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THE CONDITIONS AND CIRCUMSTANCES OF THE CIVIL LIABILITY OF PHYSICIANS IN ISLAMIC JURISPRUDENCE AND THE STATUTORY LAWS OF AFGHANISTAN

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Abstract. *The civil liability of physicians in Islamic jurisprudence and the statutory laws of Afghanistan is one of the complex and sensitive issues in medical law, referring to the responsibility of doctors towards patients and the consequences resulting from their medical actions. Civil liability of a physician means their obligation to compensate for financial, physical, or emotional damages caused to patients. This liability typically arises when a doctor fails to fulfill their duties or performs unauthorized or negligent medical procedures. The aim of this study is to examine the conditions and circumstances under which physicians are held civilly liable under Islamic jurisprudence and Afghan statutory law. The central question of this research is: under what conditions and circumstances is a physician liable according to Islamic jurisprudence and Afghanistan's laws? It appears that if a physician causes harm to a patient due to negligence, lack of caution, or excessive treatment, they are considered liable. This research is conducted through library-based sources and employs a descriptive-analytical method. The findings indicate that a physician cannot be deemed absolutely liable or entirely acquitted; rather, they are liable in cases where they fail to obtain prior consent (discharge of liability), lack sufficient expertise, or commit negligence. Otherwise, they are not considered liable.*

Keywords*: Actions, Patient, Physician, Civil Liability, Treatment.*

УСЛОВИЯ И ОБСТОЯТЕЛЬСТВА ГРАЖДАНСКОЙ ОТВЕТСТВЕННОСТИ ВРАЧЕЙ В ИСЛАМСКОЙ ЮРИСПРУДЕНЦИИ И СТАТУТНОМ ПРАВЕ АФГАНИСТАНА

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Аннотация. *Гражданская ответственность врачей в исламской юриспруденции и статутном праве Афганистана является одним из сложных и деликатных вопросов в медицинском праве, касающимся ответственности врачей перед пациентами и последствий, возникающих в результате их медицинских действий. Гражданская ответственность врача означает его обязанность компенсировать финансовый, физический или эмоциональный ущерб, причиненный пациентам. Эта ответственность обычно возникает, когда врач не выполняет свои обязанности или выполняет несанкционированные или небрежные медицинские процедуры. Целью данного исследования является изучение условий и обстоятельств, при которых врачи несут гражданскую ответственность в соответствии с исламской юриспруденцией и афганским статутным правом. Центральный вопрос данного исследования: при каких условиях и обстоятельствах врач несет ответственность в соответствии с исламской юриспруденцией и законами Афганистана? Похоже, что если врач причиняет вред пациенту из-за халатности, неосторожности или чрезмерного лечения, он считается ответственным. Это исследование проводится с использованием библиотечных источников и использует описательно-аналитический метод. Результаты показывают, что врач не может считаться абсолютно ответственным или полностью оправданным; скорее, он несет ответственность в случаях, когда он не получает предварительного согласия (освобождение от ответственности), не обладает достаточным опытом или совершает халатность. В противном случае он не считается ответственным.*

Ключевые слова: *Действия, Пациент, Врач, Гражданская ответственность, Лечение.*

Introduction:

Medical care has always served humanity from the earliest periods of human history to the present, as humans have constantly faced physical problems and various pains.

Unfortunately, the history of medicine has not precisely recorded the responsibilities and liabilities of physicians during ancient times. However, medical advancements in various civilizations such as Ancient Egypt, Babylon, and more recently across the globe have led to increased attention toward the regulations, conditions, and punishments related to medical practice.

In Afghanistan, the healthcare system faces multiple challenges that reduce the quality of medical services. Among the causes of these issues are the lack of health awareness among the public, a shortage of specialized doctors, and the failure of some physicians to observe ethical and humanitarian standards. Unfortunately, the condition of many clinics and medical centers reflects severe shortcomings in equipment and hygiene. Dirty environments and the disregard for sanitary principles in many of these facilities have caused public concern and a loss of trust in medical services. These issues not only affect the quality of treatment but also diminish public confidence in the country's healthcare system.

One of the main challenges is the presence of unqualified physicians and the use of low-quality medications, which lead to numerous physical and psychological problems for patients.

