one of the appellations attributed to the divine being. The existence of anything is both evident and essential. In the divine proclamation, the Supreme Being declared: During that designated period, the Supreme Being shall bestow upon them their authentic religious belief, thereby enlightening them with the realization that the Supreme Being embodies absolute truth [1]. According to Lisan al- Arab, it is said that the concept of command is inherently just and righteous. Furthermore, it emphasizes that rights are intrinsically just and have gained recognition and acceptance [1]. Hence, the term right has significant prevalence within the language, including a broader semantic scope that extends to include the designation of individuals within the legal profession.

THE LEGAL WORD FOR THE RIGHT

The present discourse aims to explicate the conceptualizations of the right as posited by legal scholars and adherents of fundamentalist ideologies. According to Al- Shatibi, the concept may be characterized as "strict adherence to the literal text of the law." Similarly, Dr. Muhammad Salam characterizes it as "the legal ruling determined by the law, Some contemporary legal scholars have characterized it as "a predetermined benefit for either the individual or society, or both, as determined by the Legislator who possesses wisdom, Numerous jurists from both ancient and contemporary times have provided their own interpretations about the concept of ownership [9]. For instance, Ibn Najim Al-Hanafi articulated his understanding of the right of God as follows: It pertains to that which yields benefits for the collective. The examination of the possessor of a right provides a more accurate understanding of the essence, characteristics, scope, and many manifestations of that right. Nevertheless, it is conceivable for these concepts to undergo reformulation. One of the definitions is characterized by its precision as follows: a jurisdiction that is legally established either by divine authority or by human beings over individuals

THE IDEA MAY BE SUBSTANTIATED BY LEGAL PROOF

THE HOLY QUR'AN PROVIDES EVIDENCE SUPPORTING THE THESIS OF ARBITRARINESS IN THE USE OF RIGHTS

When examining the verses of the divine deity that discuss the concept of harm and the consequences arising from the exercise of a lawful entitlement, it becomes evident that they encompass various domains, notably divorce, reconciliation, breastfeeding, possession, debts, and additional subjects. In this discourse, we shall elucidate a facet of these verses and explicate the implications derived from them.

1. According to the divine instructions, God Almighty has said that divorced women are required to observe a waiting time of three menstrual cycles. Furthermore, it is deemed impermissible for them to hide any pregnancies that may have resulted from their previous marital union, provided that they have a belief in God. In the context of the Last Day, it is acknowledged that husbands possess a greater responsibility to reciprocate their wives' actions. Should they want to seek reconciliation, husbands are

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expected to provide a fair and equitable portion, commensurate with that of their wives. Additionally, it is recognized that males have a higher status or rank in this regard.

These verses elucidate the concepts that are regarded as grounds for illustrating the arbitrary nature of the individual exercising their rights. These criteria include:

- a. The concept of taking back refers to the continuance of a marriage without any kind of recompense. This practice is considered the right of the husband, as stated in the words of God Almighty: And their husbands are more entitled to their return.
- b. The woman has rights that are comparable to her corresponding responsibilities. According to the divine proclamation, God Almighty has said that individuals possess rights that are comparable to the rights bestowed upon them.
- c. The decision between retaining or releasing one's spouse is a matter of the husband's right, and it should be carried out with an attitude of love: Therefore, it is incumbent upon the husband to either retain his spouse with kindness or release her with kindness.
- d. The perpetuation of the conjugal relationship between the partners is both their entitlement and their obligation. In the event that individual's express apprehension over their ability to adhere to the prescribed boundaries set by God, they should not be held accountable for seeking financial recompense from their spouse in return for the compensation that she provides.
- e. The husband's entitlement to divorce, as stipulated by Sharia law, is subject to limitations in terms of the number of divorces permitted, rather than being an unrestricted prerogative.
- f. The legal concept of guardianship granted certain rights to the designated guardian, who is expected to use these rights in a lawful and appropriate way.
- g. The aforementioned rules are included under the verses pertaining to marital rights. Consequently, those who abide by these limitations and stick to them are doing commendably, while those who transgress them are perpetrating unjustly against themselves.

2. God Almighty says: "Make them live from where you have lived since you were, and do not harass them to make it difficult for them; but if they are pregnant, then spend on them until they give birth." Here, if they breastfeed for you, give them their wages, and agree among yourselves with kindness, but if you disagree, then another woman will breastfeed for him [1]. The passage encompasses a comprehensive connection between all specified elements, which are contingent upon adherence to moral principles, so precluding any violation by either the husband or wife.

In Surah An-Nisa, God Almighty states the following on the conclusion of the verses pertaining to inheritance [1].

"After a bequeathed bequest or a debt without harm, there is a commandment from God, and God is All-Knowing, All-Knowing." The commentators believe that the words of God Almighty: He is not harmful is a condition of the testator, so the will must be free from the intention of harming any of the heirs by depriving them of their right to inheritance or by circumventing it to reduce what they deserve. It was narrated on the authority of Ibn Abbas that the Prophet - May God's prayers and peace be upon him - he said: Harm in a will is a major sin, and this explains the wisdom of his saying: There is no will for an heir [1]. The act of making a gift to an heir is prohibited due to its potential to generate unequal outcomes, leading to both advantages for some heirs and disadvantages for others, therefore resulting in detrimental consequences. Hence, several legal scholars held the view that a testamentary gift to an heir amounting to one-third or less, with the explicit purpose of causing injury to the other heirs, is deemed void, if an individual wishes to create a will, it is imperative that they adhere to the principles and regulations set out by God and His law. It is crucial that the act of creating a will be not used as a mechanism to inflict damage onto the intended beneficiaries. Failure to comply with this ethical obligation would constitute an abuse of one's legal entitlement and a violation of moral principles. The scripture in question pertains to the statements made by God Almighty on indebtedness [10]. "And neither a scribe nor a witness will be harmed. But if you do, it is disobedience on your part. And fear God, and God will teach you, and God is All-Knowing of all things." The potential harm arises from the debtor, who may retaliate against both the writer and the martyr. This retaliation is a result of the debtor's dissatisfaction with the writer's meticulous documentation of the instrument and the martyr's willingness to testify against the debtor or provide testimony that is unfavorable to the debtor. Consequently, the debtor may inflict harm upon either party in various ways. In light of this interpretation, the verse can be seen as exempt from the concept of arbitrariness in the exercise of rights, as the debtor does not possess any rights in this context. However, the injury inflicted by the individual in question may be classified as an act of initiatory hostility and hence warrants appropriate punitive measures. Potential damage may arise when an individual, regardless of their role as a creditor, debtor, or otherwise, exerts pressure on another party to provide written statements or testimony at unsuitable occasions [1]. In this context, the concept of injury is included by the notion of the abuse of rights, wherein the individual exercising their right to seek writing or testimony is permitted to do so with the condition that their use of this right does not cause any harm to the writer or witnesses involved [11].

