

Review Article**Physician's acquittal of responsibility in Iranian statutes***Mahmoud Abbas<sup>a</sup>, Amir Samavati Pirouz<sup>\*b</sup>***Abstract**

The physician's acquittal has obsessed Iranian legislator's mind to a large extent. This is exclusively observed in Iranian statutes and specifically in Shi'ite school of thought. Muslim jurists' opinions play a very important role in enacting legal articles related to it. After reviewing the literature, the authors tried to pick and collect common features of physician's responsibilities and duties to introduce Iranian Acts with respect to the subject. Also, Iranian Acts are analyzed and the challenging medical topics such as emergency situations and infectious diseases are discussed.

Iranian legislator didn't specify a kind of physician's acquittal which received from the patient knowingly and is based on his/her free will. There are also some medical and legal gaps. Patients are not often informed of all exact and scientific information and results of their treatments. Furthermore, the forms prepared to receive the patient's consent do not provide what Iranian legislator meant.

**KEYWORDS:** Iranian Acts, Physician's Responsibility, Physician's Acquittal, Civil and Criminal Liability, Competency, Consent, Emergency Situations.

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**I**n practice, Muslims have taken the responsibility very seriously. They were among the first in the world to build hospitals for more effective care of the sick. Medical doctors are exhorted to work sincerely under the guidelines of the Shari'a to avoid all temptations to personal arrogance or greed, and to resist various social pressures that might conflict with their calling. Medical caring and curing should therefore be practiced in a climate of piety and awareness of the presence of God.<sup>1</sup>

Responsibility in medicine is a dynamic and, at the present time, troubled idea. Concepts of medical responsibility emerge from the social and economic structure of biomedical science, the perceived identity of the "good physician", and shifting conceptions of authority, autonomy, and choice in physician-patient relationship.<sup>2</sup> Responsible medicine has been defined in the contemporary era by action and

continued treatment to the point of cure, stability of the condition or death of the patient.<sup>3,4</sup> In general, physicians' responsibilities can be divided to civil and criminal responsibilities or technically, liabilities. Considering US tort and criminal law, Hodge et al<sup>5</sup> maintained that civil liability refers to the responsibility that a person or entity owes to another for causing harm due to a failure to fulfill certain established duties, either through actions or omissions. They also reported that criminal liability is arisen where one's actions fail to satisfy certain general or statutory duties so as to constitute a morally reprehensible act against society, regardless of harm to a specific individual. The potential for civil liability to stem from physicians and health care providers' duties are reinforced in the US by a number of federal<sup>6</sup> and state<sup>7</sup> laws that make clear the aspects of the patient-physician relationship.

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Some researchers tried to emphasize the need to redefine and reorient the aims of clinical medicine to be person-centered and with the focus on quality of life rather than other conceptions such as disease and cure.<sup>3,8-13</sup> Physician's reasoning about what constitutes a dilemma in clinical practice and how dilemmas can be solved paves their way to work according to moral-medical principles.<sup>14-16</sup> Such dilemmas are considered as cultural documents of medical responsibility both in practice and in process.<sup>17</sup> Authors of the present article would try to discuss different aspects of physicians' responsibilities, terms and conditions of acquittal of such responsibilities and the constituent elements of responsibility. They analyze Iranian statutes and Iranian criminal legislator's viewpoints in this respect. What the authors mean by physician's acquittal is unique in Iranian Acts and is specifically manifested in Shi'ite<sup>1</sup> school of thought. Accordingly, no religious tradition involves physician's acquittal like the one which can be observed among the Shi'ites. It cannot be found even among the Sunni Muslims. This writing also deals with the most challenging issues in physicians' responsibilities: emergency situation, and patients' competence or capability to express their consent to treatment.

## Methods

The method is based on reviewing the literature. Books, research and review articles on the subject were studied. In the framework of a review article, the authors of the present article try to discuss different and the most problematic aspects and features of a physician's responsibility. The aim is to provide medical and legal researchers all over the world with medico-legal aspects of a physician's acquittal of responsibility in Iranian Acts. Accordingly, they first presented an overview of the literature to introduce what is meant by physician responsibilities and duties. After introducing the physician's different duties, the article discusses Iranian statutes, Acts and legal provisions based on Islamic jurisprudence<sup>2</sup> and Shi'ite school of thought.

