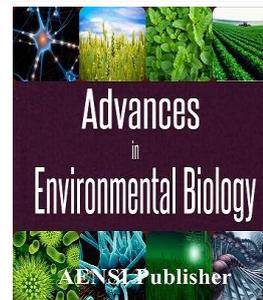




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## The Patient's Rights form the Jurisprudence and Islamic Law Point of View

<sup>1</sup>Alireza Dehghani, <sup>2</sup>Ebrahim Sadighi and <sup>3</sup>Jamal Rezaie Hosein Abadi

<sup>1</sup>M.A.Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran

<sup>2</sup>PH.D .Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran

<sup>3</sup>PH.D. Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran

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### ABSTRACT

Informing the patients of their own rights presents a picture of the existing realities and short comings in order to take a major step for improving the patient's quality level that is anticipated in the patient's rights charter. It is also important to inform them that they have right to enjoy the correct diagnosis of their illness and receive optimal care with full respect. Most of the countries have formulated the principles of patient's rights in a series called "patient rights charter" in order to explain the basic rights of the patients who are accepted in medical centers as predicted and emphasized by the terms and conditions. The patient's rights charter has common principles in different countries and these principles determine the rights of the patients. According to the Holy Quran and the sayings and traditions of the infallibles (peace be upon them), in Islam self dignity and respect for the human rights is the principle. The respect for the patient's rights also highly recommended, including the legal relationship between the patient and the doctor, the rights of the psychopath, secrecy and truthfulness of the doctor and soon. Also according to the penal code Act 2014 if the doctor causes the casualty or injury in his treatments, he is the blood- money bondsman unless his action conforms to medical regulations and technical standards. Or if he gets acquaintance before treatment and doesn't have a fault and if the acquittal of the patient is not valid because of his immaturity or madness or obtaining the acquaintance isn't possible because of the anesthesia and like this, the quittance is obtained from his parent. According to this point that the laws of Iran are based on Islam and given the special importance that Islam shows toward the others rights and legal rules based on not harming the individuals, and with regard to the history of medicine in Iran, it is expected that in our country more than other countries of the world the patient's rights be respected.

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### INTRODUCTION

The patient's vital needs, like all human. He for patient can't meet their needs, so needs to help others. If patients can be aware of their needs better recognition and select appropriate ways to help these people. Recognizing these needs provide a useful framework for care will be effective and efficient so must the treatment group have sufficient knowledge about the needs and rights of patients and how to meet them. And recognize the good opportunities that are causing these needs. Services related to patients' needs should be provided to bring them satisfaction.

Rights of an individual based on his needs and rights of a patient's medical team consist of tasks that are in front of him. Previously represent the patient deprived was of autonomy and decision making power and physician and other health care team members should decide for him and he confidently accepted this decision so patient's rights was same that determined by doctor. Whereas new definition of patient rights, the fundamental change is in public perception of the patient, health care and the scope of authority and decision-making by patients [8].

Health care systems in most countries has developed a charter of patient rights, have the administrative levels and support according to the hospital officials have an obligation to the patient's admission, the charter would give him to patient rights quite familiar .

**Corresponding Author:** Ebrahim Sadighi, Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Karaj, Iran

Current medical practices without discrimination of age, sex, or not having the financial strength of body, soul, and health care as well as done.

In the field of health care, more important when the patient's dignity understand her vulnerability, her exposure and effects incompatibility caused by the treatment and even the offenses and the strengths and weaknesses of the health care system that puts the supplier.

Clarify the patient's awareness of their rights, picture of the realities and shortcomings of the current offers to be a major step in improving the quality of patients' perceptions it is anticipated that the patient bill of rights. They also should be aware that right to correct diagnosis of his illness and receive appropriate and high quality health care with equal respect. (Mosadeghrad, A. Asna ashari. P. Inform physicians and patients of patients' rights and compliance with its at the Shahid Beheshti hospital, P12).

According to the law of Islam is based on and given the importance that Islam attaches to respect the rights of others and also the history of medicine in Iran, expected In our country all over the world who to be respect the rights of patients. And will be the people, especially in times of affliction and illness care and special attention. In case of violation of their rights and the pursuit of justice is simply not possible because the patient or family with the burden of disease, often do not have the time or ability to pursue his rights.

Although the formulation and communication of patient rights is worthwhile to perform But we can hope that the necessary measures to comply with its provisions relevant to culture, comprehensive attention to the rights of all stakeholders, Identify barriers, strategies for implementation of the Charter and also considering the rights of patients as one of the indexes The centers provide health services. Looks according to different requirements and capabilities treatment centers in the country for full compliance with the provisions of law under the Charter bill, Implementation stage of this bill can be considered.

