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JURISPRUDENTIAL PRECEPTS OF PHYSICIAN'S RESPONSIBILITY IN OBTAINING AN ACQUITTAL FROM PATIENTS WITH AN EMPHASIS ON THE PATIENTS

Dr. Rahmat Farahzadi[1]., Dr. Fares Najari[2] and Dr. 'Ideh Baradaran[3]

[1]Islamic law and Jurisprudence, Faculty Member of Islamic Azad University of Ray, Tehran, Iran
[2]Forensic Medicine Department and Faculty Member of Shahid Beheshti University of Medical Sciences Tehran, Iran
[3]Forensic Medicine Assistant and Faculty Member of Shahid BEHESHTI University of Medical Sciences, Tehran, Iran

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ABSTRACT

Physician's responsibility has long been recognized as a controversial issue among the professors and researchers of law and all the talks concern finding a scientific and fair basis for the physician's responsibility and acquittal. Although the physician's responsibility for the patient is of the classic issues raised in Islamic law, advances in medical sciences and opening new ways on the doctor-patient relationship and its regulation with the status of jus cogens by the government have withdrawn treatment of the patient from an old personal relationship recognized in jurisprudence. Technological advances in medical sciences demand an appropriate mechanism to be considered for meeting patient's safety and health, while the faulty doctor is responsible and the society is not deprived of medical services as well.

The complex and unusual situation of "acquittal condition before treatment" raises the question whether this condition is the same as lack of responsibility conditioned in the contract to exempt a doctor from compensating a patient's loss, even though he/she has committed a fault. Given the importance of this issue, we decided to assess the necessity of obtaining patient's acquittal according to jurisprudential precepts and Islamic law in this article and answer the question of whether a doctor is responsible if he/she is not successful in the treatment due to a mere failure.

In this review and library article, it was tried to initially offer a precise definition of the responsibilities, acquittal, and liability by a research through the religious and jurisprudential literature and then discuss of Shiite and Sunni scholars' views about the terms of physician's liability and acquittal.

INTRODUCTION

The word "responsibility" means and to be questioned and often involves the concept of separation of duties in what a human undergoes responsibility for it (1). It is the so-called legal obligation of a person to acquit another person's loss to whom he/she has caused it expense, whether it is due to his/her own fault or the his/her activities. Responsibility is a word opposite to acquittal in meaning and it is a title that despite having an inverse relationship with acquittal and opposition of these two legal concepts, it can lose its origin of existence in some cases despite acquittal conditions (2).

The doctor's responsibility has been a contentious issue among professors and researchers of law. Medicine is a double-edged sword that brings about a great harm if not handled with skill. On the one hand, if this responsibility depends on proving the doctor's guilt, corporate prejudice, research complexity, and defect of science prevent the lawsuit from succeeding and a reckless and business-mannered doctor can escape the responsibility and feel safe by finding refuge in these obstacles. On the other hand, if the necessity of guilt is denied, willingness to this useful and necessary profession reduces and medical knowledge loses its power of experience and initiative. All the talk is about finding a scientific and fair basis for the doctor's responsibility and acquittal. This requires a new interpretation of Islamic Penal Code underlying the "fault" in the doctor's responsibility and discredit of acquittal condition if committing that fault.

The complex and unusual situation of "acquittal condition before treatment" raises various questions about the nature and

*Corresponding author: *Dr. Fares Najari*
Forensic Medicine Department and Faculty Member of Shahid Beheshti University of Medical Sciences Tehran, Iran

basis of this institution as to whether an acquittal condition is the same "condition of lack of responsibility" in the contract to exempt a doctor from compensating a loss even though he/she himself/herself has committed the fault or it is just a condition that causes the displacement of the burden of the proof so that the situation returns to a normal condition, the injured patient has to prove the doctor's fault, and the acquittal condition does not exempt the doctor from the results of responsibility for the blame.

