



THE LEGAL TREATMENT OF MEDICAL EXPERIMENTS ON THE HUMAN BODY

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Abstract:

The legal treatment of medical experiments on the human body involves a set of laws and regulations aimed at protecting the rights and safety of participants in these experiments. This type of legislation relies on fundamental principles such as the principle of informed consent, which requires participants to consent to participation in the experiments after receiving sufficient information about the potential risks and benefits. It is worth noting the necessity of independent ethical oversight and review of medical experiments, in addition to the existence of procedures for reporting concerns or potential harm that may arise during the experiments. All of this aims to achieve a balance between medical progress and the rights and safety of individuals participating in medical experiments.

Keywords: Legal treatment; medical experiments; physical and mental safety; human.

Introduction

The scientific research and medical experiments on humans have raised the dilemma of balancing between the requirements of scientific advancement and the necessity of ensuring the minimum respect for the human body and preserving human dignity. This can only be achieved in Arab and Islamic countries through the formulation of new legislation, aiming to establish the legal, ethical, and humanitarian guidelines for scientific research and medical experiments on humans (Al-Fadl, n.d., p. 07).

Undoubtedly, the progress witnessed in medicine is a direct result of these ongoing scientific research and experiments, which serve as the cornerstone of advancement in every field, particularly in the medical field. Through medical experiments, we gain insight into



potential health problems and assess the effectiveness and efficiency of what we learn (Al-Omari, 2009, p. 04).

Significantly, medical experiments have greatly expanded the horizons of knowledge in medical sciences, providing daily solutions to human health problems and instilling hope in the hearts of many afflicted individuals with stubborn diseases still under research for a cure (Abdelkarim, 2005, p. 449).

However, medical and scientific experiments on humans have caused legal problems primarily revolving around protecting physical and mental safety from potential harm resulting from the misuse of these experiments.

If so, is it permissible to compromise the safety of the human body for purposes other than the owner's benefit? Or for his benefit, but the outcomes of such benefits are unknown and unbalanced with the risks of conducting the experiment for a specific drug or treatment? Does the participant's consent to undergo a medical experiment absolve the actor from legal responsibility?

This prompts us to examine the stance of Algerian legislation regarding this matter. The most relevant previous studies that addressed this topic include:

- AbdulMajeed bin Ali bin Thabet Al-Omari (2009), in his study "The Rulings of Conducting Medical Experiments on the Human Body in Sharia Law and the Saudi Legal System," focused on mentioning the legal texts discussing the topic without adequately indicating their seriousness or shortcomings in regulating this sensitive issue of protecting individuals subjected to such experiments.
- Ma'moun AbdulKarim (2005), in "Patient Consent to Medical and Surgical Procedures," focused on the legal aspects related to patient consent without shedding light on the importance of scientific progress balanced with legal protection of the individual.
- Nariman Wafiq Mohammad Abu Al-Matar (2011), in "Scientific Experiments on the Human Body," focused on conceptual discussions without delving into the legal issues related to medical experiments on the human body.

The addition in my research lies in highlighting the importance of medical experiments on the human body for their role in achieving scientific progress, ultimately benefiting humanity.

Additionally, in this research, I sought to shed light on the shortcomings in the legal arsenal established by Algerian legislators in regulating medical experiments on the human body and their failure to provide the necessary protection for individuals subjected to such experiments.

The study adopts both descriptive and critical methods, describing medical experiments on humans in all aspects, from concept to defining conditions, and critically analyzing the Algerian legislator's stance and shortcomings in regulating this matter.

The comprehensive consideration of the essential questions related to conducting medical experiments on the human body and elucidating the Algerian legislator's position in health protection law and its enhancement, as well as the code of medical ethics concerning the protection of human bodies and health, necessitates the division of this topic into the following sections:

Chapter One: The Concept of Medical Experiments on the Human Body: Defining the Concept and Stating its Conditions.

Subsection One: Defining Medical Experiments on the Human Body and Its Types.

Subsection Two: Conditions for Medical Experiments on the Human Body.

Chapter Two: The Limits and Regulations of Human Volunteering for Medical Experiments.

Subsection One: The Sanctity of the Human Body and its Right to Safety, balancing between the rights of God and the rights of the servant.

Subsection Two: The Position of the Algerian Legislator on Medical Experiments on the Human Body.

