

The Fundamental Of Jurisprudence And Legitimacy Of Medical Work

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Abstract

The study aimed to identify the legal and jurisprudential basis for the legitimacy of medical work, and the problem of the study lies in the lack of clarity of the legal and jurisprudential basis for the legitimacy of medical work, and highlights the importance of the study in highlighting the legal and jurisprudential basis for the legitimacy of medical work.

The study followed the descriptive analytical approach to describe and analyze the legal and jurisprudential basis for the legitimacy of medical work. The study also followed the inductive approach to extrapolate the texts of the Holy Quran and the Sunnah of the Prophet and the legal texts that concern the legal and jurisprudential basis for the legitimacy of medical work.

The results of the study showed that the jurisprudential basis for the legitimacy of medical work is that the pursuit of medical work achieves the purposes of the Islamic Shariah by preserving the purposes of the Islamic Shariah. The provisions of the law also confirmed the legitimacy of medical work significantly. The study recommended the need to urge the Libyan legislator to elaborate further on the issue of the legality of medical work in Libya with more legal texts

Keywords: Legal basis, Jurisprudence basis, Legitimacy of medical work.

Introduction

The Islamic law urged glue, and all the laws of heaven, to preserve the health of bodies, and to prevent diseases and what causes the death of man. Allah Almighty said: "And expend in the way of Allah, and do not throw your hands to perdition, and do good, for Allah loves those who do good [Surah al-Baqarah: 195].

And Islam, praise be to Allah, has come up with several measures in health matters that we boast in front of the West and the East, including: that Allah Almighty has sanctified for us purity and

said: "Allah loves the penitent and loves the purified." [Surah Al-Baqarah: verse 222].

The Almighty said: "There are men among him who love to be purified, and Allah loves those who are purified." [Surah Al-Tawbah: 108] in the talk : about Malik ALAshari the Messenger of Allah, peace be upon him said "The Pure is the arepart of the Faith (muslim. 2006)

The legitimacy of medical work has received human attention since ancient times, as it worked hard to find all preventive measures to preserve health, and this resulted in the production of a

number of means and measures aimed at protecting the individual and society from diseases, in order to preserve the health of the human being to perform his job in the worship of God and the live of this universe, according to what was available in those ages of medical sciences and preventive measures that he knew over time, including quarantine, and medical work was the subject of attention of legal and religious systems throughout human history, especially in Libya, because civilized societies before their emergence and appearance on the stage of history did not know the protection of human health, and the human body did not receive any protection.

Problem Statement

Medical work acquires great importance to both the individual and society to protect future generations. Despite of the existence of legal provisions in the Constitution and domestic law that provides the protection of human life and do not endanger human life in many ways, but there is a lack of clarity in the legal provisions on the legal texts of the legitimacy of the medical work in Libya.

Despite the fact that its provisions are enclosed, Libyan law devotes great attention to human health, the legal texts are still weak and have no clear doctrinal basis.

Research Questions:

1. What is the effects of jurisprudential basis for the legitimacy of the medical work in Libya?
2. What is the effects of legal basis for the legitimacy of medical work in Libya

Research Objectives

1. To demonstrate the jurisprudential basis for the legitimacy of the medical work in Libya.
2. To illustrate the legal basis for the legitimacy of medical work in Libya

Significance of Study

The importance of the study in shedding light on the jurisprudential and legal basis for the legitimacy of medical work in Libya is clear, as Libyan law has become clear on the basis of the legitimacy of medical work in Libya.

The human being has been alerted to the importance of medical work, as an urgent necessity to protect the human being and his life and protect future generations. This protection of human health may be international through a set of legal rules set by States to preserve human health, including internal ones that are stipulated through constitutions and internal laws.

From this point of view, Islamic jurisprudence is interested in legislating what would preserve the safety of human health and protect it from any moral damage, and this great interest given by the nominal jurisprudence to protect human health includes preserving his health in all aspects, psychological, physical, environmental and food, and everything that leads to its protection.

The results of the study are useful for many researchers interested significantly in the jurisprudence and legal basis in Libya, the results of the study also benefit the Libyan legislator in trying to benefit from the jurisprudential roots of the legitimacy of medical work in the enactment of laws and legislation that preserve human life.

Research Methodology

The present study addresses several approaches, including the following:

1. Analytical approach: The current study relied on the analytical approach to analyze the jurisprudential and legal basis for the legitimacy of medical work in Libya.

The reason for choosing the analytical approach is the ability of the analytical approach to clarify

the jurisprudential and legal basis for the legitimacy of medical work in Libya.

2. Inductive Approach: The current study relied on the inductive approach to extrapolate the texts of the Holy Quran and the cleansed Sunnah on the jurisprudential and legal basis for the legitimacy of medical work in Libya.

Limitation of Study

The limits of the study revolve around three limits that can be summed up as follows:

1. Spatial Limits: The spatial limits are limited to Libyan hospitals and health centers, and the reason for choosing Libyan hospitals and medical centers for their prominent role in providing medical work to all groups in the community.

2. Time Limits: The time limits are limited to the time period from 2020 to 2022, and the main reason for choosing this time period is the health crises that have passed through most countries of the world, especially Libya.

