Special Section: Bioethics Beyond Borders

Her Uterus, Her Medical Decision?

Dismantling Spousal Consent for Medically Indicated Hysterectomies in Saudi Arabia

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Abstract: Against the background of a recommended hysterectomy, this article examines the current requirement in Saudi Arabia for the husband's consent for any medical procedure that affects the reproductive ability of his wife. The history and background of this decree is explained, along with the major arguments for its support. Additionally, the legitimacy of the requirement is discussed from the Islamic and legal perspectives. Special attention is given to relevant cultural considerations, such as the family unit, the medical community, and the larger Saudi society. Arguments advocating for discontinuing the requirement are offered along with measures to implement in order to overcome this social artifact.

Keywords: Saudi Arabia; hysterectomy; Islamic perspective; Saudi law

> Mrs. A. was a 58-year-old woman who was admitted for an elective hysterectomy at a major tertiary center in Riyadh, Saudi Arabia. She was diagnosed with uterine fibroids 4 years earlier, after experiencing severe pelvic pain and intermittent bleeding. Initially, Mrs. A. was managed with medical therapy, but when her symptoms did not improve, she and her physician considered surgery as an option. Subsequently, Mrs. A., along with her adult son and daughter, had a lengthy meeting with her surgeon in which they discussed the benefits and risks of, and alternatives to the surgery. Mrs. A. elected to have the surgery, and, satisfied with her understanding, and confident of her ability to make this medical decision, the surgeon asked Mrs. A. to sign a surgical consent form. However, because the operation was scheduled to take place at a busy university hospital, Mrs. A. had to wait several months until her surgical appointment.
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> On the morning of the scheduled surgery, Mrs. A. was wheeled into the operating room. However, when the head nurse reviewed Mrs. A.'s medical file to ensure that all forms were complete, she discovered that the consent form was missing the signature of Mrs. A.'s husband. The nurse alerted the surgeon that hospital policy dictated that spousal consent be obtained before an elective hysterectomy, and she directed the staff to immediately stop surgical preparations. Mrs. A. protested by saying that she and her husband had been separated for years and that he lived in a rural town 9 hours away. Beyond the practical difficulties in securing his written consent, she did not want him involved in this matter. She was visibly upset that her own consent was not sufficient. Although sympathetic to Mrs. A.'s situation, the medical team felt compelled to cancel the surgery following hospital policy.

Mrs. A's situation was not unusual. In Saudi Arabia, the husband's consent is required for women seeking elective, medically indicated hysterectomies. The source of this

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requirement is found in the *Code of Ethics* of the Saudi Commission for Health Specialties (SCFHS),[1] the official body overseeing medical practice, training, and education. It is also reflected in the policies of many Saudi hospitals, as well as in the practice of the medical community.

Spousal consent is primarily defended on three claims. First, it upholds, and protects, the husband's interest in having future children. Second, it is in line with Saudi Arabia's male guardianship system that grants men legal authority over their female relatives.[2] Third, it protects hospitals and medical personnel from malpractice suits or retaliatory measures.

I argue subsequently that the spousal consent requirement should be discontinued on multiple grounds. The claims made in support of spousal consent are insufficient. The requirement violates a woman's autonomy and her right to make medical decisions, and can be harmful when it delays or prevents needed medical care. Further, in contrast to what is generally accepted, I find no traditional Islamic, legal, or ethical basis for requiring spousal consent. Finally, after examining the changing role of women in Saudi society, I conclude that spousal consent is a relic of an increasingly obsolete view of Saudi women as being in need of male guardianship, and urge SFCHS and Saudi hospitals to change both their policies and their practices.

Background

Hysterectomies are the most common non-pregnancy-related surgical procedures in women,[3] and are indicated for a number of disabling and life-threatening conditions including: fibroids, cancer, and endometriosis.[4]

Although considered sterilizing procedures, they are most often performed as therapeutic measures.

