

Civil responsibility of physicians in Iran's law

Abstract

One of the important subjects discussed is physician' civil responsibility. However, in Islamic punishment law, some regulations have been allocated to it. In comparative law of physician's civil responsibility, the principle is based on guilt, which means when a doctor is responsible and obliged to compensate for the loss, his fault should be proved. This solution, besides coordination with public regulation of civil responsibility, is explainable for society's expedient & patient interest, despite this in Islamic punishment law of 1987 mere responsibility or without any fault from the side of physician and following some Imamiyeh jurist consultants, it has been accepted that is critical even though mentioned regulation by accepting acquaintance condition from guaranty has been regulated, of course, it does not exempt the physician from responsibility because in this assumption by proving the fault, he will be obliged for compensation the loss. Fortunately, the new punishment regulation of 1390 has not yet been enforced. It deviated from previous regulations and has accepted fault basis on the physician's responsibility. However, it seems the responsibility basis in this regulation is assumed and not proved fault. It means that the law recognizes the doctor as responsible unless his nonfaulty to be proved, taking acquaintance of guaranty has been predicted in the new law which its benefit displaces the reason's burden.

Keywords: *Civil law, Guilty, Medical Liability, Moral responsibility, Civil responsibility of physicians*

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Introduction

Physicians' Civil responsibility is one of the main discussions of the law in different countries, and important opinions and plebiscites have been issued in this regard. In our country, before the verification of the mulct law in 1361, the civil responsibility of physicians was subject to the public regulation of 1339 of civil responsibility and fault basis was responsibility basis which has been mentioned in the regulation of 1339. However, in the mulct regulation of 1361 and then in the Islamic punishment law of 1370, several articles have been allocated to this matter that is incompatible with fault basis. In interpretation, there is some discrepancy. Fortunately, the new Islamic punishment bill (1390) has not been enforced yet, (1390), previous regulations have been amended, and the fault basis is running. Acceptance of the idea of fault in respect of physicians' responsibility is based on the thought that a physician undertaking is not an obligation to the result; it means due to the contract by the law, he is obligated to cure the patient by medical observation scales and to apply his effort and skill to cure the patient. However, the definite cure is beyond his control and obligation. Therefore, for a physician to be recognized as responsible, his fault has to be proved.

Furthermore, suppose the physician's responsibility is without any fault. In that case, the physician does not dare to cure or have dangerous surgical operations, which is an obstacle to improving medical science. It will be a loss for patients & society. In respect of physician civil responsibility based on some matters to be discussed, is physician responsibility a mere responsibility without fault and based on dangerous views or other ideas of responsibility might be without fault? Is it possible that the physician's responsibility is to be

recognized as a fault by judge-made law? In the case of irresponsibility condition or acquaintance of guaranty, the physician is exempted or by proving the fault, could he be recognized as responsible? Is physician responsibility in Imamiyeh jurist a mere responsibility and without fault?

1- The kinds of physician's responsibility

Medical responsibility is one of the matters in medical law and the relationship between patient and physician to be surveyed. Due to this relationship, the physician profits from the scientific services and has duties defined as medical responsibility. In this study, the meanings of physician responsibility, its kinds, its basis, and the conditions will be surveyed. Responsibility by the word means to question, to be questioned and specifying the duty (Faramarzi, 1994:54). It is a legal obligation to remove another people's loss that he has caused, caused by his fault or due to his activity (Jourdan, 1994:5).

1- 1Contract responsibility & Responsibility without contract

That is an obligation due to the offending of personal contract tenor that people and responsibility will obtain without a contract means that there is no personal contract. In this case, one part due to abandoning the action purposely or by mistake to make a loss for another person, it is necessary because of

not taking a step for obligation in the contract, the people who faced loss to claim and the title of mentioned loss is not taking a step for an obligation or to delay it. In responsibility without a contract, the people have disobeyed legal and public obligations and caused the loss.(safayi,2012:304)

