

CIVIL LIABILITY OF DOCTORS IN MISDIAGNOSIS LED TO THE BIRTH OF DEFORMED CHILDREN

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Abstract. Based on the single article of the law on abortion, the mother is allowed, in case of children with birth defects, or hardship for the mother if the child's birth, she can perform the therapeutic abortion under specified conditions, by the legislative. Accordingly, misdiagnosis of a doctor in the deformed child born, due to the lack of therapeutic abortion, freedom of patients visiting any other expert, and a lack of legal basis and resources in calculating the damages caused by the deformed child born, will not cause civil liability. However, deliberate misdiagnosis is considered professional misconduct and is punishable.

Keywords: deformed child born - therapeutic abortion – doctor's civil liability- misdiagnosis

1. Introduction

The doctor's responsibility means to be accountable, liable for damages and losses that are caused by negligence, misdiagnosis, and lack of adequate skills for the patient. It is mainly the civil responsibility and in a few cases, it is involving civil liability and criminal liability as well. In the case of medical responsibility, there are two views. The first point of view is based on the forcible medical responsibility and another point of view is attached to the contract that the contractual obligation of means and obligation of result derives from the same perspective.

In French law, the physician responsibility has long been considered forcible. In 1833, the French Supreme Court, ruled that the civil liability of physicians is consistent in 2003 and 2004 of the French Civil Code; therefore medical responsibility is forcible (Abast Poor, 2013; 259). By 1936, the Supreme Court expressed a different opinion about medical responsibility, the courts of France, in the case of medical responsibility, exercised regulations governing coercive responsibilities. It means the injured party must prove the fault of the doctor. Before the Supreme Court decision of 1936, some French courts, including the appellate court of Besançon on March 20, 1933 and Lyon Appeal Court on March 19, 1935, were allowed to contract theory. The French Court in 1936, with the approval of the terms, considered the medical responsibility contractual (Bassam muhtasib, 2014; 11).

Socially, the responsibility to know the physicians regarding damage caused by the actions that he has done in the context of his time science, takes the ingenuity and talent away from him and stops the medicine, on the border of conventional treatments and harmless. From the ethical dimension as well, how can give the reward of goodness with evil, and how can ask for damage from a human who has used his efforts and medical knowledge, in the way of treatment? This means is not unlike practical reason of the sponsors' physician, the doctor is kind and a kind person is "the reward of goodness is with goodness". Under the general rule, he is not the guarantor, and then the doctor is not a sponsor. On the other hand, if the liability is subject to proof of medical fault, prejudice and complexity of the study and the lack of total and complete knowledge can be prevented that, this case will reach the desired result.

Therefore, in the assumption of causality, it is likely when the relationship between medical procedures and damage is proved; it will be enough for his responsibility. Article 319 of the old penal code, which has been developed based on Islamic law, based on this theory, says: "When the doctor, however qualified

and professionals, in the treatment of personally carried out or ordered, although with the permission of the patient or guardian, causes loss of life or violation or property damage, he will be responsible."

What is certain, in the legal systems of all countries, first, the qualified cautious permitted doctor is not responsible for the damages to the sick, and secondly, the physician commitment to the patient is the obligation of means, not the outcome. If the physician uses his tools of work that are, the degree of knowledge and skills, experience and commitment to public standards and adherence to standard procedures, properly and carefully, he cannot be blamed. Old Islamic Penal Code considered the physician commitment as a commitment to act thus it knows the doctor responsible for the patient for compensation over his life and body, even if, the cure was done with the consent and permission, and even, all experts in medicine order that the physician was not at fault in his treatment. Endorsed by the trust court experts on the lack of medical fault or negligence acquitted him merely of intentional murder, criminal responsibility and punishment, but his civil responsibility in compensation for material damage to the patient, still remains. Fortunately, the new Penal Code amended the previous regulation and returned to the fault. Acceptance of the theory of fault, in the field of medical responsibility, is based on the idea that in principle, the physician is committed to tools, not a commitment to results. It means the doctor under contract or law commits to treat the patient compliance with the standards of medical and uses his effort and skill, to treat him, however, the certain cure of the patients is not in his possession and his commitment. Therefore, the physician only can be blamed, when his fault is proved. If the physician liability will be a strict liability with no-fault, the doctor does not dare to perform dangerous treatments and surgeries and this prevents the progress of medical science and will be the detriment of patients and society (Abast Poor, 2013; 261).

