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**OFFENSES IN MEDICAL CRIMES AT DIFFERENT FIELDS OF SURGERY WITH  
AN EMPHASIS ON PENAL CODE ACT OF 1392**

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**ABSTRACT**

The success in each accepted social job is given to the people who have more sciences and awareness of dominant regulations and laws on their jobs and professions. The objective is the determination of laches in medical complaints of various surgery fields (General surgery, women, orthopedic surgery and plastic surgery) by the approach of Islamic punishment law, 2013. In this analytical sectional descriptive study, all files in legal medical commission of Tehran Province are reviewed which are related to laches in various surgery fields along the year 2013. The data of files are collected and is analyzed using statistical software of SPSS V18 after entering the computer. Based on the obtained results, Obstetrics and Gynecology surgery group has had the most numbers of complaints with 423 files (11.4%) and Neurosurgery has had the least numbers of complaints in the area of medical laches with 165 cases (4.5%). Also the general rate of medical laches proofs is 30.75% in which the Obstetrics and Gynecology surgery group is placed at top with 37.75% and the Neurosurgery is placed at the bottom with 15%. The conclusion is that the principle in legal relation between the doctor and the sick is based on contractual liability, but according to the effects of various factors to gain the final result of the doctor's commitment, the commitment is not for result and it is for device and therefore lack of an interested conclusion in a sick's treatment does not essentially mean the doctor's laches. Attention to the basis of the guilt and the conditions of coming off the criminal responsibility of surgeons with legal change in the

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concept of medical responsibility is of importance in Islamic punishment law approved in year 2013.

**Keywords: Surgery, Medical Mistake, Islamic Punishment Law, Medical Laches**

## INTRODUCTION

The professional life is mixed with a set of regulations and laws. Although the person's success is related to his/her degree of science and profession, but being aware of the regulations and laws dominating his/her selected job and profession is a main factor to determine his/her job fate because it is allowed to him/her to see his/her job affairs from a wider viewpoint and to profit by more power of prediction and to add providence to his/her other scientific and professional scores and advantages (1).

The doctors should consider this point that may be under prosecution one day in the first days of being employed as a doctor. Most of them see the odds unlikely and have not a gracious feeling to it because they think that they consider the most possible consideration and required accuracy along their job, but today, this assurance cannot be obtained and sick's complaint is not an unlikely affair. In all cases which the sick encounters an uninterested or unexpected outcome, it is possible to complain the doctor even if this outcome is due to the fatal nature of the illness.

Of the other hand, the advances in professional fields and subspecialty of surgery have increased the human society

expectations up to the level that even few numbers of accidents and death are not acceptable. The possibility for occurrence of mistakes and laches is not uncommon in these professional fields and subspecialties of surgery, especially in the fields of beauty and Obstetrics and Gynecology in a way that by the smallest violation from the medical scientific standards, it would be possible to generate irreparable accidents.

Of course, it cannot be judged unilaterally and this problem should also be considered that if the doctors and the medical staffs are punished because of the smallest inappropriate treatment result which is not avoidable in many cases, then no doctors or medical staff would perform treatment and this problem causes very great social issue which its solution is out of community officials' reach.

According to these urgencies, the legislator knows the doctor as bailman only if doing laches based on the new Islamic punishment law in year 2013. According to the new Islamic punishment law approved in 2013, if the doctors and the medical staff consider all technical and practical standards and governmental regulations in performing the surgery and treatment performances and

also do not make any mistakes or laches, not only they have not any criminal responsibilities but even if failed to obtain innocence, they have no civil liability as well.

According to great responsibility for medical affairs which may accompany with some dangers for the doctor and the sick, this question is always asked that if the surgeon is not successful in treatment and the interested result which is the complete and certain treatment is not gained, does he/she responsible for just failure in treatment? Or is it necessary to confirm his/her criminal or civil responsibilities after specifying the fault? Who is responsible for proving the reason? What is the basis of fault and what are the conditions for realizing the surgeon's criminal responsibility according to Islamic punishment law approved in 2013?

The present study pays to investigate the kinds of laches in various surgery fields and the responsibilities due to it according to the approach of Islamic punishment law approved in 2013 by assessing the complaint files of surgery medical laches and issued votes in legal medical commissions.

