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Doctors' Responsibility in Iran's Criminal Law

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Abstract

Providing a precise and comprehensive definition of the areas of doctors' responsibility towards patients and accurately illustrating the medical errors will eliminate many of the disparities and challenges of the relationship between doctor and patient. Medical responsibility is one of the issues that arises in medical law and patient and doctor relationships, and because of this, the physician has the same responsibility as his own scientific services, which he considers to be in charge of medical literature in medical literature. Doctors as a citizen, like other members of the community, are guilty of criminal offenses against their offenses and deserve to be punished. But in addition to general crimes, there are some crimes that a person should only have a doctor to commit. With all the care that the physicians have in their work, but sometimes it happens that the surgeon, in the course of a surgical procedure that is also in accordance with the technical rules, causes an injury to the patient that has serious consequences or leads to the death of the patient.

Keywords: Criminal liability, Failure, Medical error, Doctor

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Introduction

The practice of medicine for the community is necessary and necessary and for a physician qualified and competent in the techniques of medicine and scientific and practical measures of obtaining previous consent and blame from the patient is not possible in many cases, therefore, it would seem contradictory for him to be responsible for his knowledge. Particularly in the verses and narrations (which is discussed below, Ihsan rule is considered), the practice of physician is considered to be Ehsan. Therefore, the combination of the principles and duties of failing to meet others and ehsan others to the doctor's responsibility is of particular importance.

The doctor's responsibilities are diverse and researched in many respects in today's society. Including whether the patient's permission to the doctor alone, to the detriment of his physical integrity and treatment, is sufficient to justify the relationship between the physician and the patient and to resolve the doctor's responsibility. Because the physician's responsibility has often been analyzed in accordance with the principles of civil liability in Western law. While according to the issues of the Qur'an's or Qur'an's consent, or the issues of admission and adultery, and the rules of pride and goodness, the results obtained in the subject of medical responsibility differ from those specified in some of the legal books mentioned (Juaninzadeh et al., 1395 : 32).

The concept of doctor and medical responsibility

A physician in Persian is the equivalent of a physician, who cares for the patient and heals the medication and medication (Dehkhoda, 1993: 4, p. 4873). In a certain culture, it is stated: "The doctor is the person who treats diseases, the person who treats the disease and orders to heal, the person who deals with the treatment of patients and the patient, and the physician is someone who is in one of the different disciplines of the world" (Moin, 1363: 774). In the term, the physician is a person who, by studying medicine in one of the university centers and obtaining a doctoral degree, who, pursuant to Article 1 of the Administrative Regulations Act, authorizes the establishment of the office of 17/7/1363, can apply to the treatment of patients on the basis of his own specialty. According to Article 4 of the Law on Medicines, Pharmaceuticals and Foodstuffs, approved on February 3, 1993, every medical and pharmaceutical institution whose technical affairs are governed by a qualified person's license by a qualified person are closed down by the medical department.

The accountable, cautious and accountable physician in the Imam's jurisprudence is well known and documented for reasons that the jurisprudents have adhered to during the periods of jurisprudence. The legislator complied with the famous promise and documented the doctor in all cases of documented illness in the patient's treatment of the patient's inertia, and established the so-called "non-medical doctor's responsibility" to the principle of risk (risk theory), and in some way the doctor's responsibility Committed to the result (Hejazi, Badaqi, 1394: 119-118).

The criminal liability of the physician is the responsibility of the physician to aggravate the treatment - while in his profession, provided that the physician has the necessary discretion. Explaining that the rape of the physician from his discovery leads to the liability and the entry of the illness to the patient. The

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obligatory practice of medicine is on the physician, so doing this assumption is not in any way and quality, for example, causing irreparable medical harm and error. However, if the doctor acts without his or her permission to do surgery, such as if the physician examines a patient or surgery that is opposed to religious principles, he has a criminal responsibility. The doctor can not kill the fetus, even if both parents ask for it(Hejazi, Badaqi, 1394: 120).

The basis of the blame in the new Islamic Penal Code:

Fortunately, the new Islamic Penal Code does not accept the sole responsibility or liability of the physician without any fault, according to some Imams' jurists and the criticisms of lawyers. Article 495 of the Islamic Penal Code provides: "Whenever a physician causes or causes physical harm in his or her treatment, he is the guarantor of the Diyah, unless his practice is in accordance with medical and technical requirements, or has been taken before treatment. And he does not commit any fault. If the offense is not valid for the patient due to his immature or insane nature, or if he is not acquainted with an abstinence due to anesthesia and the like, the victim of illness is ill.