#### *Concepts:*

Principles of patient rights it is pretty obvious that patients have rights, right to care both are components. For where a man needs to be treated on the right when care is not considered right or true. In certain circumstances, there is no significant and not a cause for charity and not a response to mistakes. Based on the principle of informed consent, patient rights and confidentiality is considered public information.

Today, patients seeking information about treatment and compelling solutions that terrible and increased sensitivity toward their rights Therefore prisms on the rights of patients is designed by expert groups. (Aliakbari, F & Tavakol. Kh Patient Rights and Responsibilities, P1)[8].

#### *Patient Rights:*

The legislation concerning the rights of patients are needed that to distinguish general rights and rights to certain conditions. In these circumstances (For example: Compulsory admission to a psychiatric hospital and those related to communicable diseases) there is a need to enact implementing legislation. It is because of government interference in the freedom and autonomy of individuals legitimizes another reason to legislate against the interests of third parties in certain cases to maintain the patient's.

Legislation on the rights of patients to general there are two ways: The first, Provides horizontal communication between the patient and the health officer is the foundation, as a result of patient rights legislation in the sphere of civil law.

The second way focuses on the role of government as protector of the citizen

And the result is based on the vertical the better solution is the implementation of legislation. Solution that allows civil cases directly to the health authorities to take legal action; but the execution is not.

The increased susceptibility of patients to pay their impact has been in the medical field disease caused by injury, physical and psychological damage to a medical center, a formal and legal rights.

In developed countries, many legal texts have been developed in each of the areas of patient rights and have been implemented. Hospital of America

The legal rights of patients developed and it has raised expectations that help health care more effective.

Patient rights laws and regulations, Respect for patients' rights and the legal framework for the multiple records on health and medical care.

#### *Responsibility:*

The origin of the word responsibility is fake of charge, warranty, guaranty, commitment and hold accountable, and in law terms responsibility, legal obligation to eliminate harm to another person has arrived and in this sense the term is used to guarantee the.

It is an old principle known successful necessary medical care, continuous cooperation between patients and doctors. Doctor and patient have a partnership commitment and so closely linked that requires both play an active role in the healing process. This partnership means that both partners have the same responsibilities or powers are equal. While the doctor is with a patient's ability to provide health care services, The patient is free

to communicate responsible decisions about diagnostic and therapeutic recommendations and contribute to the agreed treatment plan to follow.

*Medical Malpractice:*

Doctors are legally responsible for your errors. In the event of loss or damage for which the patient is liable to compensate this means that doctors are obliged to comply with the standard medical treatment of ill treatment but results are not guaranteed, because of numerous factors affecting the full effect and the desired result in treatment failure is not necessarily meant to be, Or failure to diagnose a disease. Despite providing a good description and examination and tests required failure is not considered.

The failure occurrence of the following conditions exists:

1. The doctor is responsible for patient treatment.
2. The doctor is in breach of his duty (omission to act or do not)
3. Breach of the duty of the physician to cause physical harm or mental disease.

It is the responsibility of doctors in these three states:

1. Ethical doctor in malpractice incidence of violation of human morality and religious views is responsible before God.
2. It is the responsibility of civil and criminal law aspects.
3. Liability Security If there is a violation of medical law

*Patient Satisfaction:*

Obtaining consent from a patient with complete independence means that the patient has given consent for any medical procedure and all required information must be provided to this is an event not to cross and the entire length of the patient -physician relationship exists.

Although the word is used to treat the consent of acceptance but it can be used in situations where the patient 's refusal of treatment Patients have the right to reject treatment and should be given about the necessary information.

*Satisfaction is composed of three components that include:*

1. The information
2. Capacity decisions
3. The decision to voluntarily

*Doctor's disciplinary violations:*

Essentially, the violated law violations and violations of the members of a class, profession or occupation of the regulatory regime to preserve the health of the people it is intended to be a class or profession guild lawyers and experts like Justice official . Since, the medical profession is one of the sacred words, the person who chooses a career based not only has the necessary expertise; it is committed to compliance with the medical aspects of the onslaught.

Medical abuse by prosecutors and police staff Primary barrier is not handled by the courts. Magistrate's courts of justice and police staff, each of which can be subject to a separate handle For example, if medical abortion is the deliberate prosecuted by judicial authorities be convicted and punished according to the law as it is currently abuse the contraindications for consideration by the court of first instance and the staff there . (Ahmadi, Kamran, Medical Ethics,p1)[4].