Despite scientific and technological advancements in the field of medicine, physicians' accountability toward patients must be further strengthened. Although doctors may possess the necessary experience and expertise, this does not always lead to positive outcomes; in some cases, it even results in serious harm to patients. Negligence in treatment and failure to follow ethical principles create serious problems in the healthcare system, which—alongside physical and psychological harm to patients—undermine public trust in the medical profession.

Therefore, it is essential for the Ministry of Public Health and other relevant institutions to take serious measures to reform this situation and improve the quality of healthcare services.

The Concept of Physician Responsibility

To begin, it is essential to define the key concepts of the discussion both linguistically and terminologically, in order to clarify the subsequent topics and avoid any verbal ambiguities.

Definition of Responsibility

In Persian, the term "responsibility" refers to guarantee, obligation, and accountability.

In its active form, it is synonymous with terms such as being in charge, being obligated, committed, or bound. In its passive form, it conveys meanings such as being liable or under someone's guarantee. The usage of the term "responsibility" in Persian originates from Islamic customs and culture, in which any form of duty or obligation ultimately entails accountability and questioning (Amiri, 2019: 67–68).

In other words, responsibility refers to a state or condition in which an individual is held accountable by law for an act or omission. This accountability may arise from a breach of statutory criminal laws, violation of a contract (written or unwritten), or failure to adhere to professional and occupational standards.

A physician may be subject to different types of responsibilities—criminal, civil, or professional—depending on specific actions or violations of professional conduct. In some cases, a single action may subject the physician to all these forms of liability.

For instance, a doctor who issues a license without following proper guidelines and procedures is undoubtedly responsible from a professional standpoint due to violating those regulations.

Criminal responsibility can be described as the obligation of a person to endure the consequences of their criminal behavior. Alternatively, criminal liability can be defined as the violation of laws and regulations established by society, committed knowingly and intentionally (Nejati, 2010: 37). Therefore, from a criminal law perspective, the commission of a crime—or more broadly, any violation of social regulations that carries a penal consequence—is considered a necessary condition for establishing criminal liability (Validi, 1992: 26).

A. Linguistic Definition

The word "responsibility" (mas'uliyyat) is a derived noun (masdar-i sanāʿī) from mas'ul and means guarantee, liability, accountability, and also refers to the state of someone being held responsible for something—being liable for it, bearing it, or under obligation. It also conveys the meaning of being questioned, held to account, and is used in the sense of assigning duties. (Moein, 1992: 95).

B. Terminological Definition

The term "responsibility" in a technical or disciplinary sense can be examined from two perspectives:

1. Legal Perspective

In legal terminology, responsibility refers to a compulsory or voluntary obligation of one person toward another, whether financial or non-financial. It is categorized into two types:

Criminal responsibility, which cannot be quantified in monetary terms.

Civil (financial) responsibility, which can be assessed in terms of monetary compensation (Langroudi Jafari, 2008: 642).

It also means "guarantee, obligation, accountability, or the duty of a person to compensate for the harm caused to another, whether such harm results from the person's own fault or their actions." (Langroudi Jafari, 2008: 942)

It is worth noting that in Islamic jurisprudence, the term ḍamān (guarantee or liability) is used instead of responsibility (mas'uliyyat), encompassing all forms of liability, both civil and

criminal. As can be seen, the legal usage of "responsibility" aligns with its linguistic meaning, revolving around accountability and obligation in response to one's actions and behavior toward others.

2. Islamic Jurisprudential (Fiqh) Perspective

In Islamic legal and jurisprudential terminology, mas'uliyyat is synonymous with ḍamān (liability). A person upon whom a responsibility is placed is referred to as mas'ul (responsible) or ḍāmin (liable). Fiqhi liability in Islamic law is generally divided into three categories:

Responsibility toward God (Ḥaqq Allāh): where a person is obliged to perform certain actions and refrain from others.

Responsibility toward oneself (Ḥaqq al-Nafs): duties related to the care and rights of one's own self.

Responsibility toward others (Ḥuqūq al-Nās): duties and obligations one holds in relation to other human beings (Misbah Yazdi, 1994: 177).