1-2 Moral & legal responsibility

Moral responsibility is a responsibility that which the legislator is not objector to, and guarantee for implementation is just up to conscience, only because of god. There is no legal guaranty; for example somebody who is witness of drowning a swimmer and he doesn't ask for help here he feels shame. There is no legal responsibility, in legal responsibility, carrying into effect and to make loss, is the condition of certainty of responsibility, contrary with moral responsibility is legal responsibility that some cases have been accounted and have legal execution guaranty (civil & penal) and the common popularity is default the contract. It could be claimed from the court.(Katouzian,2007:231)

1-3 Civil responsibility

civil responsibility means commission a crime that has been specified, in this kind of responsibility the person should have intention for responsibility, it means causative relationship should be between doing the crime and the damage till the action to be related to him, the responsible beside of punishment must compensate the loss. Civil responsibility means obligation and makes the person for compensation, even though the incurred loss has been because of his action or his relatives or arises of his object or his own property, whenever the person is responsible for compensation, we say that he has civil responsibility.(Katouzian,2011:132)

1-4 Difference between civil & Administrative responsibility

1-in Administrative, the punishment of guilty is for avoiding disorder and defense of society and amending the guilty and in civil responsibility the goal is compensation the loss2- in penal there are punishment such as mulct, retaliation, beating by law and falconer punishments but in civil the somebody who cause loss should compensate 3- in Administrative bad intention or guilt intention is necessary, in civil proving it is not needed4- the source of punishment responsibility is law but in civil everybody should compensate any damage that has caused.(Darabpour,1994:213)

2-Professional or disciplinary responsibility

Responsibility that people have is on basis of professional contracts in associations, unions and the same trade organizations. Disobey of these regulations called disciplinary & administrative offending such as Medical arrangement organization that investigate physician's offending by considering definitions and mentioned divisions, physicians have 4 responsibility because they are a person who have duty and big social responsibility and they can not act as an ordinary person where society neglect a ordinary person and see him as faithful of god and society, physician can not leave a patient who is dying or injured, moreover so many people are believed that the responsibility is moral and all civil responsibilities and related regulations have been built on religious and moral basis, on the other hand, infliction the blow and injury with any intention or professional bad behavior and disciplinary offending by a doctor and not to accomplish the duty and leaving of cure and remedy, not paying attention to patient, misuse of medical professional, bad behavior with the patient and misuse of professional job beside of having moral responsibility still it follows penal and civil responsibility as well and is possible to sue according to law and professional regulations because on the basis of legal and religious nobody is immune from being sued for example on the basis of regulation the beneficence, the job of the physician counted as beneficence and is immune form responsibility because on the basis of article 1 of civil law and other articles and regulation of compensation the loss, in respect of penal responsibility, offending from the law or medical organization has penal responsibility, penal responsibility states that each action can not be counted as guilt unless the action to be known as guilt. in discussion about penal responsibility, the guilty beside of punishment must compensate the loss.(saket,2009:36) By considering that taking acquaintance is regarded by legislator and there is positive idea of jurist consultant but it does not remove civil and penal responsibility because the law, trade and professional regulations must be observed and caution to be exerted so patient's allowance and taking acquaintance is conditioned on non guilty of the physician and all the regulations and medical science otherwise he is responsible. (Katouzian,2011:148)

2-1Shortcoming and medical errors from legal point of view

From the view of law, shortcoming and making mistake in medical science are different, medical error is an unwanted action that does not lead to a desirable result in cure on the

other hand penal medical error caused by shortcoming are errors which firstly . bring about indisposition or any hurt secondly, getting hurt is due to shortcoming from physician' side.(Imami,1999:231)