3. Objective Limits: limited to the study of the legal and legal basis of the legality of medical work in Libya, and the reason for choosing objective limits is to confirm the legality of medical work legally and jurisprudence in Libya.

Literature review

The previous studies dealt with many studies related to the subject of the study, the jurisprudential and legal basis for the legitimacy of medical work in Libya, and the current study dealt with many previous studies, including master's and doctoral studies on the subject of the study.

The following previous studies will be discussed in more detail as follows:

1 . The study of Muhammad Ali, (2016), entitled: Crimes related to public health, Arab

University Tabassi - Tabassa, Algeria, Faculty of Law presented as part of the requirements for obtaining a master's degree in Criminal Law ":

The study aimed to identify crimes related to public health, and the problem of the study is that maintaining public health is a priority for medical work and that there are many crimes committed related to public health.

The study highlights the importance of highlighting the need to preserve public health and that it is the right of every citizen of the State and to define the concept of public health crimes. The study followed the descriptive analytical approach to analyze crimes related to medical work.

The study has reached many results, including that the forms of medical error are lack of skill or ignorance of the origins of the profession, negligence or lack of precaution, and failure to observe laws, regulations and criminal texts. The study recommended the need to continue scientific research in the field of legal studies with permanent research in everything related to legislation designed to preserve human health and the body and the issues of medical errors that occur from workers in health practices and the impact of medical workers on the patient and its damage and the effectiveness of laws regulating healthwork in the country.

The current study benefited from this study in identifying the theoretical framework of public health, but it dealt with the aspect of health-related crimes, which is very different from the study.

2. Dodin study, Mahmoud Moussa Issa, (2006), entitled: "The individual civil liability of the doctor for his professional work, Master's

thesis in law, Faculty of Graduate Studies, Bir Zeit University, Palestine":

That study aimed to clarify the civil liability of the doctor and also aimed to determine the legal basis of the doctor's individual responsibility. The problem of the study lies in the responsibility of the doctor before the law for his medical work, where the doctor is responsible for his medical actions.

The importance of the study is highlighted in highlighting the criminal and medical responsibility as a result of the doctor's professional work.

The study followed the descriptive analytical approach to describe and analyze the doctor's individual civil responsibility

3. The study of Saleh Jassim Saleh Abdul Rahman Al-Muhammadi (2019) entitled "The Evolution of Civil Liability in the Medical Field", Master Thesis, Qatar University College of Law, ity for his or her professional work.

That study concluded, among the most important results, that the medical work includes prevention, treatment, diagnosis, and the obligation of legal license to practice the medical profession and the hypothesis of validity of consent on the part of the patient. It also noted the doctor's obligations towards the patient as a due diligence to complete his recovery, follow up his condition, and inform him of the case, supervision and control. The study recommended many recommendations, including that the opinion in the jurisprudence and the Palestinian judiciary that the responsibility of the doctor is civil liability and that his obligation to conduct care as a general asset and that medical liability in Palestine is governed by the general rules of responsibility in general under the provisions of

the Journal of Judicial Judgments and the Palestinian Civil Violations Law.

The current study has benefited from this study to identify the responsibility of the doctor for his medical work, but the study did not clearly explain the jurisprudential basis.

This study aimed to analyze the laws and regulations that govern the conditions for practicing the medical profession in the State of Qatar to determine its nature, and the problem of the study lies in the failure to update the laws related to the development of civil liability in the medical field, which contributed to the inability to determine civil liability.

The importance of the study in highlighting medical errors in the field of plastic surgery - luxury surgeries – which are the necessary cosmetic surgery, improvement surgery or elective surgery, and the origin of the commitment of the plastic surgeon in therapeutic surgery is an obligation of care, and the study followed many results, including that the Qatar legislator assesses responsibility for the errors of doctors in accordance with the general rules in the civil law, and did not devote to it special provisions for the responsibility of doctors for errors that occur as a result of their practice, and the study recommended the Qatar legislator to introduce modern legislation that regulates the medical profession in view of the developments of the profession, provided that it devotes a special door to the regulation of civil liability and the obligations that fall on the doctor with the strictness of the obligations of the specialized physician, and the current study benefited from this study in identifying the theoretical framework of the development of responsibility in the medical field, but the study did not address the jurisprudential or legal basis.

4 . As the study of Dawas, Rana Najeef Taha, (2011), entitled: Civil Liability of the Causer,

Comparative Study, National University of Success - Graduate School of Studies

The study aimed at clarifying the Algerian laws and legislation regulating medical work and clarifying what is medical error in the field of civil liability. The problem of the study lies in the inability to set specific rules for the civil liability of the doctor in the Algerian law. The study highlights the importance of the study in highlighting that the Algerian law guarantees the right of citizens to health care within the principles and provisions of the Constitution, as it stipulates the right to health and that the State has the duty to preserve and care of this right. The study followed the descriptive analytical approach to describe and analyze the Algerian laws and legislation regulating medical work. The results showed that the liability is based on the damage to the patient and that the injured patient can claim compensation by filing a lawsuit against the doctor who treated him or the treatment institution in which he was in order to receive his compensation. The study also recommended that the entitlement and assessment of this compensation is subject to the general rules governing civil liability, concluding that the civil liability of the doctor is only a copy of the general civil liability in the Algerian law.

