

Comparative Study of Iran's and Iraq's Laws in Respect to Criminal Responsibility of Physicians

دراسة مقارنة للقانون الإيراني والعراقي في مبادئ وشروط وأركان

المسؤولية الجنائية للأطباء

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Abstract

The fundamentals, conditions and pillars of doctors' responsibilities in Iran's and Iraq's law are the same. Doctors have criminal responsibility and the basis of criminal responsibility in Iran's and Iraq's law is the theory of fault. However, as regards criminal liability, they take advantage of the theory of fault and risk. If a medical practitioner has complied with his occupational laws or regulations or obtain consent from a patient, it would be no criminal liability. The terms of criminal liability in Iran's and Iraq's law are the perception, the authority and the fault of the conditions of the criminal liability of the doctor. Elements of criminal responsibility of the physicians in Iran and Iraq are the realization of the damage caused by the physician's error, the realization of the false doctor and the proof of the causal relationship. In Iran and Iraq, physicians are like other defendants and offenders and positive conditions are also mixed in both countries. That is, the doctor should defend his charge and he will not be held responsible for carrying out his medical practice. He must have committed a fault in order to bring him a criminal charge. In both countries of Iran and Iraq, negating the letter is an obstacle to the criminal responsibility of the doctor. Unless the doctor's guilt is



proven, the doctor will be responsible. This research can examine the criminal responsibility of doctors in Iran and Iraq in terms of its responsibilities, conditions and pillars.

Keywords: Criminal Law, physicians/Doctors, Responsibility, Comparison, Iran and Iraq.

Introduction

The doctor and the medical team, in addition to the positive roles in society, can be offenders. If they do not meet technical standards and they leave their job, they are held accountable. Their civil liability may be answered by liability insurance, but the criminal liability of their actions will always make the doctors more cautious about their actions.

The criminal liability of physicians in Iran is in accordance with Section G of Article 158 of the Islamic Penal Code of 2014 states: "Any legal or surgical procedure performed with the consent of the person or the parent or supervisors or their legal representatives, in compliance with technical and scientific standards and governmental regulations, in cases of Immediate the consent is not necessary." In the abstract of this article:" In the absence of negligence or fault of medical science and practice, no guarantee is given to him, although he has not been guilty of indulgence." In accordance with the meaning of this note and with care in the context of the matter, one can be sure that the doctor's guaranty has been expressly denied, and the ruling contained in the previous law in this case It has been adjusted and it can be said that the legislator has resigned from his previous procedure and accepted the promise of unconscionable jurisprudence based on no guarantees of the qualified physician is accepted. However, there are points in this article; the legislature states that if a physician causes physical loss or injury in the treatment that he is doing, he is the guarantor of the wergild, He has placed the responsibility of the physician and has in fact given absolute responsibility, which has become a fault with the exception that he has stated: unless his action is in accordance with medical and technical standards.

In Iraq's law, Article 411 of the Iraq's Penal Code No.111 of 1969, according to a judge opinion, stipulates that a physician will be sentenced to life imprisonment, in the committing intentional or unintentional crimes caused by negligence, recklessness and lack of respect for the system and regulation of medical,. Also, in materials 417 and 418, in the event of a violation of the law and the legal right, any medical treatment and other medical treatment without the consent of the patient or legal guardian is considered a crime.

The subject of this research is a comparative study of the criminal responsibility of Iranian and Iraqi doctors, which deals with the responsibility of physicians for failing to comply with Iran's and Iraq's law. The difference in this research with other works is that no one has done anything about the comparative review of the criminal responsibility of doctors in Iran's and Iraq's law.

First Speech: Principles of Criminal Responsibility of Physicians

According to the theory of fault, anyone who is guilty must accept responsibility for his or her work. In Iran and Iraq, the theory of fault has been accepted. According to the theory of fault, the basis of civil responsibility is fault and the supporters of this theory believe that if an error is committed, the person is responsible for the compensation and the only reason that can justify the civil liability of someone to compensation is the existence of the causal relationship between the fault.(Abbasi, 2009: 49-50) The medical example of this is that the physician which the patient has been surgically and because of undergoing surgery and risk ,so he is the culprit and responsible. The fault in Iran's law is the same. The faults in Iran's law are: recklessness, neglect, lack of skill and disregard for state institutions. In Iraq, there are also forms of error: negligence, neglect, carelessness, discretion, and non-observance of laws and regulations and statutory rules.