## I. Physician's Duties: Patient's Expectations

A study indicated that 72% of Americans believed "the doctor's obligation to treat all sick people" in 1991. Such an obligation had been first established more than 140 years earlier than 1991.<sup>18</sup> Physician's duty changed into an integral part of social expectations and as a result, shapes a major component of the social contract in medicine. It is also considered as public respect, admiration and even prestige for the medical profession.<sup>19</sup> In the US, unlike private medical organizations such as American Medical Association and the state medical associations, the regulations promulgated by judicial agencies have the force of law. Accordingly, the breach of law will result in license suspension or revocation.<sup>20</sup>

The creation of a physician-patient relationship may be critical to the legal obligation of a physician to care for a specific patient.<sup>21</sup> Therefore, once a physician-patient relationship is established, it continues until it is terminated by the patient, through mutual consent; there is no need of physician's service and the physician withdraws after reasonable notice to the patient.<sup>22</sup> Some studies indicated that the courts paid minimal attention to the legal impact of budgetary restraints regarding the funding of medical services on the medical practice. Also, the impact of patient overcrowding on the standard of medical care has received little attention. Nevertheless, the same studies maintained that the courts are willing to adjust the standard of care when the number of personnel is limited to control the physicians and hospitals.<sup>23-26</sup> Golinger et al<sup>27</sup> conducted a study which extended from 1981 to 1986. They found a referral rate of 3.3%. Also, another study achieved by Myers et al<sup>28</sup> showed a 15% rate of referral. There are also general duties shared by all entities that serve each society.

There are also some responsibilities and duties regarding post-mortem examination and the patient's confidentiality. Ong et al<sup>29</sup> believed that pathologists and laboratories have a responsibility to take measure to ensure the patient's confidentiality. The same study indi-

cated that the pathologist is duty bound to conduct a post-mortem examination. In Malaysia, according to the Medical Act 1971 the Director-General of Health was empowered to appoint any fully registered medical practitioner to perform post-mortem examinations. Accordingly, such practitioner is considered to be a government medical officer.<sup>30</sup> Despite all responsibilities and duties of physicians, nurses and health care providers, they sometimes make mistakes or errors. The best example of the physicians, who made mistakes, is Dr. Samuel Kiberu. He made a total of errors in 4230 cases between 1991 and 1993.<sup>31</sup> Rosai et al<sup>32</sup> believed that there should be written practice codes or procedures which all physicians, including pathologists and other staff members, are aware of and adhere to.

Harsányi et al<sup>33</sup> reported that Hungarian criminal and civil law regarded physicians' responsibilities when they commit: (a) error in their professional practices; (b) by negligence, culpable according to the civil law; (c) to which there is a causal relation; and (d) leads to some kind of harmful result. The same researchers mentioned that the basic condition of the physician's responsibility is infringement of professional rules. Munk<sup>34</sup> reported that based on pathological statistics, errors and deficiencies in diagnosis are unavoidable in medical profession and its incidences. Also, Gruver et al<sup>35</sup> counted the causes of diagnostically errors or deficiencies as follows: (a) the lack of necessary experience of a physician; (b) the incomplete diagnosis of amnesia; (c) omission of the necessary routine check-ups; (d) improper evaluation of the clinical and laboratory findings; (e) omission of some special examinations; (f) deficient observation of the process of illness; (g) ignoring the presence of more than one illness or rare cases; and (h) the limits of the methods of examination and possibilities

## ***II. Iranian Physician's Acquittal: An Innovation of Islamic Jurisprudence***

Iranian legal system is based on Islamic Jurisprudence and most of its articles are enacted according to the juridical judgments<sup>3</sup> which Muslim jurists<sup>4</sup> deduced. Other legal systems

consider the patient's consent as the requirement of legitimate conducts and medical duties and this is regarded as the discharging factor of medical liability. Nevertheless, Iranian legal system requires both the patient's consent and a physician's acquittal before achieving medical treatment or surgical operation. Iranian legislator believes that the physician will be liable to redress the hurt inflicted on the patient even if they had no failure unless they receive acquittal from the patient or their legal guardian. Therefore, the patient's consent is merely permission with respect to the physician's conduct in medical treatment. Hence, in addition to the patient's consent, the physician's acquittal is a sufficient cause to abolish physician's civil and criminal liabilities.