However, the civil liability of physicians in misdiagnose a deformed child born by mistake, due to the possibility that abortion legislation is placed (under certain circumstances) for the mother, has great legal complexity. Proving or falling of this responsibility of the doctor is an issue that will be examined in this article.

2. Commitments of doctor in jurisprudence and Iranian law

Indeed, in the study of medical responsibility, regarding the misdiagnosis led to the birth of deformed children, we have to study the obligations of the physician, the patient-physician relationship and in general, the formation of civil liability, to pay the compensation.

Some say: "doctor-patient relationship, in its current form, is arbitrary. The patient chooses a physician with his liking, or accepts the physician who recommended him in the hospital, and the doctor agrees, by accepting patients and treats him. However, it should be noted that, today, the contractual relationship is established more with legal personality of hospitals and clinics, and doctors, as part of its character or experts, treating patients." (Abast Poor, 2013; 260) the doctor character, will never be nullified, but the physician's personal responsibility should be considered in accordance with the general rules and not the contract with the hospital. Except in special cases, the patient can appeal to anything he wants if the medical errors will be both contractually and enforced. In medical practice, commitment to treatment is the commitment to care, and the implementation of common techniques, and efforts in treatment, and it less happens that, the doctor guarantees patient healing, even confidence that the doctor gives about an effective medical treatment or a success in surgery is based on the doubt and it has a more psychological aspect than legal and

the courts hardly guarantees these promises. The rule is applied in the case that doctors have no contractual relationship with the patient and he is the function of his professional job. For example, doctors who treat the disease in case of an emergency or will be the contracting party and will be asked for cooperation by the hospital, he has not the duty more than care and effort and special actions.

2.1 in Jurisprudence

In Jurisprudence, it is known that the physicians support damages, which will be because of the treatment to the patient, though, he had the necessary precautions and the treatment will be to the patient's permission. In view of justification, it is said that: "since the act of doctors will be done deliberately, patients' loss is in decision-degree of murder." They have also argued that despite an employment obligation, resorting to innocence presumption is baseless, because in this case the principle is not current. In addition, the permission is in treatment and not in loss, so the guardian's permission in fall of loss has not been effective, there is no conflict between permission and liability (Najafi, 1398 AH; 43:47).

In return, Ibn Idris did not know the doctor as a guarantor if he is aware and he makes the necessary effort into the treatment (Shahid Sani, 1282 AH, 347). In order to justify the view, with the permission of the patient, the responsibility disappears and what is legally permissible has no liability.

There is less doubtful regarding Abra physician from the patient and his guardian before treatment. Some have said Abra has no effect because the waiver is before fixing it, but popular opinion is firmly opposed to it. The reason of popular opinion, the rest of the news from Abu Abdullah (AS), from Imam Ali (AS), the public and the public need in the influence of these conditions. The Abra has similarities with the permission of harm and like the conditioned elimination of animal and Parliament, it should be valid (Najafi, 1398 AH; 44:47). It should be added that, some scholars have considered the physicians absolute responsibility, limited to his stewardship in waste and do not consider assumptions that, the patient accepts the medical suggestions with confidence to his wisdom and authority in the scope of this guarantee. They cited on the confirmation of their view toward the news that know the treatment permissible with the possibility of health (Najafi, 1398 AH; 49:47).

In comments and criticisms of jurists, it can be summarized that if the doctor is a supervisor at Treatment, without obtaining permission, the great jurists are allowed to liability. Document waste to rule in the case, if the doctor will be in Treatment and take permission from the sick, without have acquitted him, ruling is well known with the necessity of guaranteeing before scholars as the loss rule document. Unlike Alameh Hilli that had no guarantee, document should be the principle of non-liability. Groups of jurists objected him that this principle is disposal to rule waste. To illustrate, attention to this question is necessary that if in case of loss, the rule of goodness will be obeyed or not? In most legal texts, it can be seen that goodness rule, allocates the rule and "On the hand that take even Todd Yeh ", but the waste rule has defined situations and the decision to guarantee the spendthrift, however he will be good or not (Abast Poor, 2013; 260).

