

# Civil Liability of Doctors and Medical Staff in the Field Of Gynecological Diseases and Compensation Methods

**Seyedeh Maryam Asadi nejad<sup>1</sup>, Ambar Dwi Erawati<sup>2</sup>**

*<sup>1</sup> General practitioner, private law faculty member, law department, Ahrar University Institute of Higher Education, Rasht, Iran.*

*<sup>2</sup> Widya Husada Semarang University, Indonesia.*

**Abstract:** Compensation methods in civil liability are actually one of the methods of implementing the obligation of losses that cannot be compensated by single methods. It is necessary to study different methods of damage repair and the efficiency and adequacy of each one. In this article, the basic goal of compensation for lost rights is stated for this purpose, and the major merits and benefits of compensation have been studied and researched. According to different definitions from the point of view of jurists in the quarterly and various publications from reliable domestic sites, as well as the study of civil liability from different points of view and reliable reference, it can be pointed out that this important point can be based on the main goal of civil liability in Therefore, compensation for the damage done should be considered in order to achieve the new legal principles of punishment that accepts the basis of fault. Different theories will be different by proving the fault of the doctor's commitment to the result or by the subject, which sometimes has unfortunate consequences. The civil responsibility of the doctor is actually the responsibility of the doctor for the damage he causes to the patient during surgery or treatment. This damage can be caused by the doctor's failure to perform his duties properly or even errors during treatment or surgery. In general, whenever a person is obliged to compensate another person, he has a civil responsibility towards him. It is not correct for a doctor to perform an operation whose harm is greater than the benefit for the patient, and derma is considered permissible if it is beneficial for the person's health.

**Keyword:** Civil liability of doctor, patient, consent to treatment, obligation, medical error, compensation

## I. Introduction

Civil liability is the obligation and obligation that a person has to compensate the damage caused to another person. It means that the responsible person is obliged to compensate the injured person. This responsibility can be compensated by compensation for the damage caused. Doctors who are convicted due to medical malpractice, either personally or considering that they have already insured themselves against civil liability through insurance companies, it is possible to pay money for the physical injuries caused to the patient, which is the most common method in law. Iran is a monetary method of compensation Two theories have been proposed regarding the responsibility of doctors towards the patient, which are the coercive theory and the contract theory, which are fully discussed in relation to it, but two questions are raised in this regard: If medical responsibility is based on coercive theory, who is responsible for proving fault? If the doctor's responsibility is based on the contractual theory, who is responsible for proving fault? Medical responsibility has gone through many ups and downs from the past until now, which were sometimes based on coercive theory and sometimes based on contractual theory. In addition to civil responsibility, which is compensation, doctors also have criminal responsibility, which the Islamic Penal Code approved in 2013 has stated articles in this regard, which are mostly based on intent and malice. In this case, when the perpetrator of a harmful act is punished if his act is considered a crime. The situation stated in Article 2 is any act or omission that is punishable by law. That is, the doctor's behavior is a crime if it has a spiritual element (general malice and special malice) and a material element. In criminal liability, in addition to the victim, the society also suffers from the occurrence of the crime. In this regard, I read the news that stated that the corona virus epidemic was caused by the mistake of several Chinese researchers in their studies on the tuberculosis virus, which, in my opinion, should be investigated from a criminal point of view. In relation to the civil responsibility of obstetricians and gynecologists, the issue of calendar birth has been raised. It has recently

been observed that parents are interested in the birth of their child on a certain date. In this context, the doctor, as an informed and expert person, is in charge of premature birth, and the parents, by declaring their consent to premature cesarean section, are considered to be the cause of calendrical birth. Another civil responsibility of doctors is in the field of errors caused by medical fertility. Today, with the advancement of technology regarding the elimination or in other words the maximum reduction of infertility, in some people fertility is possible only through medical treatments and methods or in other words through unconventional fertility. The civil liability of all the people who are involved in the treatment of a patient is one of the important topics of civil liability law that is discussed in different countries and important opinions have been issued about it. Performing medical and therapeutic actions is allowed if it is beneficial for a person's health, otherwise it will not be permitted by the legislator. Therefore, all those who initiate treatment should refrain from taking action that has no effect on a person's health. One of the biggest problems of today's medicine in the world is that every year, accidents and accidents caused by medical responsibilities cause more deaths than cancers or diseases such as AIDS. One of the ways for doctors to escape from this responsibility is doctors' insurance, which is one of the types of civil liability insurance policies that cover damages caused by errors, mistakes, and negligence of the insured in diagnosis, treatment, treatment, surgery, and any medical matter that causes injuries, including It covers those who are physically and mentally ill or die.

