



Study the Types of Medical Crimes and Medical Infractions in the Penal Code of Afghanistan

Zaker Hussain rezaiee*

Department of Private law and criminal law faculty of Law and Political Science, Balkh University. Afghanistan

*Corresponding author email: zaker_rezaiy@yahoo.com

ABSTRACT

Doctors are regarded as lifesavers in the world. Earlier, people who practiced medicine used to be precise in their treatment and more concerned with curing patients, it was considered as a service to humanity. However, currently, the profession has evolved into a money-making enterprise rather than a noble work. This has devolved into misuse of a noble deed. One of the ways to make money is medical crimes and medical infractions. So one of the most important issues discussed in today's law is the Medical Crimes and Medical Infractions. All countries have complete laws on prosecuting delinquent doctors. Afghanistan's legal system has incomplete laws regarding medical crimes and infractions. Unfortunately, no research has been done in this field in Afghan law. This is the first research that discusses medical crimes and medical infractions in the Afghan penal code. The penal code of Afghanistan is incompletely criminalized medical crimes and has not criminalized medical infractions. Therefore, it is necessary that the Afghan penal code should criminalize and recognize the medical infractions. This research wants to provide a legal solution to compensate the physical damage and mental damage of the patient, explaining the difference between medical infractions and medical crimes, study the challenges of the Afghan penal code regarding the criminalization of medical infractions cases and providing a suitable solution to prevent medical infractions and crimes in the Afghan society. Overall, there is a need for a fair and effective method to monitor and punish physician misconduct that will be conducive to the honest delivery of quality health care.

Keywords: Doctor, Crime, Infraction, Penal Code of Afghanistan, Owners of Pharmacies and Laboratories

INTRODUCTION

Crime means an activities that involve breaking the law (the Oxford English Dictionary) or crime is defined as an act punishable by laws forbidden by statute or injurious to public welfare. The Penal Code of Afghanistan has criminalized many behaviors. Since, The medical profession has been one of the most rooted professions in the history of human life (Sharivar,1998). This profession has always been important and challenging due to its connection with the life and death of people. Although doctors try to do their work with all their care and effort, sometimes they may commit a fault and negligence or carelessness in doing their work. For example; Some

people who visit the doctor for treatment, but they commit medical crimes, which are more vulnerable than fraudulent crimes (Rosoff, 2009). The reason for their vulnerability is that health care seekers have a medical problem that they have no ability to dictate its treatment procedures and need to get well as soon as possible. Health care providers take advantage of the desperate needs of a health care seeker to defraud them (King & Wheeler, 2006). Therefore, it is the right of the countries to impose criminal and non-criminal responses in order to prevent medical malpractice. Today, one of the biggest challenges in the Afghan society is the issue of medical crimes and medical infractions. Because many of the behaviors of the doctor and those involved in medical affairs have caused physical and mental harm to the patient and remain unanswered by the criminal justice system. Therefore, medical crimes and infractions are one of the important challenges of the Afghan criminal justice system.

Medical crime is a kind of occupational crime (Friedrichs, 2010). So, medical crime is a type of occupational crime which includes a wide range of illegal activities committed within the medical profession (Sara, 2016). Unfortunately The Penal Code of Afghanistan incompletely criminalized Medical Crimes. For example Afghan Penal Code is silent about the types of Abortion and the allowed disclosure of secrets. While, medical crimes include abortion and violation of professional secrecy, which can be subject to public prosecution in criminal courts (Fathi, 2016).

The basic goals of this research; fixing the shortcomings of the penal code and providing a suitable solution to reduce the illegal and ineffective behavior of doctors and those involved in medical affairs. The important questions of this research are (1) what are the legal solutions of the penal code regarding medical infractions? (2) Does the penal code distinguish between an infraction and a medical crime? (3) In the current situation, how does the judicial system of the country deal with the criminal and delinquent doctor? (4) How are the material and mental damages of the sick person compensated? Therefore, the hypotheses are that the penal code has defined an incomplete legal solution for medical crimes, and it has been silent on responding to medical infractions. It is disheartening to come across this news which medical crimes and medical infractions are not separated in the penal code of Afghanistan. Unfortunately, due to the lack of legal solutions, no cases regarding medical malpractice have been registered in the country's judicial system.