## **METHODOLOGY**

All of the necessary information including sick's (complainant's) and medical staff (complained people) age and sexuality,

the kind of complainant's/ complained person's profession, the place of occurrence (the type of treatment center), the kind of laches and percentage or innocence and ending of doctors' files (according to the view of commission) are inserted in researcher-made information form in a sectional descriptive-analytical study which is done in the field by investigating the medical complaints files of the surgery group in medical commission at Tehran legal department of medicine in year 2013. The sick's current status (death or the reason of maim) is also investigated.

According to 20 percent average rate of medical laches proving (in past studies), the sample size is obtained equal to 68 cases by 95% safety factor and  $\beta$  coefficient of 10% which according to the possibility that some files are incomplete, it increases to 80 files. The sampling method is simply stochastic which is selected according to the statistics inserted in legal medical organization about the surgery group (including General surgery, Obstetrics and Gynecology, Orthopedic surgery and plastic surgery) counted with the coefficient of 10 and with 80 numbers of random files.

According to the necessity of considering the medical morality and confidentiality of files insertions, the investigation is done on the files at the place of Tehran legal department of medicine and the

complainant's name and family name and address are not used. The adherence to all morality principles of Helsinki's statement is existent in the research.

## RESULTS

The present investigation is done in order to investigate the medical laches in various fields of surgery by the approach of Islamic punishment law approved in the central commission of Tehran legal medical organization in 2013. To access the above main objective, a collection of detailed targets are proposed along with some questions for researchers.

In total, the Obstetrics and Gynecology surgery group has had the most numbers of complaints with 423 files (11.4%) out of 3706 files in 2013. The neurological surgery has also the least numbers of complaints in the domain of medical laches with 165 cases (4.5%) as seen on **Table 1**.

The **Table 2** pays to the investigation on the statistical findings of average, median, mode, age spectrum of patients and also medical staff. The results show that the average of patients' ages is low in the fields of obstetrics and gynecology and plastic surgeries and is high in neurological surgery and orthopedic surgery because of the nature these practices have. Also, the obstetrics and gynecology and plastic surgeries patients have had less age spectrum than the general and orthopedic

surgeries patients. Of the other hand, the age average, the median and the medical staff mode are nearly similar in complaints files of all fields.

Also the work experience spectrum in plastic surgery field is less than other fields; i.e. that by increasing the work experience, the rate of complaints decreases (more accuracy, less assurance and better relation to sick by increasing the work experience). Of the other hand, the work experience average in orthopedic and obstetrics and gynecology is less than other fields; i.e. in these fields, the laches are generated in doctors having less work experiences (less accuracy and more carelessness or indiscretion in doctors with less work experiences).

In investigation on the complaints against the doctors versus the sick's sexuality, data show that female complainants are more than the males in a general investigation ( $P=0.000$ ). According to the nature of the cases, this difference should be meaningful in obstetrics and gynecology field and the generality of patients are females ( $P=0.000$ ). 7 male patients are newborns who are claimed that their deaths were because of the doctor's laches. The status of the patients volunteered for obstetrics and gynecology is the same. The patients are generally females ( $P=0.000$ ). In the fields of general, orthopedic and neurological surgeries,

although the female complainants are more than the males, the difference between two sexualities is not meaningful.

In investigating the status of complaint against the surgery group versus the type of medical center, there is not any meaningful differences between the occurrence of laches in academic centers and the occurrence of laches in non-academic centers in a general view ( $P= 0.87$ ). But this status is different between various fields. It can be seen practically that the difference between academic and non-academic centers is meaningful in neurological surgery ( $P= 0.012$ ), orthopedic surgery ( $P= 0.001$ ) and plastic surgery ( $P= 0.000$ ) fields. The complainants of orthopedic and neurological surgeries fields are mainly in academic centers but the complainants of plastic surgery are mainly in non-academic centers. No differences are found between academic and non-academic centers about two fields of obstetrics and gynecology and general surgeries (**Table 3**).

Among 400 investigated files, about 30% of laches were proved. The most percentages of laches belong to obstetrics and gynecology and plastic surgeries (38.75% and 36.25%). Then the fields of orthopedic and general surgeries (32.5% and 31.25%) are in next levels, respectively. The field of neurological surgery had the least

percentage of laches proving (15%) (**Table 4**).