According to the risk-generating theory that is called without responsibility, risk or fault is not a component of responsibility, and that someone has suffered harm and injuries to others, it must

compensate for it, and it does not matter whether its behavior is in vain or error. What is important is to attribute the damage to the responsible and not the culprit. It considers any activity in the community affected by a hazardous environment that everyone benefits from. Therefore, the fault is not the basis on the elements of this responsibility.

It may be better to consider the mixed theory that implies a contribution to both theories in creating responsibility, but the basis of theories in the criminal responsibility of doctors is composed of these two theories of fault and risk creation. As a result, it should be said that one should not be held liable for damage sustained by his legitimate activities, since it is unreasonable to ignore the necessities of social life and not to take responsibility for any moral principle. Although this view appears correct because of the lack of ethics, the fact is that the responsible motive is like the perpetrator's motive. What motivates the perpetrator is as important as, for example, the physician has been motivated in practice. Obviously, the spirit of the law also requires that the responsible person be identified. He is a person who, through fault or without fault, must follow the correct path and must be accountable for the danger he has created. Whether he is guilty to this danger or not.

Second Speech: The Criminal Conditions of Physicians

Criminal liability occurs when a criminal act is committed to an entity legally capable of bearing the consequences of its offense and has two main characteristics, namely, perception, distinction and the freedom of choice and will, in addition to material elements and behavior and criminal act, which is the criminal material or material element. In addition to material element, there must also be a spiritual element that is the same as the intention of crime or error. After these two pillars are available, there must be a criminal offense that is a prerequisite for the fulfillment of criminal responsibility. Two other important issues are the responsibility of another act that is always in the medical profession. Another is the question of obtaining exculpation from a patient who, if it is for a doctor, will be responsible

for not obtaining a letter from the patient. In this speech, the terms of criminal responsibility in Iran and Iraq are reviewed.

A: perception

The basic condition of criminal responsibility is to have perception. Perception, power and ability to perceive perception from one hand to reason, and on the other hand, it becomes a factor of growth. (Mirsaeedi, 2007:116) The Iranian legislator, as well as the condition of perception, is one of the main conditions of the doctor's criminal responsibility. Article 140 of Islamic Penal Code 2013 of Iran is also related to: Criminal liability in circa, Retaliation and Sanctions are only possible when the crime is prudent, wise, mature and punishable, except in the case of reluctance to commit murder, which is set forth in the third book of retribution". It means that the person knows what he is doing and understands his or her good or bad. Perception of the first condition is the responsibility of the criminal, and the purpose of this is the ability of a person to understand the nature of his actions and to understand the results of which the act is followed up (Hasani, 447). The human being is held accountable for his work, although he does not know, the law for that act has been punished. His excuse for not knowing the criminal law is not accepted. Article 1/37 of the Iraqi Penal Code emphasizes this issue. The article states:" No one can argue with his unawareness of the provisions of this law or any other penal code until his lack of knowledge of the criminal law is unconstrained ". Perception of the condition of will is wise and perceptible. Although perception is different from will. The intention is to direct the mind to the verb and may be conscious or unconscious. The crazy person likes the actions he does, but does not understand the limits and can not distinguish between the act and the forbidden. Although he does not have the will, but he is lacking in perception and consciousness. (Al-Haidari, 2010: 118)

Article of the Iraq's Penal Code 60 No. 111, 2014, in this case is amended as follows: "A person who, when committing a crime without perceptions and will, is not held accountable either for lack of perception because of insanity, or for a malfunction of the mind, or for

drinking or drinking because of the substance or narcot that was forced or due to his unawareness, or to any other reason that science is obtained, he has no perception or will, However, if the defect of reason or the use of psychic or oppressive or non-existent, other than the weakness of perception and will at the time of committing the crime does not have any effect, the accusation is reduced" .

