Liability for Medical Negligence: A Study of Islamic Law

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Abstract

Preservation of life is one of the five main objectives of *Sharī'ah*. Preservation of life includes preservation of health too. Every human being falls ill at some point of life and needs assistance of medical practitioner. Medicine is an inexact science and can go wrong. In such cases of mistake, misadventure, negligence and criminal actions, doctors and patients end up in court of law. It is pertinent for Muslim doctors, patients and courts to seek the knowledge about the perspective of *Sharī'ah* regarding practice of medicine. *Sharī'ah* guides medical practitioners by providing them general principles for the practice of medicine and enlightens the patients about their rights. Furthermore, it directs the courts and doctors about their liability. Medical malpractice law in *Sharī'ah* started with the tradition of Prophet: "He who sets himself up, and undertakes the treatment of others, but had not prepared himself well for medical practice and as result has caused harm, is liable." This tradition and many other guidelines from Quran and

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Sunnah formed the basis of Islamic Law of medical practice. Muslim Jurists (fuqahā) expounded these concepts and guided medical practitioners about their liabilities in cases of misadventures, mistakes and negligence. This article aims at exploring the treasure of *Sharī'ah* regarding the liability of medical practitioners. It argues that *Sharī'ah* incurs the liability to compensate for the harm caused due to negligence and mistake while criminal liability is invoked only in the cases of gross negligence.

Keywords: *Sharī'ah*, Medicine, Doctors, Negligence, liability

Introduction

According to Islamic *Sharī'ah*, life and health are the blessings of Allah and should not be wasted.[2] Ensuring preservation of life is one of the five objectives of *Sharī'ah*. For this purpose, *Sharī'ah* allowed the practice of medicine and urged people to use it for cure. A Ḥadīth states: "Seek medical treatment, for Allah has not created any disease but He also created a remedy for it, except for one disease: old age."[3] Medical Practitioner are bound to be skillful in that art and to use their skill in best possible manner and don't cause harm to the patient in any way. However, unfortunately mistakes, misadventures, negligence and quackery often happen in this field. Doctors are not absolved of the liabilities of all these mishap. They are liable to compensate for the harm

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[2] See: Muhammad Ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Dār Tauq al-Nijāh, 1422 H), 8: 88, Ḥadīth no. 6412.

[3] Muhammad Ibn 'Īsā al-Tirmidhī, *Al-Jāmi'*, (Beirut: Dār al-Gharb al-Islāmī, 1998), 3, 451, Ḥadīth no: 2038; Abū 'Abd Allah Muḥammad Ibn Yazīd Ibn Mājah, *Sunan* (Dār Ihyā al-Kutub al-'Ilmiyyah), 2:1137, Ḥadīth no. 3436.

caused in many cases. Medical malpractice law in *Sharī'ah* started with the tradition of Prophet Muhammad which speaks:

مَنْ تَطَبَّبَ، وَلَمْ يُعْلَمْ مِنْهُ طِبٌّ قَبْلَ ذَلِكَ، فَهُوَ ضَامِنٌ۔[4]

> "He who sets himself up, and undertakes the treatment of others, but had not prepared himself well for medical practice and as result has caused harm, is liable."

This tradition and many other guidelines from Quran and Sunnah formed the basis of Islamic Law of medical practice. Before going into details, it deems appropriate to first throw a glance over the general concept of liability in *Sharī'ah* before computing the liability of doctors.

Concept of Liability in *Sharī'ah*

The concept of "*ḍamān*" encompasses the details of liability in *Sharī'ah. Ḍamān* is closer to multiple notions of English Law. It can be considered a synonym of "surety ship" but it is broader concept than mere surety ship. Likewise it can be translated as "obligation" but it is wider term than that. Similarly at times, *ḍamān* can be translated as "indemnification" too. The literal meanings of *ḍamān* are *Kafālah* (surety ship), *Iltizām* (obligation), and

[4]Ibn Mājah, *Sunan*, Ḥadīth no. 1148; Abū 'Abd al-Raḥmān Aḥmed Ibn Shu'aib Ali al-Nasā'i, *Sunan* (Maktaba al-Matbu'āt al-Islamiyyah, 1986), 8 :52. Ḥadīth no. 4830; Abū Dāwūd Sulayman Ibn al-Ashas al- Sijistānī, *Sunan* (Beirut: Dār al-Kutub al-'Arabī), 18:107, Ḥadīth no. 4830, Ḥadīth declared as Hassan by al-Banī; Abū 'Abd Allah Muhammad Ibn 'Abd Allah al-Hākim al-Nīshāpūrī, *Al-Mustadrak 'alā al-Saḥīḥayn* (Beirut: Dār al-Kitāb al-'Ilmiyyah, 1990), 4:263, Ḥadīth no.7484. Ḥadīth declared as *Sahīh* and al-Dhabī agreed with him; Abū al-Hassan 'Ali al-Dār Quṭnī, Sunan (Beirut; Moassisa al-Risalāh, 2004), 4:264, Ḥadīth no. 3438.