## **II. Background**

Bijan Haji Azizi, in Daneshvar Medical Journal, 2010, Volume 9, Number 36, Pages 72-63, concluded that these methods are actually the methods of liability of the party responsible for the loss. Since different types of material, spiritual, and physical losses cannot be compensated with a single method, the efficiency and adequacy of each is studied.

Nahid Broumand, Seyyed Mohammad Mousavi and Seyed Mohammad Azin, members of the faculty of the Department of Law, Jurisprudence and Medical Ethics, in the scientific-research quarterly of 2021 and 2022, regarding the civil responsibility of doctors in errors caused by fertility, concluded that there are two theories in this regard. And there is a well-known theory that believes in the guarantee of the doctor, and another, which is not well-known, does not consider the doctor as a guarantor unless he is at fault.

Laia Watanpour, Fatemeh Watanpour and Dr. Ayatollah Parvizi Fard in the first international conference and the third national conference on management research on May 3, 2017- University of Tehran, about the civil responsibility of doctors with the approach of the Islamic Penal Code 2013 concluded that the responsibility Civil liability is the responsibility of the doctor for the damage he causes to the patient and this damage is caused by the performance of medical duties. If the medical responsibility is based on the coercive theory by proving the fault in the treatment of the patient or claims that it is based on the contractual theory, depending on whether the doctor is sure that he will reach the result or by means of it, the matter will be different.

Javad Maboud and Ali Faqih in the quarterly published in February 2023 about the civil liability of doctors in terms of Imamiyyah jurisprudence and Iranian law came to the conclusion that according to the law of civil liability, if they carelessly or deliberately cause harm to people in the performance of their duties, they are personally responsible for compensation. Damaged. Despite the fact that in legal researches and writings, he is responsible for the rules and principles governing civil and criminal responsibility, he is also responsible for the carelessness that causes harm to a person.

Iraj Babaei Regarding the concept of civil liability in the legal encyclopedia of 2019, came to the conclusion that the civil liability in Iranian law, the issue of personal and financial damage, other than in the form of the rule of loss of collateral, usurpation and disturbance, and its effects in each of these topics. It has been independent and different from the other, but civil responsibility and related rights have consistent rules and conditions. In fact, civil responsibility as an independent legal entity deals with all issues and examples of compensation in a unified and organized manner.

Seyyed Mohammad Tabatabainejad and Mohammad Kazemi, in a research article from the Faculty of Law and Political Sciences of the University of Tehran regarding civil liability and compensation, concluded that the civil liability system is one of the divisions of private rights and oversees the obligations to compensate the damage caused to Another one is created based on this, the main goal of civil responsibility is different and undeniable in order to achieve what the military responsibility system pursues by relying on the rules of public law.

Hamidreza Salehi, Seyed Mohammad Razavi, Rasool Rafiei and Yunus Karoumi regarding compensation for damages caused by medical treatments in Iranian and American law in the Scientific Research Journal of Medical Law in 2020 concluded that in Iran, compensation for non-financial damages requires an apology. On the other hand, in American law, the courts have issued numerous decisions, financial and non-financial compensation for various cases related to

medical errors, especially pain, suffering, emotional damage, grief and sorrow caused by the death of a person for his relatives, changing the appearance of the body In this country, the task of determining damages is entrusted to the jury.

Seyedah Luna Mohammadi and Priya Karamzadeh in a research article on Iranian and French law in Scientific Research Quarterly Volume 13 Number 49 October and December 2020 about the responsibility of doctors for medical errors came to the conclusion that one of the oldest issues of medical law is that the patient He has the right to ask the doctor to compensate for damages based on the contract or crime. After many years, the French legal system considered the relationship between the patient and the doctor as a contractual relationship, according to which the doctor will be responsible when there is a fault on his part.

Hamid Rahmani, in the scientific research journal of medical law of Yazd University in 2022, about the compensation of damages caused by scientific researches of foundations and structures, concluded that the traditional system of compensation, such as the theory of fault and the theory of creating risk, in practice does not fully compensate the subject be made. Traditional damage compensation systems do not have the necessary efficiency to compensate damage caused by scientific research.