Note 1 - If the physician does not fail or guilty in science and practice, no guarantee is given to him, although he has not been acquitted. "

From this article, it is understood that the physician is primarily responsible for the harm suffered by the patient, unless his lack of fault is proved or obtained. In this hypothesis, if the physician is exempted from liability, he or she has not committed a fault. In other words, it is inferred from the terms of the article that the guilt or, in the sense of, the fault can be deduced; that is, it is not necessary for liability to prove the fault, but the doctor can prove his lack of fault, as it proves that the medical regulations and technical standards Completely adhere to and do not take any unnecessary disregard. If the doctor receives a victim from a patient or his wife, in other words, he has a condition for non-liability, the burden of proving the fault will be borne by the survivor. Therefore, the condition for the exclusion of the guarantor does not exempt the physician from liability in the case of proof of fault and only transfers the burden of proof, which means that if the indemnity has not been obtained from the guarantor, the burden of proving the non-fault lies with the physician and, The fault lies with the lost person. The use of the word "fault" in Article 495 of the law implies that the responsibility of the doctor is based on fault, but not the proven fault, but the alleged fault, which is contrary to it. Obviously, responsibility will not be effective without fault or as proof of non-fault. Article 495 of the law also confirms the acceptance of the basis for the fault in this law (Safa'i, 1391: 149-148).

Absolute Criminal Responsibility of the Doctor

Criminal liability is based on a criminal intention or error, and if the subject is punished with a harmful act, the act is considered a crime. When an act is a crime that has a spiritual element (general maladaptation, special malice, or criminal error) and a material element. In addition, the law should also regard it as a crime and punishable. In criminal liability, in addition to a criminal offense, society may also be affected by crime, while in civil liability it is the victim of a private person. When a doctor is responsible for criminal proceedings, his or her act of committing an act of ill-will and the law also

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requires it to. According to the French Penal Code, if doctors refuse to provide assistance to people in need of treatment, or because of lack of skill, discretion and illness, cause death or complete disability for more than three months, they will be punished and punished and prosecuted. Consequently, their cash offspring are not specifically covered by insurance coverage for French medical insurance. According to Articles 624 and 648 of the Islamic Penal Code, abortion is punishable by a physician for two to five years imprisonment and payment of a divorce and a penalty for the disclosure of secrets, imprisonment of three months, one day to one year, or a fine of one million to five hundred thousand to six Million rials The two crimes in connection with doctors require the existence and proof of the psychic element. Medical insurance policies in Iran do not cover cash penalties, and if the insurer is required to pay a fine, the insurer will not be obliged to pay. Diyah, of course, is covered by the insurance contract due to its specific nature.

To clarify the issue of the absolute criminal liability of the doctor, we review the civil liability of the doctor. Civil liability is a liability to compensation. The two common theories that form the basis of civil responsibility are the theory of fault and the theory of danger. Among the jurists, the fault is referred to as "abusive" and the articles 951 to 953 of the Civil Code imply the meaning. However, the root of jurisprudence can be found in the theory of danger in the "membran al-ghmn al-ghram" principle. Based on the theory of fault, the offender must prove the harmful fault. But in the risk theory that was considered with the onset of the Industrial Revolution and the spread of damage in Europe, for the sake of simplicity in litigation, there is no need to prove a damaging blame, and only to prove the existence of a causal relation between loss and harm (Janipur , Abbasi, 1392: 41-40).

Criminal liability of the doctor in relation to general crimes

According to the same principle of persons against the law, physicians and other medical practitioners, except in certain cases and conditions for which the law provides for the death penalty and exemption from criminal liability, is not a matter of this responsibility and does not have any privilege against others, and if committed General crimes will be prosecuted as well as other individuals. Depending on the type of offense committed, they may be prosecuted in one of the competent courts (statutory, military, revolutionary), and in this case they have not been prosecuted for admission or approval. In addition, the owners of medical literature are accountable for the importance of their work and the nature of their work, which we have described here as special crimes, and to mention the important titles mentioned in various criminal laws.