However, it seems, the waste rule has no such application, but the best rule has considered the real rule in waste rule. Therefore, first, the evidence of waste rule - Anyone who damages other people's property is a guarantor - does not apply, due to the fact that, this Cobra's overall is not narrative context, but, it is, inevitably, because of the lip, which is not defined in that way. Secondly, "What the benefactors of the matter" is universal, free allocation. The language is the languages of verse that is not the allocation vector and particularly it means practical reason of Muda (Abast Poor, 2013; 262).

Therefore, Mohsen, even if it is destructive, but it is non-destructive due to its goodness. Holy legislator, in the area of law and legislation, considers improver non-destructive, and inevitably "What the benefactors of the matter" on the base of real government waste, which is a waste of the allocation rule, namely: "View improved non-underwriter", so in both cases, there is no liability to the doctor, because he is Mohsen. Because in each case, as improver is true for a doctor, in accordance with the principle of beneficence, there is no liability, including criminal, civil fixed on him. Sheikh Abdul Rahman Algeria, said to the four Sunni schools: when a doctor will be skilled and qualified and habitually, he has made no error in his operation, however, in his treatment, incidentally, he has killed or maimed, so no liability will be for him.

2.2 The civil liability of a doctor, in the IPC, with an emphasis on Islamic Penal Code 2013 and comparison with the Jurisprudence

Doctors' civil liability is one of the important legal and civil liability issues that have been discussed in different countries, and important ideas have been issued about it. In our country, before the adoption of the law diya, in 1982, a civil liability of doctors was subjected to the general rules of civil liability and the terms of the responsibility, primarily, the fault was appointed in 1339 civil liability law. In addition, in terms of the responsibility, primarily, the fault, which was established in 1960 in civil liability law, was applicable in this case. However, in Law of blood money in 1982, followed by in the Penal Code in 1991, some articles were devoted to this issue, which are not compatible with the fault. Moreover, the articles do not have enough coordination based on responsibility, and in their interpretation, also statistically comments can be seen. Fortunately, the new Penal Code in 2013, it amended the previous regulation and returned to the fault.

2.2.1 The civil liability of doctors in the Penal Code and Jurisprudence

Article 319 of the Islamic Penal Law 1991, on civil liability and legal interpretation, the liability of the doctor, it was decreed: "If a physician, though, qualified and professionals, in treatments that he does, or orders, though, will be with the permission of sick, or his guardian, causes loss of life or injury or property damage, he is responsible. "

It is noteworthy that, it has a vast territory because it includes both waste and causality: the phrase, "I do it personally" is the observer of waste and the word, "ordered" is the observer of causality. In addition, the article covers both losses of lives and limbs and financial losses. Furthermore, in this article, there is no word of blame and apparent, the legislator has accepted the strict liability or no fault. Whether we consider the theory of risk or the theory of right guarantee, with inspiration from Western theories, as its base, or by the use of words and interpretations of Islamic jurists, we consider the theory of loss negates as its basis. However, Article 319 IPC in 1991, is based on Shi'a jurists, that consider the physician, responsible, in any case, whether he has faults in the science and practice, or qualified, or permitted by the patient or guardian.

Article 321 of the Penal Code in 1991, which referred to a veterinarian, is as the Article 319, apparently, it accepts a veterinarian strict liability and decrease that when the veterinarian and the vet, however, will be an expert in animal care, however, with the permission of the owner, causes damage, he will be responsible. "This article, in terms of the responsibility is in accordance with Article 319 and the like, it has religious roots because, it has been described the vet in terms of liability to the doctor.

According to what was said, the responsibility of a doctor and a vet in liability in the IPC 1991 is a strict responsibility and it is not based on fault. In other words, for medical and veterinary obligation for compensation, it is enough to prove the harm

suffered and the causal relationship between the loss and the read operation, while the responsibility of the circumcision under Article 320 is apparently based on Shia scholars. It considers fault, just as "exceeding the limit" and in case of non-aggression guarantee as much to the lack of guarantee for their fatwa.