The Concept of a Physician

A. Linguistic Definition

In linguistic terms, a physician is someone who attends to the ailments of the sick and provides healing through careful management and the use of medicine. (Dehkhoda, Ali Akbar, Dehkhoda Dictionary, via software)

B. Terminological Definition

In terminology, the term physician here refers to a skilled, professional, and qualified medical doctor who has undergone formal academic education in the field of medicine, successfully completed the necessary stages to gain specialization, and is authorized by law to practice medicine upon receiving a formal license or certificate of qualification. (Nejati, 2010: 63).

Alternatively, it can refer to someone who has attained a high level of expertise in medicine through experience and professional practice. Now, if such a physician—despite applying all their efforts in good faith and adhering to technical principles and regulations—treats a patient but the treatment results in the patient's death or permanent injury instead of recovery, the question arises: is this physician liable or not?

On the other hand, if an ignorant individual falsely claims to be a physician and treats patients without any knowledge of medicine—commonly referred to as a quack or unqualified physician—there is no doubt or debate regarding their liability.

Islamic texts and traditions emphasize the accountability of such individuals. First, merely undertaking such a practice without proper qualifications is itself considered negligence and automatically entails full liability. (Nejati, 2010: 59) Second, such individuals are prohibited from practicing medicine, and they should not treat patients. To protect public welfare, such a person is considered legally incompetent (mahjur), and the authorities are obliged to prevent them from continuing medical practice in order to safeguard people's lives and property.

Medicine, being a collective obligation (wājib kifāʾī) in Islam, imposes a duty on anyone who has acquired medical knowledge to take responsibility for their medical actions, especially since they directly deal with human life and health. (Zuhayli, 1992: 449–450)

In technical terms, medicine is the science that deals with the human body—studying both the factors that maintain health and those that lead to illness or the deterioration of physical well-being. In other words, medicine is the discipline concerned with preserving and promoting health, preventing diseases, and treating the sick and injured. This goal is primarily achieved through identifying, diagnosing, and then preventing or managing the progression of diseases and injuries.

Conditions and Legitimacy of Medical Practices

Like other sciences, medical knowledge involves interactive and incremental issues and has advanced through various tools. One of the new topics in this field is plastic, reconstructive, and cosmetic surgeries, as well as treatments involving prohibited objects. These matters are also considered new in both law and jurisprudence. Treatment using prohibited substances like alcohol or impure medicines is only permissible in cases of necessity and to the extent required.

Similarly, using medicines that harm the patient’s body is prohibited unless it’s an emergency. Medical treatment must be legitimate, meaning it should not contradict ethics or law.

Medical actions performed without legal authorization or those harmful to patients' health are considered illegitimate. Law forms the basis of liability; therefore, physicians who perform actions like abortion to save a life are not to be blamed if they act in accordance with the law.

The legitimacy of any medical action is dependent on the permission of the legislator. (Mohseni, 2008: 192)

In fact, negligence is punishable regardless of the harmful effects of the action.

Negligence refers to the breach of laws and regulations that govern the conduct and relationships of people; whether or not harmful results occur is irrelevant.

For example, if driving without a license leads to bodily harm, it constitutes a violation of two offenses: driving without a license and causing unintentional injury. (Tohid Khaneh, 2009: 153-154).

A: Permission of the Legislator

Engaging in the medical profession without legal authorization, even if it does not result in harm, leads to legal responsibility and prosecution. The adherence of the medical profession to laws and regulations ensures the safety and progress of society. According to Article 210of the 1306Penal Code, practicing medicine without an official license is considered a crime and punishable with discretionary penalties. Article 3of the Forensic Medicine Law emphasizes that individuals practicing in the medical field must hold a valid diploma from recognized domestic or foreign institutions. Article 22of the Public Health Law of Afghanistan stipulates that medical services can only be provided with a certification from the Ministry of Public Health, and any medical practice without this certification is unlawful and contrary to the law. Related professions, such as pharmacy, dentistry, and laboratory activities, are also subject to these requirements, and their licenses must be issued following evaluation and approval by the Pharmacy Affairs Administration. According to Article 19of the Public Health Law, any medical procedures must comply with the law and be conducted through authorized centers. The use of unauthorized drugs or engaging in activities without the necessary license is unlawful and subject to legal prosecution. These laws are designed to protect public health and ensure the quality of medical services, and compliance with them is mandatory to prevent violations.