*Evaluation of patients' rights in the world:*

In general, a review of the patient's bill of rights in the world can be seen that all these countries have in common the following principles:

1. The right to appropriate and high quality care and treatment without discrimination
2. The right to health - the health of their disease status
3. The right to confidentiality of health information - Confidentiality of treatment and health care providers
4. The right to consent to any medical intervention – health
5. The right of independent judgment and decision-making about health services – therapeutic
6. The right to respect for private hospital environment
7. The right to peace
8. The right to protest and complain
9. Compensation (Mesdagh Rad, Ali Mohammad, Asnaashri parto, the knowledge of the doctors and patients about the knowledge of the doctors and patients about the patient rights and its implementation in shahidbehedhti hospital of Esfehan,p19).

*Patient Rights in Iran:*

One of the defining aspects of patient rights standards in clinical services is to apply the rule. In 1381; the first patient's bill of rights was written and was notified by the Ministry of Health, treatment and Medical Education. Given the need for a comprehensive text editing patient rights, patient's bill of rights with a new and comprehensive health services were developed to explain the law makers and the ethical treatment arena. At the end draft Charter of the Policy Council of the Ministry of Health and Medical Education plan was adopted. The final text of the Charter of Patient Rights in November 2010 the Minister of Health and Medical Education subsidiary was notified centers.

The five pillars of the Charter, including the right to receive appropriate services, get the right information to properly and adequately, the patient's right to choose and decide freely on health services, right to respect for patient privacy and respect the privacy and the right of access to effective complaints system is that way, each at 14, 4, 7, 9, paragraph 3 NICU. (Abbasi, Mahmood, Medical Responsibility, p78)[5].

Individual members of society are committed to protecting and respecting human dignity. This is particularly important in terms of disease.

Causes of non-compliance with the Patient Bill of Rights

Of patients:

- Lack of patient awareness of their rights
- Lack of familiarity with the subject titled Patient Bill of Rights
- Having the authority to ask people to register their protest.

Medically:

- Not compatible with the provisions of the Charter in some health facilities
- Lower rates of hospital personnel
- Hospital staff fatigue and exhaustion due to overwork and inadequate hospital facilities
- Low standard public hospitals that patient dissatisfaction is
- The impossibility of implementing some of the provisions of the rights, like the right to choose the doctor's patients.
- Lack of funding for things like respect and implementation of the Patient Bill of Rights (Shojapoorian Siavash, Contractual responsibility of the doctor against the patient,p35)[7].

*The responsibility of the ignorant doctor:*

The proficiency and expertise is the first and fundamental condition and part of the medical profession. If the in incumbency of the medical jobs and veterinary and other related branches of it is without the necessary knowledge and caused the death or injury of an organ or power of a human, that person has responsibility for compensation the loser. Senior Shiite jurists like Sunni jurists believe that having knowledge in medicine and the expertise in it is the condition of its incumbency and occupation and if a person introduces himself a doctor, but he knows nothing about the medicine, he will have responsibility for doing this job because the doctor concerns about the life and money and honor of the people and an ignorant doctor beside not reducing the pain and suffering of the patient, adds on it and with his ignorance will endanger the lives of innocent people (Ali Mohammadzadeh, *ibid*, P.130)[10].

Imam Ali (peace be upon him) narrated in a tradition that: Imam is required to imprison the unfaithful scholars and ignorant doctors (Alhor Ameli, Mohammadi ibn Alhassan, *Tafsil Vasael Al Shiite ela Tahsil Maseal Alsharia*, P. 248),[14] because the unfaithful scholars corrupt the religion of the people and ignorant doctors corrupt the life of the people.

The prophet Mohammad narrated in a tradition: If a person practices the medicine but doesn't have knowledge about it he is responsible. Moshet Sharif also strongly forbids the act on suspicion especially in important matters such as life and health of the human: "do not follow the thing what you are ignorant about it. (Isra sura, verse 36), "in fact superstitious thoughts and fictions, will never sacrifice anyone's right." (Yunes sura, verse 36).