B: Optional

Being eligible from the eighteenth century, he entered into criminal law with the debates of the realm of education, and the debate about algebraism flourished. In the view of this school, the belief in the will and freedom of will, is the effect of ignorance on effective factors in will. The will, in turn, is a phenomenon that is subject to the law of jubilation. The denial of the will of this school was realized, but was not welcomed. Because the weak point of this theory is the comparison of human behavior with natural phenomena. (Mirsaeedi, 2007:136) Optional has two elements of power and will. Anyone who acts or leaves an act, means both power and will, So he has a choice. Article 140 of the Islamic Penal Code 2014 also applies to the following:" Criminal liability in extent , retaliation and imprisonment is only possible when a person is a victim of a crime, reasonable, adult, and free, except in the case of reluctance to commit murder, the sentence of which is set forth in retaliation book".

The purpose of freedom of choice is "the ability of man to compare between the factors and motives that lead him to commit a crime and the factors and motives that make him free from crime, and this comparison must be according to his own choosing. In other words, freedom of choice means the ability of a person to determine his work in accordance with the requirements of the law"(Al-Hadith, 1992: 323).

Will is considered as the queen of mind, which every human person uses, but the will that is intended by law is the will based on the state of perception and understanding and the effect of external factors that affects the freedom of choice until the will. the will of the free degree; that is, the will to be free of the impaired that affects it and affects the criminal responsibility of man (al-Haidari, 2010: 120).

C: Specific conditions for physician responsibility in Iran's law

In Iran's law, there are two elements of the criminal intent and the fault of the perpetrator. Article 144 of the Islamic Penal Code 2013 states that: In the pursuit of intentional offenses, in addition to the knowledge of the offender, his intention to commit a criminal offense must be established. In the event that their occurrence is based on the law depends on the consequence of the outcome, the intention of the outcome or the course of its occurrence must also be established. Also, Article 145 of this Act" The commission of unwarranted offenses is subject to the fault being committed by the perpetrator. In unintentional crimes, including Pseudo-intentional and Definitive error, the provisions of the retribution and wergild Books are applicable". The issue of fault is associated with three concepts of irresponsibility, disregard for lack of skill and non-observance of state regulations. Note 145 of this article states: The fault is both inattentiveness and carelessness. Negligence, neglect, lack of skill, and non-compliance with governmental systems and the like, as the case may be, are instances of recklessness or neglect.

D: Failure an acquittance from the patient

Article 495 of the Islamic Penal Code of Iran in order to acquittance from the patient states that: " If a physician causes or causes physical harm in his or her treatment, he is the guarantor of the wergild unless his practice is in accordance with medical and technical guidelines or that he has been taken an acquittance from the patient before treatment and There is no fault either, And if the source of the offense is not valid for the patient because of his immature or insane nature, or if he is not acquainted with it because of anesthesia and the like, the acquittance becomes Stripped off from caretaker of patient". According to this article, the physician is not solely responsible for three conditions and at all times, in case of loss or injury, is responsible and guarantor. The first condition is that the technical requirements have been met and they have not committed the fault. In this case, what is the offense or not, is not the guarantor. The second is that it has received the acquittance and has not committed a fault, even

if it does not comply with technical standards. For example, due to special circumstances, a special drug will end in the hospital, or if the doctor does not take any action, the patient will be wasted. Your doctor may choose a route that is not in accordance with technical standards. Here, it is not solely responsible for the failure to take the letter and act without fault. The third state also goes back to the note of Article 495 which has the following lyrics: " If there is no fault or fault in the physician, there is no guarantee for him in science and practice, although he has not been guilty of indulgence ". In this case, the only fault of the doctor is the priority, and the technical guilty of the letter does not matter. But the author says this is the same as the first one. Because the doctor is required to observe the technical requirements. Failure to observe technical standards is a kind of fault and a kind of error. However, due to the lack of clarity of the legislator, this is also mentioned. It is important that the innocence be before treatment. Satisfaction or adultery after treatment is not an impediment to the doctor's criminal responsibility. Also, the difference between consent and innocence is that consent is an action that the patient allows the physician to practice. Satisfaction is a condition such as complete awareness of the patient and the status and condition of the person. The scope of satisfaction is that the doctor can not be sentenced to retaliation. (Alkholi, 1997:16) In the inferior injury, it also proves the satisfaction of neither Retaliation nor wergild. (Alkholi, 1997: 182) This matter plays an important role in the murder of pity. Iran's law, consent is not seen as an obstacle responsibility. Although the acquittance is important that take it away from the doctor's responsibility, which is different in content and satisfaction.