The current study has benefited from this study in identifying the theoretical framework of general civil liability in Algerian law, but the current study differs in terms of addressing the jurisprudential and legal basis for the legitimacy of medical work.

5. The study of Abashi Karima, (2011), entitled: Civil Liability for the Errors of Health Workers, Mouloud Mamari University - Tizi Ouzou Faculty of Law and Political Science, a study to obtain a master's degree in law

The study aimed at clarifying the civil liability of the doctor in jurisprudence and judiciary, and the problem of the study is that the breach of the trust that the patient placed in his doctor at times or the breach of confidence that the doctor placed in himself believing that he is capable of medicine without causing damage to the body and health of the patient, and therefore the medical error is considered one of the aspects of professional error, and in the presence of a legal vacuum in the rules governing the medical profession to ensure the protection of the patient, it was necessary to refer to the traditional rules to determine the damage and its images, and highlights the importance of the study in highlighting the civil liability of the doctor in jurisprudence and jurisprudence, and the study followed the descriptive analytical approach to describe and analyze the civil liability of the doctor in jurisprudence and jurisprudence.

The study reached many results, including that the Algerian legislator neglected to regulate the civil liability of the doctor and merely stipulated in a single article of the Algerian Civil Code. The state guarantees to compensate the injured in the absence of the official based on the existence of a fund to compensate him. The study recommended that the Algerian legislator put special provisions for medical liability in the health laws.

The current study has benefited from this study in identifying the civil liability of the doctor in jurisprudence and jurisprudence, but the study did not address significantly the legal and jurisprudential basis for the legitimacy of medical work.

6. Isani Rafiqa's study (2016) entitled "The Responsibility of Doctors in Public Hospital Facilities" is a thesis submitted to obtain a PhD in Public Law at Abu Bakr Tlemcen University

The study aimed to highlight the disputes related to the competence of the administrative judge in the issue of compensating for errors in the public health facility. The problem of the study lies in the lack of clarity of the responsibility of doctors in public hospital facilities. The study highlights the importance of the study in highlighting the responsibility of doctors in public hospitals in legal terms and in terms of texts and legislation. The study followed the descriptive analytical approach to describe and analyze the responsibility of doctors in public hospital facilities. The study found that there is a real problem with regard to inventorying the many and sporadic regulatory texts related to medical practitioners and all persons who are active in the field of public health. The study reached many results, including that the responsibility of doctors in public hospital facilities was not supported by enough laws. The study recommended the need to clarify the Algerian law for all responsibilities that fall on doctors while clarifying the legal originality and jurisprudence.

The current study has benefited from this study in identifying the theoretical framework of the responsibility of doctors, but the current study dealt with the jurisprudential and legal basis of the legitimacy of medical work in the first place.

7. As well as the study of bin Dashash, Naseema, (2013) entitled "Civil Liability of the Doctor in Public Hospitals, Master Thesis, Akli Muhammad Ulhaj University - Faculty of Law and Political Science, Algeria",

The study aimed to identify the civil liability of the doctor in public hospitals, and to identify the person responsible for compensating the damage caused to patients. The problem of the study is the lack of clarity of the civil liability of the doctor in public hospitals. The study highlights the importance of the study in highlighting the civil

liability of the doctor in public hospitals. The study followed the descriptive analytical approach to describe and analyze the civil liability of the doctor in public hospitals.

The study concluded that the doctor was working in a public facility, the General Hospital, assigned to perform a public service for the General Hospital, and that accordingly the responsibility of the General Hospital was administrative.

The study recommended many proposals, including reducing medical errors, as activating monitoring by the Ministry of Health to detect cases of negligence and hold those at fault accountable, listening to complaining patients and working to raise awareness of the importance of medical responsibility through all media. The current study benefited from this study to identify the responsibilities of doctors within public hospitals, but the current study differs from this study, especially to identify the legal and jurisprudential basis for the legitimacy of medical work in Libya.

Theoretical Frameworks of the study

The Concept of Medical Work in Medicine

Medical work is defined by the Dean (Savatier) as: "The work done by a qualified person in order to heal others," as others define it as: "That activity, which is consistent in how and under what conditions it is carried out with the rules prescribed in medical science, and in itself - that is, according to the normal course of things - tends to heal the patient, and the origin in medical work is to be therapeutic, that is, aimed at getting rid of the disease or alleviating its severity, or just relieving its pain, but it is also considered medical work, which aims at revealing the causes of health or just preventing the disease."

The concept of medical work is a jurisprudential term

Some jurists view medical work as: "Every activity that responds to the human body or itself, and it is consistent in its nature and manner with the scientific principles and rules that are recognized in theory and practice in medical science, and is carried out by a doctor legally authorized, with the intention of detecting, diagnosing and treating the disease to achieve healing or reduce the pain of the patients or prevent the disease, or with the aim of preserving the health of individuals or achieving a social interest, provided that the consent of those who perform this work is available." We did not find in what we saw a legal or jurisprudential definition of medical work in different legislation, but the Egyptian judiciary was one of the first to refer to medical work, stipulating a serious medical error and tightening the ratio of error to medical practitioners, and they must take care, otherwise, offer to judge him compensation.