2.2.2 Basis for civil liability of doctors in the IPC 2013

The new Islamic Penal Code rejected strict liability or liability without fault of the doctor, according to some scholars and critics and it is based on returned to the fault. In accordance with Article 495 Islamic Penal Code 2013 "Whenever a physician in his treatment causes loss or injury, he is the Guarantor of blood money unless his action will be in accordance with the provisions of the Medical and Technical Standards. Alternatively, before treatment, the acquittal is made and he committed no fault... and if getting exemptions from sick is not valid due to his immature or insane, or innocence of him may not possible because of the anesthesia and the like, the innocence will be gotten from a sickness."

Note 1: In the absence of negligence or fault of the doctor in the science and practice for him there is no guarantee though is not getting innocence.

Note 2: The patient's parents are certain like the Father. In case of absence or unavailability of the special parents, head of the judiciary by seeking permission from the respective positions of leadership and authority granted to prosecutors' innocence apply to the doctor.

We infer from this article, which doctors are primarily responsible for the losses suffered by the patient, unless the lack of his fault will be proven, or the presumption of innocence is received. In this case, also, when the doctor is exempt from responsibility, he is depreciation. In other words, the context of the above article is inferred as the assumption of guilt or as the presumption of fault, which means that, for responsibility, it is not necessary to prove fault, but doctors could prove his guilt, if he proves that, he has fully respected medical regulations and technical standards and committed no recklessness. When the doctor obtained innocence from the patient or guardian, and in other words, he asked the condition of his irresponsibility, the burden of proof of guilt will be the loser's responsibility. Therefore, it is not exempt the condition of innocence from the physician liability in case of fault, and it only shifts the burden of proof. It means that, if the condition of innocence has not taken from the guarantee, the burden of proof of fault will be on the shoulders of doctors and if the certificate of innocence has been taken, the burden of proof of fault will be on the shoulders of the injured party. The use of the word fault, in the matter of law, is that the responsibility of the physician is based on fault, but not proven faulty, but the assumed fault, that it can be proven otherwise. Obviously, in strict liability or absolute, proof of guilt will not be effective. Article 495 of the new law also confirms the acceptance of fault in the law (Safai, 2013, 145).

3. Analysis of therapeutic abortion law

Based on a single article, therapeutic abortion law is approved on 15 June 2005: therapeutic abortion is authorized with a definitive diagnosis confirmed by three physicians and verification of Legal Medicine based on the fetus's illness. It is due to the disability or being deformed, causes constriction for the mother or the diseases of the mother that is with the mother's life threatened, before insufflation of spirit (four months). In addition, no punishment and responsibility will be considered for the doctor.

It comes from the uttered of the Article that establishing the right for abortion is with terms of reference material, for parents, with the mother's consent. We know that, to make this right, it depends on the diagnosis and prenatal diagnosis processes as

well. Diagnoses that should insist on it and it should be done four months before the fetus.

However, the question comes to mind that, in the case of medical malpractice, in the diagnosis or declare it and the birth defects, whether he will be in charge for compensation or not? If the answer is yes, what is the legal basis? How will the amount of damages be determined?

In the single article of the law on therapeutic abortion, it states: "abortion is allowed with a definitive diagnosis confirmed by three doctors and forensic experts, based on fetal diseases, which due to disability or being deformed. It causes constriction of mother or mother's illness, which, coupled with the mother's life threatened, and it can be done before insufflation of spirit (four months), with the consent of the woman. No penalties and responsibility will be realized for the doctor. Violators of the provisions of this Act shall be sentenced to the punishment prescribed in the Penal Code."

As of the uttered matter and what was expressed in the right and split it, it seems that we cannot allow therapeutic abortion as a right to be considered because:

1. Due to the illegality of abortion in Iranian law and indicating the phrase: "... punishment and responsibility will not be held to liable doctor." It seems, legislator wishes to address the cases of removal reasons of criminal liability, because abortion toys criminal responsibility and the article has excluded for therapeutic abortion, if it is subjected to confirmation by three doctors, proving deformed or fetal disability and creating hardship for the mother. It has cited all the above-mentioned condition as the doctor's defense to criminal liability.