**Table 5** is related to the frequency distribution of the proved status of laches in studied surgery groups versus the type of laches (note of substance no. 215 in Islamic punishment law approved in 2013). The indiscretion had been more common than the carelessness. This status is also observed in the fields of obstetrics and gynecology, general and plastic surgeries. But this is inverted in the fields of orthopedic and neurological surgeries. In other words, the occurrence of carelessness is seen more common than the occurrence of indiscretion. Also, it is paid to investigate on the frequency distribution of the proved laches status of surgery groups versus the type of profession. As it is observed, the main responsibility belongs to related professional in all fields. Then it can be said that the nurses are responsible for the laches. Also the operating room assistants and technicians are in next level. But this status is a bit different for various fields. The responsibility belongs to operating room technician after the professional in the fields of general and plastic surgeries and after the professionals, the assistants are responsible for neurological surgery (**Table 6**).

In **Table 7**, it is paid to the investigation on the frequency distribution of the proved

laches status of surgery group versus the patient's status after surgery. The type of the status in this investigation is as death or the outbreak of permanent maim. In a general investigation, the main complaints are related to the patient's maim. But the status is a bit different between various fields which relates to the nature of illness. In a field like neurological surgery considering

the fatal nature of the illness, the main complaints are brought up by the deceased's parent and the laches are proved. But in a field like plastic surgery in which the fatal rate of the occurrence is negligible, the main complaints are done by proving the laches after the outbreak of maim. The same status is dominant in other fields.

**Table 1: The overall frequency distribution of medical laches in various fields of surgery in 2013**

Groups	Complaints	Complaints	Percentage
Obstetrics and Gynecology surgery		423	11.4
General surgery		398	10.7
Orthopedic surgery		315	8.5
Plastic surgery		228	6.2
Neurological surgery		165	4.5
All of the complaints (in all medical fields)		3706	100

**Table 2: The frequency distribution of surgery group complaint status versus age in two groups of Patient and Health Staff**

Age Average	Median		Mode		Age Spectrum		Average	
	P	HS	P	HS	P	HS	P	HS
Obstetrics and Gynecology surgery	6	3	2	3	2	3	-51	-67
General surgery	4.2	5.3	5	6	5	6	17	28
Orthopedic surgery	4	6	3	3	3	3	-81	-75
Plastic surgery	6.3	7.3	6	7	6	7	15	31
Neurological surgery	2	1	4	3	4	3	-89	-59
Total	3.4	8.3	4	8	4	8	8	32
	8	9	2	3	2	3	-51	-61
	6.2	6.3	7	7	7	7	23	35
	3	3	5	3	5	3	-67	-55
	9.4	9.3	0	9	0	9	21	37
	7	7	3	3	3	3	-89	-75
	1.3	8.3	1	8	1	8	8	28

**Table 3: Frequency distribution of complaint status against surgery group versus the type of medical center (the place of occurrence)**

Groups	Type of medical center	Academic (percent)	Non-academic (percent)	Total	P value
Obstetrics and Gynecology surgery		46 (57.5)	34 (42.5)	80	0.092
General surgery		43 (53.75)	37 (56.25)	80	0.25
Orthopedic surgery		56 (70)	24 (30)	80	0.001

Plastic surgery	11 (13.75)	69 (86.25)	80	0.000
Neurological surgery	47 (58.75)	33 (41.25)	80	0.012
Total	203 (50.75)	197 (49.25)	400	0.87

Table 4: Frequency distribution of complaint status against the surgery group versus laches proving

laches proving Groups	Yes	Percentage	No	Percentage	Total
obstetrics and gynecology surgery	31	38.75	49	61.25	80
General surgery	25	31.25	55	68.75	80
Orthopedic surgery	26	32.5	54	67.5	80
Plastic surgery	29	36.25	51	63.75	80
Neurological surgery	12	15	68	85	80
Total	123	30.75	257	69.25	400

Table 5: Frequency distribution of the proved laches status of surgery group versus the type of the laches

Groups	Type of laches	Indiscretion (Percentage)	Carelessnes (Percentage)	Lack of skill (Percentage)	Observing the orders (Percentage)	Proved laches
obstetrics and gynecology surgery		19 (61.3)	12 (38.7)	8 (25.8)	5 (16.1)	31
General surgery		17 (68)	8 (32)	4 (16)	2 (8)	25
Orthopedic surgery		9 (34.6)	17 (65.4)	7 (26.9)	4 (15.4)	26
Plastic surgery		19 (65.5)	10 (34.5)	23 (79.3)	0 (0)	29
Neurological surgery		3 (25)	9 (75)	8 (66.7)	5 (41.7)	12
Total		67 (54.5)	55 (45.5)	50 (40.7)	16 (13)	123