B: Intent of Treatment

The absence of malicious intent in medical practice refers to the intent to treat and heal, which in criminal matters can lead to the removal of criminal responsibility. Although, in criminal cases, the mere occurrence of a harmful action is sufficient to prove liability, in the medical profession, to prove the criminal liability of a physician, malicious intent as the mental element of the crime must be demonstrated. According to Article 40of the Afghan Penal Code, malicious intent is considered present when the perpetrator has premeditated the crime. On the other hand, if a physician acts with the intent to heal and follows professional and religious principles, even if harm occurs to the patient, they are not criminally liable. [1]،(Afghan Penal

[1] Surah At-Tawbah, verse 91, refers to the exemption of beneficent individuals from liability:
"لَيْسَ عَلَى الضُّعَفَاءِ وَلَا عَلَى الْمَرْضَىٰ وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا يُنفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ مِن سَبِيلٍ وَاللَّهُ غَفُورٌ رَّحِيمٌ"
"There is no blame on the weak, nor on the sick, nor on those who do not find anything to spend (in the cause of Allah), provided they are sincere to Allah and His Messenger. There is no way (of blame) against those who do

Code, 1396: Article 40) This is also reflected in Islamic jurisprudence through the principle of "Ihsan": "There is no blame on those who act with good intentions," indicating that individuals who act with good will should not be harshly judged and are not liable. (Mihahd Damad, n.d.: 264)

The Rule of Benevolence (Qā‘idah al-Iḥsān) applies in cases where the individual has no intention of personal benefit and their action is, both rationally and socially, considered an act of kindness. For example, doctors who tear a patient’s clothes in an emergency situation or individuals who demolish a part of a building to extinguish a fire are exempt from liability due to the absence of ill intent and personal gain. (Muḥaqqiq Dāmād, n.d.: 149).

C: Consent in Medical Procedures

The term riḍā (consent) is derived from the root raḍiya, meaning satisfaction or pleasure, and is the opposite of anger and displeasure. Words such as riḍā, riḍwān, and marḍāt all convey the meaning of contentment, and irḍā means to please someone. Thus, in its linguistic sense, riḍā means permission, contentment, acceptance, and satisfaction (Mo‘in, 1992: 1659). In legal terminology, riḍā refers to the heartfelt willingness towards a legal act that has occurred, is occurring, or will occur.

Treatment of a patient through any medical method requires the patient’s or their legal guardian’s consent. Doctors are not permitted to perform surgery or administer treatment without such permission. Consent is one of the fundamental conditions for exemption from liability in medical practice and is analyzed from three perspectives: first, divine approval as the primary outlook; second, the welfare and health of the patient; and third, the patient’s or guardian’s consent as a complementary and supportive factor. Patient consent implies prior authorization and can be either oral or written.

According to Article 54of the Afghan Penal Code, performing surgical procedures or other treatments is contingent upon the patient’s consent and adherence to professional standards.

In the absence of consent, even if the doctor's intention was therapeutic, they may be held civilly or criminally liable. Moreover, doctors are obligated to inform patients or their legal guardians about the nature of the disease, treatment methods, type of surgery, and possible consequences.

good. And Allah is All-Forgiving, Most Merciful." This verse indicates that those who act with sincerity and goodwill, despite their limitations—such as weakness, illness, or lack of financial means—are not held accountable. It serves as a basis for the legal and moral principle that beneficent individuals (محسنین) should not be held liable when acting with good intention and within their capacity.

According to Article 20of the Public Health Law of Afghanistan, in emergency cases where delay in treatment may endanger the patient's life, surgery may be carried out with the approval of the treating medical team, even without the consent of the patient or their guardian.

However, in non-emergency situations, obtaining the written consent of the patient or their guardian is mandatory under Article 27of the Health Centers Regulation. Doctors are also required to inform patients about diagnosis, likelihood of treatment success, and potential side effects. Failure to do so constitutes a violation of patient rights and may result in legal accountability for the doctors (Roy Balmer, 2009: 159).

Full awareness of the treatment process and possible surgical complications is essential.

Patients have the right to receive honest explanations about the surgical procedure, anesthesia, and recovery time. They must also be informed of specific risks such as bleeding, swelling, or the duration of treatment. If such information is not provided and surgery is performed without the patient's informed consent, the physician may be held accountable and face legal consequences.

