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**A SURVEY ON PHYSICIANS' COMMITTED ACTS EXEMPTION IN IMAMI  
JURISPRUDENCE**

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**ABSTRACT**

A particular attention has been paid to Health and Medicine in Islamic instructions, in a way that it is assumed one of the greatest interests in the religion of Islam mentioned protection of the health even protection of life or body. On the other hand, patients obliged to refer to physician in the light of catching the disease found with being killed or mutilation, even loss of physical refreshment; Patients should have their treatment and have not the right to hesitate or delay to go through treatment. This paper aims to investigate physicians' committed acts exemption in Imami jurisprudence. The method used in this paper is the descriptive-analytical method where the data needed gathered from Medical and legal communities. Hence, according to the Shi'ite view of religious scholars, it is assumed regarding the rules governing Imami jurisprudence including rule of beneficence, Justifiability, Permission for treatment and comments by grand Ayatollahs, the physician known exempted of responsibility and liability arising out of acts committed in the light of no extremes and using the expertise and the necessary precautions whereby his acts justified.

**Keywords: Permission for Treatment; Beneficence; Necessity, Physician's Liability**

**INTRODUCTION**

**License to practice medicine in Islam**

The first basis of the jurisprudence on the physicians' committed acts exemption can be proposed referring to the words containing

jurist words or the Jurisprudential rule "permission against liability", mentioned as license to practice medicine in terms of sacred religion of Islam. According to this rule, it

can say that while act respecting the exercise of the fundamental rights including having treatment obliged for the individuals in Islamic community where a person qualified to practice medicine techniques as a representative of his community is permitted to provide treatment for the individuals within the community, seen far from his liability to license to practice medicine while adverse consequences occurred (**Bojnoordi, Seid Mohammad, pp. 350**). A majority of Imami jurists in their Jurisprudence Books have studied the physicians' liability entitled "physician's liability", indicated that all the physicians licensed to practice medicine in Islam, if found it against Islamic instructions, they definitely litigated, but, this did not occur and all the acts found in accordance with Islamic instructions (**Moosavi Khomeini, Ayatollah Ruhollah, Tahrirolvasyleh, volume 2, Islamic publication, Qom, 1985, pp. 556-557**).

In this regards, a variety of Narratives proposed, e.g. two samples of such Narratives have been proposed here:

Yunusibn Hassan said to Imam Hassan, a person who uses drugs and makes an incision may be improved or possibly killed. Imam Hassan, said, being improved, thus better to go through this using drug and phlebotomy

(**horol ' Ameli , vasaeloshiah, volume 3, Al-Bayt Institute, 1414 AH, volume 25, pp. 222**).

Ismail ibn Hassan said to Imam Hassan, I am a man of Arab specialized at medical science, the one used in Arabia, not taking money to practice medical science. Imam Hassan answered no matter. He said, we bore wounds and burn it with fire, in response Imam again answered go through, no matter. He added, we prescribe toxic drugs, received the response, no matter from Imam. Additionally, he said, the patient may die, for the last Imam responded, no matter let him to die (**horol ' Ameli , vasaeloshiah, volume 3, Al-Bayt Institute, 1414 AH, volume 25, pp.221**).

As a result, License to practice medicine in Islam can be taken as a jurisprudence basis regarding physicians' committed acts exemption where the practitioners obliged to exercise such acts have to consider religious rules, otherwise their liability to act for this can be avoided. Another jurisprudence basis on physicians' committed acts exemption obtains from the words containing jurist words referring to rule of beneficence; according to rule of beneficence, the righteous have no sin, and no hassle, whereby this rule, says, beneficence avoids liability comes to realize, i.e. if someone can do something like that in