Taghrīm (monetary compensation).[5] As mentioned earlier, *ḍamān* covers multiple related but different concepts. For this reason, several definitions have been suggested by Muslim jurists for the true meaning of the term "*ḍamān"*. Some definitions are as under*:*

> *Ḍamān* is *iltizām* (obligation) to restore the damage caused to the owner by destruction of his property. Similar object must be returned if it is fungible and value must be paid off if it is non fungible object.[6]
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> الضَّمَانَ عِبَارَةٌ عَنْ رَدِّ مِثْلِ الْهَالِكِ إنْ كَانَ مِثْلِيًّا أَوْ قِيمَتِهِ إنْ كَانَ قِيَمِيًّا.[7]
>
> *Ḍamān is Taghrīm* (monetary compensation) of destroyed property.
>
> وَالضَّمَانُ عِبَارَةٌ عَنْ غَرَامَةِ التَّالِفِ.[8]
>
> *Ḍamān* is obligation reflecting the meaning of Surety ship to guarantee a debt or production of a person.
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> وَهُوَ فِي اللُّغَة الِالْتِزَام وَشرعا يُقَال لالتزام حق ثَابت فِي ذمَّة الْغَيْر أَو إِحْضَار عين مَضْمُونَة أَو بدن من يسْتَحق حُضُوره.[9]

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[5]Ahmad Ibn Muhammad ʻAli al-Fayūmī, *al-Misbāh al-munīr fī gharīb al-sharh al-kabīr* (Beirut: Al-Maktabah al-ʻIlmiyyah, n.d), 2 :364.

[6]Armed Ibn Muhammad Makkīal-Ḥamawī, *Ghamz ʻUyūn al-Baṣā'ir fī sharh Al-ashbāh wa al-Naẓā'ir* ((Beirut: Dār al-Kutub al-ʻIlmīyyah, 1985), 2 : 6.

[7]Muhammad Ibn ʻAlī Ibn Muhammad Showkāni, *Nail al-Aowtār Sharh Muntaqa al-Akhbār* (Egypt: Dār al-Ḥadīth, 1993), 5 :357.

[8]Muhammad Ibn Ahmad al-Khatīb al-Shirbīnī, *al-Iqna' fī ḥal alfāz abī Shuja'* (Beirut: Dār al-Fikr, n.d), 2 :312.

[9]Muwafffaq al- Dīn Abū Muḥammad ʻAbd Allāh ibn Qudāmah al-Maqdisī, *Al-Mughnī* (Cairo: Maktabah al-Qāhirah: 1968), 4 :399.

Ḍamān is merging of one liability with another in respect of demand for performance of an obligation.

ضَمُّ ذِمَّةِ الضَّامِنِ إِلَى ذِمَّةِ الْمَضْمُونِ عَنْهُ فِي الْتِزَامِ الْحَقِّ.[10]

Ḍamān is *iltizām* (obligation) to pay monetary compensation for destroyed, usurped, defected and damaged properties and items.

وَيُطْلَقُ عَلَى غَرَامَةِ الْمُتْلَفَاتِ وَالْغُصُوبِ وَالتَّعْيِيبَاتِ وَالتَّغْيِيرَاتِ الطَّارِئَةِ.[11]

Ḍamān is iltizām (obligation) to pay damages for injury to life or any bodily organ.