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- AbdulMajeed bin Ali bin Thabet Al-Omari, "The Rulings of Conducting Medical Experiments on the Human Body in Sharia Law and the Saudi Legal System," supervised by Mohammed Zain Al-Abidin bin Taher, Master's thesis in Systems, College of Sharia, Department of Judiciary and Sharia Policy, Islamic University of Madinah, Saudi Arabia, in 1430 AH. However, the researcher focused on mentioning the legal texts discussing the topic without adequately indicating their seriousness or shortcomings in regulating this sensitive issue of protecting individuals subjected to such experiments.
- Ma'moun AbdulKarim, "Patient Consent to Medical and Surgical Procedures," supervised by Professor Mohammed Kahloulah, a doctoral thesis, Faculty of Law, University of Abi Bakr Belkaid, Tlemcen, in 2004-2005. Despite the importance of this reference, the researcher here focused on the legal aspects related to patient consent without shedding light on the importance of scientific progress balanced with legal protection of the individual.

As for the contribution of my research, it lies in highlighting the importance of medical experiments on the human body for their role in achieving scientific progress, which ultimately benefits humanity.

The Experiments and Their Types (First Issue), and Addressing the Necessary Conditions for Conducting These Medical Experiments on Humans (Second Issue).

First Issue: Definition of Medical Experiments on Humans and Their Types

In this issue, we will define medical experiments on humans (first) and their types (second).

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1. Definition of Medical Experiments on Humans:

Language: The term "experiment" derives from the verb "to test." It means to try out or test. A person who has experienced various

trials is called a "tested person." In linguistic terms, an experiment is an organized test of a phenomenon or phenomena intended for careful and systematic observation to ascertain a result or achieve a specific purpose (Al-Zubaidi, 2008, p. 153).

1.1: The specialized meaning of experiments aligns with the linguistic meaning, referring to testing specific hypotheses to prove or disprove their validity, as well as measuring and understanding phenomena. This corresponds to the fundamental linguistic meaning (Mustafa, 2010, p. 119).

Dr. Magdy Abdullah defined it as a "method for testing a hypothesis" or "a deliberate observation subject to conditions that make it under the researcher's supervision and control, constituting a deliberate change." It is also, according to him, "creating a phenomenon in specific industrial conditions arranged by the researcher before conducting the experiment, intending to gather information about a phenomenon to verify the validity of the hypothesis (Abdullah, 1966, pp. 33ff)."

Professor Dr. Ma'moun Abdul Karim defined it as "a collection of scientific or technical activities aimed not at treatment but at acquiring new information about the subject of research or its treatment" (Abdelkarim, 2005, p. 452).

Patients participating in experiments can directly benefit from the information obtained by the doctor from the experiment. However, if the experiment is non-therapeutic, only future patients can benefit from it.

1.2 - Types of Medical Experiments on the Human Body

Medical experiments vary depending on their general purpose. If the purpose is to treat the patient and alleviate their pain, the experiment is considered therapeutic. If the purpose is to gain new knowledge without direct personal benefit to the subject, it is considered scientific or non-therapeutic. Therefore, medical experiments can be classified into two types:

1.21- Therapeutic Medical Experiments

These experiments are conducted by physicians with the aim of treating the patient using modern methods in cases where there is no known drug capable of achieving recovery. The primary purpose of this type of experiment is to attempt to find a treatment for the patient



through new methods such as new drugs, radiation, or other modern means.

1.2.2-Scientific Medical Experiments (for Scientific Discoveries):

These experiments can be defined as technical and scientific activities conducted by a physician on a patient's body to acquire new knowledge regarding disease prevention or preventive treatment. While therapeutic experiments do not raise legal or ethical issues regarding their fundamental legitimacy, the situation differs for scientific experiments that lack a therapeutic purpose (Al-Abraishi, n.d., p. 286; Al-Omari, 2009, p. 09). This raises the issue of the necessary conditions for conducting medical experiments on humans, which will be addressed in the next issue.

1.3- Necessary Conditions for Conducting Medical Experiments on the Human Body:

To permit medical experiments on humans, adherence to a set of legal regulations outlined in international covenants and domestic legislation is required. This includes general conditions necessary for medical procedures (first) and additional conditions imposed by the nature of medical experiments, such as medical guarantees and legal protections for individuals subjected to these experiments (second). These conditions serve as the legal framework for conducting experiments on the human body.