The concept of medical work in Islamic law

As the Islamic Shariah defines medicine as it came about the jurist Ibn Rushd: "Medicine is a science from which the conditions of the human body are known in terms of health and corruption," and Galen was attributed that he said: "Medicine is a knowledge of the conditions of the human body, preserves the sum of health, and recovers its vanishing," and in the rules of judgments: "Medicine - as the Shariah - is designed to bring the interests of safety and wellness, and to ward off the wicked of depravity and immorality..."

The purpose of medicine: to preserve health is present, to restore it is missing, and to remove or reduce the disease as much as possible."

The structure of the study

The study revolves around two topics. The first is the jurisprudential basis for the legitimacy of medical work.

The second topic: the legal basis for the legitimacy of medical work.

We will address each topic in more detail as follows:

The first topic: The jurisprudential basis for the legitimacy of medical work

It is certain that the Islamic Sharia is the law that is valid for every time and place to protect the individual and society from epidemics and diseases. It is a genuine Islamic methodology, and it is necessary to refer to the written Islamic jurisprudence as the basis for all new things. The Almighty said: ".And we send down the Qur 'an that which is healing and mercy for the believers, but it does not increase the wrongdoers except in loss." (Al-Israa, verse: 82)

What is decided by the Truth blessed and exalted be God, from the fact that the Qur 'an is a healing that is not limited to reading the Qur 'an to the patient, but is a much wider circle than that, and we can recognize the capacity of this circle of several things, including: Preventive medicine, which benefits from the set of provisions and directives that the Qur 'an came with and the truth of the hadiths, and this is a wide door, the texts of the imperative of purity and cleanliness are very many, but the purity of the body is a worship that is not prayer and the Prophet, peace be upon him, has forbidden a mark from entering the country infected with infectious diseases, and has forbidden those who were in that house from leaving it, and this is the best way to prevent the spread of diseases and epidemics that are transmitted by rapid infection, and this is what is called today quarantine and closure, and this is evidence that the Sharia is valid for every time and place.

Also, the Islamic history has many events related to the legitimacy of medical work, for example, the plague of Amwas, which happened during the time of Omar bin Al-Khattab, may God be pleased with him, and the plague of Al-Jarif in Basra in 69AH, during the time of Abdullah bin Al-Zubair (may God be pleased with him), which forced the jurists to intervene in research and provide legislative solutions through the Islamic jurisprudence full of events. It is known that the Islamic Sharia and its provisions have many characteristics, the most important of which are: raising embarrassment, forgiveness, facilitation, payment of hardship and low costs, and if what is difficult to do is found and the matter reaches the degree of necessity, Allah Almighty has legislated licenses that allow the taxpayers what has been prohibited to them, and forfeit what they have to do until the necessity disappears, and it is permissible for states and governments to impose restrictions on individual freedom in order to achieve the interest, whether in terms of preventing entry to and exit from cities, curfews or quarantines on specific neighborhoods, or travel bans, and it is also necessary to adhere to the decisions of states and governments in what is called social distancing and so on, which would help to contain the virus and prevent its spread, because the actions of the imam are entrusted to the interest, in accordance with the legitimate rule that states that (acting The Imam over the parish is entrusted with the interest).

Referring to Islamic jurisprudence, the Islamic Shariah defines the state as a political entity and sets out its rights and responsibility towards

individuals. As we mentioned, states and governments may impose restrictions on individual and collective freedom in order to achieve the interest of preserving lives and funds in the legitimacy of medical work and other emergency procedures in cases of epidemics.

The permissive also inferred in the legitimacy of the medical work of medicine and the request for healing a sentence from the talks of the Prophet - PBUH - including what was narrated about Jaber bin Abdullah may Allah be pleased with them about the Messenger of Allah - PBUH - He said: "For every disease there is a medicine, and if you get the medicine of the disease it will be cured by the permission of Allah the almighty ¹ From the words of the hadith the jurists inferred from the four doctrines that the request for healing is legitimate and that the patient, if he succeed to reach to the skilled doctor who knows the medicines and their effects there is cured with the acquittal of God, ² and the Prophet - PBUH to called to the medication by word, deed and saying - as he PBUH said - What is narrated by Abu Hurayrah, may God be pleased with him,

He said—there is no disease that Allah has created³, expect that he also created its treatment. And from his report what was narrated by our Master Usamah bin Sharik may God be pleased with him: some bedouins asked :oh Messenger of Allah (pbuh) shall we treated(our ill)?

He said, yes oh servant of Allah, be treated, indeed God had placed no disease except that He also created its treatment, or said: disease, only

¹ Directed by Ahmed (3/335, H 14637) and the female, the book of medicine, the door of ordering medicine ((4/369, H(7556)), and his attribution is correct, the Albanian said: True, see: The small mosque and its increases(930)..

² Ibn Hajr: Fath al-Bar (10/135);Minawi: Fayd al-Qadir (5/283); and Iraqi: put forward for upbringing.182/8)

³ Taken out by Bukhari, the book of medicine, the door of God did not send down a disease until he had sent down a its cure, (5/2151, H5354), and Ibn Maja, the book of medicine, the door that God did not send down a disease until he had sent down a cure for it ((2/1138, H3438)).

one disease, they said Oh Messenger of Allah what is it?