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ABUSE OF RIGHTS HYPOTHESIS SUPPORTED BY EXAMPLES FROM THE PURE SUNNAH

Within the Sunnah of the Prophet, there are textual references and practical manifestations that suggest the permissibility of infringing against the rights of others. These roots may be traced back to Islamic teachings, as shown by the following textual sources:

What was narrated on the authority of the Prophet - may God bless him and grant him peace: There is no harm or harm [12].

Scholars specializing in jurisprudence and jurisprudential norms have extensively expounded upon the hadith, extracting and elucidating numerous principles derived from it. This hadith encompasses a fundamental principle of Sharia law. Indeed, it is widely acknowledged that it has a significant position within the framework of Sharia law, as shown by several references in both the Qur'an and the Sunnah.

Academic scholars have extensively expounded upon the many facets involved in discerning and differentiating between different forms or manifestations of injury. According to Ibn Manzur, damage may be seen as the antithesis of benefit, with the intention of causing harm to its possessor. Consequently, harm encompasses both the act of inflicting hurt and the resultant negative impact experienced by the one affected [13].

According to Ibn al-Atheer, the one in question does not compensate or recompense the other person for inflicting damage upon them. According to the statement, damage refers to actions that cause negative consequences to one's buddy, while benefit refers to actions that result in personal gain. damage is further defined as actions that cause negative consequences without deriving any advantage from the friend. According to the source, it has been said that these terms possess identical connotations and are repeated in order to underscore their significance [3].

THE APPLICATIONS OF THE COMPANIONS PROVIDE EVIDENCE SUPPORTING THE PREMISE OF MISUSE OF RIGHTS

Numerous instances have been seen whereby the Companions of the Messenger of God - may God bless him and give him peace - have made use of the notion of arbitrariness in the context of legal rights. These applications have been made in light of the teachings mentioned in the Holy Qur'an and the Sunnah. Some notable examples of such applications include:

1. Malik narrated in his Muwatta: "Al-Dahhak bin Khalifa wanted a stream of water to pass to his land through the land of Muhammad bin Salamah, but Muhammad refused, so Ladhahak said to him: You did not call me, and it is of benefit to you. You drink from it first and last and it will not harm you. Muhammad refused, so Al-Dahhak spoke to Omar, may God be pleased with him." So, he ordered him to shoot it, but he refused, so Omar said: By God, he will pass it over, even on your stomach. He allowed Al-Dahhak to throw it, so he did.

2. Malik also narrated in Al-Muwatta a similar incident in which Abd al-Rahman ibn Awf - may God be pleased with him - wanted to divert a stream of water for him from a man's passage in the wall to another side of the wall closer to his land, but the owner of the land refused, so Omar, may God be pleased with him, ruled for Ibn Awf to divert it. These two incidents indicate the establishment of the right to easement on the land of others, such as the construction of canals and the construction of waterways between agricultural lands, if no harm is caused to the owner of the land. This is what many jurists have agreed upon, in accordance with the ruling of Omar - may God be pleased with him, and is supported by the ruling of the Prophet - May God's prayers and peace be upon him - in the incident of Samra and Abu Lubabah, as witnessed by the words of the Prophet, may God's prayers and peace be upon him: "No harm, no harm." Some jurists are of the opinion that the landowner should not be forced to do so because he disposed of someone else's property without his permission, so it is not permissible, and it is an analogy.

3. What Omar, may God be pleased with him, ruled was based on the fact that the owner, in rejecting the right of easement without any harm being caused to him because of that, is only considered to be abusive in using his right.

4. Ibn Hazm mentioned that Abd al-Rahman bin Awf - may God be pleased with him - divorced his wife Tamadur irrevocably during his death illness, then he died while she was in the waiting period, so Uthman, may God be pleased with him, ruled that she inherit from him, and Uthman's ruling was based on the consideration that divorce during a death illness is considered Arbitrariness on the part of the husband in exercising the right of divorce, because it deviates from the purpose for which divorce was legislated, which is to get rid of the ill treatment of the sick person and the sick person, the disease of death, and whoever is like him, such as one who has been sentenced to death or the like, is on the verge of eternal salvation from the bad treatment that he suffers from, so his divorce of his wife in this case was There is only one explanation for the situation, which is that he divorced her with the intention of depriving her of his inheritance out of revenge and harm to her, so he was abusive in using his right [14].

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THE CONTROLS, CIRCUMSTANCES, AND APPLICATIONS OF THE THEORY

THE NOTION OF ARBITRARINESS'S ESSENTIAL COMPONENTS AND GROUNDING IN REALITY

This paper explores the fundamental components of the idea of arbitrariness in the utilization of rights and the underlying principles upon which it is based.

Based on the aforementioned, it can be said that the theory of arbitrariness is grounded upon three fundamental components or pillars, namely:

1. The presence of a valid entitlement, as determined by Sharia law, is an exclusive right bestowed upon the individual, regardless of whether it pertains to tangible or intangible matters, or has financial implications. It is important to note that the determination of this right is solely within the purview of Sharia law and not subject to external influence.
2. The possessor of the aforementioned entitlement, referred to as the rightful holder, is an individual with unrestricted human agency, irrespective of their liability. The notion of arbitrariness on the part of the individual in authority is conceptualized as originating from their own person or their duly appointed representative. Furthermore, in the absence of the designated individual, this notion extends to someone who assumes their position, such as a guardian or custodian.
3. The use of this entitlement contravenes the legal statutes and restrictions set out by the Shari'ah, thereby leading to detriment inflicted upon others and the exploitation of such entitlement in question. An illustration of this scenario is an individual who ignites a fire on their property on a day characterized by strong winds. As a consequence, the fire extends beyond their land boundaries, encroaching into the neighboring properties and resulting in the destruction of crops or other forms of damage. Consequently, the individual in question has responsibility for the harm incurred by their neighbor due to their actions, since they have exceeded the boundaries of their entitlements and violated the rights of others.