Given the importance of this issue, we decided to evaluate the necessity of obtaining an acquittal from patients according to jurisprudential precepts and Islamic law in this article and answer the question of whether a physician is responsible for a mere failure of medical treatment if he/she does not succeed to treat a patient and the desired result, which is to heal the sick, is not gained or it is necessary to retain his/her fault to meet his/her responsibility. Who is to bear the burden of the proof? Therefore, it is necessary to first give a precise definition of acquittal and liability and then express different jurisprudents' views on liability and acquittal.

***The definition of acquittal**:* Acquittal literally means deliverance, void of fault, as well as aversion, hatred, disgust, acquittal of a crime, fault, and slander (1).

The jurists divide acquittal into 2 types: waiving acquittal and advocating acquittal. A waiving acquittal is an acquittal that is obtained by waiving of a debt and obligation and an advocating acquittal is a confession by the obligee to vindicate his/her right (3). In the context of the doctor-patient relationship, acquittal is an example of the condition of lack of responsibility, i.e. lack of a physician's responsibility for the possible losses arising from the treatment.

The definition of liability: Liability means accepting, undertaking, commitment to a loss and damage, etc. and its use in common law and conversations is the same concept of commitment.

In the overall look, this concept is divided into 2 parts:

1. Contract liability
2. Compulsory and non-contractual liability

The purpose of a contract liability is an obligation on individuals caused by a violation of the terms of a contract, thus leading to a responsibility. This is when there is a contract between an injured individual and the agent of loss and the damage caused is as a result of not implementing the provisions of the contract.

In defining this kind of liability, jurists have written as follows: "Liability is a legal contract that creates an obligation for the body and property."

Compulsory liability: Destroying or damaging the property of others with one's own hands or by a palfrey or a vehicle he/she is riding on is called a compulsory liability.

METHODOLOGY

This study was of a review and library type performed by a content analysis method. It was based on researching for Islamic sources and texts and reliable jurisprudential sources, as well as jurists' opinions and statements

Findings

From past periods so far, medical liability has gone through numerous ups and downs, sometimes interpreted as compulsory, sometimes as contractual.

In the French law, medical liability was known as compulsory for a long time, i.e. the injured one had to prove the doctor's fault.

Sunni jurisprudence rules

They refer to physician liability rules as causing no harms, giving benefits, and causing a loss as described below:

Physician's liability

Based on the principle considered by the jurists of Hanafi religion, a doctor is not liable for any losses he/she causes to a human body or limb unless the injured one proves his/her fault (4). Thus, a doctor's responsibility and liability is concerned only when his/her error is proven. In the event of a mistake, the treating physician is responsible though he/she is proficient and authorized.

The rule of causing no harm

According to Sunni jurists, as long as the result of administering a right is to cause a loss on others, the harm should change into a liability, whether that right has been determined directly by the legislator or proven through a contract because administration of rights is subject to the condition of health and human blood and property are respected.

Therefore, a loss directed towards property and human blood changes into a liability. However, this rule does not comply with 2 cases, one of which is when the exercise of a right cannot be avoided, such as a practitioner who performs a surgery on a patient and it leads to a limb or organ loss or death without any abuse or wastage from him/her. In this case he/she is not liable (5).

Some jurists of Hanbali religion have invoked this rule by reasoning that there is no need to obtain permission from a patient or his/her parents when there is no possibility of seeking permission and risk of the illness (6). Using this rule, some others have incapacitated an ignorant doctor to prevent people from any losses (7), but other religions have not argued about the mentioned rule of doctor's liability.

The rule of giving benefit

If a doctor treats a patient without his/her parents' permissions, the populace of jurists consider him/her as a liable person since such a physician is an offender in their views, but on the contrary, some others like Ibn Qayyim al-Jawzi do not consider him/her to be liable by referring to verse 11 of Surah Repentance of holy Koran and believe that if a doctor has not been negligent, he/she will be regarded as beneficent and a beneficent person will not taken as liable (6).