According to the consensus of Shiite jurists, if a proficient doctor makes a mistake by negligence and carelessness and damages the patient, so he is responsible although the patient or his parent allowed the treatment (Sheikh Najafi, volume 43, P. 44; Moghadas Ardebili, P. 4; Almoosa Alkhomeini, Volume 2, P. 561, Problem 5; Khoiyi, Volume 42, P. 221, Problem 224; Altabatabayi, Volume 2, P. 596).[19] And since the responsibility of the careless and heedless doctor is evident and certain in religious jurisprudence, the jurists have discussed less about this issue, because all rules and evidences of responsibility prove applicable.

No matter how skilled is the doctor in his science and practice, according to medicine custom he has duty to apply all scientific and common standards to improve the patient from the moment of the entrance until the completion of the diagnostic otherwise if the patient suffers from a damage, the doctor is responsible, although the patient was treated with his permission or his parent permission and before the treatment the doctor has obtained the a quittance, Because the permission and a quittance is not a reason for the carelessness and

imprudence of the doctor. Therefore, this question that whether the doctor is responsible or not is about a proficient and skilled doctor who applies whole his power according to medical principles and practices, but his efforts haven't been fruitful and the patient has died or suffered from a physical disability, otherwise the ignorant or careless doctor is definitely responsible (Mohammadi, Abolhassan, Principles of Islamic laws deduction or jurisprudence principles, P.339).[13] Because there is on observable uncertainty and disagreement between Shiite and Sunni about the responsibility of the ignorant doctor, we avoid the more details about it.

*The responsibility of the skilled doctor:*

Undoubtedly the human life is full of suffering and pain and illness and until the time that the earthling human lives in this world should struggle with many pains and sufferings and remove the losses from himself; Because hurting and killing oneself is sin. On the other hand, he should try to remove the problems and pains and think about them: Because he has been commanded to treat himself at the time of sickness and refer to expert and eliminate the pain (Ali Mohammad Zade, Kalil, medicine in the Ijtihad mirrore, P. 203)[11].

If a specialist doctor applies all his efforts in treatment of the heals him lay good faith, yet the patient dies instead of recovery or the treatment leads to defects, is the specialist doctor who applied whole his power for the treatment of the patient responsible?

The Senior Shiite jurists were divided into two groups in answering to this question: one group said that the specialist doctor is responsible and sparked the criticism of the others and the critics have tried to answer the criticism of mutual view and critiqued their evidences and reduced the severity of the commandment.

*Legal rules:*

*Loss rule:*

Everyone who causes the loss of money or life or the health of someone else is responsible. It is clear that in this rule intention or lack of intention, wisdom or imprudence, maturity and immaturity and knowledge and ignorance don't have any effect, this means that in all cases the careless person is responsible, so the work of the doctor who caused the loss of life or money or physical power or defect leads to his responsibility and because the loss isn't intentional, so it is quasi- intentional. (Makarem Shirazi, Esteftaat, Holiness site)[26].

Experts on this issue that whether the loss rule can be a reason for non culprit doctor's responsibility or not have disagreements: Most of the jurists believe that loss rule applies to non culprit doctor's interventions and causes his responsibility. However, this group believes that for the reason that the doctor in the loss of the life or an organ of the patient has action intention but doesn't has result intention, the crime committed by the doctor is quasi- intentional and the doctor have to pay the blood- money. (Alfazel Almeghadad Ibn Abdollah Alsivary, Altanghih Alrae Almokhtasar Alshraii, P.470&471)[16].

Some jurists and lawyers opposed the pervious comment and considered incorrect the relying on the rule or loss in order to prove the responsibility of the non culprit doctor. This group have argued for proofing their opinion, although the loss of life or the organ of the patient is attributed to the action of the doctor and according to jurisprudence rule, every person is responsible for his loos, but the doctor has good faith in his action and in his treatments is good and beneficent with the patient and we cannot consider responsible the beneficent (Ayatollah Ahirazi, Alfegh, Volume 9, P.77. cited by Sivash Shoja Pooorian, Civil liability arising from job mistake of the doctor, P.72)[8].

It must be said in contrast to this view: First, in terms of the majority of jurists the legal rule refers to the responsibility of the destructor and includes the beneficent and non- beneficent. And secondly, the patient's consent is the permission in treatment not in loss, and this practice may be permissible religiously but makes responsible the operator, for example despite the fact the parents are allowed to punish the children, but if the punishment causes the death or physical harm to the children they are responsible. Third, even if we know the consent realm of the patient in loss, the doctor is responsible for the patient's fatality, because based on the principles in physical damages the consent of the injured person does not have any effect (Amoozgar, Morteza, legal and police prosecution of the guilty doctor, P.66).