1.3.1 - General Conditions for Practicing Medical Procedures:

When considering the types of medical experiments, it becomes apparent that therapeutic experiments aim to treat the patient undergoing them. Therefore, those conducting such experiments must adhere to the general conditions necessary for medical procedures, including:

- Licensing by law to practice medicine.
- Adherence to scientific principles.
- Therapeutic intent.
- Patient consent.

The content of these conditions does not differ between therapeutic experiments and general medical procedures. Compliance with these conditions, according to their general characteristics, is sufficient to affirm their presence in the field of therapeutic experiments (Abdelkarim, 2005, pp. 498-499).

These conditions also apply to non-therapeutic experiments. Initially, human physical safety cannot be compromised without legal authorization from relevant authorities. Therefore, practitioners of non-therapeutic experiments must adhere to the conditions mentioned earlier if they belong to medical professions.

Additionally, a physician wishing to conduct a non-therapeutic experiment must obtain the patient's consent after informing them of the experiment's risks and objectives. The complete and voluntary consent of the volunteer is necessary before conducting medical experiments on the human body. Overall, the risks associated with medical experiments necessitate special care for the individuals undergoing them, not only from a medical perspective but also from a legal standpoint. This will be elaborated on in the following point (Al-Fadl, n.d., p. 17).

1.3.2 - Mandatory Presence of Medical and Legal Conditions:

Medical Conditions:

The multifaceted relationship of experiments in various aspects of human life necessitates specific conditions for a physician to ensure that the effects of their experiments are positive rather than negative. These conditions include:

- Adherence to the fear of God and His law: Those conducting experiments must prioritize the fear of God, integrity, and honesty, adhering to divine law to avoid violations.
- Accuracy in recording and observing all changes and effects resulting from each step of the scientific research conducted, documenting them faithfully as they occur in reality.
- Researchers must be experts in their field, possessing expertise and knowledge of scientific and legal research methods and principles.
- The researcher must beware of bias towards one variable over another, as this can lead to altering and falsifying research results. Bias might also cause significant harm to the subjects of the experiment. The researcher must maintain objectivity in their research (Al-Ahwani, 1975, pp. 8-9; Al-Fadl, n.d., p. 17).
- It is imperative for the researcher to respect the humanity of the volunteers by informing them of the steps of the experiment and providing them with training for certain stages that require it.



Failure to train volunteers may affect the results of the experiment, jeopardizing its success and the accuracy of its results.

- Experimentation on animals before moving on to human trials is obligatory. Using humans as the initial testing ground for new drugs and treatment methods is impermissible.
- It is necessary to strike a balance between the expected benefits of the experiment and the associated risks. Trials with risks outweighing anticipated benefits should not be authorized.

1.3.3. Legal Conditions:

As a general rule, the presence of medical guarantees alone is not sufficient to authorize medical experiments. Allowing experiments without supervision of physicians poses a significant risk to the safety of individuals undergoing such medical interventions, especially scientific experiments (Al-Fadl, n.d., p. 19). Imposing supervision on medical experiments serves a practical benefit by reminding researchers of the necessity to examine legal and ethical aspects before engaging in experiments involving human subjects. The pursuit of scientific progress by the researching physician might overshadow the necessary care for the person undergoing the experiment, exposing them to risks that may not correspond to the expected benefit. Therefore, it is necessary to entrust this supervision to mixed bodies comprising members from medical and non-medical professions to achieve social control over these experiments. Alternatively, it can be entrusted to medical advisory committees in addition to oversight exercised by the Ministry of Health (Abdelkarim, 2005, p. 501). All these conditions, as mentioned, are agreed upon by most Arab and Western laws and international covenants. Moreover, if these conditions are not met, it is not permissible to conduct experiments on any human, even with their consent (French Law No. 1138/88; European Principles Agreement, 1950; Helsinki Charter, 1964; Arab Charter of Human Rights, 2004).

2- Limits and Regulations of Human Volunteering for Medical Experiments:

In this issue, we will address the sanctity of the human body and its right to safety, considering its position between the rights of God and the rights of the individual (first point). Then, we will explain the

stance of Algerian legislation regarding the protection of the individuals undergoing these experiments (second point).