The rule of causing a loss

If a medical treatment leads to the loss of a limb or body and the physician is not qualified, he/she will be liable, but there are two words for a proficient doctor who has not offended or wasted: the first is that of Malik Ibn Anas, who did not know a doctor as responsible by referring to verse 117 of Surah Baqarah and thus revenge and aggression is not permissible except from and on the oppressors. If a doctor has been competent and has not offended or been negligent, he/she will not be liable. Another reason is based on a tradition about liability related from the Prophet (PBUH) by Abdullah Ibn Umar that says "Whoever is not aware of medical profession and practices it is liable." In our assumption, a qualified doctor is proficient to medical profession and the loss has occurred without his/her offence or wastage. Another reason is that a physician is a trustee of patient's body and a trustee is liable only in case of offence and wastage. Contrary to Malik's words, Sunni famous jurists consider a doctor to be liable though he/she has not offended or wasted (6). In this regard, they refer to the following reasons:

- The first reason is that God says in verse 14 (92) of Surah An-Nisa:

"It belongs not to a believer to slay a believer except it be by error. If any slays a believer by error, then let him set free a believing slave, and bloodwit is to be paid to his family unless they forgo it as a freewill offering.

- The second reason is that a doctor's crime is wastage, no matter it is intentional or erroneous, and in any case, the waster is liable.

Thus, it seems that among the Sunnis, lack of a physician's responsibility is subject to the following conditions:

A) The doctor must be a specialist and skilled, i.e. if he/she does not have the necessary expertise or someone non-proficient and unaware of medical affairs deals with a patient's treatment, he/she is liable and of course, a specialized physician should observe the technical regulations and ethical principles in treatment in his/her profession in addition to having a good intention to treat.

B) ***The permission of the law:*** If a specialized physician deals with an illicit work, he/she is responsible. For example, if a mother goes to the doctor for an abortion and he/she aborts her fetus, he/she is responsible. For this reason, it is said that "the permission of the law and liability do not come together."

C) ***The permission of the patient or his/her parents:*** A doctor's involvement in treatment without a patient's permission leads to his/her responsibility unless in exceptional cases because in this case, the doctor's act is withdrawn from permissible and legitimate frameworks and is deemed to be an offence.

However, Sunni jurists disagree on whether a doctor's responsibility is contractual or non-contractual. Some believe that medical responsibility is compulsory and coercive as the relevant jurisprudential rule applicability implies it and the provisions of the rule is as follows: A doctor is not liable for any losses he/she causes to a human body limb unless the injured proves his/her fault and this means the contractuality of his/her responsibility since in the contractual liability, lack of achieving a satisfactory result merely shows the fault of the committed person and the injured does not need to prove his/her fault for the compensation of his/her own loss, exactly opposite the contractual liability.

On the other hand, some maintain that a physician's responsibility is contractual and this seems more familiar to the mind because the injured party must prove that a contractual relationship has existed between him/her and the doctor and the doctor has ignored this relationship and acted contrary to it.

Physician's liability in Shiite jurisprudence

Unlike the Sunni, Shiite jurists have not dealt so much with the doctor's type of responsibility and only some reputed ones have pointed out this issue: In a book called Jevaher al-Kalam, Najafi has appearantly talked about contractuality of a doctor's responsibility and called the doctor-patient contract as a rental type.

A) ***Ignorant doctor:*** As the Sunnis, Shiite jurists believe that awareness of medical knowledge and having expertise and finding skills in it are a condition for a tenure and employment in it. If someone introduces himself/herself as a doctor without knowing anything about medical science, his/her tenure to medicine leads to his/her responsibility and liability for the physician not only deals with people's bodies and properties, but also is involved in their reputations. Thus, an ignorant doctor not only does not relieve the patient's suffering, but will add to it and jeopardize innocent people's lives with his/her ignorance. In a hadith (tradition) narrated from the Commander of the Faithful, he bids, "it is obligatory on the Imam to imprison evil scholars and ignorant doctors, etc....