THE PREMISES ON WHICH THE DOCTRINE OF ABUSE OF RIGHTS IS BASED

The historical legal scholars of Islamic jurisprudence addressed the misuse of rights through the development of various branches of jurisprudence and the examination of factual matters. Furthermore, they advanced their understanding by establishing numerous jurisprudential principles that govern these branches, including the principles of non-harm, prohibition of harm, and various other principles of inclusion, as well as the principle of permissibility. Numerous scholars have endeavored to develop a legal framework pertaining to the misuse of rights. One of the endeavors in question pertains to the scholarly work and study conducted by Professor Dr. Fathi Al-Derini, aimed at establishing the idea of arbitrariness in the use of rights within the realm of Islamic law. The individual holds the belief that the presence of the notion of arbitrariness within Islamic law serves a preventative purpose, as it serves to deter the right holder from using their right in an arbitrary manner prior to its actual execution. If the probability of the anticipated injury resulting from its use is more probable than not, and this circumstance does not align with the principles of tort law, which intervene in ascertaining responsibility for the injurious action subsequent to its actual occurrence.

His Excellency posits that the concept of arbitrariness in the exercise of rights arises from the inherent nature of rights in Islamic law and its jurisprudence. Islamic jurisprudence is not solely grounded in individual perspectives, but rather emphasizes the harmonization and conciliation of both individual and collective interests.

Similarly, the concept of individual rights serves a social purpose and should not be mistaken for a social role in and of itself. The prominence of property rights, seen as paramount among private rights, is readily apparent in the legal framework of Sharia and its associated laws, which have been established to safeguard and uphold such rights.

The idea of arbitrariness in Islamic law is intricately connected to the theory of right and its inherent character. This theory serves a twofold purpose and is drawn from the fundamental nature of Islamic legislation and its extensive jurisprudential framework.

These articles pertain to the requirements on the use of the right and the circumstances under which it is applicable. This use lacks legitimacy and pertains specifically to the conditions for abuse in the exercise of the right. According to Article 36, it is stated that the act of granting permission is in conflict with the concept of warranty. Furthermore, it is emphasized that those who use their rights in a lawful way cannot be held accountable for any ensuing harm.

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May Li stated in the explanatory memorandum for this text: "This text is consistent with the wisdom of Article of the current civil code, which says: 'Whoever uses his right in a legitimate manner shall not be responsible for the damage that results from that [15]."

The phrase included in the proposed text, "The legal permissibility contradicts the guarantee," is intended to convey the same meaning. This phrase aligns with the stipulation in Article 4 of the codification. It is worth noting that the text begins with a phrase commonly used in Islamic jurisprudence due to its concise eloquence, followed by the aforementioned statement. A linguistic expression that elucidates the intended semantic interpretation.

The intention of the explanatory memorandum is evident in its aim to provide clarification on the jurisprudential rule that states "Legal permissibility contradicts the guarantee." The first portion of the text serves to affirm the authenticity and legitimacy of the document. With regards to Article 37 of the aforementioned draft, it is observed that it contains provisions that specify:

- a. The use of a privilege is deemed unlawful if its possessor strays from the original aim as established by the legislature.
 1. If the action is designed to cause damage to others.
 2. In the event that it contradicts a public or fundamental interest.
 3. Engaging in an illicit pursuit.
 4. The pursued objectives lack proportionality in relation to the negative consequences inflicted upon others.
- b. The court has the authority to issue a ruling that prohibits this particular use and reinstates the situation to its prior condition, while also providing compensation for any consequent damages. Consequently, a universally applicable criterion of arbitrariness exists, which encompasses all types of rights and spans across various legal domains. This underscores the importance of incorporating the theory of arbitrariness in the initial section of civil codification, thereby establishing the right as the fundamental underpinning of arbitrariness.

The most practical uses of the general standard encompass many sub-standards that need consideration.

- a) Abuse may occur when the possessor of a right exercises it with the intention of causing damage to others.
- b) In the event that the exercise of a particular right contradicts the underlying public welfare, it is noteworthy that such a criterion was initially articulated in Article 6 of the preliminary version of civil codification, albeit subsequently omitted. However, it is worth mentioning that this principle finds recognition in Islamic jurisprudence and has been incorporated into the Code of Sharia Laws. Article 26 of said code explicitly asserts the principle of "private harm in order to prevent general harm."

THE PRACTICAL IMPLEMENTATIONS OF THEORETICAL FRAMEWORKS

EXAMPLES OF MISUSE IN THE USE OF RIGHTS

Upon doing study on the legal literature pertaining to this matter, it is evident that the Kuwaiti legislature has outlined in Article 30 of the Civil Code the principal manifestations and significant instances of misuse in the exercise of one's entitlements. These principles were taken from Islamic law, specifically, and were used as examples, albeit not exclusively. Subsequently, the judge retains the authority to express his viewpoint on matters that do not fall within any specific category, utilizing the overarching criterion outlined in Article 30 of the Civil Code. In doing so, the judge is guided by the principles of Islamic jurisprudence and draws upon the teachings of the Prophet, seeking divine blessings and peace upon him. He said that there is no danger or detriment [16].

CODE OF CIVIL PROCEDURE ARTICLE 30 APPLICATIONS

ILLEGITIMATE INTEREST ARISES AS A CONSEQUENCE OF EXERCISING ONE'S RIGHTS

It is not enough that the interest that the right holder aims to achieve through the use of his right is apparent and beneficial, even if it is of great benefit to him. Rather, the interest must be legitimate, and rights have no value in the eyes of the law except to the extent that they achieve any legitimate interests, and in order to pursue illegal interests, and this is what leads to the deviation of the purpose of the right, and therefore it deprives it of legal protection, and the protection of the law is what recognizes the rights

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of their owners and also with the powers it contains in order to protect them, in order to Its owners are able to use it and achieve legitimate interests through this, that is, the interests that the law recognizes and protects in the event that if the person intends behind this to use his right to achieve illegal interests, then he is abusive in his use of his right, and the interest is illegitimate in the event that it was a violation of the law, public order, and good morals [17].