1- Abortion (Articles 622- 623-624 of the Islamic Penal Code and Article 487 and later of that law).

2- issuing a certificate for exemption from service in the offices or the duty system or for the submission to the judicial authority or certification which entails a loss to a third party or to the treasury of the state (Articles 539-540 of the Islamic Penal Code).

3- Disclosing the patient's secrets in non-legal cases (Article 648 of the Criminal Code).

4- The law of refusal to provide assistance to injured persons and to eliminate the dangers of life (adopted by the National Assembly of the Islamic Republic of Iran on 25/3/54) and its executive decrees (approved by the Cabinet of Ministers).

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5- Regulations of medical affairs approved in 1334 and amendments 67 and 74 under titles of any kind of medical institution without the permission of the Ministry of Health - Import and export, and the purchase and sale of unlicensed medicines - Disrupting the distribution system - Publishing the misleading advertisement - Transforming the date Taking medicine or increasing the official price.

6- The Medical Treatment Regulations approved by the Expediency Council (23/12/67) include the establishment of medical institutions by persons who are not competent in the field of specialty or created by specialists without a license; - the refusal of hospitals to accept and provide emergency services to primary patients; Providing excessive services for the purpose of gaining or confiscating in the form of - and receiving more than the stated rates - employing medical experts and paramedics without authorization from the Ministries of Health and Labor - the use of persons lacking competence - leaving the medical institution by the technical officer Testimonial physician or other medical cures At the appointed hour - closed unjustified office or institution without notice. In these cases, pursuit may be made according to the distribution of jurisdiction through the General Court or the Revolutionary Court or the Public Institution of Government. Of course, special crimes are not limited to medical practitioners, and other classes, including judges and lawyers, are also subject to crimes pertaining to their class, which emphasizes the importance of their jobs and their critical position and responsibility, and should by no means be It was considered a limitation (Diasalar, 2001: 48).

Three pillars of doctor's responsibility

1- A criminal offense or medical error

2. The result of a crime or injury

3. Relationship between the causal relationship between the criminal act and the harm done

To fulfill the doctor's responsibility, there are three essential elements that we will explain each one in order.

1. A criminal offense or medical error: A mistake is directed against a deliberate action consisting of a description of the activity of which the subject has a distinct power and has committed a failure due to negligence or ignorance, or mistake or misdemeanor, and in the medical practice the error is The job defect that the physician dominated his work at that time to his care in taking care of him, leading to some degree of physical, mental or financial disability.

2. The result of a crime or injury: A patient must be injured as a result of a physician's mistake and this is the result of a crime, that is, if the medical error does not follow the injury, that is, the verb "error" does not follow the patient. Not responsible.

3. Relationship between the causal relationship between the criminal act and the harm done: The last element to be realized is that there must be a causal relationship between the injury to the patient and the practitioner's practice, that is, the documented error is the doctor's practice, which must be proved.

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An error in medical practice can occur at any stage, which we will briefly explain:

A) At the diagnosis stage: At this stage, the error involves testing and the nature of the disease, the degree and extent of progress, and the rest of the effective factors, such as the patient's specific conditions, in terms of health status and heredity effects. It should be noted that from the very first day of judgment, there is no error in the detection of punishment while the doctor has done his or her own as much as ijtihad.

B) at the time of treatment: the doctor is responsible for taking care of his condition and improving his recovery during treatment as long as the patient does not recover. Which is dependent on the type of treatment and treatment of the disease.

C) Error in the verb: knowledge of the patient's strain and age, and the degree of progression and the ability to withstand the mental state and the use of a method that is less likely to be present for the patient.

D) During treatment: using methods that reduce the risk of illness and attention to adequate means and equipment for the treatment of the disease, which, depending on the physician's method, can interfere with the treatment of factors, such as when the time for treatment is low or in urgent cases Use of other appropriate means(khedmati, Glyzadeh, 1396).