In Saudi Arabia, Islamic law, which forms the basis of the country's legal system, permits hysterectomies when there is a known therapeutic benefit, as in the case of Mrs. A. However, Saudi medical practice imposes an additional condition: the consent of a married woman's husband. This requirement for spousal consent for hysterectomies is not unique to Saudi Arabia. Until the early 1980s, a number of other countries, including the United States, Australia, and Japan, required spousal consent before allowing any procedure resulting in sterilization. In the past 30 years, many of these countries have either discontinued this practice, or differentiated between medically indicated procedures and others obtained only for sterilization.[5] Saudi Arabia has not.

To understand the basis of why the Saudi Arabian medical community continues to uphold spousal consent, it is important to examine the three arguments often presented in support of the spousal consent requirement for elective hysterectomies.

Arguments Supporting Spousal Consent

The main argument rests on the view that an individual has a strong and legitimate interest in the reproductive abilities of his or her spouse. Saudi tradition views procreation as the ultimate goal of marriage. Therefore, the Saudi medical community supports husbands' involvement in decisions affecting the reproductive abilities of their partners. Because a hysterectomy terminates a woman's

ability to bear children, her husband's consent to the procedure must be obtained. However, there are instances in which this justification appears to be inadequate.

Interest in a spouse's ability to procreate is hardly justified in situations in which pregnancy is unlikely; for example, when women are separated from their husbands, or when they have passed childbearing age, as was the situation with Mrs. A. Nor is this interest salient when hysterectomy presents a viable therapeutic benefit for disabling conditions such as chronic pelvic pain, dysfunctional bleeding, or cervical cancer. Further, the interest justification raises the difficult question of what is to be done when a man overrides his wife's consent for a medically recommended procedure. Some proponents of the spousal consent dictum have suggested that in times of conflict, medical teams should try to convince the husband of the medical necessity. If he remains unconvinced, then they should follow the wife's wishes as long as they are medically justified. This approach seems to indicate that the underlying goal of spousal consent may be satisfied through spousal notification instead. This manner of dealing with the issue is explored later in this article.

Indeed, it can be argued that the justification given of the husband's interest masks a different problem, one of gender inequality. The right to be informed about a spouse's future reproductive ability does not appear to extend equally to women; Saudi wives are seldom asked to provide written consent for surgical procedures resulting in their husbands' sterility. The SCFHS code makes no mention of such a requirement.[6] If proponents of the requirement for obtaining spousal consent were aiming to uphold the interest of one spouse with regard to the reproductive ability of the other, they would have also supported obtaining the wife's consent. As this is not the case, the claim that spousal consent protects a husband's interest is weakened and is suggestive of deeper, more troubling, discrimination against women, in which her interests in making independent medical decisions for herself are ultimately outweighed.

The second argument supporting spousal consent stems from a particular contextual feature of Saudi society. Traditionally, Saudi society has tended to favor men more than women, who were often seen as in need of protection and guardianship. This is reflected in the country's male guardianship system which grants legal authority to men over women.[7] It was only recently that Saudi women were legally granted the right to make their own medical decisions.[8]

Despite this change, some women still prefer the involvement of male relatives in their medical care. For this reason, spousal consent can be said to reflect both this entrenched view of women, and some Saudi women's preferences. What makes spousal consent requirements currently problematic is a rapidly changing culture that no longer uniformly views women as inherently dependent, as well as a growing number of Saudi women who are vocally and explicitly demanding more individual autonomy through the dismantlement of male guardianship.[9] The changing role of women in Saudi society is discussed subsequently in this article.

The third argument reflects the tendency of some medical professionals to view informed consent as an insurance policy against malpractice suits. Similarly, Saudi hospitals consider spousal consent requirements to be protective measures against any potential liability. Indeed, several Saudi physicians have been sued by their patients' husbands for failing to obtain their consent as well. One recent, albeit

extreme, case highlights the risks clinicians and hospitals potentially face when they do not involve husbands: an angry husband shot and seriously wounded the male physician who helped deliver his wife's baby.[10] Although this incident represents a rare and unlikely consequence, it is nevertheless understandable why some hospitals and medical professionals are reluctant to revoke the requirement of spousal consent, even though it only serves to reinforce the legitimacy of male guardianship. As changes in the culture continue, it is hoped that instead of lending credence to the suits brought by husbands, Saudi courts will support and uphold the adequately obtained informed consent of women patients, and protect physicians who provide medical treatment on its basis.