Accordingly, he is considered to be abusive in using his right

1. An employer who exercises their prerogative to terminate an employee based on their affiliation with a labor union, their religious convictions, or their political ideology.
2. The landlord, under the pretense of personal occupancy, urges the tenant to quit the leased property with the intention of afterwards renting it to a more financially advantageous renter.
3. Moreover, an individual who leases a residential property with the intention of overseeing illicit activities such as prostitution or gambling, and exhibits abusive behavior while exercising their rental rights.
4. The act of intending to do damage to others is indicative of a someone being abusive in the use of their rights. This implies that the only purpose of using these rights is to inflict harm onto others. Instead, abuse may be characterized as the exploitation of advantages that may be obtained by the perpetrator if they refrain from doing so. The intention behind such actions is not to enrich oneself, but rather to cause damage to others. In this scenario, the burden of proof is with the injured party to establish the existence of deliberate intention to do injury by the one exercising their right. This intention may be substantiated via several techniques of verification, and it can be deduced from the disinterest shown by the rights holder in using their right or the insignificance of the benefits derived from exercising such right [18].
5. The absence of proportionality between the interests of the individual asserting their rights and the extent of damage inflicted upon others. In the context of this scenario, the individual exercising their right is considered arbitrary when they possess multiple options for utilizing said right, yet deliberately choose the method that inflicts the greatest harm upon others, without attaining any substantial personal advantage. An example of this would be an individual who installs a chimney in a particular location within their building, thereby causing harm to their neighbor, despite having the ability to place it elsewhere.
6. The application in question holds significant significance within Islamic law, as it represents one of the manifestations of discretionary power in the exercise of rights in Islamic jurisprudence. It encompasses all forms of harm inflicted upon unfamiliar neighbors as a consequence of the property owner's exercise of their right. In such instances, the proprietor exercises their entitlement in a manner that results in causing excessive and extraordinary harm to the neighboring parties, beyond the boundaries of acceptable conduct and mutual understanding among neighbors. In this context, the proprietor disrupts the established equilibrium between their own interests and the collective interests of the community. By exercising their entitlement, they cause significant and extraordinary harm to their neighbors, so exhibiting deviant behavior. The objective of the right becomes capricious and devoid of legal safeguard.

The adverse effects experienced by neighboring individuals due to the persistent vibrations emanating from the functioning of an electricity-generating apparatus situated in the hotel annex.

THE ROLE OF ARBITRARINESS IN THE EXERCISE OF THE RIGHT

The variation in the interpretation and implementation of rights within law has arisen due to the arbitrary nature of their use. There are those who advocate for the universal application of the theory of arbitrariness to all rights, without any exceptions. Conversely, there are some who adopt a more limited approach by omitting certain rights from the purview of this theory. This divergence in perspectives leads to many interpretations and debates on the matter. The objective of this study is to investigate the applicability of the theory of arbitrariness in the context of copyright use, as well as to provide a clear definition of arbitrariness within this domain.

THE MEDICAL PRACTITIONER DECLINES TO PROVIDE MEDICAL INTERVENTION TO THE INDIVIDUAL

What is the stance of Islamic law on the doctor's decision to withhold treatment from the patient, although possessing the necessary capability to do so? This inquiry necessitates a thorough jurisprudential response, since we encounter this occurrence on a near-daily basis. Jurists have scrutinized this matter in the context of investigating cases of murder by cause. In doing so, they have provided illustrative instances, the arbitrary actions of medical professionals

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THE TENETS OF THE IDEA OF MEDICAL ARBITRARINESS

ADVANTAGES OF MEDICINE AND HOW THE IDEA OF MEDICINE CAME TO BE

The term "medicine" refers to the practice of treating the human body. A medical practitioner, often known as a doctor, has knowledge and expertise in the field of medicine. The doctor is responsible for administering and prescribing appropriate medications for the patient. The term "medicine" itself encompasses several connotations and interpretations within the language.

Wiz: He is said to possess exceptional intellectual acumen, displaying expertise in his field of study, and holding the title of a medical professional.

Repair: It is said that he has goodness, that is, he has made him sound, and he has goodness in matters, that is, kindness and policy.

Kindness: And the doctor is gentle in matters.

RELATED WORDS

Medication: It is the use of medicine, including treatment, which is treatment, and medicine: it is what is treated with, and it is also called healing. The virtue of medicine: The source of medicine is basically the need for it. People need it, as its fruit is the preservation of the human soul, which is the second goal of the Sharia goals, and all laws have brought it. The Prophet, may God bless him and grant him peace, said: "Take care, for God has not created a disease without creating a cure for it other than one disease, old age [19]. Al-Shafi'i says: "There are two types of people who are indispensable to them: scholars for their religions, and doctors for their bodies" Al-Ezz bin Abd al-Salam said: Medicine, like Sharia law, was established to bring about the interests of safety and well-being, and to ward off the evils of illness and disease [3].

THE LEGAL AND ETHICAL OBLIGATIONS OF THE MEDICAL PROFESSION

DEFINITION OF RESPONSIBILITY IN GENERAL

Responsibility in general is the condition of the person who committed something that requires accountability [3]. Or it is the obligation that a person has to guarantee what he issues. It is possible that what is meant by responsibility is holding a person accountable for his action or omission from an action that caused harm to others. The penalty for this responsibility is public dissatisfaction and denunciation, but if the act violates a legal rule, it is legal, and it is either administrative, civil, penal, etc.

ISLAMIC LEGAL THEORY REJECTS THE CONCEPT OF PERSONAL LIABILITY

The legal principle pertaining to medical responsibility asserts that those who engage in a profession or field of study that they were not knowledgeable about at the time of their mastery are accountable for any damage inflicted upon others as a consequence of their activity. One of the regulations outlined in Islamic Sharia is that the responsibility of a doctor to provide treatment, whether authorized or requested, is considered obligatory. This obligation remains intact even if the doctor has the discretion to choose whether to fulfill it, as long as the doctor ensures the condition of safety. The doctor's duty also encompasses exercising scientific and practical diligence in providing the appropriate treatment and its method, as they possess extensive authority and guardianship in making such decisions. The jurists are in full agreement over this matter, but they diverge in their explanations for the doctor's lack of culpability. Abu Hanifa posited that the rationale for a medical procedure is rooted in societal exigency and the consent of the affected individual or their legal guardian. Conversely, Al-Shafi'i and Ahmad ibn Hanbal maintained that the justification is only in the consent of the affected individual, with the intention of rectifying the resultant condition by the physician. The individual in question did not possess the intention to do damage to the other party, as he observed the situation. In the absence of both the ruler's authorization and the patient's consent, the doctor has no liability for any breaches of technical principles or errors that may arise throughout the course of their practice [20].

According to Sharia scholars, the criteria for the lack of medical culpability are consolidated.

1. Permission to use public streets.
2. Furthermore, the topic of interest pertains to patient satisfaction
3. The purpose of healing.