From the above definitions, it is evident that multiple but related concepts are intertwined in the term *Ḍamān*. The most relevant notion to the medical malpractice is the liability to pay monetary compensation for the damage caused to the patient due to Physician's treatment. *Sharī'ah* requires two conditions to be fulfilled in order to establish *ḍamān*. There must be *al- ta'addī* (transgression) or *taqsīr* (negligence); on the part of doer in order to consider him *ḍāmin* (liable) and as a result of that *al- ta'addī* (transgression) or *taqsīr* (negligence); aggrieved party must have suffered *al-ḍarar* (harm). If the injury wasn't the result of transgression or negligence, doer will not be liable.[12] In the light of these principles, there will be *ḍamān* upon a medical practitioner if he transgressed the limits of his practice i.e. he did which he ought not to do or he didn't do what he was supposed to do. In both cases he will be *ḍāmin* if his action or omission caused harm to the patient.

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[10]*Mausu'ah* al-*Fiqhiyyah* al-*Kuwaitiyyah s.v.* Ḍamān.

[11]*Mausu'ah* al-*Fiqhiyyah* al-*Kuwaitiyyah s.v.* Ḍamān.

[12]Dr. Wahbah al-Zuhaylī, *Naẓaryah al-Ḍamān* (Damascus: Dār al-Fikr, 2012), 18- 26.

Liabilities of Medical Practitioners

Muslim jurists dealt with this issue in either of the two ways: They presented the details about different types of doctors and determined their liability accordingly; or they listed certain conditions and concluded that the doctor, who fulfilled these conditions, will not be liable

Imam Ibn al-Qayyim al-Jawziyyah in his book '*Zād al-Ma'ād fī Hadyī Khaīr al-'Ibād'* presented five different categories of medical practitioners and decided whether they are *ḍāmin* or not.[13] These classes are summarized below:

Proficient Authorized Doctor (who treated according to the accepted prevalent methods)

According to the jurists, a doctor will not be liable if a medical practitioner is proficient in his field and he treated his patient according to the prevalent accepted method and there was neither transgression nor negligence, yet patient couldn't be cured and his condition deteriorated and complications resulted from his treatment. According to Ibn al-Qudāmah, a proficient doctor is the one who is knowledgeable and experienced in his field. If he is not that skillful, it will not be permissible for him to do incisions.[14]

There is an important discourse in jurisprudence regarding the reason for discharging the medical practitioner from the liability. Ḥanafī jurists are of the opinion that the doctor is assumed to be performing his duty, for which he was trained, in the manner in which it is usually conducted. During execution of a duty practitioner is only liable if he is not

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[13] Muhammad Ibn Abū Bakr ibn al-Qayyim al-Jawziyyah, *Zād al-Ma'ād fī Hadyī Khaīr al-'Ibād* (Beirut: Mu'assasah al-Risālah, 1994), 4:128.

[14] Ibn Qudāmah, *Al-Mughnī,* 6: 120.

authorized or if he goes beyond the boundaries and limits of authorization. There is a Legal Maxim of *Sharī'ah*: "executing one's duty does not entail a guarantee of safety nor success." Medical treatment is a necessity, which is very crucially needed by the society. "The consensus is that there is no liability attached to the consequences of performing one's duty so the medical practitioner in charge may not be liable, "by consensus of all *fuqahā*"[15].Sarakhsī in *al-Mabsūt* said:

> If a barber-surgeon lets out blood, or incises an abscess, for consideration; or if a veterinary worker treats an animal, for a fee; then if that person or animal dies, the performer is not liable. This is in contradistinction to the work of a tailor who spoils a dress: because he was contracted to deliver a piece of work without defect, which is within human competence. Whereas in the case of living objects the intervention opens up a door for the soul a domain which is not under the control of the performer; as it unleashes elements of nature which may complicate the procedure The contract of exchange is not applicable where there can be unforeseeable results to the intervention. So in this situation the performer is not liable, if he did what he was asked to do, unless he transgresses or performs without consent but if someone is asked to circumcise a child and he cuts off the glans, he is liable, as circumcision *(khatan)* should be limited to the prepuceonly. So, by cutting off the glans he has transgressed whereas he confines himself to the limits of what is required, but

[15] Abū Bakr Muhammad Ibn Abū Sahl al-Sarakhasī, *Al- Mabsūt* (Beirut: Dār al-Ma'rifah, 1978), 16 :10-11.