common law and the public interest even though harm occurred by chance, no liability would have the person (**Katoozian, DrNaser, civil liability, 'coercive' Warranty, first print, 1995, pp. 153**). **Surat At-Tawbah [verse 60]**, response beneficence with beneficence, and AlRahman[verse 60], the true way for righteous is the way to obey beneficence, indicate one of the legal rules mentioned as rule of beneficence, concluding no liability and compensation imposed on righteous. However, there are conflicts of interest among grand Ayatollahs on provisions of rule of beneficence (**Bojnoordi, Seid Mohammad, jurisprudence rules, volume 1, Second issue**). Yet, Inclusion of rule of beneficence in terms of adapting its concept with the acts exercised with Good faith and honesty can be extrapolated to many samples named one of them as practice medicine. As defined if a physician applied Good faith and honesty to heal the patients with what known and learnt in the past sustained on curing the patient and providing him with treatment, but, in the process of cure if the patient killed or mutilation, even loss of physical refreshment occurred for him, in this situation the physician would not be licensed to practice medicine and physicians' committed acts exemption would be used for the physician. License to practice medicine by

a physician acted based on his liability and faith to cure the patient regarding the medical practices, attempted, in a plain language made a huge effort to cure the patients in accordance with the academic and practical instructions governing religious system and not committed to any irresponsibility, lacked the patient to be cured would result in doubting on the science of medicine avoiding the physicians sustained on healing the patient whereby this can threaten the patient's health seriously put the people in trouble. An overview of narratives and hadiths on terms and conditions attempting to practice medicine, it is assumed that Infallible Imams have allowed curing the patients, however, with the adverse consequences, this turns back to the fact ,as believed, physicians' acts are all honorable, and patients are received with benefits from physicians' medical practices, in a plain language, physician do usually favor for the patients, although somehow, the consequences might be vise versa not found with good results. Hence, according to what discussed earlier, the rule of beneficence can be accounted as a base together with other bases of physicians' committed acts exemption in Imami jurisprudence.

**The third basis "Necessity"**

One of the other jurisprudence fundamentals on physicians' committed acts exemption can be obtained based on the words of jurist regarding jurisprudence rule as the rule of necessity. Necessity in words of jurist required to two social and personal aspects. This meant somewhat to justify physicians' committed acts required to the necessity to protect from human's life or come to realize health and somewhat the necessities derived from social life justify the physicians' committed acts. Imami jurists have adhered to necessities and obligations in order to issue a religious rule, as deceased al-Shahid al-Thani in Lamhedescription, indicated often accuracy at physicians' committed acts exemption comes to realize by patient, said, the reason for this can be found as follows:

- 1- The necessity and need invite us to disapprove liability, because there would be no way for the patient unless found with a cure.
- 2- On other hand, if the physicians knew they would be asked after the patient left without being cured or lost an organ of his body, thereby they would not act medical practices so that no way would be found in healing the patients. Undoubtedly, needing to cure and medical practices helps the

patients before cure to give a permission on exempting the physician whether not healed (**ShahidThani, AlrozatolBahyeh fi Sharh Almaehaldameshgieh, second volume, Islamic publication, 1997, pp. 419**).

Further, some jurists exempt the physician who considers a Muslim's life to sustain him alive with dissection, to pay blood money. Helli, the scholar, in his book named "Shara'i al-Islam" had the same idea with ShahidThani, believed curing the patient is essential, and if physicians' committed acts exemption not required, difficulty would occur for the patient. Physician SahebJavaher mentioned physician assistance in curing the patient essential to sustain him alive, and if before curing the patient, physicians neglect their liability, then curing the patients would come to realize (**Helli, trans-Abolghasemib Ahmad Yazdi, Shara'i al-Islam, Tehran university publication, volume 4, 1989, pp. 1976**). Dissection, if helps for human's life, no sin for Muslims would be seen, so that problems in humans' life. Imami jurists particularly precedents, to define rules governing medical science, sometimes permitted exercising practices as an introduction to sustain human lives. Imam Khomeini further believes in dissection of a