The most basic importance and necessity of this issue are that to Preventing illegal, negligent and careless behaviors of doctors and medical officials. Also, with studying this research by the legislators, it will be possible to prevent medical crimes and infractions in the country through the criminalization of some medical criminal behaviors and to have a healthy society free from illegal behaviors. Finally, this research discusses the key concepts of medical crimes and medical infractions, regardless of whether they are legislated in the penal code or not as follows. This research aims to provide appropriate and accurate answers to the questions by using analytical-descriptive method.

KEY CONCEPTS

The word of "Crime" means sin, error, transgression and offense (Dekhoda, 1994). In the expression, it means an illegal act [behavior] for which someone can be punished by the government or Crime means implies a serious offense punishable by the law of the state (Merriam Webster Dictionary).

Crime is a topic that is often discussed among law-makers as well as members of the general public (Sara,2016). Therefore, the crime is the behavior that is prohibited by the law approved by the Assembly. But, medical crime is fraudulent occupation of a medical job without legal requirements and over obedience from medical laws and regulations in performing legal duties and tasks (Abbasi, 1997). It would be better if the word fault was used in this definition. It has been discussed in the definition to committing an act by knowledge, intention and awareness. Therefore, a medical crime is a behavior that a doctor or people related to the medical profession knowingly committed and the law has considered a punishment for it.

The word of delinquency or infraction means going against, disobeying, and turning away (Moin, 1997). In the expression, illegal acts or actions that are prohibited by the laws and regulations of the country and the offender deserves to be blamed (Farjad, 1990). Therefore, the word fraction is general and includes infraction and crime. But, the meaning of infraction is the behaviors that are prohibited by the regulations that approved by the executive branch or the government. And Medical infraction is malpractice, negligence, non-observance of special systems related to the medical profession and other persons related to the medical profession (Sirati Nouri, 2017). Malpractice means a behavior that the perpetrator does not know that the behavior is forbidden.

TYPES OF MEDICA CRIMES WHICH ARE CRIMINALIZED IN PENAL CODE

The crimes under the title of medical crimes that the legal system of Afghanistan has criminalized and has been considered punishment for those are:

First; Importing illegal drugs: according to Article 886 of the Penal Code, a person who produces, imports, buys, sells, supplies, demands, transfers and stores non-standard drugs, In addition to forfeiting and destroying the drug, they will be sentenced to medium imprisonment up to three years. (1)When the crime specified in paragraph (1) of this article is committed by a legal person, in addition to the punishment of the perpetrator and forfeiting and destruction of drugs, the perpetrator, depending on the circumstances, will be sentenced to a fine of twenty thousand to two hundred thousand Afghani or his license will be taken. Therefore, if a person commits the material element of the crime knowingly that the drug is non-standard, in addition to destroying the drug, they will be sentenced to medium imprisonment up to three years. However, if a legal person or any company or pharmacy, commits the above-mentioned material element, in addition to the punishment of the person and destruction of the drug, the legal person will also be sentenced to a fine of twenty thousand to two hundred thousand Afghani or their license will be taken.

Second; Abuse of the drug whose date expires: Article 887 of the penal code provides: "A person who produces, maintain, supply, demand, buy, sell or transmit the drug, in addition to forfeiting and destruction of drugs, It is sentenced to twice the price of the forfeiting drug. Whenever the offense in paragraph (1) of this Article is committed by a legal person, in addition to punishing the perpetrator, forfeiting and destruction of the drug, the perpetrator shall be sentenced to four times the price of the drug or his license will be taken. Finally, if the offenses referred to in Article 886 and paragraphs (1 and 2) of this Article, the person's health is harmed, the perpetrator shall also be sentenced to pay the perpetrators in addition to punishing the offense. Therefore, the word person in this article is general and includes all medical staff or ordinary person. That is, if the natural person commits the material element of this crime, in addition to forfeiting and disappearance of the drug, he or she will be sentenced to the cash punishment of two several drug prices. But if the crime is committed by a legal

person such as a pharmaceutical or non-pharmaceutical manufacturing company, in addition to the perpetrator and forfeiting and disappearance of the drug, he or she will be denied a fine of four times as much as the drug or permitted of the license will be taken.