The Islamic, Legal, and Ethical Perspectives

Turning from the arguments supporting the preservation of spousal consent, it is important to explore the legitimacy of this requirement from the Islamic, legal, and ethical perspectives.

Islamic Perspective

Saudi Arabia is a Muslim majority country. This is reflected in its legal system, which is rooted primarily in Islamic jurisprudence.[11] Likewise, many of the laws, regulations, and policy initiatives in Saudi Arabia reflect Islamic values. In addition, Saudi lawmakers often look to Islamic scholars to inform new legislation. In order to efficiently and accurately utilize Islamic judicial opinion, the Saudi government authorizes an official institutional body, The Council of Senior Scholars, to deliberate and issue religious decrees, or *Fatwas*, in all matters of life. In 1992, in response to an inquiry by the Saudi Minister of Health, the Council deliberated the matter of spousal consent in medically indicated hysterectomies and issued the following ruling: "if a legitimate medical authority finds that a hysterectomy, oophorectomy, or a cesarean section is medically necessary, then the person authorized to allow this intervention is the woman herself, provided she is found to be competent and able to do so. There is no need to require the consent of the husband, or any other male guardian since the matter at hand involves her, and she is most knowledgeable of what is in her best interest."[12]

The Saudi Council's decree indicates no Islamic justification for requiring spousal consent for medically indicated hysterectomies. Despite this ruling, there is room for disagreement by proponents of this requirement. The sterility resulting from the procedure appears to be at the center of this contention, and proponents may point to the Islamic position on contraception in support of their argument. Most Muslim scholars agree that non-medically indicated, irreversible contraceptive measures are not permitted within Islam, whereas others add that reversible contraception must be agreed upon by both spouses.[13] These arguments are not of concern here, because they take contraception as the ultimate goal of the desired procedure.[14] The focus in this article, as it is in the Council's decree, is hysterectomies sought for therapeutic purposes. Therefore, their relevance to this debate is minimal. The position here is that there appears to be no Islamic justification for the continued requirement of spousal consent.

Legal Perspective

The main legislating authority in Saudi Arabia is the Bureau of Experts at the Council of Ministers.[15] Alongside royal decrees issued directly by the king, the Council is responsible for establishing all civil regulation, law, and policy. In 2005, the Bureau issued the *Code of Practicing Healthcare Professions*, in which it outlined all regulations concerning the practice of medicine. Article 19 states that informed consent must be obtained from all adult, competent patients directly. It makes no distinction in regard to gender or medical procedure.[16] This code became the first official ruling giving Saudi women the legal right to independently make their own medical decisions.

Although there appears to be no Islamic or legal basis for requiring spousal consent, the SCFHS still maintains its necessity in its aforementioned *Code of Ethics:* "The conscious adult woman has the right to give consent to any medical intervention that is related to her, including surgical operations, except for what is related to reproduction, like the use of family planning methods, hysterectomy or other procedures. In such procedures, the acceptance of the husband must be obtained too."[17] Although the authors of the code qualify that these procedures are reproductive, they make no further distinction between therapeutic and contraceptive ends.

It is difficult to reconcile the SCFHS recommendations with the Council's decrees and the Bureau's practice codes. However, despite the salience of the SCFHS as the sole certifying and accrediting medical authority, its ethics code, although important, is not religiously or legally binding, nor is it beyond reexamination.

Ethical Perspective

Compelling women to provide their husbands' consent for surgical sterilizing procedures is not only devoid of any Islamic or legal basis, it is also without ethical justification. Indeed, it can result in significant harms. The spousal consent requirement robs women of the rights given to them by both Islamic law and the Saudi legal system to independently determine their own best interest, and make their own medical decisions. Furthermore, obtaining spousal consent may result in significant delay or outright prevention of care, leaving women to experience the physical and emotional tolls of an illness, or the negative effects of multiparity when pregnancy is no longer compatible with good health. In addition, spousal consent may affect a woman's right to privacy. In the case of Mrs. A., she was separated from her husband and did not wish to disclose private health information to him. Finally, continued requirement and justification of spousal consent results in overall harm to all Saudi women through the reinforcement of gender roles in Saudi society, damaging the greater push for individual autonomy that Saudi women are currently seeking.