A physician's exemption from liability for damage caused during medical practice to a patient has to be reinstated between him and the patient. If the physician does his job without fault and failure, he is not responsible unless the harm is sustained. The basis for the forgiveness of responsibility in medical treatment is the satisfaction of the person. This approach, the Iraqi Penal Code, states in the second paragraph of Article 41/2 of the Iraq's Penal Code, one of the forms of emergency, the possibility of immediate intervention and emergency surgery to save the patient, even without the consent of the patient or his legal

guardian. In this regard, the Tribunal ratifies the law, the religious statement number 175 on the date of 7/7/1973. No. 632 (Alawi:2016,41)

- 1- If the patient is ill and none of his close relatives or supervisors are available, he needs urgent surgery to save his life: this is an emergency condition that allows the physician to intervene and surgery. But if he is not close enough to death risk, he must stop until the patient's intelligence and his consent are satisfied, if the patient is mature, and if the person is immature, the consent of the religious representative is to be found.
- 2- If the patient's family is not allowed to work while he or she needs surgery to save his life, if the death risk is near and there is no way to save him, other than surgery, his family's prohibition is not valid and the physician, according to the law that is given to him by law, It can do surgery.
- 3- If a patient with complete consciousness needs surgery to save his life and agrees with the practice but his family opposes, the criterion is self-satisfaction if it is mature, But if the patient is immature and death risk threatens her, her physician will use his right to carry out surgery and to save her life so that her life can be saved and the patient's legal status is not a criterion.
- 4- In the case of a disease that was completely alert and needed urgent surgery to save her life, she did not consent to surgery. This is while his current situation was considered urgent and the law has made it clear that surgery is permitted.

Third speech: elements of criminal liability of Physicians

Criminal responsibility has several pillars along with the accused's attitude toward crime; it may be that the accused is the main culprit for committing a crime, in which case the issue of direct responsibility is raised and the defendant is directly involved in the crime of crime, or that he may commit another person's crime. One of the forms of criminal responsibility is one that can be identified through the consideration of the spiritual element of the criminal responsibility, the two elements of perception and the two dimensions that constitute the essential conditions

for the occurrence of a crime. Therefore, if the will is the agent of the behavior and the result, the responsibility is deliberately formed and if the agent is a behavior and not an outcome, then an unwarranted responsibility is formed. According to the Iranian writers, there are three pillars for realizing the doctor's responsibility: The realization of the damage caused by the doctor's error, the realization of the doctor's fault and the proof of the causal relationship. In the Iraq's law, the authority of the doctor has been counted. Therefore, if the resultant agent is the result of the behavior, the responsibility is deliberately formed and if the agent is a behavior and not a result, then an unintentional responsibility is formed. According to the Iranian writers, there are three pillars for realizing the doctor's responsibility:

A. Realization of the damage caused by the doctor's error

The first pillar of physician's responsibility is the existence of a harmful act that is exported from the doctor, which is referred to as a doctor's mistake. This pillar will have three forms of civic, criminal, and law enforcement in one form and appearance. (Saeid rad, 2014: 112) In Iran's Islamic Penal Code 2013, the legislator did not make a specific definition of fault or error. But also to mention its implications. Article 495 of the Islamic Penal Code states: Whenever a physician injures or causes physical harm in his or her treatment, he is guarantor of the wergild, unless his action is in accordance with medical and technical requirements or that he has been acquitted before committing an assault and he is not guilty of misconduct. If he is guilty of miscarriage because of immature Or his insanity is not valid, or he can not be educated because of anesthesia and acquittance removal from the patient's guardian is forbidden. Here it turns out that one of the conditions that the doctor has responsibility is his fault that there must be other conditions such as lack of compliance Technical standards and lack of proper punishment, so that he will be held accountable. The result of the damage that the patient suffers during the course of the treatment or after treatment is as a starting point for the medical record, and this is considered to be the basis for the fulfillment of the doctor's criminal responsibility. The criminal responsibility of the physician is achieved by compromising the