dead Muslim not permitted and taboo (Mohammad Hasan Najafi, *Javaherokalam*, volume 42, sixth edition, Maktabolislamiyah, pp. 47). Yet, this practice not mentioned totally taboo, where dissection of a non-Muslim is not possible, or even allowed, it is recommended for dissection of a Muslim letting the scholars to see the real body, i.e. organ to do the research. To define more, added, in Islam, even after death, human's body would be protected and valued as jurists gave sentence, such that while any damage or abuse to dead body occurs, the one done that would be liable to pay blood money. Imam Sadegh, says, as God conveyed human respectable, called the dead body of human respectable. If done a practice to a dead body, mentioned that practice taboo for alive person that would be crime paying blood money for it. on transplantation of organs, jurists in contemporary era had the same views as discussed above, in their views, transplantation of organs of a body to another body is banned, but, the matter of life and death of a alive person accounted, cut an organ of a Muslim's body and transplanting to another organ is permitted (Roohalah Khomeini, *Tahrir-ol-vasileh*, volume 2, Islamic publication, Qom, 1989, pp561). Imami Khomeini in the book *Tahrir-ol-vasileh* addressed to this, permitted cutting an

organ and transplanting to another organ, said along this, cut an organ of muslim dead body to transplant another alive person is not allowed unless his life depended on it. Further, the necessity derived from human life of individuals' health by jurists mentioned as a basis to exempt physicians practices. A majority of Imami jurists believed that sometimes necessity from social life can be a basis to exempt physicians' practices (Vasaeloshiah, volume 19, pp. 247, Helli, *trans Abolghasemibn Ahmad Yazdi, Shara'i al-Isla, Tehran university publication, volume 4, 1989, pp. 1976*). Al-Shahid al-Thani in *Masalik al—afham* mentioned essential to cure the patients, believed people' need to a physician is a necessity which justifies the necessity for liability to exemption (al-Shahid al-Thani, *Masalik al—afham*, volume 16, first print, Islamic religion institute, volume 15, pp.328 ). Hence, based on the words of jurists, necessary to save the life of Muslims and also the needs of community to physician and the medical science have been conveyed as a Jurisprudential basis to exempt the physicians and Surgeons justifying the surgical and medical practices.

#### Permission in treatment

Imami jurists believed altogether in physicians' liability acting to cure without

patients' permission, however, somehow a specialized liability even with the patient's permission would lead in mutilation, even loss of physical refreshment (Seid Ali Tabatabaei, *Rayazolmasael fi bayane l ahkam*, first print, Beirut, Lebanon, volume 10, pp. 400, Abolghasem , *Tehreek-e-Minhaj-ul-Quran*, volume 2, Najaf, volume 2, pp. 221). IbnEdris believed in lack of the physician's liability, argued patient's permission fades the liability mentioned as known curing and having treatment for the patient is allowed in Islamic instructions, so patient's permission to act such practices is allowed (IbnEdris, Saraer, Islamic publication center, second publication, pp. 373). In this regards, in view points of other scholars, they have argued against what mentioned above, called the physician liable for crimes because patient's permission lied in cure and totally improvement by having treatment not being killed or deprived from recovery. Hence, patient's permission in decline of the liability would not be effective and there would not conflict of interests between liability and permission so that the one who is liable intended to cure, instead, caused a person died would be justified (**al-Shahid al-Thani, Lamhe description, , volume 10, pp. 110**). The author of meftah-ol-keramah cited according to AllamehHelli, as overviewed the

words and books by jurists, it can perceive that just the jurists in precedence, al-Shahid al-Thani in Lamhe description, al-Shahid al-Thani in *Masalik al—afham*, Karaki in *Jame - Al - Maghased*, Helli in *Ershad*, cited their views on the physician's liability in the light of patient's permission, whereas the jurists in antecedent including Al-Marasem, Alnahayat, *Tabsara-e-Kutab*, Al-Ketab, *Jame - Al – Maghased*, Al-tahrir and etc not believed in physician's liability in the light of patient's permission (**Laameli, Mohammad Javad Alhoseini, meftah-ol-keramah volume 21, pp. 11-12** ). Hence, AllamehHelli argued on the conflict existing among the jurists on liability or lack of liability cited it left incomplete view, doubted on which is better, added, the conflict between IbnEdris and other jurists is not a real conflict, because as IbnEdris believed while physician is permitted to cure the patient would not be liable in this case, and others called him liable believed in lack of permission. Yet, others believe, however jurists not cited permission to treat while called the physician liable, but, it is clear the physician permitted is liable where often the physicians act to practice treatment by patients' permission (**Jafa'riTabar, quoted in physicians' medical liability, Tehran university political science and law, no 41,**