Third; Refusal of a doctor to treat a patient: When a health institution or a medical official refuses to treat a patient while performing his duty, if he/she is causing physical or mental harm, the perpetrator, in addition to compensation, will be punished for the crime specified in this law. However, if the health institution or the relevant medical officer refuses to cooperate with the forensic medical expert, he will be sentenced to a fine of five thousand to fifteen thousand Afghani (Criminal Code, Article 888). The content of this article, contrary to article 887 of this law, only includes natural persons and a legal person who responsible for medical affairs. That is, if these people, knowing that the patient needs treatment, voluntarily refuse to treat the patient or to cooperate with a specialist doctor, the following two situations are relevant; First case: If the issue is physical and mental harm, the perpetrator will be sentenced to the punishment of the crime committed in addition to compensating the damage. But in the second case, when the medical institution or the medical staff refuse to cooperate with the forensic expert, they will be sentenced to a fine of five thousand to fifteen thousand Afghani.

Fourth; Carelessness, imprudence or non-observance of medical regulations by a medical official: whenever a medical official commits such an error (act) in the diagnosis or treatment of a patient as a result of negligence, carelessness or non-observance of medical regulations which causes physical or mental harm to the patient, will be sentenced to the punishment of the crime of error specified in this law (Criminal Code, Article 889). In the interpretation of this article, it should be said that if, as a result of a criminal error, a doctor or a person employed in medical affairs, material or mental harm is caused to a sick person, According to the principle of proportionality of crime and punishment, the mentioned person is required to compensate the damages.

Fifth; Entry, processing and distribution of poisonous or harmful drugs: A person who imports or exports animals or animal products, biological materials or other controllable substances contaminated with infectious organisms or poisonous or harmful drugs, processes, manufactures, buys, sells, maintains, supplies, transfer or provide its bed. He will be sentenced to a fine of 20,000 to 30,000 Afghani (Criminal Code, Article 890). In the interpretation of this article, it should be said that whenever, due to a criminal error, a doctor or a person working in medical affairs causes material or mental harm to a sick person, the said person is required to compensate for the damages in accordance with the principle of proportionality of crime and punishment.

Sixth; Transmission of diseases to others: Article 891 of the Penal Code states: "A person who commits or refuses to commit one of the following acts that leads to the transmission of diseases to others, will be sentenced to short imprisonment".¹ If committing the crimes listed in paragraph (1) of this article causes the death of a person, the perpetrator will be sentenced to long imprisonment. The emphasis of these two clauses is on the real person (Explanation of Penal Code, 2018). That is, if the transmission of the disease is the result of his conscious abstinence, he will be sentenced to short imprisonment. However, if one of the actions leads to the

¹. Failure to establish a tracking system, failure to comply with food hygiene, failure to comply with regulations, procedures and standards, failure to comply with food safety measures, failure to comply with warnings, production, procurement, supply, storage, export, distribution and sale of non-food items Healthy, buying unhealthy food for the purpose of reselling it, publishing deceptive and misleading advertisements and illegal activities.

death of a person, he will be sentenced to long imprisonment. Finally, if a person who produces, supplies, exports and distributes, sells or buys for the purpose of selling HARAM food, he will be sentenced to a maximum of medium imprisonment.

Seventh; Negligence and refusal of duty principles: Whenever a veterinary medicine worker neglects to perform his duty and as a result of this neglect, harm is caused to the animals under treatment, he will be sentenced to a fine of five thousand to ten thousand Afghanis (Criminal Code, Article 892). The meaning of the crime of neglecting the principles of duty is the negligence of the veterinary worker in the performance of his duty, which results in harm to the animals under his treatment (Explanation of Penal Code, 2018). That is, if the animals under treatment are harmed due to the carelessness of the veterinary worker, the person will be sentenced to a fine of five thousand to ten thousand Afghani.