Mohammad Norouzian, Salman Valizadeh and Farhad Adarshi in the Quarterly Journal of Fiqh and Islamic Law Studies about the civil liability of doctors came to the conclusion that the responsibility of each of the factors causing damage and the extent of responsibility of each of the factors causing damage is coercive and contractual, compensation for the damage caused to be compensated in the best way. And it is one of the duties of the government and the legislator, while protecting the rights of the patient and the person being tested, to provide the basis for conducting such research.

### **III. Generalities and Concepts**

#### **3-1-Civil Liability**

A person's legal obligation to repair the damage he has caused to another, whether this damage is caused by his own fault or caused by his negligence. (Fiqh) used the word guarantee in this sense and it means any type of responsibility, including financial responsibility and criminal responsibility. The term responsibility is an Arabic word and its Persian equivalent is the term accountability.

In fact, responsibility is a person's responsibility for the actions that are attributed to him, the guarantee of legal implementation of which is different according to the type of responsibility. Therefore, civil liability is a person's legal obligation to compensate for the losses caused to another person as a result of his documented act. The origin of the commitment may be voluntary or contractual or it may be the law that such commitment is called coercive guarantee or civil liability in a special sense.

#### **3-2-Moral Responsibility**

In a way, this responsibility is about the conscience of a person, and in its article, a person becomes responsible for his own mistakes. Moral responsibility is generally internal and personal, and in order to know the perpetrator, it is necessary to inspect his thoughts and conscience. In other words, moral responsibility is the obligation that a person has in his conscience against his speech, actions and thoughts. If the act is in good faith, the person is not charged, but if the person has an intention against the rules, he is responsible. Doctors must also follow principles and rules, the importance of morals and ethical principles for a doctor, in terms of intensity and weakness, depends on the effect it has on the patient's psyche.

#### **3-3-Coercive and Contractual Theory**

##### **3-3-1-Medical Liability Based on Coercive Theory**

In this regard, it is the responsibility of the patient or claimant to prove the issue. The followers of coercive responsibility of the doctor believe that what the doctor undertakes to do is to treat the patient. It depends on human life, which is not negotiable and cannot be traded. In the Islamic Penal Code approved in 2013, in articles 497-495, the doctor's responsibility is recognized as an example of fault-based responsibility. Any error attributed to the doctor, which causes the patient to die or harm his health, will be applied to the provisions of the Penal Code, and if it is accepted, it will be mandatory to apply the provisions of compulsory liability. In fact, when two people do not have a contract with each other and one of them harms the other intentionally or by mistake, the non-contractual or non-contractual liability is fulfilled. Coercive liability is the responsibility to compensate for the loss caused by the violation of the duty that is first

prescribed by the law. Such an obligation is towards individuals in general and its violation can be compensated through filing a lawsuit.

### **3-3-2-Medical Liability Based on Contractual Theory**

The condition for fulfilling the contractual responsibility is the existence of a correct contract and establishing the relationship of causation. Therefore, failure to fulfill the obligation resulting from any contract means committing a contractual error. Whether this is due to intention or error. If the doctor's responsibility is based on the contractual theory, depending on whether the doctor's obligation is the obligation to the result or to the means, the issue will be different.

Obligation to the result regarding the contractual responsibility of the doctor, because the doctor is committed to achieving the result, if the patient is not cured, it is assumed that the doctor made a mistake. In other words, failure to achieve results is a presumption that the doctor has violated the established rules and systems of medical science, and in this case, the patient is not required to prove the doctor's mistake. In relation to the obligation by the stated means to prove the doctor's error, failure to obtain a result is not sufficient. Therefore, if the patient does not fully recover, the doctor is not responsible unless the patient proves the doctor's fault. Because the commitment of the doctor is the commitment to the means and he tries to use all his facilities to treat the patient.