Article 27, Paragraph 1of the Health Centers Regulation states that written consent from the patient or guardian must be obtained before any surgery or medical procedure. Article 26, Paragraphs 7– 8further stipulate that informing the patient about the likelihood of treatment success, diagnosis, and professional findings in written form is part of patient rights and service provision. It obliges doctors and medical personnel to adhere strictly to these legally outlined patient rights (Roy Balmer, 2009: 159).

M. Emergency Situations

According to Article 20of the Public Health Law of Afghanistan, performing surgical operations and using complex diagnostic methods for the purpose of diagnosis and treatment is only permitted after obtaining the patient's written consent. If the patient is under the legal age or suffers from mental disorders, consent must be obtained from the parents, relatives, or legal representative of the patient.

In emergency situations where delays in diagnosis or treatment may endanger the patient's life and it is not possible to obtain consent from parents or legal representatives, surgery may be performed with the written approval of the treating medical board, even without the patient's consent. In cases where neither the consent of the patient nor their guardians can be obtained, and no relatives or legal representatives are present, doctors are permitted to proceed with treatment or surgery in life-threatening emergencies without obtaining prior consent.

In such cases, if harm or damage results from the medical intervention, doctors will not be held liable, provided that they adhered to technical and professional standards. Furthermore, Article 46of the Regulation on Private Health Centers obligates private medical institutions to provide essential and life-saving medical services free of charge to victims of natural and non-natural disasters and to refer them to the relevant authorities after stabilizing their condition.

In emergency situations, doctors may rely on the following principles:

The existence of a serious threat to the patient's life, which must be proven by the physician (in case of disagreement, the opinion of the forensic medical authority will be considered decisive),

and the inability of the patient to give consent.

However, once the emergency condition is resolved, obtaining the consent and legal clearance (discharge of liability) from the patient or their legal representatives becomes mandatory.

Civil Liability of Physicians

The civil liability of physicians in Afghanistan is based on the general principles of Islamic jurisprudence and civil law, which are structured around the concepts of fault and liability. This liability is essential to protect patients' rights and ensure professional standards in the medical field. In order to improve this area, legal reforms and the expansion of civil liability insurance could play a significant role. Article 774of the Civil Code of Afghanistan stipulates: "A person who commits a harmful act such as murder, injury, beating, or other forms of harm to the body is obligated to compensate for the damage caused."(Civil Code of Afghanistan, 1355, Article 774).

The explicit wording of the lawmaker in this article shows that compensation is required in all cases, without the need to prove fault or negligence, as the phrase "the person who commits" is used. This means the person may be at fault, negligent, or even without fault. However, a question arises: Is a person liable only when committing a harmful act, or does this also apply to omissions? The answer lies in the phrase "harmful act," which refers to actions leading to murder, injury, beating, or other harmful consequences. The purpose of using this term is to exclude acts of benevolence (ihsan), as a person may unintentionally harm another while acting out of kindness. According to the majority of Islamic jurists, a benevolent person is not held liable(Mujaddidi, 1399: 212).

Another issue concerns the damages suffered by a person due to an assault or injury. In such cases, the perpetrator must not only compensate for the damage caused but also cover the expenses of those financially dependent on the victim. In this regard, Article 775of the Civil Code of Afghanistan provides: "A person who causes the death of another due to injury or any other harmful act is obligated to pay compensation to those who were financially dependent on the deceased and have been deprived of support as a result of the death." According to this article, the perpetrator is required to cover all the expenses of the deceased's dependents, with the amount determined by the specific circumstances of the case(Mujaddidi, 1399: 213).

Physician's Responsibility in Prescribing Pharmaceutical Products

In the field of medicine, only a licensed physician is authorized to prescribe and issue instructions for the use of pharmaceutical products. Accordingly, medications dispensed by pharmacies without a physician's prescription fall under the responsibility of the professional distributor, not the prescriber, since only physicians are permitted to prescribe. Moreover, medications listed and approved by the Ministry of Public Health are included in the scope of the physician's responsibility when prescribed and used. In this context, the physician's responsibility for compensating damage resulting from pharmaceutical products is clearly identifiable. Many of the side effects and injuries caused by medications—especially in patients with specific physical and psychological conditions—are directly related to the physician's prescription. Physicians prescribe medications with knowledge of the patient's condition and potential drug reactions, making their role in compensating any resulting harm from drug use highly important and necessary.(Maboudi, 1401: 3811).