*The case rule:*

This rule complies with the work of the doctor in some cases; for example, if a doctor has prescribed injections to the patient and the nurse acts as directed by the doctor and gave an injection to the patient and he dies or his organ defects, for example becomes crippled or blind, so because the doctor is more powerful than the nurse, he is responsible not the nurse who should act based on the doctor's order (Safayi, Seyed Hossein, Civil liability of the doctor by looking to new legislation, P.12)[24].

*The pride rule:*

In some the doctor is responsible based on the pride rule. Where the doctor prescribes a drug to a patient and the patient uses the drug according to the trust on the doctor's opinion and with the hope that his disease is treated whit the drug, but the usage of the drug causes his death or defect or other damage, in this case the

doctor is the plunderer and the patient is the plundered, so according to pride rule and the tradition: the patient or his relatives can refer to the doctor at the time of damage.

*Noharm rule:*

Under this rule, any harm from any person to third person should be compensated. On the other hand, the blood of the Muslim should not be wasted and the doctor should have knowledge; because his lack of responsibility causes the loss of the Muslim's blood and this is sin in the religious law. (Sheikh Najafi Javaher Alkalam, P.45)[22].

Two issues should be noted about the application of the no harm rule in medical mistake:

1- The words harm and destructor are referred in traditions. So the harm and destructor includes every damage including physical, financial and spiritual logically and mystically.

2- The term health that exists in some prophetic traditions about no harm and no destructor shows the generality and universality of no harm rule and its executive power in all cases, both civil and criminal.

So the executive realm of no harm rule is not restricted to financials compensation and civil responsibility but the governance of this principle will monitor the criminal liability and all rules and regulations. (Katoozian, Naser, Preliminary period of civil rights, P.62).

Some jurists have consensus claim on this issue or interpreted to "no foul" (like Shikh Najafi, Mohaghegh Helli), even shahid Sani in Sharhe Lemae considered the consensus the main reason. Helli researcher in Alnahaye follows this way. (Shahid Sani, Zeindedin Ibn Ali Aljabayi Alameli, Alrozeye Albahiye fi Sharh Alemae Aldameshghiye, Correction and the margin of the Seyed Mohammad Kalantar).

*Acquaintance Principle:*

This principle is where that there is no Ijthihad reason on employment obligation, and if there is an evidence about this case and the evidence about the responsibility includes the specialized doctor, so there is no time for the implementation of the acquaintance principle. The permission to treatment is not the permission to loss; on the other hand, the patient allows to his also treatment not his loss. The common law also doesn't attach the treatment to loss and the permission in itself is not abortive of the responsibility; Because the nature of the permission is the consent in the occupation: Whether it is based on responsibility or no responsibility or investigation in cases, and we can find cases which the responsibility has realized in it despite the permission: like Maghbooz Belsoom. (Alhor Alalem, Mohammad Ibn Alhassan, Tafsil vaseal Alshitte ela Tahsil Masael Alsharia, volume 18, 19, P.357).

*The patient's permission and religious law:*

The renowned jurists believe that there isn't any difference between the legality of an act and binding the responsibility, so the doctor will be responsible for his behavior; Because at the time of treatment he is intended to act but he doesn't want the death or the impairment of the patient and with regard to the result is not purposeful, so he should pay the blood- money and has committed the quasi- intentional murder (Esmail Abadi, Ali Reza, Comparative looking to the doctor's responsibility in Islamic religions, jurisprudence magazine, new exploration is Islamic jurisprudence, P.152).

In contrast to popular opinion, some jurists such as Ibn Idris from the old companions, Ayatollah Seyed Mohammad Hossien Esfehani (Esfehani, the book Alajarah, P.250, cited by Moosavi Bojnoordi, P.43) and Ayatollah Seyed Mohammad Shirazi from the contemporaries believe that if a doctor after passing the training periods and obtaining the professional certificate with the permission of the official authorities practices the medicine and treats his patients with technical regulations and ethical principles, but his patient be injured because of the treatments, the doctor is not responsible for the damage. (Sharaf Idin, Ahamd, the doctor's responsibility "Moshkelat Almasoolia fel mostashfiat Alame" P.64). Because a doubt occurs about the responsibility or non responsibility of a skilled doctor who considers the scientific principles in the treatment of the patient.

In this case, the acquittance principle rules the non responsibility. The lower allows the treatment and the legal and legitimate work does not bring the responsibility.