pp. 75-76). According to the account mentioned as physician's permission to act medical practices, patients' permission in medical science required to proficiency to observe all the sides and effects. The ones who take the sides of this account patient's permission to physician to have treatment and cure is permitted, mentioned totally in accordance with Islamic instructions, thus, there is no reason to call the physician liable when permitted to act medical practices for the patient. Along this, AllamehHelli cited in *Shara'i al-Islam*: the jurists argued that the jurists believed the physician would not be obliged to take the responsibilities in the light of patient's permission, because the liability can be cancelled by means of permission, added, as curing and providing treatment for the patient is permitted according to the Islamic instructions, so patient's permission is allowed to go through this (AllamehHelli, *Shara'i al-Islam, Abolghasem , Tehreek-e-Minhaj-ul-Quran, volume 2, Najaf, volume 2, pp. 221*). Other jurists believed that permission in providing treatment for the patient is allowed to help him to be healed not to lose his life. If a person as a punishment hits someone not leading to crime, but, cause him to lose her health or life, this would be a real punishment for him. These jurists in initial known patient's permission together

with other terms and conditions required for the physician's liability, but, later with recourse to the obligations and arguments referring to the liability, even while the physician not being specialized in his proficiency, would be obliged to go through providing treatment. ShahidAval in Lamhe, says, what loses in treating the patient would be paid back by the physician, however, made effort and acted by patient's permission, but in the light of lack of recovery would have to pay back what lost.

al-Shahid al-Thani, says, the physician would be liable to whatever lost in treating the patient, even his health or an organ, has to pay for this, because the lost occurs by the physician not succeeded to cure the patient and put him in trouble lost his life in partial left sick again. Although the physician not desired for this and lost occurs accidentally, but, this would be similar to an act occurred by intention, anyhow the physician obliged to pay the blood money for this. Any harm entered to the patient even accidentally during treatment, the physician would be liable to pay blood money whereby IbnEdris has stated that, a physician if make a large effort to cure the patient, so the physician would not be liable because according to the rule of exemption, no liability for the physician would be asked, the physician liability due to

patient's permission would be cancelled, treatment and cure the patient is a task for which no hesitation has to be asked whether no liability asks. If the patient before having treatment informs the physician about the crime and physician's liability, exemption of physician would come to realize, the reason for this lies in two facts: 1- the necessity obliges us to such an exemption because there would be no way for the patient unless being cured. 2- it is necessary to take exemption from the patient or his parents otherwise if something happened, the physician would be obliged to respond.

### **Physicians' committed acts exemption against the crimes appeared due to the treatment**

The last basis on the physicians' committed acts exemption due to the crime stemmed from treatment can be acquired referring to the words of jurists where physicians' committed acts exemption due to the crimes stemmed from treatment cause the decline at liability. Grand Ayatollah believed that physicians' committed acts exemption before treatment causes the physician's liability resolved whereby it can refer to following:

khobarSokoni narrated from Imam Sadegh that: everyone specialized at medical science has to take permission from the patient or the parents of patient unless he has to pay for

blood money (**vasaeloshiah, volume 19, Ketabdiat**).

The rule mentioned as the conditions and terms called necessary for the Muslims, says, physician in signing contracts to use his services to cure the patient, has to use the exemption as a condition in the contract for all the losses appearing during the treatment unless some of the losses would be come to realize after the contract signed, but, by signing the contract the provision would be provided to cancel the physician's liability (**MakaremShirazi, No 1, 1987, pp. 12**).