Because there appear to be no Islamic, legal, or ethical grounds to support spousal consent, nor do the claims presented in its defense appear convincing or legitimate, the proposal here is that enforcement must be discontinued, and that the Saudi legal system, medical community, and medical professionals themselves have an important role in doing so. However, before expanding on how this can be achieved, we must first consider an important, potential, critique of the argument presented thus far: the imposition of autonomy, a Western value, onto Saudi women, with the presumption that it is of significance, when all that is known about Saudi women indicates otherwise.

Saudi Women and Autonomy

Critics of the views presented in this article may point to the fact that Saudi Arabian society has traditionally been viewed as communitarian and male centered, individuals have strong familial ties, and men are often involved in all important life decisions concerning their female relatives. Within Saudi culture, men are not seen as oppressors but rather as protectors and guardians. It would be wrong, objectors may say, to enforce an inherently Western value such as autonomy onto a culture where is it not considered relevant.

However, the idea that Saudi women relish their secondary role in society is difficult to support. Over the past decade, Saudi women have led several campaigns advocating for reforms that would elevate their societal status. Their work has been successful, paving the way for a recent proliferation of policy changes favorable to women, and ushering in a new wave of feminist activism that has successfully brought the issue of women's rights to the forefront of public discussion.[18]

Particularly in the medical field, an overview of Saudi medical research indicates that female patients want to be consulted first in their own medical care. One study found that a significant majority of female cancer patients preferred to have their full diagnoses disclosed to them, and to be included in every treatment discussion.[19] More than 99 percent wanted to know their prognoses, regardless of severity. Another study found that Saudi mothers preferred to be included with their partners in the first discussion of a newborn's serious or terminal illness.[20] Unfortunately, as yet, there does not appear to be any research on the preferences of Saudi women regarding spousal consent. Still, the body of literature that does exist on the healthcare preferences of Saudi women does not lend strong support to the idea that Saudi women do not value an independent and free exercise of choice. It is salient, however, to examine where that idea originates.

The perception of Islam as inherently oppressive and controlling of women is overwhelming. Still, several Islamic feminist scholars have attempted to challenge this misconception. In *Women and Gender in Islam: Historical Roots of a Modern Debate,* Leila Ahmed attributes the oppressive conditions experienced by women in some Muslim countries to particular, context-specific, and historically informed interpretations of Islam. Prophet Mohammad, Ahmed argues, articulated an Islamic doctrine that proclaimed spiritual, moral, and biological gender equality. However, that understanding changed over time, and often came to reflect dominant and influential cultural norms and knowledge, some of which represented patriarchal positions.[21] Similarly, Saudi society's interpretation of Islamic law reflects deep-seated cultural values, and may account for the marginalization that Saudi women have so far experienced.

That marginalization does appear to be nearing an end. In *A Most Masculine State: Gender, Politics, and Religion in Saudi Arabia*, Saudi anthropologist Madawi Al-Rasheed examines the changing role of women in Saudi society. She concludes that Saudi women's previous exclusion from society was a reflection of political and cultural values. She argues that, in the past, religious interpretations unfavorable to women were supported politically in order to appease religious nationalism and maintain political stability.[22] At present however, because of a confluence of external and internal factors, political support is granted to a new movement of feminist reform that has developed within Saudi Arabia.[23]

The arguments presented by Ahmed and Al-Rasheed are deserving of more attention than can be fairly examined in this article. Still, they present invaluable insight into how certain stereotypical views of Muslim women have become widely accepted truths. Whether in religion, culture, or state, and regardless of the origins of gender roles in Saudi society, they cannot be said to constitute a genuine and true representation of what Saudi women view as a moral or societal good. Ample evidence for this can be found in the rapidly growing feminist movement in Saudi Arabia and in the academic research evaluating the preferences of Saudi women in healthcare. There is no justification for the continued claim that autonomy, or at least the freedom and ability to exercise an autonomous choice, is an external value forcibly imposed on Saudi women.