B) ***A specialist and skilled physician:*** Without a doubt, human's life is associated with pain, suffering, and illness and a worldly man should combat with many pains and sufferings and repel the losses as long as he lives in this world since hurting oneself and throwing oneself into destruction is something wrong.

Now, will an expert or specialist (doctor) who has tried his best to improve a patient be responsible if he/she makes all his/her efforts in his/her treatment and tries to heal him/her with a good intention but the patient loses his/her life instead of recovery or the physician's treatment leads to a limb impairment or organ failure?

To answer this question, Shiite jurists have been divided into 2 groups: A group has provoked critics to criticize by considering a specialist as responsible and the critics have tried to criticize their evidence besides responding to the criticism of the opposite view and slightly reduce the severity of the judgment.

The non-famous theory of Shiite jurisprudents

Some Shiite jurists believe that there is no need to obtain an acquittal if the doctor is qualified and skilled, observes technical and scientific criteria, and comply with governmental regulations, and his/her treatment is with the permission of the patient or the patient's parents or legal guardian. As a result, there is no liability if any damage occurs to the patient or the treatment leads to his/her death.

This group of jurists, the pioneers of whom are "Ibn Idris Helli" of the ancient jurists, Ayatollah Seyyed Mohammad Shirazi of the contemporary jurists (with reference to his book called al-fiqh), and some lawyers, believe in no liability for a qualified cautious physician.

The famous theory of Shiite jurisprudents

The jurists also agree that the permission to treat and physician's liability are not inconsistent since doing an act may be religiously and legally permissible, but it brings about a responsibility for the doer in some cases. To prove their claims, the famous Shiite jurists have appealed to some reasons that are mentioned as follows:

There are some traditions expressing non-liability of a doctor

- ***A)*** ***A tradition narrated by Ismail bin Hassan who was a physician:*** He says he had once said to Imam Sadiq (AS), "I am an Arab man and familiar with medical knowledge and do not get paid for it." Imam had said, "No problem!" He had said, "I split wounds and burn them" Imam had said again, "No problem!" He had said, "We prescribe toxic medications for patients." Imam had said, "No problem!" He had said, "The patients might die." Imam had said, "Even if they die."
- ***B)*** ***A tradition narrated by Ahmad Ibn Ishaq Ahmed:*** He says, "I had a child with kidney or bladder stones. They told me, "The only solution is surgery." And when he had surgery, he died. Then, the Shia said, "You're a partner in your child's blood." Inevitably, I wrote a letter to Imam Hasan Askari (AS) and Imam answered, "Ahmad! What you've done is not on your responsibility because you've wished him a treatment and his time of death has been when you've done this." (9)
- ***C)*** ***A tradition narrated by Yunus Ibn Ya'qub:*** He says he had asked Imam Sadiq (AS) what if a man prescribes a drug or cuts a vessel and he may get a good result from that drug or cutting the vessel or the drug and cutting the vessel might kill the patient. Imam had said, "He can prescribe the drug or cut the vessel." All these narrations indicate that a physician is not considered as responsible for his/her act. (9)

Narrations referring to a physician's responsibility:

Sakuni's narration from Imam Sadiq (AS) from Imam Ali (AS): Imam said, "Whoever practices medicine or veterinary, he/she should get an acquittal from the patient's parents or animal's owner before treatment and otherwise, he/she is liable. Another narration cited as famous is this: Imam Ali (AS) knew a person who had circumcised a baby more than enough as liable.

Consensus

Some scholars have claimed of consensus on this issue, stated the doctor's liability, and interpreted it as a "no contrary case". Even Shahid Thani has documented the major reason for this based on the consensus in the book "A Description to Loma". Ibn Zohreh and scholar Helli have accepted the claim of the consensus in the books "Ghaniya al-Nozu'" in "Nekat al-Nahayah", respectively. The consensus noted here has been narrated only by Ibn Zohreh and scholar Helli and it seems that it does not have many fans among the jurists because it is only a document-based consensus and its authenticity has not been proven.