2-2 Civil responsibility of physician in Islamic penal law

Important and discussed matter of Iran civil law and also civil responsibility law that is silent about it but in Islamic penal law verified In 1375 has some cases , note² of article 59 of mentioned law states " each kind of surgical operation or cure with the person's satisfaction or parents or tutor or their legal representative by observance technical, scientific and medical standards to be carried out in emergency cases taking satisfaction for physician is not necessary .article 60 of above mentioned law refers to this subject that : if the physician before starting cure or surgical operation take acquaintance from patient or his parents , he is not responsible for any damage even defect of member" in article 319, we read that" whenever physician to be skillful and professional in his cures that does personally or gives prescription, even though to be by patient permission or her parents and cause dead or member defect or any money loss, he will be responsible , moreover in article 320 legislator recognize responsible the people who does circumcision in the case of any damage and in articles 321 and 322 to be pointed out that veterinary even though to be professional for cure an animal even with his owner's permission in the case of any damage, he will be recognized as responsible, in article 322 to mention this subject that: whenever veterinary before starting cure to take acquaintance from the animal owner ,he will not responsible for any damage. (Darabpour,1994:143) Now by stating previous related article from Islamic penal law in connection with physician civil responsibility seems in mentioned regulation, mere responsibility or without fault of physician in following some statements from Imamiyeh has been accepted that is critical even though the above regulation has been adjusted by acquaintance condition from guaranty but by studying new regulation of Islamic penal law and surveying related articles, we do observe that legislator has deviated from previous regulation and has accepted fault basis of physician for responsibility ; assumed fault , it means that law assumes the physician as responsible unless the opposite to be proved and lack of his fault to be clear. by acceptance the fault view about physician civil responsibility, the law consider that principally physician obligation should be known as obligation for implement and not undertaking for the result, it means that the doctor due to contract or law is obligated to cure the patient by observance the standards but definite cure is beyond his control, so this doctor will be recognized as guilt if his fault to be proved as in article 689 , as new Islamic penal law regulates " whenever the physician in giving health to the patient causes

death or injury, he is responsible for paying mulct unless his action to be according to medical regulation and technical balance or before cure has had taken acquaintance and does not have fault and if acquaintance of patient due to immaturity or being crazy is not valid or forcing acquaintance due to unconsciousness, is not possible, acquaintance will be got by parents. From recent article that the basis of fault or any interpretation of judge made law of fault is presumable, so it means that for responsibility , proving the fault is not necessary but physician can prove the lack of his fault and if he proves that medical regulation and technical balance have been observed and there has not been any careless and also has taken acquaintance of patient or her parent, he will be exempt from responsibility and proving the fault can be done by somebody who has faced loss. (Goldozian,2008:34)

2-3 Investigation of medical offends & crimes

According to article 21 of Medical arrangement organization establishing law , in order to investigate of trade and professional offends of medical personnel and related to this organization in center and other cities, there will be a primary board and high disciplinary that accordance with this law to establish while the crime is action or leaving the action that legislator knows it deserved for punishment , it means investigation of medical offends by primary board is not obstacle for investigation by judicial courts because physician may does an criminal action and this job is offend as well and judicial courts and disciplinary primary board could investigate it separately, if in respect of cooperation between primary board and judicial courts, the article 27 of medical arrangement organization establishing law to be recognized necessary ,after surveying all the consult and professional views about each related files of accession the guilt arise of physicians' profession , empower it to township courts and the note¹ of recent article to be observed that township's courts & public prosecutor's office specify 20 days respite for disciplinary board and mentioned board is obliged in that period of time to render professional view .(Abbasi,2001:9) in direction the establishment of disciplinary board for investigation according to article 25, one board consists of 1 judge through introduction by the chairman of justice administration for Tehran and introduction by the chief of the administration of justice the township for cities (2) legal medical organization's responsible of township 3) 3 physician from township plus one dentist, one chemist plus one expert of laboratory sciences; medical diagnosis; to be specified for

primary investigation and issuing consult and professional view & to define below disciplinary punishment and rendering it to the court.

3- - Conclusion

Below mentioned points are the result of this paper: 1- in Islamic penal law, apparently physician civil responsibility is not based on guilt but also mere responsibility and without guilt has been accepted, it means physician is responsible for any damage that the patient faces, directly or indirectly but in new Islamic penal law 1375 the guilt basis has been accepted although that this guilt is assumed and the contrary could be proved 2- the regulation of mere responsibility based on Imamiyeh consult jurists but other pronounces judgment in medical responsibility, guilt basis is presumed, of course guilt may arise due to lack of skillfulness or carelessness or the want of patient's permission or her parent that anyway it exceeds from medical ordinary behavior and reckoned as guilt, however the view of mere responsibility and without guilt of physician with comparative laws and society interest is not compatible because it takes the bravery and daring of cure & surgical operation from physician and is obstacle for progressing medical science and to cure hard illnesses. Perhaps due to this matter new Islamic penal law has been overlooked to previous regulation.

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