## **A) The Concept and Principles of Acquittal**

### ***1) Concept***

Acquittal is to discharge a specific person's obligation, whether they had not been charged or was charged at first and then, discharged from obligation. Acquittal includes an occasion in which the patient or their legal guardians discharge the physician from an obligation regarding unfavorable results and possible consequences before conducting medical treatments and surgical operations. Article 60 of Islamic Penal Act 1991 holds<sup>36</sup>:

*If the physician receives acquittal from the patient or their legal guardian before beginning to perform medical treatment or surgical operation, they will not be liable for the damage to life, property or amputation and they're not liable either in emergency cases in which it isn't possible to receive permission.*

Article 322 of the above-mentioned Act states: "If the physician or veterinarian and other professionals receive acquittal from the patient, their legal guardian or the owner of the animal, they will not be liable for the damage inflicted."

### ***2) Principles of Acquittal***

Articles 319 and 322 of Islamic Penal Act 1991 holds: "Although the physician is an expert and receives permission from the patient's legal guardian, physician's acquittal discharges their liability." Accordingly, if professionals who deal with medical duties begin the treat-

ment process and achieve it without any failure and negligence while they had received the acquittal, they will not be liable for the possible threats and damages. By "legal guardian" Iranian legislator meant the person to whom an issue is referred. If the patient is competent, they would play the guardian's role themselves but if they are minor or insane, their legal guardian's permission will be necessary. By liability, Iranian's legislator didn't mean absolute liability which includes both civil and criminal liability; rather it meant civil and financial liabilities. Accordingly, physician's acquittal neither removes the constituent elements of the crime nor paves the way for the offender to flee from punishment. A patient who acquits their physician of civil liability, in fact, acquits the physician of harmful consequences arisen from the nature of medical duties.

Regarding the legal nature of the acquittal, it is one of the examples of the requirement to discharge from obligation and it is effective as long as the physician doesn't commit a wrongdoing or failure. Article 60 of Islamic Penal Act 1991 holds:

*If a physician receives acquittal from the patient or their legal guardian before beginning the process of medical treatment or surgical operation, they will not be liable for inflicting damage on the patient's life, property or amputation and in emergency cases in which receiving permission isn't possible, the physician is not liable either.*

In fact, the phrase "...will not be liable for inflicting damage on the patient's life, property or amputation" in article 60 of Islamic Penal Act 1991 refers to the harmful consequences arisen from the nature of medical duties and the process of treatment. In other words, the word "consequences" refers to the damages inflicted due to medical mistakes and failures and there should be a causative relation between the conduct committed and the principal [5]. As it was mentioned before, article 322 of Islamic Penal Act 1991 deals with physician's acquittal. These two articles (articles 322 and 60) specified physician's acquittal as an obstacle for civil liability to occur. Article 59

(clause II) of Islamic Penal Act 1991 holds: "Every medical or surgical legitimate operation which is achieved based on the person's consent or that of their guardian and observing scientific and technical standards and government obligations is not considered as a crime." Hence, the basic requirement of acquitting a physician of their criminal liabilities is bound and limited to the following terms and conditions: (i) the legitimacy of medical or surgical operation; (ii) observing scientific and technical standards and governmental obligation; (iii) the patient's consent.

## **B) Acquittal: Requirements and Exceptions**

### **1) Requirements of Acquittal**

The physician's acquittal is like the patient's consent and should enjoy the characteristics and terms which Iranian legislator has considered for the consent. Hence, physician's acquittal will enjoy legal validity if the following terms and conditions are met: (i) the person who acquits the physician should be competent; (ii) the acquittal should be given knowingly and through free will; (iii) the acquittal should be received before the beginning of medical and surgical operations. Like the one who gives consent, those who acquit should be competent too; that is, they should be wise, mature and *sui juris*. Based on article 1210 of Civil Act 1928<sup>37</sup> adult age for boys is considered to be 15 and for girls to be 9. The adjective "wise" is attributed to a person who has the mental capacity to understand the matters correctly and is able to regulate their own conducts. A "mature" person is the one who enjoys enough authority to run their own life financially. Incapacitated persons include minors, the insane and the immature.