It should be noted that, there is a distinction among the causes of criminal responsibility and the "right". For example, self-defense is one of the reasons for resolving criminal responsibility, and it is proving causes the removal of punishment, but with the description mentioned above, could we consider the right of self-defense right? In the author's view, we cannot consider a right of self-defense right, because, with all the definitions that were given; we cannot find a definition for it. Even taking into account the legitimate defense, as a right of suspension or probation, is not right, because:

First, there is a difference between right and the right owner, while, in self-defense, such a distinction is not possible and as long as, the self-defense is not approved by the court of competent jurisdiction, it does not exist. In other words, no proof of self-defense means of not realization, and if the self-defense cannot be proved, it will be denied, while, on the right belongs the right and this is the entitlement, or rightful of the person who needs to prove it. The same applies in the case of therapeutic abortion. In therapeutic abortion, if three competent doctors do not meet the conditions, abortion lacks relevance and it cannot be claimed that the owner belongs constant right. Thus, even in the event of medical errors in diagnosis, therapeutic abortion does not form because of one of its pillars' abortion.

Two other causes of criminal liability are the exceptional entry on other waiver, not creating new rights. Accordingly, obstruction of justice is meaningless in removal reasons of criminal liability. For example, removal reasons of criminal responsibility for crimes, is exceptional, the right to life and if someone prevented that the victim self-defense and prevented crime, in each case, as foreman or deputy, in crime, traceable and deprivation of the right to life will be the case, not deny the right of self-defense. Therapeutic abortion, too, is exceptional that is the right to life of the fetus, and we cannot define it as a new right.

2. The use of indicating "permitted", in the text of the article, ultimately, can indicate the permissibility and not fixing the right, because, being proved right is not the same as its license, and in the fixing of the right, determining the implementation

guarantees is necessary, while license on it, do not need to determine the sanctions. That is why the legislator, in this matter, has not determined the enforcement, to prevent abortion. Accordingly, if the doctor or medical center states the patient that, despite the circumstances and legal physician, it is not willing to do therapeutic abortion, the patient should go to another doctor at the center, although patients get into trouble for finding another place, he cannot file a lawsuit against a doctor or medical center.

To clarify this issue, we can remind an example of other authorized affairs. Smoking is allowed from the perspective of law and positive law. Accordingly, no person can be prosecuted due to smoking, or carried out civil liability on him due to smoking, but it does not mean the right of person for smoking. Thus, each vendor who can sell tobacco products, but not willing to sell it, is not responsible based on the common law and the law, or any person or institution can prohibit smoking in private and public space - even if it is not covered, such as university campuses or public courtyard of shrines and holy places, where smoking is prohibited.

In this case, since, avoiding medical examination or avoiding therapeutic abortion, despite the permission, is not causing responsibility, misdiagnosis, provided that no intentional element was included, and it is defined in the medical error, cannot lead to criminal liability. We will talk about the deliberate misdiagnosis on the next topic.

Finally, we can say, therapeutic abortion is considered a legal license, that due to the elimination of criminal responsibility, it causes the punishment fall of legal abortion, and then it cannot be considered as an independent right for the mother or the guardian of the fetus.

4. Results

4.1 The possibility to assign the responsibility for deformed child born compensation, to medical errors

In the realization of criminal responsibility, three elements of legal, material and psychological are essential. Thus, one can easily understand misdiagnosis of a doctor and the birth of deformed child does not cause criminal responsibility, due to lack of legal element, even be intentional.

Regarding civil liability, as mentioned, therapeutic abortion cannot be considered a right that the waiving would fall the penalty, but, apart from this, is it possible - even on the assumption of the right legal abortion - to consider a causal relationship between the births of a deformed child and misdiagnosis of a doctor? If this is so, is there a jurisprudence and legal basis to determine the extent of damage or the money?

In this article, we review the possibility of assigning responsibility for deformed child born compensation, to medical errors, and discuss the above.

4.2 The causal relationship between a child born with birth defects and medical diagnostics

Although, it is possible that the misdiagnose or inappropriate drug prescribing cause damage to the fetus or cause defects in him, however, this is outside the scope of this research and this study examines the hypothesis that a child has a defect due to other reasons and misdiagnose only caused foreclose the possibility of legal abortion. In this case, we can attribute "born" of a deformed baby to the doctors misdiagnose, but this only refers to "birth" and not creating defects.