patient's physical health and endangering the health of the patient by causing ulcers and injuries in his body, or that he may be physically damaged without being injured, as the ulcer of the effect an appearance on the body involves a loss of organs and a loss of body tissue, but damage has a wide meaning, and anything that causes harm to the human body without breaking the tissues of the body, such as Making a patient and destroying harmful substances may and may be a harmful consequence of the patient's death. But for the physician to be a criminal offender, it must be a harmful consequence of his mistake, so if the doctor has not been guilty of mistakes or negligence, he is not a criminal offender, even if the result has been harmful to the patient.(khazir, 2010: 39) **B: The realization of the doctor's fault**

In Note 1 of Article 495 of the Islamic Penal Code of 2013, In the absence of a fault or fault of the physician in his knowledge and practice, there is no guarantee that he has not been guilty of any fault. The opposite is that, if there is a fault, he can not be held responsible only if he is found guilty. The opposite is that, if there is a fault, he can not be held responsible only if he is acquitted. The basis for accepting the fault of a criminal or civil authority in Iran's law is also Article 13 of the law, which states: Sentencing Or the provision of education and training.

According to the case, it should not exceed the quality and quantity specified in the law or the court order. And any damage and injury resulting therefrom, if intentionally or through fault, results in criminal and civil liability, as the case may be, otherwise the damage will be compensated from the claimant. Mistakes in all areas of life and in all occupations have always been with man. The medical profession is one of the most vulnerable occupants in the profession, and the mistakes in this occupation are far more dangerous and effective than other occupations because it depends on human life and health. The errors can be divided into two categories: intentional and unintentional.

1- Intentional Errors

This error occurs when the physician determines the will to commit a crime and so-called criminal intent or motive. Many

interpretations and definitions of intentional or criminal error are mentioned, including the fact that the subject concentrates his will to commit a criminal act and whose purpose is the result of a crime that occurs or if its purpose is the result of another crime.(Article of the Iraq's Penal Code 33) The Iraq's legislator accepts the issue of probable intention in realizing the criminal responsibility of the doctor and considers it to be the same and equal in the realization of the criminal liability of doctors, since in the provisions of the law on medical offenses a deliberate crime occurs when the agents of the crime intention are provided to the offender. If the offender gives the prospect of the consequences of his criminal actions and accepts the dangers of his work and the results of his crime, and acts as an offender, his crime is intentional.(Article of the Iraqi Penal Code 34)

There is no deliberate error in Iran's law. But the act is intentional and unintentional. This issue has been further promoted in Iran's law on the issue of arbitrary qisas. The crime is in a deliberate state that both intention act and intention result are intentional. Clause A of Article 290 stipulates: Whenever committed by someone who intends to commit a crime against a person or persons or a person or persons of an unproductive nature from a collective, and in practice, it is a crime or the like, whether or not the commission of the offense is likely to result in the crime or the like being committed or not. In this case, the killer intends the act and intends the result. In accordance with clause (b) of Article 290 Whenever committed, he deliberately performs what is typically a crime or the like, although he does not have the intention of committing the crime, and so on, but has become aware that the work is typically the result of that crime or the like. The deliberate criterion of considering this kind of thing must be a material act. This current, which is typically deadly and causes the fatalism of that world, suggests its intention. Although the agent abnegate the intention of murder, but he awareness of a deadly act the murder to be intentional .