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4. There is no error on the part of the doctor

The topic under consideration pertains to the convergence of viewpoints among contemporary legal scholars, who, through extensive deliberation and investigation, have reached a consensus on the conditions that have been previously established by Islamic Sharia scholars. It is noteworthy that a significant number of contemporary legal systems have incorporated these conditions as a means to absolve doctors of liability.

Punishment under the law and potential lawsuits illegal responsibility refers to the legal accountability incurred as a result of engaging in illegal activity. The focal point of this duty is the criminal penalty, which is a punitive or precautionary measure imposed by the law against the individual deemed accountable for the offense. Criminal liability refers to the legal responsibility that emerges from both acts and omissions that meet the criteria for a criminal offense as defined by the applicable legislative provisions [21]. Civil responsibility arises when an individual is obligated to provide compensation for the damage, they have inflicted upon others [22]. Civil responsibility is often regarded as a significant legal subject, alongside criminal culpability, due to its potential to reflect the dynamics of societies and the conflicts that arise within them. The individual in issue is placed in a position of responsibility when they breach a legal regulation, resulting in injury to themselves and others. This obligation compels them to provide compensation. Hence, this implies that it is incumbent upon the one with accountability to provide restitution for any incurred harm. The harm inflicted onto others as a result of his violation of a contractual obligation or a legal obligation.

MEDICAL MALPRACTICE LAWSUITS AND CRIMINAL PROSECUTION

The practice of medicine involves adhering to the established rules and principles of medical science, with the primary objective of healing the patient. This activity is exclusively reserved for individuals who possess a valid license to practice medicine. Acquiring an academic qualification is a crucial prerequisite mandated by the law for the issuance of this license. This qualification serves as a determinant factor in establishing eligibility for the profession, as it designates the sole individual authorized to engage in medical practices aligned with accepted scientific principles. The fundamental nature of medical practice is in its therapeutic function, with the primary objective of eliminating the patient's ailment or mitigating their suffering.

THE ONUS IS WITH THE MEDICAL PRACTITIONER

1. When he neglects the scientific principles and rules established in medical science.
2. In the event that he is unable to fulfill his professional obligations and fails to take appropriate measures to rectify the situation.
3. The physician lacks dedication towards attaining a desired outcome or objective of recuperation.

The duty incumbent upon the doctor necessitates the exertion of sincere and diligent endeavors in the provision of care to their patient. This duty, unless under extraordinary circumstances, must align with the established principles of medical science, irrespective of any contentious matters. It is imperative that these efforts avoid generating controversy and debate that may impede the doctor's diligence. Failure to fulfill this duty would be deemed an error, thereby warranting accountability.

THE IMPACT OF ERRORS IN MEDICINE AND THEIR CONSEQUENCES

DEFINITION OF MEDICAL ERROR

The jurisprudential analysis of the doctor's mistake was grounded on the overarching principle used in assessing the nature of the error. According to Ibn Abd al-Barr, there is a universal agreement among scholars that a mistake occurs when the offender unintentionally fails to achieve their intended action and instead accomplishes something different. In the context of circumcision and medical procedures, it is understood that both the circumciser and the doctor act with the intention of providing healing and medical treatment to the patient. Is it conceivable that his activity deviates from the attainment of this objective and may it be regarded as an error? Not all medical procedures may be seen as a cessation of progress towards patient recovery, therefore potentially qualifying as a medical mistake. The potential failure of a medical intervention to accomplish the desired outcome of patient recovery is not indicative of any fault, since the practice of medicine has unique characteristics stemming from its legal framework and inherent obligations. According to Dr. Abdel Sattar Abu Ghudda, the concept of regarding treatment as a sufficient duty entails that the doctor should not be held accountable for the outcomes resulting from their work in fulfilling their duty. Therefore, medical professionals are obligated to provide treatment when granted permission or upon request, and it is important to note that this duty is not contingent upon ensuring absolute safety, but rather on its execution. The responsibility is solely with the individual to use their own discretion and demonstrate commitment to both scientific and practical endeavors.

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In the event that a physician follows to the principles of the scientific and practical aspects of their profession, and as a consequence of their treatment, damage is transmitted to the patient, the physician will not be held accountable for such injury. This is due to the fact that the physician's actions were approved by Sharia law. Ibn Qayyim Al-Jawziyyah articulated a noteworthy principle in this context, stating that the consensus ensures the propagation of wrongdoing, whereas the consensus neglects the propagation of obligations. The doctor is obligated to exert honest and diligent efforts that align with prevailing circumstances and recognized scientific principles, with the objective of promoting the patient's well-being and enhancing their health status. The physician is required to use appropriate diligence in providing treatment, while they are not under an obligation to cure the patient or avert the occurrence of an ailment. The disease continues to advance, and the individual is not exempt from the potential risks and mishaps associated with it. It is the responsibility placed upon the individual to exercise due diligence and recommend appropriate treatment methods in the hopes of achieving a cure for the disease. Additionally, the individual must consider their moral duty and adhere to a cautious approach, incorporating scientific monitoring. Any failure to fulfill this obligation would be considered a medical error. Elevates the level of accountability for medical practitioners [23]. Medical mistake may be characterized as a kind of carelessness in a physician's actions, resulting from a lack of vigilance on the part of the doctor, while occurring within the same external conditions that surrounded the responsible physician. The aforementioned definition lacks comprehensiveness since it just pertains to carelessness, hence neglecting other components of mistake. In the medical field, there is no opposition to considering cases of purposeful carelessness, which should be distinguished from mere mistakes. Medical errors occur when certain factors are present, including the failure to adhere to established scientific principles and norms in the field of medicine, negligence in fulfilling the obligations of caution and care, and a lack of diligence on the part of the healthcare provider.

CAUSES OF MEDICAL MISTAKES

Through an analysis of the statements made by legal experts, it becomes evident that a medical mistake does not typically lead to legal liability unless three key components are established: transgression, error, and damage. Additionally, it is necessary to demonstrate the causal link between the error and the resulting harm. However, it is important to acknowledge that establishing this causal relationship can be challenging, akin to refuting the existence of a cause. The occurrence of harm may be attributed to an external factor, indicating the absence of any hindrance that would have prevented the damage from resulting due to an error. The specific characteristics and attributes of these components are outlined below.

