

## IRAN'S CRIMINAL LEGISLATIVE POLICY ON MEDICAL CRIMES

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**Abstract.** The current paper aimed to investigate the dominant approach in Iran's legislative policy on medical crimes taking into account various criminal, judicial and executive aspects. Some of the findings and the results show that firstly, legislative criminal policy approach in dealing with medical crimes are punishment based lacking corrective and preventive attitudes. Secondly, legislative criminal policy of Iran disclaims responsibility of the physician based on consent, the presumption of innocence, legality and respect for the scientific and technical work. Third, the basis for criminal liability of physicians in Iran law is not transparent and criminal attitude of the legislator is allowed to develop the scope of inclusion of medical liability of the physician while there are the conflicts on legal articles.

**Keywords:** criminal legislative policy, medical liability, medical crimes.

### 1 Introduction

Studies show that the criminal policy of Iran lacks systematic and goal-oriented strategy with the ability to prevent crimes, general and specific deterrence and reformation and rehabilitation of offenders not only in dealing with medical crimes but in different aspects of dealing with delinquency. And the manifestations of different conflicts and problems in criminal legislative, judicial and executive policies in turn faced criminal policy of Iran with ambiguity and inefficiency, and not only there is no corrective or preventive or precautionary statements sensible and reliable indicative of having new knowledgeable approaches to criminology but weakness in controlling crime has established a reasonable suspicion that Iran cannot follow a scientific and systematic criminal policy on dealing with medical crimes or other crimes (NajafiTavana and Milaki, 2011). The current study attempts to study the various aspects of criminal policy of criminal offenses in the intervention areas of medicine, and its efforts aimed at analyzing the concept and principles of criminal liability of physicians in Iran criminal policy and in this context provide answers to the research questions.

### 2 Criminal policy and its variants

Today, the criminal policy is an independent field of study contrary to the scholars of the past that took it as a branch of criminology or applicable criminal law. A proper criminal policy, contrary to criminal law, not merely relies on penal policy; instead, the resolving of social problems; removing the causes of delinquency; elimination of legal discrimination and injustice; and cure and rehabilitation of criminals are of its characteristics. Favorable criminal policy is a general concept that uses many sciences in order to achieve goals and on the other hand is associated with many organizations through which implements their measures; Therefore, criminal policy is classified from different angles, one is division into three legislative, judicial and participation parts (Katoziyan, 1995).

#### 2.1 Criminal legislative policy

It involves a series of measures to combat delinquency manifested in law with assured enforcement of legal sanction.

#### 2.2 Criminal justice policy

In its narrow sense means the criminal policy which is reflected in the decisions and performance of the courts of justice. After legislator implemented criminal policies in the form of laws and regulations, these laws and regulatory messages are perceived, interpreted and accepted differently.

### 2.3 Criminal policy of partnership

It means to determine the effective participation of civil society actors in the criminal policy. In other words, it means taking into account the effects of creation of strengthening tools and levers other than the police or the judiciary in order to give more credit to criminal policy, which is prepared and enacted by the executive and legislative branches.

The word responsibility means guaranteed, liability, obligation, reprimanded, being obliged to do something, committed to come and man of duties and any actions man undertakes and is responsible for (Jafarilnagrodi, 2013). In jurisprudence the responsibility and liability are used interchangeably and the responsible person is liable (Dehkhoda, 1995).

Medical liability is a fundamental issue in medical law arises in the physician -patient relationship. In fact, the physician -patient relationship is as a contract that is signed between them and by virtue of this contract, the physician as an active player in this relation gains income as to his scientific services while entitled to obligations have been called liability in legal literature. In this regard, the physicians is liable of their expertise and the size of its scientific capabilities, in accordance with the regulatory system and taking into account confidentiality and non-disclosure of this relationship takes care of patient and any " malpractice "by him, will be the realization of civil and criminal liability. In fact, when the legal relationship is established between patient and physician, the practitioner responsibility will be crystallized in the field and medical malpractice and errors arises responsibilities from this relationship as the case may be (Khalilifar, 2011). Civil liability comes when losses inflicted on individuals as a result of medical procedures .The responsibility is to compensate for the loss or damage and sentenced physicians by medical malpractice compensate for the damage personally or via insurance companies.

The medical crime is the fraudulent medical office jobs without having conditions of legal regulation and malpractice and negligence and violation of medical rules and regulations in handling tasks and legal obligations.

### 3 The basis for civil liability of physician in the IPC and Jurisprudence

Articles 319 to 321 of Islamic Penal Code enacted in are on medical responsibility and circumcision and veterinary that first we analyze and criticize them. Then we refer to the provisions of the new Islamic Penal Code. Article 319 of Islamic Penal Code on civil liability and the legal liability of physician stipulates: "the physician is liable if, although qualified and professional, causes loss of life, injury or property damage in treatment by them, or ordered by them, however, with the permission of the patient or their guardian." Article 319 of IPC is based on the Shi'a jurists; and they know physician liable even guilty in applying knowledge, qualified, and permitted by the patient or guardian. Evidence of liability is referred to in view of the reasons given in support of the theory (Sivsalari, 2001; MahmoodRezaee, 1993). There is another promise in jurisprudence that is the basis of acceptance of medical responsibility of the physician in case of malfunction that will be discussed later.