The conditions for the realization of the murder intentionally according to paragraph (a) of Article of the Islamic Penal Code 290, adopted in 2013, are as follows: 1- The purpose of the outcome and

the crime 2- Death/ stripping life 3- The causal relationship between the act and the outcome. The material crime of the means, time, place, personality, and the like are not involved and the crime is not susceptible to them. But the elements of its material element, the sole subject, the conduct of the perpetrator and the result. However, the following conditions should be considered as the opposite of the concept:

1. The subject intends to have an act and does not intend to result, the work is typically lethal and science has a causality = murder
2. The subject intends to have an act and does not intend to do so, the work is typically deadly and science does not have a causality = It is not intentional because it involves someone retaliation that knows his custom as a murderer.
3. The subject intends the act and does not intend to do so, the work is typically deadly and science does not have a causal relationship = It is not intentional.
4. The subject intends the act and does not intend to do so, the work is typically deadly and neglects the cause. It is not intentional.

2- Unintentional Error

Iraqi lawmaker states in the definition of an unintentional error: time is an unintended crime that the result of a criminal act is due to the wrongdoing of the offender; whether this error is due to negligence or due to carelessness or non-observance of legal rules and regulations. .(Article of the Iraq's Penal Code 35)

The unintentional issue in Iran's law is divided into pseudo-intentional and perverse error, which has also become more widespread in the context of the murder. In the Iranian and Iraqi Penal Code, the unintentional error has different types that will be dealt with below.

1.1. Negligence/ Indifference

One of the doctors' negligence is to put parts of the bones in the patient's flesh or to put a scar on the patient's body or negligence in

caring for the patient after surgery (Shdeifat, 2011: 205), according to which the Court of Appeal Union of Qadisiyah No. 28 / T / G / of 2014 on date 2/2/2014, with its unique feature, have given. In the criminal court (female doctor), the offense confesses that the attendant at the time of the examination was on the verge of giving birth, and he expressed general questions about his marriage history, while the accused should act in his own way and not delay the surgery. Does not result in the death of the fetus in the mother's abdomen, thus the evidence obtained in accordance with the provisions of Article 331 of the Iraqi Penal Code 2 is sufficient to condemn him (Mizehr, 2014: 26). The synonym of negligence in Iran's law is unconscionable. Irresponsibility According to the provisions of the article 145 of the Islamic Penal Code of Iran, the fault is conscientious and incoherent. carelessness, negligence, lack of skill, and non-compliance with governmental systems and the like are, as the case may be, cases of recklessness or neglect. The irrevocable error is the human act that takes caution in performing the act and the act performed is considered to be unconscionable. Of the most common examples of irrelevance, the uterus is uterine rupture in curettage and rupture of the intestines in uterine devices.(Nejati, 2010: 82)

1.2. Disregard

The purpose of this unconscious is to conceive of false and defective skills and to perform the work without considering the dangers or consequences thereof. And the doctor is unaware of the incident or the conditions that must be known to him.(Zanjrawi, 1977: 459) Accordingly, the Baghdad Court of Appeals approved the law No.1190, No1260, misdemeanor 1998, on date 3/12/1998. The imprisonment of an anesthesiologist was issued for one year because he had left the surgery room before the end of the operation and, by doing so wrongly, caused a general paralysis of the patient and the Baghdad court issued a death sentence for the surgeon, because he Anesthesiologist did not allow her to leave the surgery room, she was stripped of her responsibilities (Allawi, 2016: 51). The synonym of this error in Iran's law is disinterest. Disinterest is a kind of negligence and discretion of the type of the verb. There is no clear

indication of disorientation, lack of proper preoperative testing, no pre-injection test, no ECG before healing.(Nejati, 2010: 83)

1.3. Inattention

lack of take necessary action to avoid harmful consequences.(Hadith:1992,٣١٠) An example in medical science is medicine, which during the surgical operation places part of the dressing gang in the patient's body and he/she conceals this because the patient's treatment involves removing the gangs.(Qasim, 1990: ٩٣) Accordingly, the tribunal has established a law No.101.G.2013 on date of 6/9/2013. The law states: After the check and trial on 28/7/2017, the truth of the claim became apparent. The patient died after a long suffering with the illness and pain caused by the offender's act (female physician) in forgetting to remove the band from the patient's abdomen.This concept in Iran's law includes the same precaution and can not be used to concepts such as neglect, lack of respect for state systems and lack of skill(Mazhar:2014,29). But in the Iran's Penal Code, neglect is mentioned in Article 145, which means that negligence is a kind of disobedience and is due to the abandonment of the act.