He said: The aging⁴, Every disease has been created by God except the aging, it is not one of the diseases of the world from which the Prophet -Peace & Blessings be upon him- indicates that the knowledge of the medicine is only in the hands of an expert scientist, he narrated about Abu Said Al-Khudri saying -Peace & Blessings be upon him- "God did not create a disease except he created its heal known by who got its knowledge ,and ignored by who ignore it except from the toxicity⁵, i.e. death.

Among such evidence, jurists have inferred the legitimacy of medication from all diseases without specifying any other disease. Moreover medication from old age diseases is not opposed to the noble hadith except aging. Aging itself, although it is not one of the diseases that is required to be cured, but its diseases and symptoms require its cure. It is necessary to urge healing from all diseases and incitement to seek every legitimate of the permissible medicines⁶. For example, modern dental treatments are no longer luxurious or cosmetic in most of them in the strict sense, as it is not hidden from anyone the importance of dental pronunciation, eating and pronunciation of what worship does, as well

as eating food from what preserves the soul, and according to the rule of jurisprudence, what is not obligatory, as reasoned jurisprudence has inferred on the legitimacy of medicine, so that the belief of health, healing and sharia is based on deciding interests or supplementing and disabling them or reducing them⁷.

Despite the agreement between the four schools of thought based on the legitimacy of medicine, they differed among themselves in the ruling of this medicine on the statements of four :

The first saying: He went on to say that medication is a duty as it is the saying of some Hanafiya And shafii' and hanbaliis and zahiriyya , and it is the first of all if the palm a cure was preferred through the extrapolating of the situation and following it ⁸, and Ibn Taymiyah states that healing is a duty to say some Shafi 'ah and a novel about hanabalah.⁹

The second saying: This view sees the prohibition of medicine, which is a statement by some Sufi jurists.¹⁰

The third saying: It is a face at the Shafi 'iya, Hanbalah and Zaydiyah, and it is narrated about the Kassani from the hanafiyya, and the owners of this saying went to the prohibition of medicine.¹¹

⁴ Narrated by al-Tirmidhi in his Sunnah(C 4 / p. 383, No. 2038, and pronounced to him, he said: This is a good speech true and the Albanian sheikh said: True, and narrated by Abu Dawood and Ibn Majeh.

⁵ Directed by the Governor in Al-Madrak, Book of Medicine (4/445, H8220) , and Al-Tabrani in the MiddleLexicon (2/157, H (1564)) and assigned correctly (see: Albanian: 4/207).

⁶ al-ayni umdat alqarii (21/230); Ibn Hajar: Fath al-Bari (10/135); Minawi: Fayd al-Qadir (2/256); Tafsir al-Nawawi Ali Saleh Muslim (14/191, 192); Abadi: Awn al-Ma'boud (10/240); Mubarakfuri: tuhfa Al-Hawasi (6/159); Shawkani: Neil al-Uttar (9/75).

⁷ see : Al-Shatbi: Approvals (2/51); and Al-Ezz bin Abdul

Salam: Minor Rules

⁸ Nizam: Indian Fatwas (5/355); Ghazali: Revival of Religious Sciences (4/288); Mardawi: Al-Insaf(2/463); Ibn Taymiyyah: Total Fatwas (21/564); Ibn Hazm: Al-Muhallah (7/416).

⁹ See Ibn Taymiyyah : Total Fatwas (21/564).

¹⁰ Al-Kurtubi: the Collector of the Provisions of the Qur 'an(10/138); Ibn Hajar: Fath al-Bari (10/135, onward); Al-Nawawi: (14/191); Abadi: awnal-Ma 'boud (10/240)

¹¹ Nizam: Indian Fatwas (5/354); Kassani: Bada ' e 'e 'eh(5/127); Iraqi: Rollout (8/182); Nuclear: Explain it to a Muslim (3/90); Sherbini: Singer of the Need (1/356); Al-Bahwati: Scout Mask (2/76); Morteza: Al-Bahr al-Zukhar(4/275).

The fourth saying: It is what the public is saying from the Hanafis, the Maliki, the Shafi'i, and the Hanbali'i they went to that the treatment of diseases is permissible¹², and told the consensus on that by Imam Al-Babarti of the Hanafi'i masters¹³, which is what we suggest from the statements in all cases except that one is sick and in front of him is a path of medicine and a skilled doctor and does not provide medicine, so he perished himself, so we see that one must appear for medicine in that case, but if the doctor is not skilled, he must stop and Islam has set the most wonderful example in the specialization, as it is the doctor's responsibility if he is not competent in his work and arranged for his mistakes that may produce death for the patient or a collective infection compensation and accountability. The constant in comparative Islamic jurisprudence and positional legislation is that medical work comes with which the doctor is accountable for all the mistakes that come from him, whether that error is particularly severe, such as the ignorant error or the unauthorized medical work¹⁴, the error of the skilled doctor but what is the realistic standard for distinguishing between the kind of mistakes issued by the doctors. The jurisprudence mentioned that there are types of both interests and corruptions¹⁵, and they touched on the legitimate punishments and stated that they are the causes of interests, even if they are corrupt in themselves. In this, it was said: "Perhaps the