Loss is a secular sense, meaning that, in determining instances of loss, we should accept the custom judgement and in this regard, we should not follow the examples of losses that in law or Sharia, it is not mentioned to be allegorical.

On religious subjects also, the great jurists have known the custom judgment as a criteria on the occasion of the debate about the harmed rule in recognizing the concept of loss and determining its exemplified and they have not expressed a legal definition of loss (Ansari, 1995, 2: 426). Because, as the owner of the categories referred (Almraghy, 1417 AH; 2: 311), the loss is the categories of law and in matters of law, custom judgment is the criterion. However, it is seen that jurists had thought in matters of law as well, and they have not considered some of the instances in loss categories that the norm today see them as losses. Including, about spiritual harm and non-profit, for example, Imam Khomeini (RA), according to the custom judgment, did not consider desecration or insult to another as losses (Khomeini, 2006 AH; 30-33). However, some other scholars considered non-profit and spiritual harm as the loss (Almraghy, 1417; 2: 309). This is because the custom can detect loss better and give the right to suffer by the victim, and in manifestation of harm, we should be based on the norm.

Now, the question arises whether, there is a specific definition of loss and damage, which should be a standard practice in matters of law, or by the legislator? Or it is not that and the matter of law leaves the concept and examples of loss to custom and experts, at any time and place. Obviously, if each of the two assumptions will be applicable, we encounter the effects of certain results. If we consider a certain standardized criteria for the loss or damage, we should only consider the compensation for that the legislator knows it as the damage. In this case, it seems that we have the narrow concept of losses, ahead. However, if the criterion of the loss is common, we should consider what the custom knows it as a loss. In this case, it seems that the loss or damage has a more general sense and more several examples, because, custom and customary judgment is a relative thing and it is different according to times and locations. Although, under Article 728 Procedure Act, former civil, it was stated: "the loss may be due to the financial loss or by the death of benefit that has been achieved from the commitment". We cannot infer from this article that the loss is a verdict concept and matter, and it is merely the loss of property and loss of profit, and nothing else. Because the legislature, in Article 728, first of all, only has introduced two examples of financial losses, and secondly, he has spoken in the common language, and the legislature has not mentioned the unlimited sense of loss, but the rule is allegory. The proof of the matter is that in other laws, other instances, if loss is taken into consideration. Including in the Civil Procedure Act 1939, compensation of delayed payment is recognized in 719 to 726 articles and it had expressed its Rules. On the other hand, in Article 171 of the constitution, the spiritual and material loss, both were accepted and were considered compensable and in civil liability laws enacted in 1960, in Articles 1, 9 and 10, spiritual and material loss has been accepted.

Accordingly, although the losses look compensable, but it must be said, there are drawbacks in the ability to assign it to the doctor. These problems include:

1. The single article about abortion has emphasized the diagnosis of three specialists, without tying the description of a specialist in a certain constraint - such as a coroner or a reliable doctor. In this case, two presumptions arise. The first assumption is that the mother - or father- know the malformed fetus in some way- and visit specialists to confirm this. In this case, they will have the freedom to select and refer to any of the physicians, and in case of detection of birth defects, by each of them; there are other possible medical care. Also, not only misdiagnosis of three doctors at the same time seems far-fetched, that in case of one or two doctors' misdiagnosis, determining their contribution to the damage arising from the birth of deformed children, faced with uncertainty and the attribution of harm to them qualified difficulty, due to the possibility of the patient, in reference to other doctors. In this case, no recourse to other doctors is a stronger reason that influences the causal relationship of the doctor's misdiagnosis. Another assumption is that the mother - or father does not know

the deformed fetus, and physicians will not be able to detect it (or the diagnosis is wrong). In this case, though the causal relationship between wrong detection and the birth of deformed children will be formed more complete than the first assumption, but still, the right of a patient to refer to other doctors is reserved. Moreover, in this case, misdiagnosis was not observed and only, lack of diagnosis the defect is important, and if the misdiagnosis happens, despite respecting therapeutic diagnosis norms and necessary tests, there will be no malpractice or negligence of the doctor that he could be blamed.