> the patient dies because of consequences not within his control *(sirāyah)* then he is not liable.[16]

According to Jamhūr Jurist (Mālikī, Shāfi'ī, Ḥanbalī Schools of Thought) he is free of charge because he was permitted by his patient or his guardian. He intended to cure the patients, having the competency and did not transgress or treat negligently.[17]

It is narrated that Imām Shāfi'ī said that If someone asks another to let his blood, or to circumcise his son, or to treat his horse, as a result of which loss occurred, then the situation is as follows: if the person did what is done by the people in the trade in such circumstances which is considered beneficial then there is no liability. But if his performance was at variance with what is the customary practice, then he is liable. As regards the fee, it is definitely payable if the performance was in accordance with the methods adopted by those in the field even if there is loss of life or part. But it has been said that it is even payable to the one whose methods were not in accordance with what is accepted in the field, although he is still liable. But the predominant view is that he deserves no fee. Al-Shāfi'ī said, "All fuqahā are unanimous that craftsmen are liable for all the losses incurred at their hands; but they are all also agreed that this does not apply, in all cases, to those who deal with animate beings. I find no explanation for that other than that the living body has its own reaction to actions.[18] Ibn al-Qayyim as mentioned earlier maintains that a doctor, will

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[16]Sarakhsī, *al-Mabsūt*, 16: 13-14.

[17] Ibn Rushd, *Bidāyat al-Mujtahid,* 4: 200; al-Shāfi'ī, *al-Umm* (Beirut: Dār- al Ma'rifa: 1990), 6 :190 ; Ibn Qudāmah al-Maqdisī, *Al-Mughnī,* 5: 398.

[18]Muhammad Ibn Idrīs al--Shāfi'ī, *al-Umm* (Beirut: Dār- al-Ma'rifa: 1990), 6 :186-187.

not be held liable if he is proficient and competent and was neither negligent nor transgressor, even if the consequence of the treatment was loss of organ or life.[19]

Ignorant Medical Practitioner/Quack

There are multiple Verses in Glorious Quran and many Traditions of Prophet Muhammad (peace be upon him) that sanctioned the sanctity of human body and prohibition of causing any damage to it. For Example:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكُمْ وَصَّاكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ.[20]

…..And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason."

Likewise Prophet said:

فَإِنَّ دِمَاءَكُمْ، وَأَمْوَالَكُمْ، وَأَعْرَاضَكُمْ، بَيْنَكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا.[21]

No doubt! Your blood, your properties, and your honor are sacred to one another like the sanctity of this day of yours, in this (sacred) town (Mecca) of yours, in this month of yours.

And there are many Verses in Holy Quran that mandated the redress and compensation for the undue harm caused to the other person, be it bodily harm or monetary. For instance:

وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا...[22]

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[19]Ibn al-Qayyim, *Zād al-Ma'ād*, 128.

[20]Al-an'ām 6:151.

[21]Bukhārī, *Sahīh*, 3: 573.

[22] Al-Shūrā 42:40.

And the retribution for an evil act is an evil one like it….

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ...[23]

And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed…..

If a quack or incompetent medical practitioner makes huge mistake in treating the patient, he should be punished with severe penalty as human body is sacred and he violated its sanctity. Following Hadīth of Prophet Muhammad (peace be Upon Him) gave the sufficient indication to the matter:

مَنْ تَطَبَّبَ، وَلَمْ يُعْلَمْ مِنْهُ طِبٌّ قَبْلَ ذَلِكَ، فَهُوَ ضَامِنٌ.[24]

He who sets himself up, and undertakes the treatment of others, but had not prepared himself well for medical practice and as result has caused harm, is liable.

Imam Ibn al-Qayyim said that the messenger of Allah didn't use the word "**من طبّ**" rather he employed the word "**مَنْ تَطَبَّبَ**". Thus, pointing at the difficulty in doing something and the lack of capability.[25] Therefore, any person who doesn't have the sufficient knowledge of the field of medicine comes under this category. Whether he is simply a quack meaning no regular learning from an accepted institution of medicine or any professional doctor who do not have the knowledge of that specific field. For instance a dentist cannot treat cancer or a dermatologist must not administer anesthesia. Ghazālī wrote that *Sharī'ah* only permitted the practice of medicine on the condition that the doctor is skillful and have

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[23] Al-Naḥl 16: 126

[24]Ibn Mājah, *Sunan*, 2: 1148, Ḥadīth no. 1148; Al-Nasā'i, *Sunan* , 8: 52. Ḥadīth no. 4830.