1. Transgression may be defined as an act or behavior that deviates from accepted norms or standards, hence constituting a mistake. According to Al-Sanhouri, transgression in Islamic law may be described as a departure from the typical conduct shown by an ordinary individual. According to jurists, the term "transgression" encompasses actions that exceed established norms, demonstrate recklessness, and lack prudence. Transgression is often defined as the act of surpassing the customary boundaries, whether done deliberately or inadvertently.

2. The criterion for transgression is the act of contravening the principles established by Sharia law or customary practices. In the case of the doctor's transgression, which is an error without specific boundaries in Sharia law, it is attributed to the professional customs followed by doctors. This is because Sharia law is absolute and not subject to linguistic interpretation, thus leaving room for customary practices to govern certain aspects [25]. The concept of transgression refers to the occurrence of an error, specifically in the context of a doctor's deviation from typical and well-known medical practices. This departure necessitates a level of attentiveness and understanding, whether it arises from negligence, lack of care, or a violation of the specific obligations imposed by professional customs, all without any intention to cause harm. In line with this perspective, should the physician adhere to the principles inherent in their scientific and practical occupation, any adverse outcomes resulting from their treatment cannot be attributed to their actions, since they were acting within the confines of legal authorization and did not engage in any transgressions. The jurists have reached a unified consensus that the guarantee is applicable in the case of violation.

THERE ARE TWO DISTINCT MANIFESTATIONS OF MISCONDUCT

a) The initial category is that of negative transgression, which refers to the doctor's deliberate failure to fulfill any obligation outlined in the contract or mandated by Sharia law, without any intention of causing harm. Examples of negative transgression include the doctor discontinuing treatment after initiating it with the patient, or neglecting to provide necessary first aid despite being obligated to do so. The occurrence of this violation may be attributed to the neglect of one's responsibilities.

b) The second category, known as positive infringement, refers to instances when the actions of a professional doctor led to injury, either directly or unintentionally, such as exceeding the typical boundaries of a surgical incision or making an incision in a location other than the intended site. There are two distinct categories of damage: Material damage refers to the adverse effects inflicted upon an individual's physical well-being, including the loss of their spiritual essence, impairment to bodily organs, or exacerbation of existing illnesses due to an unjust action. Moral damage, often referred to as non-pecuniary harm, encompasses the adverse effects inflicted upon a patient by a medical practitioner, such as the experience of intense pain during medical procedures or the impairment of aesthetic appearance.

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3. Causal connection: A causal link must exist between the act of unlawful infringement and the resulting harm. In the absence of a causal link, the notion of responsibility becomes nullified. Establishing a causal relationship within the medical domain is a formidable challenge, mostly attributable to the intricate nature of the human body, the variability in its states and attributes, and the inherent ambiguity surrounding the origins of problems.

4. Causal connection: A causal link must exist between the act of unlawful infringement and the resulting harm. In the absence of a causal link, the notion of responsibility becomes nullified. Establishing a causal relationship within the medical domain is a formidable challenge, mostly attributable to the intricate nature of the human body, the variability in its states and attributes, and the inherent ambiguity surrounding the origins of problems.

Force majeure, known in legal terminology as an "act of God," refers to an unforeseeable event that is beyond human control. An example of this would be the unfortunate occurrence of a patient experiencing abrupt cardiac arrest and then passing away during a surgical operation. For a cause to be considered legitimate for postponing the occurrence of harm, it must meet two criteria: unpredictability and infrequency.

The error of the patient who has been injured may occur in cases when the patient has supplied inaccurate information or failed to adhere to the doctor's instructions on the prescribed therapy and management of their sickness, or if the patient has voluntarily discontinued the treatment.

The phenomenon of attributing blame to individuals for the consequences of actions done by others may be likened to a scenario where a doctor applies a cast to a patient's fractured leg to facilitate healing. Subsequently, an individual engages in a dispute with the patient and forcefully throws them to the ground, resulting in more damage to the limb. In this situation, it is not customary to hold the doctor accountable for the additional harm inflicted upon the leg.

DEFINITION OF MEDICAL MALPRACTICE

Medical errors are defined as instances where a doctor's behavior deviates from accepted standards of care and demonstrates negligence. These errors are not committed by individuals who are fully aware of their actions and the external factors influencing them. Given that the evaluation of a doctor's conduct cannot be quantified using objective physical measurements, such as meters or arms, the establishment of a standard for medical errors necessitates reliance on medical customs and practices. The criterion used to evaluate the doctor's mistake should be an objective norm that assesses the action based on a certain behavior that differs across cases, namely the typical conduct of an individual. In order to assess the doctor's mistake in treating a particular patient, the court compares the doctor's conduct to that of another doctor of similar professional standing. Whether it is a general practitioner or a specialist.

The establishment of Islamic law as a governing system occurred via customary practices in areas where legal or linguistic regulations were absent. According to Al-Zarkashi's statement in Al-Manthur, the jurists have expressed that every matter included in Sharia law is considered completely permissible and not subject to any restrictions in terms of terminology. However, these matters are influenced by customary practices. The jurists have specifically highlighted the need of safeguarding against theft, ensuring transparency in commercial transactions, and addressing issues related to menstruation. The significance and implications of his worth lie in the fact that his situation is subject to change based on many circumstances and temporal factors. Furthermore, his position is contingent upon the fairness or unfairness of the governing authority, as well as the prevailing levels of security and terror within the society.

These two jurisprudential books emphasize the need of considering situations and circumstances, as well as the need to establish precedents when custom is seen as a regulatory factor. According to Al-Sanhouri, the standard for transgression is objective, and the key to evaluating customary conduct is in determining what is typical among individuals. atypical is an anomaly that entails accountability. The act in question does not constitute a breach and does not serve as grounds for warranty coverage [25].

Hence, the evaluation made by the court on the conduct of the physician is predicated upon the actions that a diligent medical practitioner would do in the specific temporal and spatial context of the treatment, while considering established scientific tenets, the patient's medical state, and the degree of professional expertise.

REASONS FOR MEDICAL MISTAKES

Certain legal scholars argue that faults under Sharia law may be categorized into two distinct types: pure errors and errors that result in subsequent mistakes [24].

A pure mistake refers to the outcome of an act that is either lawful or carried out by the offender under the belief that it is acceptable. In this scenario, the individual responsible for the action demonstrates intent, however the resulting damage is a consequence of their carelessness and failure to exercise caution. For instance, consider the case of a doctor who, because to an error in judgment, mistakenly incises the right hemisphere of the brain instead of the left. Another example may include an error

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in the patient's medical records leading to unintended consequences. She obtains the necessary items, except those that are essential for her.