2. Recognition of medical errors, if he acted within his jurisdiction and on the basis of common medical practices and clear principles of diagnosis, he has never been considered responsible by the legislator, that if this happens, the medical community safety encountered a serious hazard.

4.3 Lack of legal and jurisprudence resources in the calculation of damages

If we consider this assumption, despite all the discussion we had, that the doctor is responsible for the loss due to the birth of the deformed child, is there a base or source of jurisprudence and legal basis for compensation?

In terms of Jurisprudence as well as matters of law in Iran, there is no difference between healthy people blood money and people with a disability or disorder. On the other hand, proving of blood money entitlement, in Jurisprudence and Iranian Law, subjects to the conditions that, none of them apply in the discussion. Therefore, the possibility of determining damages, based on the blood money table, under titles such as the value of healthy individuals and malformed blood money! Healthy person and a person with a disability blood money! Or the blood money of members with malfunctions, or in general, does not make sense - both First matters or in this topic, the third matter does not make sense.

On the other hand, the possibility to determine damages, based on the length of treatment determined by the legal medical examiner, in this case, will not apply, because, basically, the concept of duration of treatment relates to injuries and they are the damages that are treatable and not about disability or birth defects, that no treatment can be imagined for them.

However, even if, contrary to the author's view, we consider the abortion right, it will be non-financial right, so that, in that case, the possibility to determine money damages in this right will have no image of what is raised in methods of financial compensation.

Finally, we can say, regardless of whether or not abortion rights, payment of damages and losses caused by the birth of deformed children, in jurisprudence and Iranian law has no source, and a way to calculate compensation.

4.4 Intentional mistake of the doctor in the diagnosis, leading to the birth of deformed children

There is an assumption in which the possibility of Therapeutic abortion will be lost with intentional misdiagnosis of a doctor. According to what was mentioned, Therapeutic abortion is not a right, and on the other hand, there is no basis and the source, to compensate for loss or damage resulting from it, therefore, in this case also, there is no possibility to carry civil liability for a doctor. However, this does not mean absolute impunity of a doctor, if intentionally misdiagnosed.

The doctor is obliged to use all possible facilities and his ability to make the patient better and does his medical duties in the diagnosis and treatment of a disease. Misdiagnosis causes responsibility and violation of the mentioned issue is considered

a professional violation, if it is deliberate and regardless of the subject.

In other words, misdiagnosis, which takes place on purpose will deprive an independent right of a patient, meaning the right to have access to diagnosis and treatment, and in this case, the doctor will be traceable from the Medical Council Disciplinary Board of the country, and in case of intentional misdiagnosis, he can be fined, suspended of employment licenses and even, in some cases, revoke of license to engage in practice.

It should be noted that fine, whatever the amount is, should be paid in the right of the government and it is a form of punishment, thus, it should not be mistaken with compensating for the losses and damages.

5. Conclusion and Recommendations

According to what was studied and analyzed in this article from the single article of the law on Therapeutic abortion, the doctor cannot be responsible for compensation, in the case of wrong diagnosis, which leads to the birth of deformed children. However, this misdiagnosis, whether intentional or not intentional or misdiagnosis affiliation to health care non-compliance can create professional or in some cases, legal liability for doctors, which this is different from civil liability of a doctor, in compensation, because:

Firstly: Therapeutic abortion is one of the removal reasons of criminal liability - abortion crime-and not independent right

Secondly, the medical profession demands and providing health care system security is that, the doctor did not be the sponsor, except in cases of negligence and fault, as long as following the rules and the existing system.

Thirdly, there is no base and a source of jurisprudence and Iranian law for compensation damages caused by the birth of deformed children, because Islamic law does not consider a difference between respecting healthy individuals and individuals with disabilities, and the blood money for both has been specified the same.

Fourthly, even if, contrary to the author's view, we consider therapeutic abortion as a right, the right will be non-financial and there is no mechanism for calculating its value.

Fifth: the deliberate misdiagnosis of a doctor is one of the instances for professional misconduct and it is traceable, from the union, and it can not be considered wrong with a doctor's civil liability in compensation the loss due to the birth of deformed children.

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