### **3-4-Calendar Birth**

A cesarean section outside of the scheduled time and without the necessity of a doctor is called a calendar birth, the only purpose of which is the birth of a baby on a specific date. As we have seen, many people requested caesarean section on 22/04/2023. This type of birth may cause unavoidable risks for the mother and the baby due to the change in natural birth. Therefore, it has been identified by relying on the library method. In addition to being contrary to ethics, calendar birth creates civil, criminal, and in some cases disciplinary liability for those involved. Verification of the elements of civil liability in calendar birth, including the entry of harm, harmful action and causal relationship, provides the causes of civil liability of doctors, parents and treatment centers. In such a birth, the doctor, as an informed and expert person, is in charge of the premature birth, and the parents, by declaring their consent to the premature cesarean section, are considered to be the cause of the calendrical birth. In addition to these two factors, treatment centers, despite the employment relationship of the doctor and the complex contract between the hospital and the patient, are another cause of possible damage; therefore, according to Article 526 of the Islamic Penal Code, assuming the association of the cause and the responsible, the responsibility for compensation is distributed based on the effect of the behavior of the perpetrators and by verifying it by the customary criterion.

### **3-5-The Civil Responsibility of the Medical Complex in the Mirror of the Judgments of Judicial Authorities**

Today, one of the important legal issues that civil law and civil liability law are silent about is the civil liability of the medical complex. While respecting the patient and defending human rights in times of illness and medical emergencies without discrimination of age and gender, having financial power is known as the bill of rights of the patient. In the meantime, if service negligence or committing a wrong act in planning or execution causes an unwanted result and causes damages, then such a response is definitely not worthy of the patients' expectation. Unfortunately, despite the increase in medical accidents, the legal procedure governing the authorities and medical and paramedical civil liability insurance have not been able to respond to the damages. And considering that in Iran's legal system, no special law has been approved so far in the field of medical responsibilities, except for a few limited articles in the Islamic Penal Code, which is adapted from jurisprudence. And medical civil liability claims are settled based on traditional rules. While examining examples of court decisions, it has been tried to explain the necessity of changing the medical civil liability system and approving special provisions in Iranian laws and creating a special compensation system for medical accidents.

### **3-6-Civil Liability of the Doctor in Errors Caused by Medical Fertility**

One of the important topics and fields that have been made in recent years in terms of scientific advances in the field of medicine is the issue of medical fertility. The feeling of need for changes and changes in the environment and lifestyle and thousands of other factors have caused discussion about this issue, which sometimes has unfortunate consequences. The expansion of this field and the problems that intentionally or unintentionally put the life, property and sometimes even the reputation of people at risk due to these new technologies, the discussion and research in medical law and the subsequent responsibility of doctors in this field are necessary.

### **3-7-Medical Civil Liability Insurance**

Medical liability insurance is one of the types of professional liability insurance. In this insurance, every responsibility that the doctor has towards his patients according to the law is transferred to the insurance company according to the insurance policy and the insurer will be responsible in times of need. Things like mistakes and medical errors are covered by this insurance. Even if the patient's treatment is done with the full consent of the person or his legal guardian, the medical liability insurance policy will assume the doctor's responsibility at the time of damage. Medical liability insurance is only valid in Iran. In the liability insurance of some insurance companies, the legal fees are also paid. If the patient is injured due to the errors of the assistant or nurse under the supervision of the insured doctor, the insurer is obliged to pay the damages.

### **IV. Conclusion**

The responsibility of doctors towards patients can be moral or legal. Moral responsibility is derived from the personal conscience that a person is faced with and due to which he personally and internally feels guilt and torment of conscience. Legal responsibility itself has two civil and criminal aspects. In the criminal aspect of doctors' responsibility, it is important to consider that his behavior, whether it is an act or omission, which is considered a crime according to the law. The Islamic Penal Code includes articles in this regard, by which the criminal gets his punishment, regardless of whether it has a personal or social aspect. In the relationship or civil responsibility of the doctor, it is the compensation that the person has to fix the loss and damage caused to the patient due to the action he has taken. According to the responsibility of doctors and medical errors, usually the erring doctor is not responsible for the complications caused to the patient. But to repair the damage in the lost rights, he can use the civil liability insurance method and repair the majority of the damage done. Treatment in Iran, with various consultations, mostly makes the patient responsible for the disorder and the wrong doctor is usually acquitted, except for exceptional cases, which include very acute cases or death. It is suggested that doctors' civil liability insurance is the best and most comprehensive method of liability compensation in all fields of medicine, especially gynecology and obstetrics, which are covered by the most complaints according to statistics and cases presented in court.

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