reasons of interests are corrupted and ordered or permitted, not because they are corrupt, but because they lead to interests, such as cutting off corroded hands in order to save lives, as well as risking lives in jihad (holy war), as well as all legitimate punishments, are not required because they are corrupt, but because they are the intended ones of their legitimacy, such as cutting off the hand of the thief... All these are perverse acts which the Shariah requires to obtain the real interests it entails, and to call them the interests from the metaphor of naming the cause by the name of the cause.¹⁶ To the point that in addressing the legality of medical work, the benefits and harms must be defined, unless it is from the perspective of Sharia, and in light of its objectives and constants; As for the Shari'a perspective, this meaning was confirmed by Al-Shatibi by saying: "The law giver's intention of the person in charge is that his intent at work is in accordance with his intent in legislation¹⁷. The interests are brought according to the Shariah law, and the evils that are provoked are only considered in terms of establishing the life of this world for the next life, not in terms of the desires to bring about its ordinary interests or to ward off its ordinary evils, and he evidence for this matter....- It was mentioned that the Sharia came to remove those charged from the reasons of their desires in order to be good worshippers of God, and this meaning, if proven, does not meet with

¹² Musnad Abu Hanifah (596); Ibn al-Hamam: Fathal-Qadir (8/500); al-Qurtubi: The Collector of the Provisions of the Qur'an (10/138); Ibn Abdul-Barr: The Preamble (2/227); al-Nawawi: Islam (10/342); al-Ghazali: The Revival of Religious Sciences (4/288); al-Murdawi: al-Isfas (2/463); al-Manawi: Fayed al-Qadir (4/347); Ibn Qadamah: al-Mughni (10/261); al-Bahwati: The Extreme Wills Explained (1/320); Ibn Mufleh: The Creator Shir al-Muqafi (2/427); Ibn Mufleh: Ibn Muflehl: Ibn Taymiyyimiyah (2/6); Ibn Taymiyyimiyah: The Total of Fatwat (37/471).

¹³ Al-Babarti: Care, Explanation of Guidance

(10/67).

¹⁴ Ibn Qayyim: Zad al-Ma'ad in Huda Khair al-Abbad, op. Cit., Part IV, p. 124.

¹⁵ Ibn Abdul Salam, Izz al-Din Abdul Aziz, Rules of Judgments in the Interests of Anam, Cairo: Library of Azhar Colleges, Part 1, 1968, pp. 11-12.

¹⁶ Al-Shatibi, Abu Ishaq Ibrahim bin Musa, approvals, explanation and comment of Sheikh Abdullah Draz, Dar Al-Maarifa for Printing and Publishing, Beirut, no edition or date, page 29

¹⁷ Al-Shatibi, Abu Ishaq Ibrahim bin Musa, Al-Mawarat, op. Cit., 29-30.

the imposition that the status of the Sharia be based on the whims of souls and demand its urgent benefits¹⁸, and accordingly, the interests sent, that is, there is no evidence to consider or cancel them, "are sent only in terms of not partially stating their own¹⁹,"but in terms of their gender, they are considered because they fall within the purposes of the Sharia, and therefore some scholars chose to define the interests sent as: "Descriptions that suit the actions of the street and its purposes, but no specific evidence of the Sharia has been witnessed by consideration or cancellation, and it is obtained from linking the judgment to what brings interest or payment corrupt from people²⁰." Based on that origin, the jurists went on to devise controls to assess interests and corruption, which can be summarized as follows:

1. The appreciation of interests and corruptions in the balance of the Sharia must not distinguish desires; for example, interests must fall under the purposes of the Sharia and not contradict with the book, the Sunni, the consensus or the measurement²¹. Corruptions must also be considered to be contrary to those purposes, their ranks: necessities, supplements and improvements²².

2. If interests and corruptions are combined, if interests can be collected and corruptions prevented, the first is in compliance with the order of God Almighty, where he said: "Fear God as much as you can²³," and if this is not possible, it is considered; if corruption is greater than

interest, then corruption is prevented without regard to the loss of interest²⁴.

3. If pure corruption is combined, it is avoided if possible, and if it is not possible to avoid all of it, it is avoided because it is corrupt²⁵.

4. Applying precautionary measures in order to attract interests and prevent corruption²⁶.

5. Introduce some rights to each other according to the interests and corruption they entail.

The Islamic Sharia also affirms the sanctity and the sanctity of the soul, and it has not been possible for anyone to kill people and not to scrape their lives and bodies in falsehood. All legislation has set the greatest and most severe penalties for those disgraceful damages, and no one has permitted the profanity of bodies or the exposure of a convicted or ruler to innocent blood except with right. In certain crimes, death has been made a punishment for them or in wars, and even in those, the Islamic Sharia, with its tolerance and morals of Muhammad and raising the status of man and his honor, orders that they follow them in the event of war with their enemies not to represent the corpses and not to kill an old man or a peaceful woman or a child. Those are infallible from fighting²⁷, and these noble legislations are nothing but a tribute to man and a demonstration of the tolerance of the Islamic Sharia and its preservation of infallowed souls. Accordingly, the quarantine and the prevention of infection and medication from it must be straightened with these jurisprudential purposes, so that the doctor does not go out from it and does not save the souls and bodies of

¹⁸Al-Raysoni, Ahmed, Al-Maqased Theory of Imam Al-Shatbi, International House of the Book of Islam, Riyadh, 4, 1995, p. 262.