[25]Ibn al-Qayyim, *Zād al-Ma'ād*, 1:103.

the ability to treat the patients, if these conditions are not fulfilled by the practitioner, in this situation, the original rule of impermissibility will be applied. Rule enshrined in this Holy Tradition entails that the quack will be liable for the harm caused to the patient. Ibn Rushd declares that there is a consensus of scholars that quack will be liable.[26] But Ibn al-Qayyim explicated the rule by dividing them in two types of categories. According to him, a medical practitioner will be held liable if he pretended himself to be a competent doctor and the patient, in this illusion, presented himself to be treated by him and was caused harm. Whereas if the patient knew that the doctor is a quack and not the competent one, yet he chose to be treated by him that the medical practitioner will not be held liable.[27]

Proficient and Authorized Doctor that Errs or Commits Negligence

The doctor is competent and is authorized by the government and patient but he committed a mistake. Due to this mistake whatever damage is caused to the patient, he will be liable to compensate.[28] Ibn Qayyim divided this category into two classes depending upon the mistake they commit i.e. medical practitioners that causes damage to a healthy organ instead of treating the sick one. Second is the one who errs in prescribing the medication. Mistake is the opposite of the correct or right[29]. It is an unintended action[30]. A person intended the action but he didn't intend to

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[26] Abū al-Walīd Muhammad Ibn Ahmad Ibn Muhammad Ibn Rushd al-Ḥafīd, *Bidāyat al-Mujtahid wa Nihāyah al-Muqtaṣid* (Cairo: Dār al-Hadīth, 2004), 1156.

[27]Ibn al-Qayyim, *Zād al-Ma'ād*, 129.

[28]Ibn al-Qayyim, *Zād al-Ma'ād*, 129.

[29] Ibn Manzūr, Lisān al-'Arab, s.v. Khaṭā

[30] Jurjāni, Al-Ta'rīfāt, s.v. Khaṭā.

commit a prohibited action. For instance, a person wanted to shoot a bird, instead it hit a human being. He didn't intend to hit that human being but his action missed the original target and instead hit that person.[31] Therefore, a mistake in the context of medical practice is when the doctor didn't intend to harm the patient rather harm was caused to the patient by his unintended action. Either he misdiagnosed the disease or gave the wrong medicine by mistake. Moreover, it can be due to the negligence. He may not intend that harm to the patient. But his negligence in performance of his duty may cause harm to the patient. Mistakes may or may not be due to the negligence. Muslim jurists have differentiated between negligence and mistake. If an error took place by medical practitioner without any negligence then he will not be sinful for it in the sight of Allah and His Prophet:

وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ....[32]

> There is no blame upon you for that in which you have erred but [only for] what your hearts intended.

إِنَّ اللَّهَ قَدْ تَجَاوَزَ عَنْ أُمَّتِي الْخَطَأَ، وَالنِّسْيَانَ، وَمَا اسْتُكْرِهُوا عَلَيْهِ.[33]

> Indeed Allah has excused my people from error, forgetting things, and what they were forced or compelled to do.

A person is not sinful when he commits any mistake but it doesn't eradicate the liability of causing harm to other human beings. A person

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[31]Kamāl al-Dīn Muhammad Ibn Humām al-Dīn 'Abd al-Wāhid ibn 'Abd al Ḥamīd al-Siwasī al-Iskandarī, *Fatḥ al-Qadīr'al¯a al-Hidāyah: Sharḥ Bidāyat al-Mubtadī*, 10: 203.

[32]Al-Aḥzāb 33:5.

[33]Ibn Mājah, *Sunan*, 1: 659, Ḥadīth no. 2043.

needs to compensate the damage no matter it was intentional or unintentionally caused. Thus if a competent doctor makes error, he will not be sinful if he was not negligent but he will be required to compensate. However if he was negligent and committed the mistake due to his recklessness, he will be sinful as well as liable to compensate the damage. Ḥanafīs declare the doctors liable if they deviated from acknowledged method of medicine or if they commit such a grave mistake that no other doctor of his caliber would have made.[34] Sarakhsī illustrates such a case in Al- Mabsūt, "If someone is asked to circumcise a child and he cuts off the glans, he is liable, as circumcision *(khatan)* should be limited to the prepuce only. So, by cutting off the glans he has transgressed."[35] Doctors will be held liable if they deviated from guidelines of medicine in the opinion of Mālikī jurists too. For instance, the liability would be invoked in the cases where he made the patient drink what was not suitable for him, he decreased the required quantity, he transgressed the limit or he had the authority for one treatment but he treated for something else. Ibn Rushd said: "Fuqahā are in agreement that a practitioner is liable if he errs and cuts the glans with the prepuce. But it is attributed to Mālīk that even then he is not liable if he is known to be proficient in his domain, otherwise he is liable."[36] In the viewpoint of Shāfi'ī jurists, doctors will be asked for those mistakes which other doctors would not have committed if they wanted to cure the patient. For example

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[34] Zain al-dīn Ibn Nujaim, *Al- Baḥr al- Rā'iq Sharḥ Kanz al- Daqā'iq* (Dār al-Kitāb al-Islāmī), 8:33.