Since physician's acquittal is one of the legal issues whose results can be financial possession, it seems that the patient should be mature to acquit the physician. According to article 60 of Islamic Penal Act 1991, if the patient is minor or insane, the acquittal should be received from their legal guardian. Also article 322 of the same Act emphasizes the issue and acquits veterinarians of civil liability provided that

they receive acquittal from the owner of the animal. If the acquittal is received as the result of collecting some information about medical treatment and with the patient or their legal guardian's knowledge of quality and quantity of therapy and its consequences, it will be rendered as knowingly. Accordingly the acquittal which is received unknowingly and based on incomplete or wrong information is legally invalid. Hence, the acquittal received as the result of coercion, duress and deception doesn't have any legal effect and validity.

Physician's acquittal should be received from the patient before the beginning of medical treatment process. Articles 60 and 322 of Islamic Penal Act 1991 pointed to such an issue. The last part of article 322 of this Act holds: "... if the physician receives acquittal from the patient or their legal guardian before beginning to achieve medical treatment they will not be liable for the financial damage or any damage to the victim's life or amputation." From the adverse meaning of the above-mentioned article, it can be deduced that acquittal received after achieving medical and surgical operation is not legally valid.

## 2) *Exceptions to Acquittal*

Doctrine of necessity is based on either the patient's implied consent or the hypothesis of distress. According to an implied consent, it is supposed that the patient wants the physician to save their life as they give consent in a usual occasion to save them from sever harm. Here, what is important is that the state of necessity and distress should be such that if a reasonable physician faces the same occasion, they will take the same measures. Articles 59 and 60 of Islamic Penal Act 1991 rendered a physician free from liability when there is no possibility to receive the patient's consent and acquittal. Exceptional occasions will be studied under the two following categories:

### (a) *Medical Emergency Cases*

The last part of article 60 of Islamic Penal Act 1991 which deals with the physician's acquittal of civil liability in surgical operations holds: "... in urgent cases wherever it is not to receive a

permission, the physician is not liable." The above-mentioned Act has not specified a definition, standard or criterion to determine emergency cases. But article one of Executive Regulation<sup>6</sup> of Islamic Penal Act 1991<sup>38</sup> defined the avoidance to help the injured persons and to remove threats to their lives in such cases: "Emergency cases refer to medical duties in which the patients should be treated promptly; otherwise, it will cause the patient's death, amputation or incurable diseases." Also, article 2 of the same Executive Regulation mentioned emergency cases as follows:

*Poisoning, burn, childbirth, damages inflicted through car accident and mishaps, brain and heart arrests, bleeding and shock, fainting, disorders in breathing and suffocation, convulsion, dangerous infectious diseases, babies' diseases which need blood replacement, other cases which are included in the definition of article one of the Executive Regulation.*

In addition, single article (clause II)<sup>7</sup> of Islamic Penal Act 1991 holds: "Physicians will be obliged to achieve what they afford if patients of emergency cases refer to them; otherwise, they will be considered as offenders and will be convicted to imprisonment from six months to three years." Iranian legislator didn't determine who is responsible to recognize such cases. Article 4 of Executive Regulation of the Act of Punishing Those Avoid Helping the Injured Individuals and Removing Loss of Life 1996<sup>39</sup> holds: *All hospitals including those supervised by the government and clinics and other therapeutically institutes are obliged to accept patients included in emergency medical cases day and night or according to the timetable received from the Iranian Ministry of Health.*

From the above-mentioned article, it can be deduced that some medical experts should be in therapeutic centers to diagnose the patients who need emergency medical treatments and to accept them. According to article 59 (clauses II) of Islamic Penal Act 1991, medical and surgical operations and duties will not be considered as crimes if the physician is acquitted of criminal liability and the following conditions are met: (a) legitimacy of medical and surgical operations or duties; (b) observing technical

and scientific standards and governmental disciplines; (c) the patient's consent. Based on article 60 of the same Act, in addition to the above-mentioned situations, if the physician receives acquittal from the patients, they will be acquitted of civil liability. When there are emergency medical cases and the requirement of consent is abolished, according to article 59 (clause II) of Islamic Penal Act 1991, the abolition is not a permission of a medical failure. Also according to article 60 of Islamic Penal Act 1991, in emergency cases where there is no possibility to receive physician's consent, the physician is not liable.