The importance of this reason among other reasons is to the extent that some jurists have regarded this reason as the major reason for accepting liability for a qualified, cautious, and permitted physician.

By reviewing Shiite jurisprudents' views, it can be seen that most of them have reached a consensus concerning the positive aspect of the responsibility of a qualified, cautious, and permitted doctor by expressing such terms as "no contrary", "more likely", "closest to", and "most robust". On the other hand, the opponents have tried to discredit this reason by making a flaw in the consensus.

it seemed that obtaining a written informed consent and acquittal lowers patients' expectations from the hospital and doctors and consequently fewer complaint schemes in the judiciary centers and this would cause the physicians to welcome the project in the hospital and other medical centers affiliated to the University.

DISCUSSION

A review of the reason of the doctor's liability

Jurists maintain 2 theories for the act of a physician who causes a loss to a patient: Some attach to the principle of non-liability of the doctor and some are on the opposite side and know obtaining an acquittal from the patient as an alternative. Before we examine these 2 unpopular and popular theories, respectively, we should talk about a case upon which maintainers of both theories agree and it is the liability of a physician who has violated and wasted in the healing process. Concerning an ignorant, unqualified, unpermitted, and offending or wasting doctor, there is a consensus on the doctor's liability. The religious basis of the subject can be traced back to a tradition by Imam Ali (AS) who bid: "It is imperative on Imam to imprison evil scientists and ignorant doctors ...."

To prove their claim of liability or non-liability a prudent and competent doctor, the proponents of each famous and non-famous view have referred to some narrations. Here, after citing each of them, we analyze the documented narrations according to the proponents and opponents. To prove their claims, the famous Shiite jurists have cited 2 narrations, which were mentioned above:

A narration by Sakuni from Imam Sadiq (AS) from Imam Ali (AS): Someone who practices medicine or veterinary must obtain an acquittal from the patient's parents or owner of the animal or otherwise he/she is liable.

In this narration, it can be seen that a physician or veterinarian is considered as absolutely liable unless he/she obtains an acquittal and will be responsible for what he/she will waste. Of the objections raised by the opponents of the famous narration to this tradition is entered that Sokuni's hadith has appeared on a weak basis and Shahid Thani has clarified the issue in the

"Description of Loma" so as to respond to this objection of the proponents of the famous relation like this: The Jabir's famous act shows the weakness of the hadith documentation, i.e. when the hadith text has been accepted by the jurists who have acted on it, the document weakness is compensated.

On the other hand, the opponents of the famous quote have expressed that Sokuni's narration from Imam Sadiq (AS) from Imam Ali (AS) has been perceived in a different way in other documents and after the clause "so, he/she is liable", another clause (if he/she is not skilled enough) has come that changes the meaning of the narration". Considering this clause, the tradition can be interpreted as this: Someone who practices medicine or veterinary, he/she should obtain an acquittal from the patient's parents or owner of the animal or he/she is liable if he/she is not qualified and competent. In answer to this objection, it can be said that the authentic hadith is what the fans of the famous quote have pointed to after examining the reliable books of the hadith.

Sokuni narrates from Imam Sadiq (AS) that he has said, "Imam Ali (AS) considered a person who had circumcised a baby more than enough as liable".

The opponents of the famous quote, including jurists and lawyers, believe that the narrative context is in a way that suggests the offense and wastage of the circumciser more than conventional. In fact, with the acceptance of this statement, the non-famous jurists' opinions who advocate a doctor's liability in case of offense and wastage are to be confirmed. In contrast, by expressing that there is no talk of offense and wastage in the narration, the famous proponent lawyers and jurists believe that the circumciser is responsible for the loss of life or mutilation of the person who is circumcised as long as he/she has not obtained an acquittal though competent.