2.1- Sanctity of the Human Body and its Right to Safety:

There is no doubt that the right to life is one of the foremost and most fundamental human rights, tightly intertwined with human beings. It is the most cherished aspect of human existence because life is the source of an individual's strength in both financial and non-financial activities. Losing this right constitutes the worst of calamities, as it not only entails physical and mental pain but also deprives a person of all enjoyment, destroying the most important element of their wealth. For this reason, nations have enshrined this right in the basic principles of their constitutions, in addition to the existence of international agreements such as the Universal Declaration of Human Rights of 1948 and others that have affirmed this right (Al-Jubouri, 1987, p. 84).

It is worth noting that all divine laws prohibit encroaching upon this right. The Quran contains numerous verses prohibiting the taking of life and attacking the right to life and bodily safety. Among them is the verse: "And do not kill the soul which Allah has forbidden, except by right" (Quran 17:33).

One of the most important aspects of human rights in life is the right to physical safety. It is legally impermissible to infringe upon the principle of bodily integrity in any form, whether concerning physical, moral, or health-related aspects. Professor Jean KARBINEE argues that "the sanctity of the natural person first and foremost means that everyone has the right to object to any infringement of their bodily integrity and to refuse to undergo medical experiments, surgical procedures, or medical tests because humans have natural rights inherent to their person, including the right to their own bodies" (Mazeaud, 1966, pp. 610-612).

Before this right to bodily integrity, and as an aspect of protecting the right to bodily safety, agreements that compromise this safety are deemed invalid. A society can only sustain its existence, with its unique level of progress and prosperity, if this right is fully protected. Having briefly explained the importance of the right to life and the right to bodily safety, does conducting medical experiments on the body constitute prohibited actions punishable by law? What



role does the consent of the individual play in mitigating the criminal nature of the act performed by the experimenter?

2.2- the human body lies between the right of God and the right of the servant:

The right to bodily safety of the human being, in its sense combining the achievement of individual interests and consideration of communal interests, can be classified in Islamic law as rights shared between God and the servant. God's right predominates in this, as affirmed by Ash-Shatibi in his statement: "Reviving souls, perfecting minds and bodies are among God's rights upon His servants, not the rights of the servants themselves. The fact that this was not left to their discretion is evidence of this. Therefore, if God completes a servant's life, body, and mind through which he attains what he has been commanded to do, the servant cannot waive it" (Al-Shatibi, 1996, p. 102; Hassani, 1959, p. 01; Al-Fadl, n.d., p. 10). "Wahba Az-Zuhayli" confirmed this when representing the shared right, saying: "Similarly, the preservation of human life, intellect, health, and wealth has two rights. However, God's right predominates due to the general benefit accruing to society" (Al-Zuhayli, 1991, p. 15).

Al-Qarafi went on in the twenty-second distinction between the principle of God's rights and the principle of human rights to state that God's right encompasses His commands and prohibitions, while the servant's right includes his interests in general (Al-Qarafi, 1998, p. 256). Ad-Dasuqi states: "There is no right for a human except that God has a right in it" (Al-Dasuqi, 1810, p. 173).

The "Shafi'is and Hanbalis", regarding the prohibition of harming a human being, his organs, and other aspects of causing harm, agree on the confluence of God's right and the servant's right, with God's right being predominant (Al-Tafazzani, 1996, pp. 315-323).

Thus, Islamic law has the advantage of elucidating the shared right between God and the servant and God's predominant right. The right to bodily safety is one of the legitimate shared rights legislated to protect the servant and society, with the community's interest prevailing over the individual's in cases of conflict.

2.3- The Algerian legislator's stance on medical experiments on the human body:

Medical experiments find their legal basis in Algerian law in articles 168 bis 02 and 168 bis 03 of Law No. 85-05 dated 26 Jumada al-Awwal year 1405 corresponding to 16 February 1985 concerning health protection and promotion, as well as in Article 18 of Executive Decree No. 92-276 dated 5 Muharram year 1413 corresponding to 6 July 1992 containing the code of medical ethics (Law No. 85-05, 1985; Executive Decree No. 92-276, 1992).