Table 6: Frequency distribution of the proved laches status of surgery group versus the type of the profession

Groups	Type of profession	Cases of proved laches	Professional (Percentage)	Assistant (Percentage)	Nurse/ midwife (Percentage)	Technician (Percentage)	Total
obstetrics and gynecology surgery		31	66 (70.2)	8 (8.5)	18 (19.1)	2 (2.1)	94
General surgery		25	48 (85.7)	2 (3.6)	3 (5.4)	3 (5.4)	56
Orthopedic surgery		26	31 (81.6)	3 (7.9)	0 (0)	4 (10.5)	38
Plastic surgery		29	31 (93.9)	0 (0)	2 (6.1)	0 (0)	33
Neurological surgery		12	16 (80)	2 (10)	1 (5)	1 (5)	20
Total		123	192 (79.7)	15 (6.2)	24 (10)	10 (4.1)	241

Table 7: Frequency distribution of the proved laches status of surgery group versus the type of the profession

Groups	Patient's status	Maim	Percentage	death	Percentage	Cases of Proved laches
obstetrics and gynecology surgery		10	32.2	21	67.8	31
General surgery		14	56	11	44	25
Orthopedic surgery		22	84.6	4	15.4	26
Plastic surgery		27	93.1	2	6.9	29
Neurological surgery		4	33.3	8	66.7	12
Total		77	62.6	46	37.4	123

## **DISCUSSION AND CONCLUSION**

Today, the specialization of medical affairs and the financial and social issues, result in decay of conventional relations between the doctor and the patient. Population growth, increase in the numbers of doctors, medical technology advances, lack of doctors' success in establishing communication with the patients and the increase in people awareness of their rights are among the reasons and the ascending process of complaints against the doctors in recent years. New scientific achievements are along with problems and issues that writing the laws and regulations which are correspondent to them, is an unavoidable essential. In general, the legal developments of the medical responsibility concept are among the most important aspects of these developments in medical sciences.

Lack of establishing an appropriate relation between the doctor and the patient, gaining uninterested and unexpected result which is due to the illness itself or its complications, deterministic laches from the doctor and some factors like high costs of the treatment, unnecessary actions, inappropriate moral behaving the patient and etc. are among the cases of patients' dissatisfaction in action of complaining against the doctors and the establishment of medical laches files.

The fact is that the medical faults have been converted to an important factor to approximate the time for death. Some statistics imply that 250 thousand people lose their lives because of medical mistakes while the doctors usually have a special honor but the social credit does not mean that they never make mistakes. Sometimes, the doctors make mistakes which have very dangerous and irreparable outcomes for the patients. For example, transplanting the heart or the kidney to a patient that the receiver's blood type is not accordant to the transferor's blood type and it results in death.

The medical fault may not be only special for Iran so that in past decades, this problem and its outcomes is mentioned considerably by the people and media in worldwide and has been the underlying for opening the numerous judicial files.

Complaints against the professionals are always in top of the complaints against the doctors in various fields of surgery. In this study, complaints against the professionals of obstetrics and gynecology had has the most statistics. Complaints are done in this professional field because of various reasons which can be mentioned some cases such as the nature of the field and more use of surgery devices, difficult and stressful work with the probability of harm to fetus and newborn and even mother in a little

time, lack of facilities, insufficient space and personnel, lack of appropriate relations with the patient, lack of hint to patients for unavoidable complications, late action for giving birth to baby which it makes both baby and mother impaired, assignment of birth to midwife without the professional's supervision and anesthesiologist's incorrect action during the caesarian operation. The professionals of this field usually involve healthy women and families with abundant hopes and any negligence and inattention in their works may accompany relatives' severe treats and reactions.

In this study, the surgery group of obstetrics and gynecology has had the most numbers of complaints in medical laches domain with 423 files (11.4%) out of total 3706 files in 2013. After that, the public surgery with 398 cases (10.7%), orthopedicsurgery with 315 cases (8.5%), plastic surgery with 228 cases (6.2%) and finally the neurological surgery with 165 cases (4.5%) respectively.