Indeed, the responsibility does not assemble with the license and legal allowance. If the doctor treats the patient with the permission of him or his relatives and according to scientific provisions and in this way the patient dies or encounters with loss, the doctor isn't liable; And if the doctor practices the treatment with the permission of the patient and related provisions and with regard to this rule that "the permission in thing requires the permission of its parts" and considering that in the common law permission of the patient means that if he encounters a damage the doctor isn't responsible and the common law knows only this thing about the permission so in these situations the patient and veterinarian is not popular.

On the other hand, since the doctor takes the permission of the patient or his parent, he should not be responsible in case of the death of the patient or his injury. The other case is the permission of the religion and wisdom. It means that a work that is permissible rationally or religiously should not have responsibility; So,

since the patient's treatment is permissible religiously, if a loss or defect occurs despite the provisions and scientific principles, the doctor should not be responsible. The other reason is cited from the narrations of infallibles (peace be upon them) that say no responsibility of the doctor. For example Ismail Ibn Hassan who was a doctor said: I told to Imam Sadeq (peace be upon him) that I am an Arab man and I am familiar with the medicine and my practice is Arabic and I don't get money for the examination. Imam Said: there is no problem. Isaid: we split the wound and burn it. Imam said: it isn't important. I said: we prescribe toxic drugs for the patients. Imam said: no problem. I said: the patient may die. Imam said: even if he dies.

Other narration: Yunes Ibn Yagoob says, I told to Imam Sadegh: A man (doctor) prescribes a drug or cuts a vessel and maybe this drug or cutting the vessel treats the patient or maybe he dies. Imam said: He can prescribe the drug or cuts the vessel. (Sharaf Aldin, Ahmad, the doctor's responsibility "Moshkelat Almasoolia fel mostashfiat Alame", p.69).

A) If the supervisor doctor without permission practices the treatment, the senior jurists make him responsible with regard to loss rule.

B) If the supervisor doctor practices the treatment with the permission of the patient without getting his acquittance, the jurists make him responsible with regard to loss rule. Alame Helli assumes the non responsibility rule and say that the doctor has permission. Some of the jurists criticized him and said that this principle is excreted by the loss rule.

#### *Obtaining the consent and the acquittance of the doctor:*

Many lawyers and doctors believe that with written consent from the patients before treatment or surgery are free from any liability, but this is not the case necessarily, because the medical interventions relate to the human body. Iran's legislator has considered special requirements for obtaining and accuracy of the consent and acquittance that include the compliance with the general conditions of the contracts like intent, willingness, legal capacity, legitimacy and legality. In addition, the doctor should not have fault or carelessness in the treatments and must treat the patient in his permission range in order to be free from criminal and policy responsibility in the case of injure. In some cases the consent of the spouse also is necessary. An issue that exists in Iran's law, but isn't observable in the law of other countries clearly, is the obtain of the acquittance that releases the doctor of civil responsibility in the case of compliance with the other terms and there is also some analysis about it (Ali Akbari, Fetemeh; Shahinfard Najme, considering the side effects of the treatment and the doctor's responsibility, p.13).

#### *Acquittal of the doctor in view of the great jurists:*

In response to this question that whether a careful, proficient and non culprit doctor by getting the acquittance from the patient or his parent is responsible for the loss or not, the great jurists have presented some comments that are based on the Islamic penal code.

Ibn Edris, the author of the book *Alsaraer*, is one of the luminaires of the tradition and Shiite jurisprudence and is a distinguished scholar who personally understood the presence of Imam Hassan Asghari. And seghat Alestam Kelini the author of the most reliable tradition book of Shitte "Kafi" was his student and in most of the narrations has cited Ibn Edress directly in Kafi. This great narrator of the tradition with regard to a tradition with regard to a tradition called Motabere Sokoni from Imam Jafar Sadegh and Imam Ali (peace be upon them) that "if a person practices the medicine or veterinary, he should get acquittance from the patient or the owner of the animal, otherwise he is responsible", doesn't know the skilled doctor responsible if he gets the acquittacne from the patient. Some of the old scholars like Moghadas Ardebili and some of the latest scholars like Ayatollah Shirazi have this opinion.

In contrast, Sheikh Tusi the founder of Najaf seminary and the author of two books from four books of Shiite by the name of "Altahzib" and "Alestebsar", and Shahid Sani the author of "Sharhe Lemae", Mohagegh Helli, the author of the "Alshraye" and many other great jurists of the duodenum religious believe that Ijtihad and the proficiency of the doctor and getting permission from the patient or his parent for his treatment doesn't have any effect on the responsibility of the doctor and the careful and proficient but non culprit doctor, even if has the acquittance from the patient is responsible for the losses that has brought to the patient.