In the past, the relationship between physician and patient was primarily considered a legal contract. However, today, this relationship often occurs within the framework of legal entities such as hospitals and clinics. In other words, the physician treats the patient as a professional appointed by a hospital or clinic. If the patient has not entered into a direct contract with the physician, the physician's responsibility is indirectly derived from the contract between the patient and the hospital. This implies that the physician has accepted contractual obligations toward the patient as part of the hospital's duties. Additionally, the selection of the physician—based on their qualifications and reputation—is an important factor in the treatment contract.

Patients often choose physicians unconsciously relying on their competence. In such cases, denying the contractual nature of the physician's responsibility would deprive the patient of the benefits of contractual protections(Maboudi, 1401: 3811–3812).

In modern law, especially in English law, there are distinctions between a physician's responsibility in prescribing drugs and in providing services. When a drug is prescribed via a proper prescription, the physician is not directly liable; however, if the physician or drug distributor acts arbitrarily, they are held responsible. In Islamic jurisprudence, there is no distinction between medical services and the provision of goods; any damage caused to the patient must be compensated by the physician. In contrast, Western legal systems differentiate between services and goods, and a physician is liable for harm only if there is an act causing damage to the patient. Ultimately, a physician's responsibility in prescribing medication and treating patients depends on the type of relationship with the patient, the obligations of the hospital, and the accuracy in prescribing drugs and providing medical services(Maboudi, 1401: 3812).

Civil Responsibility of a Physician in Afghan Civil Law

In Afghan Civil Law, there is no explicit reference to the civil responsibility of physicians, but this responsibility can be inferred from the general provisions of the law. The civil responsibility of a physician is defined within the framework of Article 774 of the Afghan Civil Code, which states that a physician, as an individual possessing medical knowledge and expertise, is obligated to use their knowledge and experience to treat patients. However, if their actions result in harm to the patient, the physician is required to compensate for the damage, as outlined in this article. The text of the article reads: "A person who commits a harmful act such as murder, injury, assault, or any other form of harm to a person is obligated to compensate for the damage caused." Therefore, a physician, in the event of committing a harmful act such as injury or harm resulting from negligence, error, or failure in providing medical services, will be held civilly responsible.

The civil responsibility of a physician is divided into two main categories: contractual liability and non-contractual liability. In cases where the physician acts based on a contract between themselves and the patient, a breach of contract or failure to adhere to established medical standards may lead to contractual liability. However, if there is no contractual relationship between the physician and the patient, and the harm is a result of the physician's actions or negligence, their liability falls under non-contractual liability, which is directly subject to Article 774. One key element in determining the physician's responsibility is the element of fault. If it is proven that the physician was negligent or careless in providing medical services, such as improper use of medical equipment or incorrect diagnosis, their liability will be

established. Furthermore, if the physician makes a mistake in performing a procedure for which they lack sufficient knowledge or expertise, they will still be held responsible.

However, if the physician has adhered to all medical duties and standards and, despite this, harm or damage occurs to the patient, the physician will not be held civilly liable. For example, if a specific treatment causes harm due to the patient's physical condition or an unexpected reaction to the medication, the physician may be exempt from liability unless there has been negligence or error on their part.

Moreover, the civil responsibility of the physician can also be found in Article 775 of the Afghan Civil Code. According to this article, the civil responsibility of a physician arises in cases where the physician's actions, whether due to negligence, carelessness, or failure to follow professional principles, result in the death of the patient. The article states: "A person who causes the death of a person due to injury or any other harmful act is obligated to compensate for the damage to those who were financially dependent on the deceased and have been deprived of that support due to the death." Therefore, if the physician's mistake in diagnosis, incorrect prescription of medication, or procedural error results in the patient's death, the physician will be held civilly responsible not only to the deceased but also to the individuals who were financially supported by the deceased. In this context, the physician's civil responsibility includes compensating the material damage to the surviving family members, particularly those who relied on the deceased's income or financial support. To establish this responsibility, a causal link between the physician's action and the patient's death must be proven. For example, if the physician fails to follow proper procedures during a surgical operation and this directly leads to the patient's death, they will be required to compensate for the damage.