TYPES OF MEDICAL CRIMES WHICH ARE UNCRIMINALIZED IN PENAL CODE

Afghan penal code is silent to recognize some types of medical crimes. The most basic kinds of medical crimes, which unfortunately have not been criminalized by the Afghan Penal Code, are:

First; a false medical certificate: The meaning of medical certificate is a document that is prepared by a doctor about health and illness or something related to medicine (Qazaiee, 1368). One of the major problems in Afghanistan medicine is giving false medical certificate. the most common false certificates is the certificate of a government employee or student to justify their absence. unfortunately, the issuers of such false certificates are not prosecuted. Whiles, if the doctor does not comply with his professional duties in presenting the certificate, such behavior is a crime and can be prosecuted and punished. In other words, if the doctor does not fulfill his legal obligations in presenting the certificate, his action is considered a crime and can be prosecuted. Because the incorrectness of the issued certificate not only destroys the dignity and credibility of the doctor, but also provides the basis for corruption and injustice in the society.

Second; Disclosure of secrets: Secrecy is considered as one of the good and very desirable qualities, which is highly recommended in all religions and moral books. A secret is something that, revealing it, causes harm to a person's reputation and dignity (Jaafari Langroudi, 1368). But medical secrecy refers to all the information that a doctor obtains from his patient. But the Penal Code Afghanistan does not criminalize this issue and has remained silent on this matter. Therefore, the doctor's profession includes the obligations they has made and what he/she sees or hears during the treatment, even if the patient is not aware of those things. So, it is emphasized that the doctor should try to keep all these secrets and should not disclose them. It should be said that not only doctors but also laboratory owners, surgeons, midwives and pharmacists should keep secrets. If they reveal the client's secrets, they commit a crime and can be prosecuted. As a result, the disclosure of secrets by the doctor and those involved in medical affairs is prohibited unless the disclosure is for the benefit of the patient, or the disclosure by the doctor is in the position of self-defense, or the disclosure is in the capacity of an expert, or the disclosure by the doctor is as a witness. Either the disclosure of secrets is due to the announcement of infectious diseases or the disclosure of medical secrets in front of insurance companies (Guderzi, 2010).

Third; Abortion: abortion means is the deliberate ending of a pregnancy at an early stage (the Oxford English Dictionary) or carrying before the normal due date of birth in such a way that it is not alive or able to live (Goldozian, 2014). The types of abortion include normal, medical and criminal. Normal and medical abortion is

considered permissible according to the legal conditions when it is necessary for the health of the mother. That is, the doctor is obliged to take action after consulting at least two other doctors and submit the report to the hospital board within 24 hours (Azizi, 2014). While, criminal abortion is an abortion that does not conform to statutory provisions governing the performance of abortions or dismissal of the pregnancy before the normal time by the mother. For example the mother manipulating the uterus or using drugs or hitting the uterus (Ebadi, 2013). If the doctor intentionally performs an abortion in which the soul has grown, he/she or they will be sentenced to retribution, otherwise he/she will be sentenced to financial punishment and imprisonment.

TYPES OF MEDICAL INFRACTION WHICH ARE UNRECOGNIZED IN PENAL CODE

First; Employment in the medical profession without a legal license: The principle is that the establishment and provision of medical services must be approved by the Ministry of health. For example, if the Ministry of Health determines that there is no need to establish and operate a new maternity hospital in a certain area, it will not issue an establishment permit. Therefore, anyone who tries to establish a medical institution without having an official license, or transfers his license to someone else, or uses another license, or exports and imports medicine without a license, commits a medical infraction and should be prosecuted. Unfortunately, what has become more common in Afghanistan at the moment is the issue of using another license and importing and buying and selling drugs without obtaining a license. I hope this research will open the way for the authorities to prevent these medical infractions in the future.

Second; Unnecessary prescription of the medicine: Without a doubt, buying, selling and using drugs is legally prohibited in the country. The criminal law has imposed severe punishments for the perpetrators.² But sometimes, due to medical necessity, some drugs can be used. In this case, doctors are not allowed to prescribe narcotic drugs (opium) for their patients more than the amount required for three days' use in one prescription, and repeating these prescriptions more than once is not allowed. Therefore, if the doctor prescribes narcotic drugs in more than one prescription and required amount, or if the prescription of narcotic drugs leads to the patient's addiction the doctor commits an infractions and they should be punishment.