¹⁹Al-Zuhaili, Wehbe, The Origins of Islamic Jurisprudence, Dar Al-Fikr, 2nd Edition, Beirut-Damascus, 2001, C2, p. 757.

²⁰Al-Zuhaili, Wehbe, The Origins of Islamic Jurisprudence, Dar Al-Fikr, 2nd Edition, Beirut-Damascus, 2001, C2, p. 757.

²¹Al-Raysouni, Ahmed, op. Cit., p. 8 et seq.

²²Al-Shatbi, Abu Ishaq Ibrahim bin Musa, op.

Cit., p. 5 et seq.

²³ Surah Al-Taghabin, verse 16.

²⁴ Ibn Abdul Salam, Izz al-Din Abdul Aziz, op. Cit., P. 98.

²⁵ Ibn Abdul Salam, Izz al-Din Abdul Aziz, op. Cit., P. 98.

²⁶Al-Shatbi, Abu Ishaq Ibrahim bin Musa, op. Cit., p. 4.

²⁷Khalaf, Abdul Wahab, The Origins of Jurisprudence, Eighth Edition, B. N, 1968, p. 435.

people, and he must strive not to treat his patient with what God forbid, whether through medicine, surgery, or general behavior, and whether these medicines are therapeutic or cosmetic²⁸. If those conditions are taken care of by the patient and the doctor, medication is in accordance with the purposes of Islamic law, but is a way to preserve the soul, especially in the Almighty's words (and do not kill yourselves that God has mercy on you)²⁹ Jurists differed in the order of these necessities on some of them; the Shafi'i and the Maliki went on to state that their order is to preserve religion, and then the soul, the mind, the offspring and the money while not mentioning the offer, but it is within one of the five colleges upon investigation³⁰, and the Hanafi jurists go on to state that their order is to provide religion, and then the soul, the offspring, the mind, the money, and it was said to present these four on religion because it is the human right, and therefore the punishment was applied to the killing of apostasy³¹

The second topic: The legal basis for the legitimacy of medical work in Libya

Medical work is only a measure taken by the state to preserve and protect individuals at the time of the spread of epidemics and deadly diseases, which seems to be contrary to the public rights and freedoms acquired by individuals in the state under the constitutional articles that stipulate the freedom of movement and movement of individuals and their right to work and earn what is stated in the declarations of human rights and fundamental freedoms. According to international law, the Universal Declaration of Human Rights stipulates in Article 3 (Everyone

has the right to life, liberty and security of person) To include the protection of the individual's health from diseases and epidemics among the basic human rights. Quarantine and health closure are considered by the state authorities and the rights and competencies of the administration. It is one of the duties of the people as stipulated in Article 1 of the Public Health Law in Libya No. 6 of 1973 that: "Health and medical care is a right of citizens guaranteed by the state. The Libyan Ministry of Health works to develop health and medical services, raise their level and increase their efficiency in a way that meets the needs of citizens and keeps pace with scientific progress in these areas and in line with the country's development plan. The Ministry also works to provide what is needed. The health facilities shall have technical elements."

Previously, the State exercised activities and competencies that did not extend beyond security and justice facilities, and it may not exercise the activities and competencies of economic facilities that were free; thus, it is limited to the activities of individuals and is not governed by legislation issued by public authorities, but in a framework and free space that is usually subject to natural laws³²

That is, the general and prevailing origin was the principle of the non-responsibility of the State for medical work; as the responsibility of the State for its actions and actions is contrary to the absolute principle of the sovereignty of the State, and this was prevalent in Britain in support of the

²⁸Kuwait's document on the Islamic Constitution for the Medical Profession, issued by the First World Congress of Islamic Medicine, held in Kuwait :<http://www.islamset.org/arabic/aethics/hathot.html>

²⁹Surah al-Baqarah, Aya 179.

³⁰Al-Buti, Muhammad Saeed Ramadan, Controls

of Interest in Islamic Law, Al-Resala Foundation, Fourth Edition, 1982, p. 120.

³¹Al-Zuhaili, Wahba, Mediator in Jurisprudence, Part One, Damascus University Publications, Faculty of Sharia, B. c, p. 300.

³²Badawi, Tharwat, Political Systems, Dar al-Nahda al-Arabiya, Egypt, 1986, p. 344 et seq.

constitutional rule " theking does not make a mistake"andtherefore the State is not asked and its employee is not asked either.³³

As theages evolved, the principle of sovereignty gradually receded, which entails the regression of the principle of the State's non-responsibility, because the principle of the State's sovereignty does not conflict with its submission to the law and its obligation to compensate those who caused it harm, and the principle of legality became the prevailing principle, with the subjection of the ruler and the ruled to the law; thus, the administration turned from an administration that does not ask or be held accountable; as it does not err on the basis of the idea of the absolute state's sovereignty to an administration of another form; as it is accountable and obligated to compensate individuals affected by its activity, whether by mistake or not, the provisions and rules governing the activity of the state are characterized by being constantly developed and renewed; provisions and rules that change and keep pace with the development of administrative phenomena over time; This is due to the evolution of the role of the state and its mission from the guardian state to the intervening state, and because the administrative judiciary is characterized by being an innovative and constructive judiciary, unlike the ordinary judiciary, which is considered the prisoner of the legal text.³⁴