[35]Al-Sarakhasī, *Al- Mabsūt,* 16*:* 13.

[36]Ibn Rushd, *Bidāyah al- Mujtahid,* 4: 200.

a doctor operated a patient who was so weak that he couldn't have borne surgery and ultimately died. Shāfi'ī said that if someone asks another to let his blood, or to circumcise his son, or to treat his horse, as a result of which loss occurred, then the situation is as follows: if the person did what is done by the people in the trade in such circumstances which is considered beneficial then there is no liability. But if his performance was at variance with what is the customary practice, then he is liable.[37] Ḥanbalī jurists demand to inquire from doctors if they transgress from the place where they were permitted or treated for which they were not authorized. According to them, if the practitioner operates without permission and death ensues, then he will be liable. If the practitioner removes a part (organ) without permission, and causes death, then he is liable.[38]

Criminally Negligent Medical Practitioner

Those medical practitioners who behave criminally negligent may have to redress it by retribution according to some jurists. Fuqahā are not unanimous in this regard. Ḥanafī *fiqh* makes it mandatory to kill directly or through an instrument that is meant for killing like sword or shotgun. If it is achieved through some intermediary means, it will not amount to killing. To Imām Abu Hanīfa it will be compensated through *diyyah* not retribution.[39] Ahmed Abdel Aziz broadens the ambit of this scenario and pictured an instance that can be included in this example and the punishment thereof. He gave the example of a doctor who was permitted for a limited simple procedure but transgressed and operated beyond his

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[37]Al--Shāfi'ī, *al-Umm*, 6: 190

[38]Ibn Qudāmah, *Al-Mughnī,* 5: 398.

[39] Ibn 'Ābidīn, *Radd al-Muhtār 'Ala al-Dur al-Mukhtār*(Beirut: Dār al-Fikr, 2006), 6:543.

permission and as a result cut his vessels or commits a mishap that claimed the life of patient. Imām Mālik was quite reluctant in assuming that a medical practitioner will intend murder of the patient by treatment or omission. It is narrated:

> Although *qisās* is due in case of loss of life, it is impossible to be certain that the crime was intended as this is not what is expected of medical practitioners nor is it the known behavior amongst physicians; besides, it is impossible to prove beyond reasonable doubt. Therefore it should not be treated as murder.[40]

Imām Shāfiʻī held the strict opinion. According to him criminal negligence is intentional crime and it should be penalized either by *qisās* or through *diyyah*. He said:

> In cases of circumcision if the practitioner removes the whole penis, an act which is unacceptable by the standards of his colleagues, then he is kept in custody until the youngster becomes of age. It is up to the youngster then to choose between retribution and the full *diyyah*. On the other hand if the youngster dies after the injury, then it is up to the heirs to choose between retribution and the full *diyyah*.[41]

The fourth school, that is, Ḥanbalī School of law too holds a strict point of view. It says: "If the practitioner removes a part (organ) without permission, and causes death, then he is liable for retribution *(qisās* or *qawad")*.[42]

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[40]Zurqani, *Sharḥ ʻalā Mukhtaṣar Khalil* vol. 8 (Cairo: Matbaʻat Mustafa Muḥammad), 117.

[41]al-Shāfiʻī, *al-Umm*,6: 82.

[42] Ibn Qudāmah, *Al-Mughnī,* 3:331-332.

Conclusion

Health is considered a blessing in Islam. Medical practitioners should be skillful in his field otherwise he would be liable for the harm caused to the patients due to their mistake and negligence. Muslim Jurists classify doctors into different categories for the purpose of ascertainment of liability and the remedy available for the patient. Doctor doesn't have to indemnify the patient if he was qualified for the treatment and didn't deviate from the standard guidelines whereas he will be liable if the doctor wasn't proficient or qualified for the treatment. Negligence and mistake will lead to monetary compensation while the criminally negligent doctor may be prosecuted for murder and bodily injuries.