In contrast to the above cited tradition raised by the proponents of the famous quote, the proponent jurists and lawyers of the famous quote state that this narration does not imply a liability but non-liability, but permission for the act of treatment regardless of the results. In other words, the narration has just tried to state that there is a possibility of treating a patient even with the probable risk of his/her death. With regard to the traditions documented by each of the two groups and objections and the answers given to the objections it generally seems that the objections to the cited narration of the fans of the famous quote, rejection of and the objections to the famous narration seem stronger than those of the non-famous narration, especially because of the point perceived from Sokuni's hadith: Why has Imam Ali (AS) resorted to obtaining an acquittal for lack of liability and shown an alternative for the problem if the physician is not regarded as responsible by the legislator.

Assessment of the evidence of lack of a doctor's liability

As mentioned above, if the doctor is competent and begins to treat the patient with his/her permission or his/her parent's permission while obtaining an acquittal and complies with ethical principles and rules of medical science, he/she will be quashed of civil and criminal liability and responsibility. There are several reasons for the lack of liability, which are noted as follows:

Tradition: Some of the traditions that can be cited in this regard are as the following:

Yunus Ibn Ya'qub says he has said to Imam Sadiq (AS), "A man prescribes a drug or cuts a vessel, while it is possible that he'll get a positive result or the patient die. What's the verdict? He said, "He can cut the vessel and prescribe the medicine." (9) From Imam's permission for the treatment though there is a probability of harm or loss to the patient, it is understood that there is no liability in this work. In this tradition, the necessity of obtaining permission or acquittal has not been pointed out.

Someone said he had had a child with a stone in kidney and that they had said there had been no other choice than treating with surgery. However, his child had died under the surgical operation. Some had said he had shared in his son's murder. He had sent a letter to Imam Askari (AS) and explained the problem. The Imam had replied that there had been no responsibility on him because he had intended for his son's treatment but his death had occurred at that time. This tradition is more explicit than the previous narration on the lack of liability although it is understood that the father has given permission for the treatment since he himself has taken his child to the doctor. It is quoted from Imam Ali (AS) that a doctor will not be liable and responsible if he/she deals with a treatment that leads to the patient's death or heavy loss when he/she has permission from the patient or his/her parents or relatives (12) because he/she has dealt with the treatment with the patient's permission. This narration explicitly considers obtaining permission enough to remove any liabilities while not pointing out the necessity of obtaining an acquittal too. It has been quoted from Imam Ali (AS) that someone who practices medicine or veterinary, he/she should get an acquittal from the patient's parents or animal's owner and otherwise, he/she is liable (10). The last 2 traditions indicate the lack of liability, one with logic and the other with meaning as bound to other traditions, such that from the sum of them, it can be clearly concluded that a doctor is not liable for the losses caused if getting permission and acquittal besides having other conditions. Maraghi has objected to this reason and said, "Permission and consent to treatment are not the same as permission to waste and the common law deems no relationship between permission for treatment and waste. Permission never quashes liability because its nature is permission to seize, whether it is based on liability or no liability (13). Also, Shahid Thani said:

The patient has given permission for treatment, not on his/her waste and there is no discrepancy between the permissibility of an action and its liability and responsibility. It seems that this objection is not valid since the reasoning to the lack of a relationship between permission for treatment and permission on waste is valid when no traditions exist on this issue besides the fact that the common law considers a relationship between permission for treatment and lack of liability though it finds no relationship between permission for treatment and permission on waste.

As previously mentioned, in accordance with the rule of beneficence, if a doctor is qualified and observes medical, technical, and moral principles while intending to treat the patient, he/she will be considered as beneficent and thus he/she will not be liable, otherwise it is necessary to say that the good-

doers can be held accountable. In this case, Bojnourdi has stated, "In numerous cases, our jurists have passed a judgment on the lack of liability due to knowing the doctor as a beneficent ... and a good-doer is trusted and his/her helpful hand is regarded as a permitted hand by the holy legislator. The jurists' words all express one point that "there is no liability on a good-doer and a good-doer intends nothing but a right act and is the reward of a good deed other than beneficence?" This judgment indicates that no offence should be done to a good-doer.