Shahid Sani discusses about the responsibility of the doctor like this: If the doctor causes the death or defect of the patient, he is responsible because the loss is related to action and the blood of a Muslim should not be wasted and also the doctor had intention in the action and there was a fault in the result so the action is quasi-intentional, even if he was careful and are realized by the mere mistake of the responsibility and here the responsibility is realized as the first method.

Mohagegh Helli: If the doctor is proficient and the patient has allowed him for the treatment but the treatment caused death, the doctor is not responsible; Because the responsibility removes by the permission and because the action is permissible and the doctor is responsible for the death, this saying is doubtful.

Imam Khomeini that his legal opinions in *Tahrir Alvsile* and more than any text and vote have influences on the drafters of the Islamic penal code believed that the culprit doctor is responsible for the damage to the

patient, even if he has gotten the acquittance from the patient, and if the careful and proficient doctor gets the acquittance from the patient of his parent and doesn't be careless in his medicine, he isn't responsible. (Imam Khomeini, Rooh Alah, Tahrir Alvasiel, Institute for publication of Imam Khomeini's works, P.233) and he said in Tozih Almasael (problems 4, 2206):

Problem 4: If the doctor has failed in the practice or with proficiency and precision without the permission of the child's parent treated him, so he is responsible (If the patient is child and if he is adult without his permission), but if this doctor that has proficiency and precision injures the patient in the treatment is not responsible but he has financial responsibility and this case is rue about the veterinarian (the doctor's animal) and all of these things are when the treatment has been done by the doctor.

Problem 6: Apparently if the patient acquitted the doctor before the treatment and the owner of the animal acquitted the veterinarian and the parent of the child acquitted the doctor before circumcision, he is not responsible, (and apparently the patient should be adult and the treatment doesn't cause the death of the patient, and the parent of the child or the owner of the animal should be adult if the treatment causes the death of the child and the animal), but it is possible that the patient's acquittance for removing the doctor's responsibility in the case that he is adult be enough even if the treatment causes his murder; But, it's better to apologize the patient (his heir) or the owner of the animal.

Problem 2206: If the doctor says to the patient or his parent that the isn't responsible in the case of loss and is careful in his work but the patient dies or encounters an injury the doctor isn't responsible.

Imam Khomeini believes about the responsibility of the doctor: If he makes a fault scientifically and practically, he is responsible for the loss even if he has acquittance, and if the doctor takes an action without the permission of the patient's parent or the adult patient, he is responsible although he is an outstanding scholar and if the patient or his parent permits the doctor and the patient dies the doctor isn't responsible but he is responsible for the financial loss.

The acquittance should be taken before the treatment of the patient and if the patient is mature and wise and the treatment doesn't cause to death it is true and maybe the aqcittance of the mature and wise patient be enough even if it doesn't result in the murder (Imam Khomeini, Rooh Alah, Tahrir Alvasile, P.235).

#### *Acquittance in the law:*

Islamic penal code requires in the blood- money section:

In the Act 2014, articles 495 to 497 the following issues have been considered:

Article 495: If the doctor causes the loss or injury in his treatment, he is responsible for the compensation unless his action is based on the medical regulations and technical standards or he taken an acquittance before the treatment and doesn't have any fault, and if the obtaing of the acquittacne from the patient is not valid because of his immaturity or madness or obtaing the acquittance is not possible because of his anesthesia, the acquittacne will be from the patient's parent.

Note 1: In such cases, if the patient or the nurse knows that the order is wrong and will cause the injury and loss but he does the action, the doctor isn't responsible and the patient or the nurse is responsible.

Note 2: In amputation of injuries caused by the medical treatments this law in conformed according to article 495.

Article 497: In the essential cases that the getting the acquittance is not possible and the doctor takes the steps for saving the patient according to the regulations, no one is responsible for the loss or injuries.

#### *Conclusions:*

Informing the patients of their own rights presents a picture of the existing realities and short comings in order to take a major step for improving the patients quality level is anticipated in the patient's rights charter. It is also important to inform them that they have right to enjoy the correct diagnosis of their illness and receive optimal care with full respect.

Most of the countries have formulated the principles of patients rights in a series called "patient right charter" in order to explain the basic rights of the patients who are accepted in medical centers as predicted and emphasized by the terms and conditions. The patient's rights charter has common principles in different countries and these principles determine the rights of the patients.