At the same time, the physician's responsibility under this article is subject to certain conditions. If the physician has adhered to all scientific and professional standards and the patient's death results from factors beyond the physician's control, such as the patient's critical condition or the body's failure to respond to treatment, the physician will not be held liable. However, this must be substantiated with sufficient evidence and documentation.

The Physician's Discharge of Liability and Responsibility in Sunni and Shia Jurisprudence

The civil responsibility of a physician arises from their conduct and actions in relation to patients.

If a physician's treatment results in the patient's death or the loss of a limb, there are various opinions among the five Sunni schools of thought regarding the liability of the physician.

The following discusses these opinions:

A. Hanafi School

In the Hanafi school of thought, if a skilled and capable physician treats a patient with the patient's consent (or the consent of their guardian) and the patient dies or suffers harm as a result of the treatment, the physician is not held liable. Some Hanafi jurists argue that if the physician performs their duty diligently and without negligence, and if the patient's death occurs despite this, the physician will not be liable (Kāsānī, 1409: 305). Al-Baghdādī holds the same view (Al-Baghdādī, n.d.: 48). Another jurist suggests that if the physician makes a mistake that results in the patient's death, the physician will be held liable (Ṭūrī, 1404: 56).

Thus, Hanafi jurists do not hold a competent and skilled physician liable for two reasons:

1. Consent and Permission: The patient's or their guardian's consent absolves the physician from liability. If the physician adheres to medical rules and treats the patient accordingly, they will not be held responsible if the patient dies.

2. Social Necessity: Many members of society rely on physicians' services. Exempting physicians from liability encourages them to treat patients, which benefits society as a whole (Zuhaylī, 1405: 450-499).

The argument is that the patient's consent or that of their guardian is sufficient to remove liability, and no formal discharge of liability is required, provided the physician does not make an error. However, if a mistake is made, the physician will be held liable (Muḥammadi, 1390: 8).

B. Mālikī School

Mālikī jurists hold that if a physician is skilled and administers a treatment that results in death, the physician and their family (ʿāqilah) are not liable. However, if the physician makes a mistake leading to death, they will be liable. In cases where the loss of an organ is less than a third of the full blood-money, the physician will pay from their own wealth; if it exceeds a third, the responsibility lies with the ʿāqilah (Abūl-Barakāt, n.d.: 355). Al-Desūqī adds: "If the physician is unskilled and their treatment leads to harm, there are two opinions: one holds the physician liable, while the other, by Ibn Qāsim, places the responsibility on the ʿāqilah. The first opinion is stronger" (Al-Desūqī, n.d.: 28).

Ibn Rushd maintains that if the physician is not knowledgeable in medicine, they themselves are liable, not their ʿāqilah, citing a hadith from the Prophet (PBUH) who said:

"Whoever practices medicine without prior knowledge of it, is liable" (Abū Dāwūd al-Sijistānī, 1369: 1148).

Therefore, the Mālikī school asserts that a physician is not liable if they possess expertise and obtain permission from the patient or their guardian, as long as they do not err in their treatment.

C. Shāfiʿī School

Shāfiʿī jurists argue that if a skilled physician treats a patient with the consent of an authorized person, and no negligence occurs, the physician is not liable. However, if the physician makes a mistake and harm results, they will be held responsible for the loss (Al-Nawawī, n.d.: 391; Al-Sharbīnī, n.d.: 202). Al-Shirwānī states: "If the physician errs and harm occurs, they will be liable, and a physician who is unskilled is also liable if harm results" (Al-Shirwānī, n.d.: 197).

The reasoning for exonerating the physician is that their actions were performed with the patient's consent, and their intent was to heal the patient, not to harm them. If these two conditions are met, the treatment is deemed lawful, and the physician will not be held liable for harm, provided their actions align with recognized medical practices (Shāfiʿī, 1403: 62).

Thus, in the Shāfiʿī school, if the patient suffers harm or dies, neither the patient nor their family can demand the physician's punishment or blood-money, as long as the physician adhered to medical standards and acted with the intention of curing the patient.