Cultural Considerations

There are three areas of relevant cultural considerations that require special attention in the course of discontinuing the spousal consent requirement: the family unit, the medical community, and the larger Saudi society.

The Family Unit

There is a concern that revoking this requirement makes it easier for women to obtain hysterectomies in secret, which can be disruptive to the family structure, and may also put some women at risk of abuse if their husbands find out. Undoubtedly, the protection of women from domestic violence is an important goal of the medical profession. However, this goal can be achieved through other means. One such method is the replacement of spousal consent with spousal notification. This can be implemented in a variety of ways, one of which depends on the degree of interest a husband has in his spouse's reproductive potential. For women who are no longer of childbearing age, or are separated from their husbands, the need for notification is minimal. For women who are still capable of having children, the argument for notification is stronger. In all cases, a woman's consent must first be obtained before her husband is notified. In situations in which there is significant medical indication, physicians must have thorough discussions with husbands in order to explain the potential benefits of these procedures. If, despite these conversations, a husband still appears unconvinced, ethics services may be consulted to help aid in discussions. As a last resort, legal avenues might be considered. Throughout, physicians must be aware of supportive services that can offer help in incidents of domestic abuse. The involvement of physicians, ethicists, and perhaps the law, not only underscores the importance of the issue, but also has the benefit of removing the woman's burden of overruling her husband, and may alleviate any retaliation against her in the future.

It is equally important to consider the potential for reproductive abuse and coercion that such a requirement enables. Reproductive abuse is defined as behavior intended to maintain power and control in an intimate relationship, and can be achieved through interference with contraception or pregnancy.[24] Those opposed to revoking spousal consent must be aware that its revocation is not merely aimed at the comfort or convenience of women, nor is it a simple challenge to the social norms in Saudi Arabia. Rather, the revocation of spousal consent is integral to the protection and empowerment of women who may be victims of spousal abuse.

Spousal consent requirements allow vindictive or abusive husbands to withhold their consent in order to injure their spouses. Indeed, medical professionals have a duty to advocate for these at-risk women.

The Medical Community

The medical community has a large role to play in the revocation of spousal consent requirements: first by educating medical students and residents on the Islamic, legal, and ethical status of spousal consent; second, through equipping them with the skills necessary to engage in conversations with apprehensive husbands; third, through raising their awareness of the risks and harms of requiring spousal consent; and fourth, by developing a case-by-case approach to these situations. Spousal consent, or notification, is not indicated in every incident. The case of Mrs. A., for example, would qualify as a situation that would not warrant it. With more education and awareness, physicians attain a certain experienced knowledge that allows them to assess individual situations separately and address them appropriately.

Another area in which the medical community must be concerned is that of policy. On first examination, discontinuation of spousal consent at the policy level may appear problematic. However, as spousal consent has no religious or legal grounding, its legitimacy can be effectively challenged. This is not unprecedented in Saudi Arabia. Over the past decades, many existing polices and regulations have been challenged and eventually revoked. As the Saudi government looked to improve the societal status of Saudi women over the past two decades, it overturned and repealed many long-standing laws and policy measures. Many of these decisions were met with resistance at first but, over time, have become accepted and preferred. There is reason to believe that revocation of spousal consent will follow a similar path from opposition to acceptance. Because most Saudi hospitals follow the lead of SCFHS, it falls on SCFHS to take the initiative. SCFHS must amend its code of ethics to reflect the issues and concerns discussed in this article. Similarly to how it has supported the rights of women to informed, independent, decision-making in all other areas of health, SCFHS must also support their reproductive rights. Indeed, such a change will affect not only thousands of women seeking medically indicated hysterectomies but will also influence the conversation surrounding spousal consent in other reproductive discussions.