1.4. Lack of caution

An error is a positive action from the subject and it is a failure to consider the consequences. In this error, the perpetrator is aware of the harmful consequences of his actions, but despite that he does not take the necessary precautions (Zanjrawi, 1977: 409). Accordingly, in a judgment issued by the Revolutionary Court of Babil Union No. 115/114 on date 7/3/2016, the cause of the death of patient is a severe bleeding after childbirth, resulting in a cervical rupture. The defendant's weakness in helping the patient and transferring her from the emergency department to the delivery room despite her unfavorable condition is based on evidence(unpublished). The synonym of this concept in Iran's law with tolerance is the same lack of skill. Lack of skill is a kind of carelessness that is caused by a positive person. Lack of skill is sometimes scientific and sometimes practical. In the first type, the doctor may have a scientific skill but

can not undergo surgery due to shaking hands. The doctor has not been cautious here. Lack of scientific skills also leads to the acceptance of a disease that has no knowledge of the disease and acceptance.

1.5. Failure to comply with laws and regulations and legal provisions

This form of action is intrinsically independent, which alone suffices to ask a person who violates laws, regulations, and orders, even if he is not registered with any error (Ghasem:1990,٩٣) In this case, the violations cited in Iraq's credible laws are under the notion of non-compliance. As it appears in two articles 411 and 416. In addition to the special rules of the medical profession any error is counted as a violation of these rules. The feature of the error in this form is that the judge does not require a personal interrogation or a criterion to prove or identify the offender's fault. Laws and bills have been issued, and the verdict states that if an opponent of a law shoot a bullet in a home that could harm a young girl, his defense would not be acceptable if he said that he was unable to see him because he was unable to see him. Whether or not he will be guilty of a single decision to oppose a bill of rights.(Ghasem, 1990: 94) In Iran's law, there is also a lack of respect for governmental systems such as neglect or overlook in the implementation of the provisions of the Code of Conduct and the relevant laws that apply to all occupations. The Iranian legislator has raised the issue of non-compliance with governmental systems and error cases generally in two directions: medicine and driving. According to the commentary on article 145 of the Islamic Penal Code of Iran, the failure to observe the state legislature can either be discretionary or indecisive.

C: Proof of causality relationship

The causal relationship is the same as the condition of the criminal liability of doctors and one of its elements, because the general rules of the law have given that for the fulfillment of the criminal responsibility it is not enough for the patient to be injured and the physician makes a mistake, but the patient's injury should be the result

of the doctor's mistake. The doctor is only responsible if he has a causal relationship between the patient's injury and the doctor's mistake (a relationship between the mistake and the result of the transplant). However, the doctor will not be responsible if it is determined that the patient's injury was inevitable and certain and there was no mistake in the work. For example, if the doctor wants to do surgery and determine what surgery is to be performed or not, the patient's death is certain, in this case, the doctor is not responsible for the death of the patient. Also, if the doctor fails to perform surgical procedures for infectious medical devices, then the patient will die in the cardiac effect, since there is no relationship between the heart failure and the absence of an infection, the doctor is not responsible.(khazir, 2010: 40)

In Article 29 of the Iraq's Penal Code, No.111, 1969:

A person is not held accountable for committing a crime that is not the result of a criminal offense but is held to be accountable for participating in a crime that is the result of his criminal behavior, whether in the past and the future, even if he does not.

But if that reason is sufficient only to commit a crime, then the criminal will not be prosecuted unless it is about the crime committed.

Conclusion

The basics of the criminal responsibility of doctors in Iran and Iraq under normal circumstances are based on the theory of fault. That is, if the doctor makes a fault, he is responsible. Of course, the general conditions of criminal responsibility, including having perception, authority, lack of criminal intent, patient consent, observance of legal and technical standards, having a medical license and a legal license, are also necessary in this regard. But the doctor's criminal liability is primarily due to the doctor's fault. In emergencies, the general health of the doctor only affects the general conditions, and if there is a fault, emergency situations will not prevent criminal liability. The element of Criminal liability of physicians in the Iranian and Iraqi Laws is The triangle that the realization of the damage caused by the doctor's error, the realization of the doctor's fault and the proof of the causal

relationship. The fault is a common and specialized meaning that is divided into two categories of irresponsibility and neglect in the rights of Iran and in the rights of Iraq, negligence, neglect, discretion and non-observance of laws and regulations and statutory rules.