D. Ḥanbalī School

According to the Ḥanbalī school, if a skilled physician treats a patient with consent and does not transgress, but harm results from the treatment, the physician is not liable, even if the disease spreads. This is similar to a judge executing a punishment, where the judge is not liable if the punishment leads to death, provided no transgression occurs. However, if the physician makes an error or acts recklessly, they will be held liable (Ibn Qudāmah, 1406: 124). Ibn Mufliḥ states: "If a physician is skilled and their treatment results in harm, they are not liable as they have done something lawful" (Ibn Mufliḥ, 1400: 110-111).

Thus, the Ḥanbalī school holds that a skilled physician is not liable unless they make an error, in which case they would be responsible for the harm caused.

E. Shīʿī School

Shīʿī jurists assert that if the physician acts excessively or negligently, even with the consent of the patient or their guardian, they are liable.

This is because the consent of the patient is only for treatment and not for causing harm or death. Ayatollah Arākī has stated that a physician is liable in three cases: lack of expertise, negligence, and lack of authorization. However, if the physician possesses expertise, does not neglect their duty, and obtains consent from the patient or their guardian, they are not held liable (Ḥujat, 1375: 149).

Before him, jurists such as al-Ṣāḥib al-Jawāhir, al-Shahīd al-Thānī, and al-Ṣāḥib al-Riyāḍ have also held physicians liable for negligence, even if they had the patient's consent (Najafī, 1400: 44; Jabbāʿī Āmilī, 1419: 49; and Ṭabāṭabāʾī, 1404: 596). Imam Khomeini even went further, stating that the physician is liable despite having sufficient expertise and authorization from the patient, even if there was no negligence (Mūsawī Khomeinī, 1390: 560).

In contrast, some jurists argue that consent alone is not sufficient, and that a formal discharge (barāʾat) is necessary to absolve the physician of liability (Madani Kāshānī, 1408: 49).

Conclusion:

The findings of this research on the civil and criminal liability of physicians in Islamic jurisprudence and Afghan law demonstrate that this issue is a sensitive and complex area of medical law, directly related to both the ethical and scientific principles in the medical profession, as well as to the health and rights of patients. In Islamic jurisprudence, a physician's liability is primarily based on the principles of justice and compensation for harm. A physician is obligated to perform their duties with care and diligence. If a physician neglects their responsibilities or their treatment results in harm to the patient, they will be held liable, particularly in cases of either unintentional or intentional errors. Islamic jurisprudence, guided by the principle of "La ẓarara wa la ẓirār" (no harm and no harm done), considers the compensation of harm a general duty, holding the physician accountable for any harm caused to the patient. In cases of intentional error in treatment, the physician not only bears civil liability but may also face criminal prosecution.

Regarding criminal liability, Islamic law holds physicians accountable with greater scrutiny, depending on the severity of the damage caused to the patient. If a physician’s error leads to death or serious injury, they are recognized as committing a crime and are subject to criminal penalties such as blood-money (dīyah), imprisonment, or other punishments. In this regard, Islamic laws specifically recommend that physicians exercise the utmost caution and diligence in performing medical procedures to prevent any unfortunate incidents.

Afghan regulations also address the civil and criminal liability of physicians within the framework of the country's domestic laws. According to Afghan laws, a physician is required to use their knowledge and skills in treating patients. In the case of a violation of this responsibility, the physician is obligated to compensate for the harm and comply with relevant laws. Negligence or errors in diagnosis and treatment can create civil liability for the physician, and if the harm is significant—whether physical or financial—the physician may be subject to legal prosecution.

Additionally, if a physician's actions result in the death or disability of a patient, they will be criminally prosecuted. Specifically, Afghan law requires physicians to use only legally approved tools and medications.

Overall, the civil and criminal liability of physicians in both Islamic jurisprudence and Afghan regulations is designed to protect patient rights and improve the quality of medical services. Physicians must act not only as knowledgeable professionals but also as individuals with ethical and legal responsibilities toward their patients. Similarly, Afghan laws place significant emphasis on adhering to strict medical standards and regulations, ensuring both the health and safety of patients and the accountability of physicians for any misconduct. In this context, it is essential to balance the responsibilities of physicians with the rights of patients. To improve public health, continuous medical education and rigorous oversight of physician practices are essential to ensure better healthcare outcomes and uphold ethical standards in the medical profession.

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