Ibn Idris has said a doctor is legally obligated to treat the patient and has no obligation to achieve a result of improvement, but it is necessary for him/her to commonly make an effort for the patient; otherwise know the doctor as liable makes an obstacle to medical profession and doctors' refusal of treatment. In addition, a doctor is beneficent in his/her action and practices beneficence to the patient with his/her therapeutic acts and a good-doer cannot be known as responsible. Therefore, liability is annulled due to the existence of permission and legitimacy of medical practice. Of course, it seems that this rule does not conflict with the necessity of permission and obtaining acquittal.

CONCLUSION

The results obtained from the series of discussions and reviewing statements and reasons are as follows respectively:

1. According to some Shiite jurists and those of the four religions, if a doctor is a specialist, asks for the permission of the patient or his/her parents or guardian, and is not negligent in the treatment, he/she will not be liable if the patient dies or undergoes a loss and there is no necessity to take an acquittal; however, according to some Shiite jurists, obtaining an acquittal to eliminate any liabilities is necessary.
2. If the patient cannot pay for the treatment for any reasons when visiting a physician, the doctor will be liable if he/she refuses to treat him/her and he/she dies or undergoes a loss. In such cases, the physician should attempt to treat; otherwise, the government urges him/her to cure the patient. Nevertheless, the cost of treatment will be on the patient to pay, but if he/she is has difficulty to pay, the Islamic government will be responsible for payment from the public funds.

A physician cannot be absolutely known as liable or judge an acquittal for him/her, but overall, his/her liability is subject to the presumption of attempting to treat without obtaining an acquittal or having sufficient expertise or despite having these conditions, he/she has been negligent. However, if he/she has obtained an acquittal while having the necessary expertise and he has not neglected in the patient's treatment, he/she will not be liable.

There is a difference between permission and acquittal. Permission is only as an allowance for the physician's action of treatment and should not be considered as effective in the outcome and thus does not prevent any liabilities to any unwanted results that may be achieved from the treatment. Therefore, for the lack of a doctor's liability, obtaining an acquittal is required in addition to permission for the treatment.

3. The patient's permission is not the same as his/her permission for a waste or loss and obtaining permission and acquittal are not sufficient in the lack of liability alone, but also having the necessary expertise and knowledge and lack of going to extremes is required. Therefore, if a doctor does not have desirable practical and academic skills or neglects when attempting to treat though having proficiency and causes a loss or waste, he/she shall be liable although he/she has been permitted and taken an acquittal. Moreover, if a doctor attempts to treat while obtaining permission and acquittal and observing scientific regulations and standards and causes any losses or wastes despite attention and no negligence, he/she cannot be considered as liable since on the one hand, a doctor is legally obliged to treat patients while he/she tries to a conventional extent but is not committed to improve the results on this path and thus knowing him/her to be liable in such circumstances would lead to the doctors' refusal of medical treatment, which causes hardship and subsequent disruption of public order or extortion in the rights of medical community and on the other hand, it is contrary to the principle of beneficence because the doctor has been as a good-doer with regard to the mentioned conditions and does the patient a favor with his/her therapeutic measures and thus a good-doer cannot be held accountable.
4. Contrary to the views of those who believe that if taking an acquittal before treatment leads to the abortion of liability, actually, the waiver would have occurred before being fixed and what should not be accepted is an example of abortion and accordingly, they do not know acquittal prior to treatment to be effective on the abortion of a liability, we think that getting an acquittal before treatment is influential on its abortion based on the provisions of a tradition quoted from Imam Sadeq (AS). In addition, it is possible to document the necessity to practice medicine for disregarding the non-waiver principle before fixing it.
5. In cases of emergency when it is possible to take permission, the doctor is not liable; otherwise, it will bring about the doctors' refusal of treatment, patients' deaths, hardship, disruption of public order, and loss on people search. Obviously, the physician will not be liable based on the conditions noted above.
6. Doctor's negligence is sometimes by mistake and sometimes deliberately. Where it is by mistake and a disservice occurs to the patient, the civic responsibility and liability will be on the physician and if it is deliberately, the criminal responsibility will be on the doctor and having expertise and permission (according to the viewpoints of the triple religions of Hanafiyya, Malikiyya, and Shafi'iyya and some Shiite jurists) and acquittal (according to the viewpoints of some other Shiite jurists and the author's opinion) will not quash the responsibility since such permission and acquittal do not mean to waste but to treat.