Hence, the administrative judiciary took it upon itself to create and find legal theories that can accommodate the development of the work and activity of the public administration and the intervention of the state in most matters and actions that were the monopoly of individuals without the state, and this is evident through deciding on the disputes that arose between

individuals and the various departments and institutions of the state. For this reason, the general rules that govern between individuals could not be enforced between individuals and the administration and are not valid to establish the responsibility of the state on the basis of error, which led the administrative judiciary to search for different rules, theories and foundations that are valid to regulate the relationship between the state and individuals little by little until new theories emerged in the responsibility of management on the basis of other than error, which is the theory of the responsibility of the state without error or the responsibility of management on the basis of risk.

Discussion

The results are discussed according to the objectives of the study, where the study addresses two objectives:

Objective 1: To identify the jurisprudential basis for the legitimacy of medical work in Libya

The results of the study confirmed, according to the above, that medical work has caused many problems and restriction on people and restriction on freedoms and some rights , but thatit is in the public interest that everything is humiliated in front of him and the bottom line is toward off corruption and bring interests that the Islamic Sharia has been established by God Almighty to take care of the interests of the worldly and other worshipers, material and moral, and in this regard, it is possible to borrow the expression of Imam Shattabi, where he reported and said: "The status of Sharia is in the interest of worshipers both sooner and later". Accordingly, medication must be to pay the spoiler in the body as it is to bring interest in it, and the legitimacy of the medication depends on balancing the interests in

³³ alzayni ,noha othman, responsibility of the government about the lgislature,study of comparison without house of press,1985,page 48

³⁴Al-Nahri , Majdi Medhat, State Responsibility for Non-Contractual Acts,Compensation Court, 2nd Edition, Dar Alnahda Alarabiya, Cairo, 1997, p. 35.

it with the spoilers that can be generated from it. If the doctor knows that in dental cosmetic treatments, the body or part of it is spoiled, or the use of a forbidden or injustice to another person takes from his body for a fee or without a fee, and this deduction is harmful to him. In return, there is a small interest, which is the general form of teeth, he must prevent his patient from that medication, but if the spoiler is in most cases some of the pain that is generated by the treatment, which is quickly eliminated in general, these are things that are remedied depending on the size of the interest that belongs to the patient, and that interest progresses with the patient's information and insight into those pains and leaves the matter to him in choosing. There is no conflict between medicine and the doctrinal rule. It is taken into account that the Shariah has purposes that must be preserved, as must be the balance between prevention by quarantine and closure and the legitimacy of medication from infection, if there is medicine, and compliance with the orders of the security and medical authorities, and the preservation of the five things that are the purposes of the Shariah, which, if not preserved, led to the destruction and loss of the soul. Islam came to follow him, ordering the necessity of preserving those necessities that are necessary in the interests of the world and religion together, but in their loss, the barrage of architecture, the ruin of the world and the corruption of conditions, and from the fruits of its preservation, the prevention of harm to people and the eradication of its causes, and those necessities that are mandated to be preserved by Shariah in the preservation of religion, the soul, the offspring, the supply, the mind and the money.

Objective 2: To identify the legal basis for the legality of medical work in Libya

The results showed that the legal basis for the legitimacy of medical work in Libya comes from the approval of the Public Health Law in Libya

for the legitimacy of medical work. Article 1 of Law No. 6 of 1973, which stipulates that every citizen has the right to enjoy medical care that no one is deprived of, and there is no doubt that every human being needs medical care, especially in the event of the spread of epidemics, which calls for more care and attention to individuals. There is no doubt that the closest way to take precautionary measures from the outbreak and spread of the epidemic is to declare some exceptional measures such as quarantine and closure, which raises problems as to whether Libyan legislation and the Libyan legal health system are sufficient to confront epidemics and the spread of viruses. He needs more legislative intervention in order to be at the level of the exceptional health situation and to accompany countries with developed legal systems and to provide legal and health protection for the human being during and after the spread of epidemics, as well as the extent of his interest in the rights and freedoms in the constitution and the law governing those rights and how to deal with them in the time of quarantine and closure in Libyan law, comparative and Islamic law.

Recommendations

The study recommended several recommendations, including the following:

1. The continuation of scientific research on the jurisprudential and legal basis for the legitimacy of medical work in Libya significantly.
2. Working to urge the Libyan legislator to further elaborate the issue of the legitimacy of medical work in Libya with more legal texts.
3. Detailing the jurisprudential issues related to the legality of medical work and trying to mix and reformulate the legal texts related to the legality of medical work in Libya.
4. Attempting to simulate different legal systems, especially the Arab Republic of Egypt, to identify the drafting of legal texts for the legitimacy of medical work.

5. Raise the issue for discussion in Libyan conferences and universities to obtain new ideas regarding the jurisprudence and legal basis for the legitimacy of medical work.
6. Attempting to root medical issues with some expansion to show the extent of their legitimacy.
7. Work to motivate the Libyan parliament to enact more laws that preserve the human right to life and access to better medical services.

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