The occurrence in question can be classified as an error, as it deviates from the intended outcome. The individual responsible for this occurrence did not have the intention to carry out the action, but rather, it transpired due to their negligence or direct involvement. This can be likened to a scenario where a medical treatment is administered without conducting the necessary medical examination and diagnostic procedures, or when a doctor prescribes a medication to a patient which subsequently leads to a heart attack. Legal academics have classified medical errors into two distinct categories, as per his assertion.

Material error: It is essential for individuals, even medical professionals, to uphold their general obligations of caution and prudence within the confines of their respective professions. These general duties take precedence over the adherence to scientific or technical regulations specific to their field.

For instance, consider the scenario of a physician undertaking a surgical procedure despite their compromised health status, such as being assigned to attend to an ailing individual or a young child, and subsequently failing to provide the necessary care, resulting in the patient's demise. Additionally, instances may arise where the medical professional inadvertently leaves behind a piece of gauze or a medical device within the patient's body, or mistakenly inserts an oxygen tube into the esophagus instead of the intended bronchial tubes. Another example involves the inadvertent cutting of the right hemisphere of the brain instead of the left, leading to the misinterpretation of X-ray images.

Technical mistake refers to the occurrence when a doctor deviates from the established principles and regulations that are widely recognized and accepted within the medical community. These principles and rules are based on theoretical and scientific knowledge that every doctor is expected to be acquainted with over the course of their medical practice. A technical mistake may be defined as a departure from the established principles and regulations that regulate the medical profession, hence imposing limitations on its practitioners during the execution of their duties. Instances that may be used as examples include situations such as failure to adhere to medical examinations, inaccuracies in the process of blood transfusion, or harm inflicted upon a patient owing to improper utilization of medical apparatus and gadgets, resulting in incapacity or the deterioration of an organ or sickness.

THE FACTORS CONTRIBUTING TO MEDICAL ERRORS

The reasons of medical errors are many and cannot be exhaustively listed, however they may all be traced to a lack of adherence to the standards of the medical profession. The following are some of the more significant examples, however this list is not exhaustive:

The infringement of scientific principles within the medical profession refers to the contravention of established principles and standards that are grounded in theory and scientific knowledge. It is important for every doctor to possess an awareness of these principles while engaging in medical practice. There are two categories that are included under this category.

1. The field of established medical sciences encompasses the study of medicine, which is characterized by its reliance on fundamental principles. These principles include the disciplines of anatomy and physiology, as well as the understanding that the human body requires a constant intake of oxygen and that uncontrolled hemorrhaging may result in fatality. These constants are widely recognized and indispensable, encompassing both general constants and specific constants pertaining to the field of surgery. For instance, the principles governing the use of a scalpel within the body and the management of bleeding during surgical procedures remain consistent across various surgical interventions and throughout different time periods. The aforementioned general and specialized sciences are widely regarded as established disciplines, and those who depart from their principles are subject to punitive measures. These might be considered as medical guidelines and established facts.

2. Emerging medical sciences include the ongoing development of scientific knowledge in the field, including novel discoveries and treatment approaches. However, for these sciences to be regarded as scientific principles, two specific requirements must be met.

- These scientific disciplines must be endorsed by a credible scientific organization.
- Experienced individuals affirm the appropriateness of its application and implementation.

The amalgamation of these two delineations necessitates an additional need from the practitioner, namely, his aptitude to use these novel disciplines. If a novel surgical procedure has been developed, it is advisable for individuals to exercise caution and refrain from hastily implementing it without proper supervision or completion of a qualifying training program. This recommendation is in accordance with the guidance provided by medical experts. If the physician considers these factors and engages in a reputable professional practice that aligns with their qualifications and follows to established norms, they may be free from liability.

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The concept of breaching the duty of care pertains to the doctor's responsibility to use caution rather than focusing only on achieving a desired outcome. If the physician and those of similar profession exhibit any behavior that contradicts this obligation, it serves as evidence of their accountability, and this violation may be described as follows:

- Recklessness refers to the act of engaging in an activity without adequately considering the potential outcomes or repercussions. As an example, a medical practitioner does a surgical procedure without soliciting the assistance of an anesthesiologist.
- The absence of adequate prudence and caution is evident in the doctor's decision to provide therapy using gadgets that were known to be malfunctioning.
- Instances of negligence and inattentiveness may manifest in several forms, such as when a surgeon inadvertently fails to remove bone fragments from the surrounding tissue or unintentionally leaves a piece of gauze within a patient's stomach.

Noncompliance with the laws established by the governing bodies overseeing medical practice, including the failure to provide necessary treatment to patients resulting in injury and neglecting to get informed permission from patients. Instead, the official process of endorsing a document to indicate compliant agreement is satisfactory.

THE RAMIFICATIONS OF MEDICAL ERRORS

The fundamental tenet of Islamic jurisprudence posits that the foundation of accountability and responsibility lies in the will of individuals. It further asserts that any impairments that arise within the realm of volition, such as compulsion, forgetfulness, and mistake, absolve individuals of their obligation. According to the Messenger of God, may God bless him and give him peace, it has been said that God has eradicated mistake and forgetfulness from the members of my community, as well as any actions they were compelled to do.

The Almighty's saying: "And there is no blame on you for that in which you erred, but only for what your hearts intended; and God is Forgiving, Most Merciful." Al-Ahzab 5 indicates the fall of sin when one makes a mistake, while the Almighty's saying: "And what It is permissible for a believer to kill another believer unless by mistake. "If he kills a believer by mistake, then the freeing of a believing slave will be done as blood money and delivered to his family unless they give in charity." An-Nisa: 92

In light of the established liability of the perpetrator, it is pertinent to consider the rationale behind mitigating the wrongdoer's culpability, which stems from the incomplete nature of their crime due to the absence of intent in their actions. It is important to note that Sharia law only provides protection for the wrongdoer as a means to safeguard the public interest. Within the realm of wrongdoing, there exist grave offenses that are recurrent, such as wrongful killing and injury. These transgressions are primarily rooted in negligence and a failure to exercise due care. In order to mitigate potential harm, the legal system imposes penalties for regularly occurring incorrect acts that possess evident dangers. The imposition of penalty for this offense is justified on the grounds that it helps the collective welfare by promoting increased awareness and caution among people, therefore deterring the commission of such crimes.

The primary concern is to the fundamental underpinnings of responsibility in the context of medical errors.