ملخص البحث:

إن مبادئ وشروط وأركان المسؤولية الجنائية للأطباء في قانون إيران والعراق سواء. والأطباء يسألون جزائياً، والقاعدة للمسؤولية الجزائية في قانون إيران والعراق تكون نظرية الخطأ والتقصير. وعلى الرغم من أنه في تحقق المسؤولية الجزائية للأطباء يستفاد من نظرية الخطأ ولكن إن حافظ الطبيب على القوانين والأصول لمهنته، أو حصل على رضا المريض فلا يسأل جزائياً. فإن شروط المسؤولية الجزائية في قانون إيران والعراق هي الإدراك، والإختيار، وإثبات قصوره في أصول مهنته. وأركان المسؤولية الجزائية للطبيب في قانون إيران والعراق هي: تحقق الأضرار الناتجة عن خطأ الطبيب، وإثبات قصوره وإهماله، وإثبات العلاقة السببية. وفي قانون إيران والعراق يعتبر الطبيب مثل سائر المتهمين والمجرمين وشروط إثبات جرمه في البلدين مختلطة؛ يعني يجب على الطبيب أن يدافع عن نفسه ضد الإتهامات ولا يسبب العمل الطبي فقط مسؤولية جزائية له، بل يجب أن يرتكب قصورا أو إهمالا حتى يستوجب مسؤولية جزائية. وفي كلا البلدين إيران والعراق تمنع براءة الذمة من المسؤولية الجزائية للأطباء ما عدا اثبت عمد وإهمال الطبيب. ففي هذه الحالة يسأل الطبيب جزائياً. هذه الدراسة بإمكانها أن تدرس المسؤولية الجزائية للأطباء في إيران والعراق من منظور مبدأ المسؤولية، والشروط، عناصرها.

الكلمات المفتاحية: القانون الجنائي، الأطباء، المسؤولية، قانون إيران والعراق.

References

- [1] Abbasi. M, Medical Penalties, First Edition, Legal Publishing, Tehran,2009.
- [2], Medical Responsibility, First Edition, Sina Medical Institute, Tehran,2009.

- [3] Mirsaedi. M, Criminal liability, the scope of the organs, first edition, Volume 1, Tehran publishing, Tehran, 2007.
- [4] Nejadi. M, Physician Responsibility in Jurisprudence and Criminal Law of Iran, First Edition, Khorsandi Publishing, 2010.
- [5] Nori. F, Responsibilities and Duties of Murder from the Point of View of Law and Jurisprudence, Printable Version, Majd Publications, Tehran, 2014
- [6] Yousefi Rad. N, Doctor's Responsibilities in Islamic Imams and Law, First Edition, Sepehrandish Publication, Tehran, 2010.
- [7] Al-Hadith.A, Explanation of Penal Code, General Department, Baghdad, Time Printing, 1992.
- [8] Al-Haidari. J, Penal Responsibility, Baghdad, Al-Sanhoury Library, 2010
- [9] Zanjrawi. S, General Principles of Penal Law, Cairo, 1977.
- [10] Khazir. L, the criminal responsibility of the doctor, a research submitted to the promotion to the third category of judges, 2010.
- [11] Shdeifat. S- M, Criminal responsibility for medical work, Baghdad, House of Culture, 2011.
- [12] Allawi. Sami Katie, responsibility of the criminal doctor, Baghdad, 2016.
- [13] Alq. K, the responsibility of the doctor for his mistake criminally, a letter submitted by the Judicial Institute, Baghdad, 1990.
- [14] Mizehr. A, The responsibility of the criminal doctor for his professional mistakes, a research submitted to the promotion to the third category of judges, Journal of the cradle of justice, Baghdad, 2014.
- [15] Najib Hassana.M, reasons are permissible in Arab legislations, Cairo, High Institute of Arabic Studies