The Larger Society

Despite the absence of legal or religious barriers to the revocation of spousal consent, there may still be societal objections. In order to achieve widespread acceptance, community efforts must be geared toward education and raising awareness in the larger society. The Saudi government appears invested in increasing consciousness regarding gender discrimination. In 2013, Saudi legislators signed into law the Protection from Abuse Act.[25] Although the Act's primary focus is domestic violence, it is also concerned with criminalizing and combatting harassment and discrimination against women. The measure also allocates resources toward public education and supportive services. Similarly, The National Family Safety Program, a large initiative aimed at combating all forms of violence against women and children,[26] has been successful in challenging certain social norms, including gender discrimination.

It is evident from past experiences that the larger Saudi community is accepting of change, once the value and importance of those changes have been properly examined. In regard to women, their role in Saudi society is currently in flux. That role is changing and expanding rapidly, but cannot reach its full potential without certain policy adjustments.

The Road Ahead

It is clear now that no Islamic, legal, or ethical foundation supports spousal consent. Nor are the three arguments presented in its defense sufficient, or legitimate, grounds for its maintenance. In fact, its continued requirement causes women significant physical, emotional, and social harms. Based on the growing Saudi women's movement in general, and the known desires of Saudi women regarding healthcare in particular, the contention here is that spousal consent is nothing more than a societal artifact, a product of a rapidly fading secondary view of women, and that, therefore, Saudi authorities are urged to advocate for its discontinuation.

Since ratifying the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2000, Saudi Arabia has had an obligation to ensure that the practice of requiring spousal consent is halted in Saudi hospitals. Article 12 of CEDAW states: "Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."[27] Under the terms of CEDAW, spousal consent limits women's access to healthcare, and their ability to make medical decisions. All responsible Saudi authorities must strive to end it.

As the sole training, accrediting, and certifying medical authority, SCFHS must remove spousal consent from its *Code of Ethics*. There is no justification for its requirement and significant potential for harm in its continued recommendation. In light of its enormous influence on medical professionals, SCFHS also has a duty to uphold ethical and just medical practice, with which spousal consent is most clearly not compatible. Similarly, hospitals must follow suit and eliminate spousal consent from both their policies and their practice. Likewise, medical professionals have a duty to their patients, and to their patients' well-being, not to their patients' husbands. Medical professionals must not put their patients' health at risk, or delay care, in order to obtain spousal consent; however, they will not be able to do so without institutional or legal support.

The Saudi legal system must be careful not to legitimize unwarranted lawsuits brought by disgruntled husbands, and must set clear limits on the types of suits that can be considered. Instead, courts should champion the rights of women and uphold informed and uncoerced medical consent. Courts should also unequivocally criminalize and adopt a zero tolerance policy for retaliatory attacks on medical professionals.

It is important to note that the aim of this article is simply to repeal the strict requirement of spousal consent in medically indicated hysterectomies, and not to prevent women who do wish to involve their partners in these decisions from doing so. The goal here is empowering women to make autonomous choices, including the choice to defer to or consult someone else. Enforcement of spousal consent deprives women of that ability.

Indeed, spousal consent appears to be a remnant of a time where Saudi women were considered helpless and dependent. This no longer rings true. In the current climate of change and reform concerning the rights of Saudi women, there is every indication that the practice of requiring spousal consent is nearing the end of its cultural usefulness. Saudi society's strong familial and community bonds are doubtless positive virtues, but the same cannot be said of patriarchal practices that imbue regulations and policy such as spousal consent. The time has come to put it to rest.

Notes

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14. Much discussion can, and should, be had regarding the validity of these positions; however, that is beyond the scope of this article.
15. See note 11, Muaygil 2016.
16. Bureau of Experts at the Council of Ministers. Code of Practicing Healthcare Professions: Article 19 [in Arabic, author's translation]; updated 2005; available at https://www.boe.gov.sa/ShowPDF.aspx?filename=a7e7ed5a-7191-4ad1-8cce-f63907e9971f&SystemID=164&VersionID=178 (last accessed 18 Mar 2017).
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