However, what is certain is that if we assume blood money as a punishment, physician's responsibility in Shiite jurisprudence can be equated to criminal absolute liability and even if the doctor has had sufficient knowledge, taken his/her ultimate skills and efforts for the treatment, permitted the patient for treatment, and not committed any fault, he/she will be liable in the event of death or any physical damage to the patient due to being documented by his action, sanctity of Muslim blood loss, and traditionally narrated consensus about liability of the intentional-like act and if Iranian legislator has deemed obtainment of an acquittal as a proof of a physician's lack of punishment, it is an expedience passed regardless of patients' rights while the minimal compensation could be predicted through insurance and the doctor should be held accountable to the patient based on the absolute responsibility. The issue that a doctor's act may lead to a loss or damage because of carelessness, negligence, and non-compliance with governmental regulations makes us deem the doctor to be responsible. However, with the adoption of Article 495 of the Penal Code of 2013, this problem has been somewhat solved and doctor's absolute criminal responsibility of a pressing type has been considered in this regard.

By analyzing the proofs of those Shiite jurists who have commented on the liability for a non-culprit doctor and comparing them with the reasons made by jurists on the lack of liability for non-culprit physician, it is inferred that the famous opinion are based on more credible reasons and are assumed to be more consistent with the rules. However, it should be acknowledged that the acceptance of the famous theory will lead to unfortunate consequences from social and moral perspectives. Note that in the medical-legal elimination, doctor's obligation is of a commitment-to-means type and the doctor has committed to ensuring the result of improvement in the patient's treatment, but it is upon his/her shoulder to make the necessary efforts in the treatment of the patient to the conventional and canonical extent.

The kind of certainty the doctors give about the effectiveness of treatment or success on the surgery is only based on suspicion and probability and is more psychologically than legally promising, while the courts hardly interpret such promises as a guarantee since a cure depends on factors and elements that will not always follow a doctor or surgeon's will like heredity, patient's body strength, degree of the disease progression, and limitations and shortcomings of medical sciences. Yet, the legislator has converted the nature of the doctor's commitment from trying to take care to refraining the (resultant) loss so that the physician is liable for the losses that arise directly or by others.

It is for granted that socially, holding a doctor as accountable about the losses caused by the actions he/she has done in the context of his/her time takes away his/her power of initiative and flourishing of talent and stops medical knowledge at the border of common and harmless treatments. Also, from a moral dimension, how can goodness be punished by badness and take recompense from someone who has made all his/her efforts and medical knowledge in the treatment of patients, while this means opposite to the following logical and practical precept: "Is the penalty of beneficence other than beneficence?"

Although the key to solving this problem and dilemma and easing this hardship is the presumption of giving an acquittal by the patient or his/her legal guardian to the physician, acceptance of the theory of liability for a non-culprit doctor is contrary to justice and of social requirements and ethical rules per se. Thus, if a doctor, for example, says, "This particular drug is useful for this disease or if I were that patient's doctor, I would take such an action." and the patient or his/her family acts upon the physician's comments and as a result, a loss or limb or organ impairment is caused, no accountability will be held on the doctor because here, the supervisor serves to be stronger than the cause.

It seems that obtaining a written informed consent and acquittal from patients before sending them to the operating room is a good way to prevent the patients' complaints program in the judicial and disciplinary centers and the respected doctors can take actions to use the related forms provided.

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