Medical responsibility is the accountability of the doctor for the damage which occurs for the patient and these damages are results of the medical actions. The doctor is responsible for the damages to the patient when there is a causality between his mistake and the harmful act.

The causality between the mistake and the loss is by supervision or cause. The order for the responsibility of the doctor is different according to some scholars. Alame Khansari believes that if the doctor gives a drug to a patient and causes his death or disability accidentally, because the doctor is not the supervisor of the loss the order of his responsibility is difficult. But if the doctor is the supervisor and takes the drug to the patient or cut the patient's vessel or gives an injection or practices the surgery, the loss is attributed to the doctor's action; with regard to responsibility rule and some narrations like the narration of Ibrahim Ibn Hashim from Nofeli

from Sokooni from Imam Ali (peace be upon him) that shows the responsibility of the person who does circumcision, the responsibility of the doctor is ordered. Professor Seyed Mohammad Sadegh Hosseini Rohani also says that if the doctor is supervisor and the patient dies, the doctor isn't responsible.

With respect to obtaining the patient's permission, the consent is necessary until the time that doesn't cause constraint and fault. In the emergency times or when the legal agent isn't available, the doctor should take necessary cares. So, if a patient isn't able to give consent and there is enough time, the doctor should take the consent of any other permissible person. If postponing of the practice causes the damage and injury to the patient, the doctor should take action without, the permission.

According to this point that laws of Iran are based on Islam and given the special importance that Islam shows toward the others rights and not harming the other people to the history of medicine in Iran, it is expected that in our country more than other countries of the world the patient's rights be respected and pays attention to people especially in the affliction and illness and if the rights of the people lose the follow up and litigation become possible because most of the times the patient or his family doesn't have time and ability to follow up his rights because of the problems causing from the illness.

Although the formulation and communication of the patient rights is a valuable action for fulfilling the patient's rights, but we can hope to consider its provisions when the necessary arrangements for suitable popularizing, comprehensive attention to the rights of all beneficiaries, identifying the barriers, strategies for implementing the charter and respecting to the rights of the patients become available as the indicators for valuation of the health care services. It seems that according to the different requirements and capabilities of the medical centers in the country for respecting the provisions of the patient's rights according to approved charter, the stage implementation of the charter can be considered.

We selected this issue for the investigation due to lack of familiarity of many patients with their rights and the circumstances of litigation in case of the loss of the rights and the increase of these problems because of the growth of the population and outbreaks of different illnesses and because of lack of comprehensive research in this case. This research is a fundamental research and it has been done by the library method. According to this point that the laws of Iran are based on Islam and given the special importance that Islam shoes toward the others rights and not harming the other people and with regard to the history of medicine in Iran, it is expected that in our country more than other countries of the world the patient's rights be respected and pays attention to people especially in the affliction and illness and if the rights of the people lose the follow up and litigation become because most of the times the patient or his family doesn't have time and ability to follow up his rights because of the problems causing from the illness.

By analyzing the evidences of those Imami jurisprudents who commented about the responsibility of the non culprit doctor and by comparing it with the evidences that have been presented by the distinguished jurisprudents about the non responsibility of the non culprit doctor, we interpreted that the popular opinion according to evidences is more valid and consistent with the rules. However, it must be noted that the acceptance of the popular theory from the social and moral point of view will have incorrect consequences, It means that in the medical- judicial custom the commitment of the doctor is the commitment to the means and the doctor is not committed to achieve the improvement in the treatment of the patient, but he should try to treat the patient in the conventional ranges.

The assurance that the doctors give about the effectiveness of the treatment of the success of the surgery is based on suspicion and probability and has psychological implications rather than law implications. Because the recovery of the patient is dependent on factors and elements that always don't follow the will of the doctor of the surgeon, such as inheritance, physical strength and power and the degree of disease progression, limitations and short comings the medicine. However the legislator has changed the nature of the doctor's commitment from care to avoidance of harm (result) in order that the doctor becomes responsible for the losses which are brought directly or by others.

It is that holding responsible the doctor about the loss that results from his action in the knowledge of his time takes his initiative and talent socially and stops the medicals science in the conventional and un harmful treatments border and from the moral dimension how can we punish the beneficence of a person and take compensation from a person who uses all his endeavors and medical knowledge in the treatment to wisdom.

However, there must be a panel of experts and professionals for respecting the patient's rights and prevention form the loss of his rights and they should judge about this issue and have jurisdiction to determine that whether the doctors acted carelessly in the incurred losses or not?

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