The effect of obtaining a criminal offense from the physician

A. Explaining Satisfaction and Innocence

Intervention in the body and the lives of persons is not permissible even for medical treatment, and the consent of the person or authority, or the supervisor or his legal representative, must be obtained prior to the medical operation. In the assumption of the possibility of obtaining the consent of the person, it is not possible to obtain it from the parent (the parent) or the guardians or his legal representative (such as an ancestor's grandfather, guardian, guardian), but if such a possibility is due to an emergency or non-legal personality Or there is no disability, the consent of the supervisor or the legal representative is permitted. Of course, in urgent cases and not having access to anyone, satisfaction is not necessary. It is obvious that obtaining consent is the condition of the physician's action in treatment and treatment, since he does not take into account the consequences of medical operations, it does not in principle preclude the physician from taking responsibility for his or her death or injury (Rostami, Qaradaghi, 1394: 56).

B-The title of fault in the assumption of non-acquittal

The Islamic Penal Code seems to have adopted 92 intermediate views, and it can even be claimed that it is closer to the views of the opposition. According to Article 495, the physician is not the guarantor in either of these two situations. First, where his practice is in accordance with medical and technical standards, and, secondly, when he was convicted before the treatment and he did not commit any fault. In spite of the fact that there is a lack of guaranty in the first part of the article, in the event of compliance with technical regulations and medical regulations, in the second part, the emphasis is on adjudication, even if there is no fault, which apparently means the observance of medical regulations. In Note 1 of the

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article, the absence of fault and fault will result in the removal of the responsibility of the physician, even if no offense has been obtained. The legislator apparently, by the first part of Article 495 and its note 1, has agreed to consider the guarantor of a physician in the absence of a presumption of innocence, while modifying the famous opinion of Imamieh jurisprudents on the necessity of being educated. Indeed, the Islamic Penal Code does not consider marriage as a reason for the guarantor and, therefore, obliges the physician to prove non-fault or fault in order to escape criminal responsibility, whereas the second part of Article 495, on the assumption of allegiance to non-guaranty It confirms the condition of responsibility and the proof of it by the claimant (Rostami, Qaradaghi, 1394: 57-56).

Solutions to Doctor's Dismissal from Criminal Responsibility in Jurisprudence and Law

Sometimes a surgeon undergoes a surgical operation that is also in accordance with technical rules, and causes a patient to get injuries that may have dangerous consequences or result in the death of a sick person. In this case, can a surgeon be prosecuted for murder? In this regard, there is also a difference between the laws of the jurisprudence because the laws of the subject matter of medical work are considered as rights; whereas in the Islamic law, medical work is obligatory and the physician is required to maintain his scientific resources in the service of society. To give The jurists in this regard have two comments that are well known for the doctor's guarantor. Iran's laws of law, also with a well-known adherence, are considered to be the primary guarantor of the doctor, but for the physician to relieve the consequences of this outcome, there are two specific strategies for the treatment of the physician. As stated in the jurisprudence as a way for the physician to be released from the guaranty, in this speech, the two institutions of transgression and patient satisfaction have been investigated as the only major ways in which the physician's responsibility for his actions in respect of his jurisprudence and the laws of Iran has been investigated. (Moradi, 1390: 128).

Conclusion:

From the point of view of criminal law in the traditional sense, in order to prove crimes, in addition to the material elements of crime, there has also been a need for the existence of a spiritual element of crime. However, given the developments in the law, in particular in the criminal law and the importance of new crimes in the course of social and environmental changes, lawmakers are convinced that, in the particular attention to social order, the existence and the fault of the individual means to be investigated by certain crimes and impose no punishment. Although this seems contradictory to the philosophy of criminal responsibility, it is exceptionally necessary that such crimes be found on the one hand only with the recognition of the material and legal material and, on the other hand, as insufficient guaranty of civil, professional and disciplinary action, should be for such crimes Cash penalties will be applied to some extent to prevent the escape of legal and natural persons.

Today, with the rapid advancement of medical knowledge and the availability of modern equipment, the doctor can guarantee the treatment of some low-risk diseases and commit to deliver the result. Nevertheless, the principle is committed by the physician as "committed". But the jurisprudence has given this principle the "result" of knowing many doctors' commitments. Therefore, given the significant advances in the field of medicine, the commitment of the physician to healthy blood transfusions should not be considered "by means of". Considering the importance of the medical profession in the community

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and the sensitivity of the physician's performance, there is a controversy about his responsibility among the jurists, and two opinions have been raised that, according to one, the principle is based on the lack of responsibility of the physician and, according to another principle, the doctor's responsibility, unless contrary Prove (Janipour, Abbasi, 1392: 49).

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