Article 168/2 paragraph 1 states: "The ethical and scientific principles governing medical practice must be strictly adhered to during experimentation on humans within the framework of scientific research." While Article 168/3 stipulates: "Experiments not aimed at treatment shall be subject to the prior opinion of the National Council for the Ethics of Medical Sciences referred to in the above-mentioned Article 168/1." Article 18 of the Algerian Medical Ethics Code states: "The use of new treatments for patients shall not be considered except after conducting appropriate biological studies under strict supervision and when it is confirmed that this treatment directly benefits the patient." From a careful examination of these articles, it is evident that Algerian legislation explicitly allows medical experiments on humans, whether therapeutic or scientific. Regarding the basic rules governing the conduct of these experiments, Algerian legislation only addresses some of them, such as the requirement of consent and the nature of the liability arising from harm to the subject of the experiment. Article 168/4 of the Health Protection and Promotion Law states: "The person's consent to the experiment and the opinion of the National Council for the Ethics of Medical Sciences initiating the experiment shall not absolve him from his civil liability".

The task of guiding and supervising medical experiments on humans is assigned to the National Council for the Ethics of Medical Sciences, implying that the authorization of medical experiments, especially non-therapeutic ones, is linked to the prior opinion of this council according to established scientific criteria. In this regard, Article 168/1 states: "A national council for the ethics of medical sciences shall be established to provide guidance and opinions on the process of extracting tissues and organs, transplantation, experimentation, and all therapeutic methods imposed by the development of medical technologies and scientific research, ensuring



the respect for human life and the protection of his physical safety and dignity, taking into consideration the appropriate time for medical work, and the scientific value of the test and experimentation project .

Through the legislative texts included in the Health Protection and Promotion Law and the Algerian Medical Ethics Code, the essential conditions for conducting experiments on humans under Algerian law can be inferred as follows:

- The necessity of consulting the National Council for the Ethics of Medical Sciences regarding all medical experiments involving humans. However, the conduct of non-therapeutic experiments is contingent upon the approval of the aforementioned council due to its supervisory role.
- Achieving a direct therapeutic benefit for the subject while simultaneously advancing scientific research.
- Respect for the bodily integrity and dignity of the subject of the experiment, which means ensuring his consent on one hand, and the availability of necessary safety conditions for his physical well-being at the site of the experiment on the other hand.
- Ensuring the scientific value of the experiment project considering the timing of its execution, as experiments should only be carried out under favorable conditions with expected results, within the framework of respecting the physical safety of the individual. However, what the Algerian legislator is criticized for is the lack of provision in the Health Protection and Promotion Law for any administrative procedure regarding obtaining the necessary license for conducting medical experiments, implying an absolute control by medical professionals over this type of medical intervention. This type of control contradicts the prevailing trend in many systems, which entails assigning this control to mixed committees to enable the public to be informed about what is happening in scientific research institutions and to involve them in supervising medical experiments involving humans.

Conclusion:

Medical experiments are among the medical activities that cannot be avoided for the advancement of medical and surgical

sciences. Thanks to these experiments, doctors and scientists throughout the ages have been able to mitigate many diseases that have claimed numerous human lives over long periods of time.

The significant contribution of medical experiments lies in broadening the horizons of knowledge for medical sciences, providing daily solutions to human health problems.

The practical importance of medical experiments on humans stems from the fundamental differences in composition between humans and other living beings. This necessitates experimentation on humans to obtain genuine results for the substance or therapeutic method being tested.

Medical and scientific experiments on humans have received particular attention during the last quarter of the past century in many countries, including Islamic ones, due to the legal and ethical questions they raise regarding their legitimacy and the availability of specific conditions to protect the physical and mental well-being of the human subjects involved.

Islamic law has the merit of being ahead in elucidating the shared right between God and the servant, and the predominant right of God. The right to bodily safety is one of the legitimate shared rights legislated to protect the servant and society, with the community's interest prevailing over the individual's in cases of conflict.

As for the regulation of medical experiments in Algerian law, it can be said that it is still in its early stages. Algerian legislation, through the Health Protection and Promotion Law, has laid down the legal foundation for medical experiments and entrusted the supervision task to the National Council for the Ethics of Medical Sciences.

The shortcomings of Algerian legislation are evident in its failure to provide the necessary protection for individuals undergoing this type of medical experimentation. The legislator has only included one provision confirming the civil liability of the experimenter for damages affecting the participant in the experiment.

Therefore, it is hoped that the Algerian legislator will intervene in the near future to clarify the ambiguity surrounding some of the provisions regulating this sensitive issue.



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