Accountability in the context of medical mistakes is contingent upon two factors:

Firstly, the act of disregarding verification and precautionary measures. Nevertheless, the culpability of the offender is not contingent upon their demonstration of carelessness in every instance. The presumption of negligence arises when the wrongdoer deviates from the established scientific or practical norms of their field. The burden of proof is on the offender to demonstrate that they acted in accordance with these principles in order to be absolved from liability. The report and inscription indicate that the sort of offence in question is the failure to verify.

Secondly, it is important to consider the contractual basis of medical responsibility.

The doctor-patient relationship is established via a contractual agreement whereby both parties agree to give a designated benefit to the patient in return for a monetary charge or other kind of compensation. In typical scenarios, the medical practitioner provides treatment to the patient, typically in accordance with a pre-established agreement. The patient is generally obligated to adhere to the terms of this agreement, which may be expressed informally or without written documentation. Upon the doctor's initiation of opening his clinic and displaying a sign, it becomes evident that he assumes the role of the provider, offering his services to potential patients.

When the patient seeks medical care from this particular doctor, it signifies the patient's consent to the proposed treatment and therefore establishes the formalization of a medical contract between the patient and the doctor. Within the confines of this contractual agreement, the patient formally requests that their physician provide the necessary medical attention that would

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facilitate their recuperation. In return, the patient agrees to remunerate the physician with a predetermined and mutually agreed-upon charge. It is customary within the medical profession to establish the fees for examinations and treatments in advance.

The second requirement: means of proving medical error:

The patient's assertion about the doctor's error cannot be deemed credible in the absence of substantiating evidence. In accordance with legal principles, the onus of demonstrating medical negligence rests with the patient, since the burden of proof is with the plaintiff, while the responsibility of refutation lies with the defendant [26]. The patient possesses the inherent entitlement to utilize various forms of evidence, such as witnesses, personal experience, and documents, in order to substantiate the occurrence of an error and establish a causal relationship between said error and resulting damage. It is imperative to demonstrate that the damage incurred would not have transpired in the absence of the aforementioned error.

Undoubtedly, the task of substantiating the existence of a medical mistake is a challenging endeavor, particularly for the lay population, irrespective of their degree of education within the medical profession. Consequently, the onus of demonstrating the presence of a mistake falls with the patient, which may be a challenging endeavor, particularly given the demanding, intricate, and expansive nature of the medical profession.

The means of proof that should be relied upon are:

1. Testimony refers to the presentation of true facts in a court of justice, aimed at substantiating the veracity of a claim or assertion. God Almighty said: "And call for two witnesses from among your own men; and if they are not two men, then a man and two women from whomever you are pleased with." "Disease" Al-Baqarah: 282.
2. Confession: It is information about the establishment of a right of another against oneself, and because it is a confession by the defendant in favor of the plaintiff, there is no doubt about it, and the acknowledgment indicates proof of error on the part of the confessor only.
3. Expert testimony refers to those who provide information and knowledge on scientific facts. The foundation of expert evidence is in its provision of information pertaining to a specific fact, as delivered by an individual with extensive knowledge and expertise in the subject matter. Hence, legal scholars see it as a question of narrative rather than testimony. A single witness, regardless of gender, is deemed enough for this purpose. In the absence of a Muslim witness, it is permitted to consider the evidence of a non-Muslim individual. Jealousy is an emotional response characterized by feelings of envy, insecurity, and possessiveness.
4. Written papers include various records generated by medical professionals of equal standing in the patient's medical record. These documents often consist of a diagnostic portrayal of the ailment, the commencement date of therapy, any subsequent illness progression, and the prescribed drugs. In addition, the treatment or surgical procedure documents also include the signatures of either the patient or their legal guardian.

The second issue: What results from the doctor's error?

It is widely acknowledged by the scientific community that in cases where a doctor initiates medical treatment and the patient experiences complete or partial harm, resulting in death or limb damage that was unforeseen and could not have been anticipated by the doctor's expertise or caution, and where such harm was not caused by any error or negligence on the part of the doctor, there is no legal obligation to provide compensation or guarantee. This absence of guarantee is justified by the fact that there was no reasonable basis for such guarantee, whether intentional or unintentional, and imposing such a guarantee would impede doctors from fulfilling their professional responsibilities. According to the account provided by Ibn Jarir, he inquired of Ataa if it is possible for a doctor to die while attending to a patient's wound. According to his statement, he lacks cognitive faculties [26].

Hata telafisi miktarı: Hata telafisi iki kısma ayrılır The concept of estimated blood money, also known as diya, pertains to the valuation of damages that are assessed in terms of monetary compensation. The payment of blood money is a mandatory requirement in cases of loss of life or the loss of the functionality of a vital organ in the human body, such as the tongue. Fifty percent of the total is deemed required for the curved appendages, namely the hands and feet, whereas ten percent is considered obligatory for a single digit.

2. Unassessed compensation, as determined by the ministry of justice, refers to the compensation for injury that is not explicitly mentioned in any textual documentation. In such cases, the judge or a designated representative is responsible for conducting an assessment to determine the appropriate compensation. Typically, in contemporary society, the valuation of blood money is expressed in monetary terms, so giving the judge discretionary power over both forms of recompense.

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RESULTS

1. The concept of arbitrariness in Islamic jurisprudence extends beyond transactions, unlike positive rules which are confined to one domain. Moreover, it has a broadened reach that encompasses extensive domains under Islamic law, including transactions, family decisions, and penalties.
2. The legal and civil liabilities resulting from a physician's medical mistake have been widely acknowledged.
3. The ramifications of medical mistake have been elucidated.
4. The foundation of accountability in the context of medical errors has been established.

CONCLUSION

Based on the aforementioned analysis, it can be seen that the idea of arbitrariness in the use of rights primarily pertains to the realm of legal theory. Its origins and foundations may be traced back to the evidential support found within Islamic law and the corpus of jurisprudential literature. The Qur'an, Sunnah, and the practices of the Companions have all made reference to this principle, and its applicability in Islamic law extends beyond transactions. Positive rules have a broadened reach that encompasses several aspects of Islamic jurisprudence, including transactions, family decisions, and penalties. On the contrary, there is evidence of its expansion to include the theoretical framework's applicability to the use of rights and public freedoms. Individuals possess the freedom to engage in independent thinking, express personal opinions, undertake actions, and move about unrestricted, as long as their activities do not cause damage to others.

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