Article 321 of the Penal Code that refers to a veterinarians similar to Article 319 and apparently accepted the vet immediately responsibility and provides that: "a veterinarian shall be held liable, although an expert, inflicts damages on animal during its treatment, though with the permission of the owner". This Article is consistency with the Article 319 and is with the same jurisprudence roots of the Article 319 because scholars compared physician liability to that of the veterinarian. Accordingly, physician and veterinary liability in the IPC is a strict liability and is not based on fault; in other words physician and veterinary liability, on compensation for medical maltreatment, it is enough to realize the harm suffered and the

causal relationship between the loss and the agent lawsuit to prove; while circumcision responsibility under Article 320 is apparently based on the fault. This article stipulates: "the circumciser is liable if causes offense or loss due to the excess of the amount necessary cut although skilled." It seems that 'cutting more than enough' "is a fault; because the fault in the sense accepted by most lawyers and civil law and Islamic jurisprudence is compatible with "deviate the conventional behavior". But, in case of circumciser who is a professional, his act should be compared with the behavior of similar experts. It is clear that specialist circumcision does not "cut more than enough" and it is the violation of practice of medicine. Thus, specialized circumcision that exceeds normal behavior must be liable. However, Article 320 is also based on the opinion of some Shi'a jurists.

#### 4 Examples of medical crimes and their punishment

In this section, due to the limitations, we will discuss two examples including Suicide medical assistance and abortion; and then end up with the discussion with the conclusion of the discussion.

##### 4.1 medical assisted suicide

Physician-assisted suicide (Rezapour, 2011) means to end the life of patient by received physician assistance through the voluntary choice of the patient. In the other words, in this type of suicide, "the physician provides patient with suicidal tools (for suicide), knowing that he intends to use it to commit suicide." Some believe that Physician-assisted suicide is in fact, one of the types of euthanasia and consequently should be discussed under this system. Thus, some literatures have been divided euthanasia into two types of direct and indirect. This division refers to the role of who perform the deprivation of life operation, in a sense that if the physician themselves deprives the patient of life; it will be direct euthanasia and if the physician provides the patient with the suicidal tools; it will be indirect euthanasia (Zeraat, 2001).

##### 4.2 Abortion

Abortion is a difficult and complex issue of the today's society. Almost all human societies are faced with this problem given the breadth and diversity of religious beliefs and moral influence among the various classes of society. Naturally, the legal systems claiming the protection of the values and beliefs of citizens, encounter this issue more seriously and more objective. According to Iran the Ministry of Health and Medical Education records, the number of 80 thousand abortions take place annually, mostly illegal and unhealthy.

Under Article 622 of the Penal Code, "Whoever knowingly and intentionally, through beating or annoying pregnant women causes abortion, s/he would be liable to pay atonement or retribution and subject to imprisonment from one to three years."

In this context, Article 718 can be noted that provides: "If a woman aborts her fetus intentionally, quasi-intentionally or on pure error, atonement shall be paid by the perpetrator or her guardian based on the case."

#### 5 Conclusion

According to the historical development of medical liability laws passed in Iranian law, According to the Penal Code in 2013 in the absence of medical fault in science and practice, there is no liability on the physician, even if the acquittal is not gotten. In fact, the new Penal Code has accepted the fault. However, before that the physician was considered responsible for damage that was caused to patients during treatment even if negligence was not the case. It should be noted on the one hand due to the sanctity of the medical profession from the divine perspective and tradition and on the other hand the relativity of human progress in medicine, a skilled professional shall be distinguished from who treats patient by the lack of necessary expertise and in fact with fault, because it is compatible with the principles of fairness and justice and a safety issue for young physicians to stay away from the rebuke of absolute fault taking advantage of their expertise and dare generalize their skills in the field of finding solution in the treatment of disease. In this regard, the new law is a fundamental step in the realization of rights and ethics closeness because highlighted the good will as the principle that combined with the profession and associated with it. Although there are ambiguities in the context of some recent laws, they must be corrected with openness and transparency in order to move towards human and divine value.

Legal procedure must be adjusted to avoid a conflict between Article 492 and Article 496 and the adjustment means to sum up between two wills (the will of the physician and the will of nurse). Also, it is not fair to consider the nurse knowledgeable and the physician ignorant where traditionally the physician has higher medical expertise and skills, especially that meeting this is associated with certain complexities, especially in case that nurse provides physician with medical note but faces with his insistence. It was a good idea if the legislator support nurses in different ways to get rid of the confusion in a transparent manner and do not ignore physician. In fact, the legislator should take into account the sensitivity of the profession and clearly apply a consistent procedure to avoid obscurity and support for health.

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