The research shows that the complaints against medical fields are increasing in ascending, so that the total cases of complaints against the medicine staff which were referred to Tehran legal medical organization was 134 cases in year 1995 which it was increased to 299 cases in 1999, 833 cases in 2004, 2207 cases in 2009, more than 3370 files in 2011 and 3706 files in 2013. The average annual growth of

medical laches files has been more than 12% - 15% in recent five years.

The investigations about the result of medical laches files which are done by researchers, show that the medicine staff were faulted in 1054 cases (47.8%) out of total 2207 cases of recorded complaints in year 2009. This statistics resulted in condemnation for 1358 cases (46.4%) out of total 2925 cases of medical laches files in year 2010 and for 1508 cases (44.7%) out of 3377 files and resulted in exoneration for 1869 cases out of 3377 files in year 2011. In this investigation, 30.75% of cases were the proving of laches which the most percentage is related to the professional field of obstetrics and gynecology (38.75%) and the least percentage is related to neurological surgery (15%).

Other investigations show that the most numbers of convicts in the files were dentistry files, general surgeons and obstetrics and gynecology doctors in year 2009 respectively, which are changed to obstetrics and gynecology and orthopedic surgery in year 2010. It means the professional field of obstetrics and gynecology has included higher statistics of medical laches occurrence. In this research, the most cases of laches are related to obstetrics and gynecology, plastic surgery, orthopedic surgery, general surgery and neurological surgery.

Complaining against the surgeries has two aspects. One is the probability of medical weakness or laches and the other is the illogical claims of individuals who complain against the surgeries repeatedly because of lack of knowledge about medical problems, illness complications and the limitations of doctor's ability. The numbers of complaints are increasing day after day according to the fees paid from insurance organization and lacking complete clarification about medical, surgical problems, complications and the doctor's limitations and abilities. In today's world, a juridical relation is established between the doctor and the patient, the principle is the conceptual responsibility and if any contract exists, the basis of responsibility is the contents of concluded contract between the doctor and the patient.

Based on this relation, the doctor is responsible for this problem that he/she should use all his/her talents and abilities to treat the patient and should not forget the legal framework. Sometimes it is probable that doctor does not perform his/her tasks as he/she should do and a different result is obtained randomly and unusually. In these cases, the problem of doctor's mistake, violation, laches or guilt is introduced which its juridical outcome is different for doctor and patient. Although this performances usually do not have intentional

nature but these laches may be considered as an irreparable mistake in the viewpoint of a patient which his/her problems has been increased and he/she has missed a part of his/her somatic and mental health and a family who see a member of its body sickly and damaged.

Although the basis of contract agreements is on the results but in some cases especially in doctor's commitment for the patient, the commitment is for the device. One of these cases is the surgeon's contraction to the patient for his/her treatment. The medical science is not complete and many of its affairs are based on probabilities. A change is developed in the system of medical responsibilities by approving the Islamic punishment law in 2013. The matter 495 of this law is the fundamental pillar of juridical order of surgeon's responsibility including civil and criminal that may be construed as the guiding principle. In this regulation, three conditions are considered for the legitimation of doctor's act: patient's satisfaction, the legitimation of medical action and also the observance of technical and scientific and governmental regulations. The Islamic punishment law which is approved in 2013, has avoided the previous rule and it does not accept the doctor's strict liability or non-fault liability according to some Imamiyeh jurisconsults' statements and lawyers' critics and it has returned to the

basis of the fault and has accepted the basis of fault in doctor's liability; because it is not reasonable that the orthopedic surgeon is responsible for a task in which the probability of loss exists and of the other hand, the responsibility of such act is upon him/her.

Therefore, it seems that the basis of liability is assumed in this fault law, not the proved fault; it means that the law assumes the doctor to be responsible unless his/her innocence is proved. However, the virtual assumption of fault is only a legal statistic and the possibility of proving its opposition to other reasons does exist for the surgeon.

It should be noted that the increase of people complaints against the doctors and the increase of proved violations statistics and their condemnation cause the medical position encounter to be subjected to danger in country. But it does not mean that only by statistical view to these doctors' violations and condemnations, it is understood that their service level is also declining or ascending. The raw statistics does not prove anything merely and it does not mean the loss in system. But it should be really considered that if the people are aware of their rights, their claims and their level of expectations would be increased and this is not a problem for the doctors to pass along it simply.

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