The general need to treatment and avoid needing to physician in the case of needing to liability requires the condition of exemption to be accepted and if the possibility to exempt the physician does not exist, no physician due to having fear of liability would not provide treatment for the patient. Hence, imami jurists believe that physician's exemption before and during treatment would cause the liability cancelled in the light of patient's death or loss of an organ. AllamehHelli cited in Shara'i al-Islam and Imam Khomeini cited in Tahrir-ol-vasileh that exemption of physician before treatment mentioned as the correct act by physician leading to cancellation of liability. It has to state that the physicians' committed acts exemption required to lack of negligence and fault by physician in treating the patient

where the rule of physicians' committed acts exemption can be assigned where there is no reason to the negligence and fault by physician so that it is clear that there would not be the chance to apply rule of exemption. Minority of Imami jurists believed that the physicians' committed acts exemption would not lead to cancellation of his liability. The Imami jurists argued that the exemption is correct where religion comes to realized by a liability of physician so as the patient or the one who has the right exempt the physician, otherwise before religion realized or crime occurred, physicians' committed acts exemption mentioned as the rule not necessary would not be true ever. In other words, as the liability not mentioned necessary not come to realize, so it cannot say that physician is released from the liability and responsibility not found its reason yet. Indeed, Helli followed this view and accepted that the need to physician cannot be found as the permission to the terms not mentioned necessary (**Mohammad Hassan Najafi, Javaherokalam, volume 43, pp. 47, narrated by Abolghasem Gorji, law articles, two volumes, second print, Tehran university publication institute, 1994, pp. 47).**

Another difficulty is placed in the fact that narration is poor where narration conveyed

poor (**Sheikh Mohammad Hasan Najafi, pp. 46**). Further, Sokoni's narration is absolute in confirming his account where this might come to realize after crime, i.e. the narration means if physician after crime exempted the parent of patients then liability would be sustained so that parent in narration means the time for exemption would be after the crime. Hence, it can conclude that exemption after treatment comes to realize so that the general need as the reason to let the exemption permitted is before treatment so this cannot be a reason to define a rule against the Jurisprudential (**Mohammad Hasan Najafi, Javaherokalam, volume 42, sixth print, pp. 47**). The probability mentioned by some jurists known as the reason for Khabar Sokonito exempt the physician after crime is a very poor probability so that the jurists recourse to it found it legally authentic, which it can used as the basis for issuance of rule. Hence, physicians' committed acts exemption used as a condition in signing contract can be allowed. Further, conditions of the animal will and as such wills in signing the contract are allowed because due to the rule of "some conditions exist for Muslims", muslims required to sustain loyal on their conditions, thus, if physician's liability asked in signing the contract, this would be allowed and there would be no conflict of interests

(Mohammad HasanNajafi, *Javaherokalam*, volume 42, sixth print, pp. 45). In addition, the right to exempt is not allowed where its effect would result in lack of right, i.e. exemption is the barrier to right coming to realized (Mohammad HasanNajafi, *Javaherokalam*, volume 42, sixth print, pp. 42).

To sum up, it can conclude, however, some jurists like IbnEdris believe physicians' committed acts exemption before treatment would not possible but this word believed by minority of jurists, regarding that majority of jurists believe that exemption before treatment leads to cancellation of guarantor so that the physician would be exempted from prosecution. Hence, according to what said, in viewpoint of Imami jurists, if physician before treatment get exempted by patient or parents of patient, the negligence and fault in duty against probable dangers of Guarantor would not be accounted.

## CONCLUSION

The major question asked in this paper grounded on the cases the physician uses in providing treatment for the patients based on his academic information to apply guidelines at medical science, attempting to use all the facilities and instruments provided in medical science to go through all the precautions and not cause any fault appears in academic and

technical principles, but, the treatments would question the physical losses appeared to patient, so in this case it is asked whether the physician is liable or not?. In response, according to the research conducted, it can conclude regarding the Grand Ayatollah's views, the physician would be exempted from liability derived from acts committed in going to extremes and applying proficiency and precautions and this would be justified.

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