#### *(b) Governmental Exceptions*

Based on article 5 of the Act for Prevention of Sexual and Infectious Diseases 1960<sup>40</sup> where the system of the disease and the quality of infection causes anxiety, every Iranian medical center can oblige the patient to be treated up to the removal of the risk of infection. The measures taken for minors, diseases of the insane and silly persons<sup>15</sup> are included in their guardians' legal duties. In this regard, article 6 of the above-mentioned Act holds:

*Legal guardians of minors, the insane and silly persons are obliged to take measures regarding the sexual or infectious diseases of such persons whose guardianship they take. If one of the parents or the legal guardian is negligent to provide the means of medical treatment and the disease remains infectious, they will be convicted to imprisonment from eight days to one year or to a fine from fifty to 500 Rials.*

Hence, in the above-mentioned occasions, Iranian legislator not only didn't consider the patient's consent as a necessary requirement but also regarded the offender's punishment as a sanction, such an obligation is the case for obligatory inoculation; injecting a vaccine against tetanus before marriage; diagnosing the students, passengers and the providers of food, medicine and hygienic materials.

#### **Conflict of Interests**

Authors have no conflict of interests.

#### **Conclusions**

Physicians are not expected by the law to be heroes, but are obligated to act as other qualified physicians would act in the same or similar circumstances. Also the law cannot make people courageous or virtuous. Nevertheless, the law symbolically embodies the minimal ethics of society, and thus helps both form and articulate society's basic values and expectations of its physicians.<sup>21</sup> Accordingly codes of ethics are key means of establishing professional identity which both set and reflect appropriate patient and social expectations of physicians as a group.<sup>19</sup> Some hospitals have marginalized the value of emergency planning and preparedness activities despite legal mandates that require their participation.<sup>14</sup> Hospitals and health care personnel may be liable for a failure to plan for emergencies if it is determined that they had a duty to plan, the duty was breached, and the breach was the proximate cause of harm to patients. Furthermore risks of liability, discrimination, and other claims stemming from the provision of medical triage necessitate transparency accountability, and fairness in making triage decisions.<sup>5</sup>

Following Islamic jurisprudence, Iranian legislator considered the physician's obligation, as their commitment to the result but not to the means. Hence, they rendered the physician's acquittal before medical treatment as the criterion. Hence, if the physician receives the acquittal from the patient before medical treatment, they will not be liable. The forms which are prepared to receive the patient's consent do not provide what Iranian legislator meant. The acquittal should be received knowingly and based on the patient's free will. The patient should be informed of all exact and scientific information and results of their treatment. To reach such an aim, legal supervisors should supervise the process of receiving the physician's acquittal from the patient.

## Authors' Contributions

MA wrote the basic legal discussions and was responsible for parts dealing with Iranian statutes. ASP analyzed legal articles of Iranian Acts and propositions regarding physician's responsibilities and was responsible for references. All authors have read and approved the content of the manuscript.

## Endnotes

- 1) Muslim community is divided into two groups of people: the Sunni Muslims and the Shi'ite. Sachedina<sup>1</sup> mentioned that the post-Muhammadan leadership was a main factor for such a division. He also reported that the Sunnis advocated Abu Bakr's succession but the Shi'ite supported Imam Ali's leadership.
- 2) Islamic jurisprudence is the main core of Islamic law. It includes the teachings of the Qur'an and Tradition (*Sunna*). Narrations and reports which are quoted from prophet Mohammad (PBUH) are called Tradition. The authors of this article followed Sachedina<sup>1</sup> and used the word "Tradition" (with a capital "T") for the Sunna.
- 3) The rulings (*fatawa*; plural of *fatwa*) deduced by Muslim jurists from revelatory sources which include the Qur'an and Tradition.
- 4) Religious scholars and theologians who are responsible for deducing Islamic rulings from the Qur'an and Tradition.
- 5) Principal is the actor or the person who directly commits a criminal act.
- 6) Executive regulation is a collection of provisions which are enacted with respect to enforcement of an Act. It also determines the detailed and practical aspects of enforcement of the Act.
- 7) Single article is an article which is not included in an Act but it is enacted about a specific issue. It is also as much binding as an Act regarding the subject.

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