Third; Infraction of owners of medical diagnostic laboratories: In general, a medical diagnostic laboratory is a place where microbiology, parasitology, toxicology, biological chemistry and other causes related to that's be checked. Therefore, the first step to establish such laboratories is to have expertise, and then a license must be obtained. Therefore, the first step to establish such laboratories is to have expertise, and then a license must be obtained. infractions that happen in these laboratories are things like selling blood (Ebadi, 1368), issuing a false diagnosis to a patient in exchange for money, using outdated kits, changing some samples related to other patients, etc. Unfortunately, there has been no supervision and inspection of medical necessities by the authorities and those involved in medical affairs, and today we have witnessed many problems in this field.

Fourth; infractions of pharmacy owners: some major medical infractions are committed by pharmaceutical companies and pharmacies. Infractions of pharmacy owners: some major medical infractions are committed by pharmaceutical companies and pharmacies. What can be mentioned as infractions of pharmacy owners in our country today are the issues of employing unqualified people in pharmacies, running pharmacies without the presence of technical officials, selling medicine without a doctor's prescription (news report, 1402), not

². See: penal code of Afghanistan, The fifth chapter, drug section.

including the price of medicine in Doctor's prescription, overselling drugs, prescribing more than the patient needs, selling unconventional and unethical products in pharmacies, selling low-quality and counterfeit drugs, etc.

DISCUSSION

Nowadays, due to medical advances, medical crimes and infractions have also become a serious challenge for lawyers. In countries like Afghanistan, the lack of strict supervision of medical professionals and People's lack of awareness of the law, It has paved the way for more medical crimes, medical infractions and violated the rights of patients. On the one hand, the legislators of the country have not criminalized important medical crimes. For example, the types of abortions have not been discussed in the Penal Code. While, abortion can be classified into normal, medical and criminal. Also, for the medical community, it has not listed the cases of permission to disclose secrets. While, the doctor can reveal the secrets in the following cases. If the interest of the patient demands it, if the doctor defends his position, if the doctor takes the position of an expert, if the doctor acts as a witness, and if the doctor wants to announce infectious diseases. On the other hand, the Penal Code is silent on medical infractions, such as the infractions of pharmacy owners and owners of medical diagnostic laboratories, which are more common in the country today are that: employing unqualified people in pharmacies, running pharmacies without the presence of technical officials, selling medicine without a doctor's prescription, not including the price of medicine in Doctor's prescription, overselling drugs, prescribing more than the patient needs, selling unconventional and unethical products in pharmacies, selling low-quality and counterfeit drugs, selling blood, issuing a false diagnosis to a patient in exchange for money, using outdated kits, changing some samples related to other patients. Therefore, it must be said that the supervision and inspection of medical supplies has not been paid much attention by medical professionals, and today we have witnessed many problems in this field.

CONCLUSION & SUGESSTION

Crime has been defined in different social and humanistic sciences as behavior against order, behavior against public feelings and emotions and behavior incongruent with social conscience and common sense. But medical crime is a type of occupational crime which includes a wide range of illegal activities committed within the medical profession and medical infraction is malpractice, negligence, non-observance of special systems related to the medical profession and other persons related to the medical profession.

The Penal Code of Afghanistan incompletely criminalized Medical Crimes in articles 886 to 892. And Afghan Penal Code is silent about the types of Abortion and the allowed disclosure of secrets. Most importantly, The Penal Code of Afghanistan has not criminalized Medical Infractions. For example the Afghan Penal Code is silent on the discussion about the employment of medical techniques without legal permission, unnecessary prescription of drugs to the patient, deceiving the patient, infractions of the owners of medical diagnostic laboratories and the managers of pharmacies, which are among the types of medical infractions. While today, the people of Afghanistan suffer more from medical infractions matters and the Penal Code should criminalize and recognize that.

Finally, in order to prevent medical infractions and medical crimes, the author suggests the following for those involved in the legal, medical and judicial affairs of the country:

First; The concepts of medical infractions and medical crimes should be defined and separated by the legislators.

Second; Those involved in legal affairs should include the guarantee of appropriate executions for behaviors caused by medical crimes and medical infractions, according to the principles of Islamic Sharia.

Third; guarantee of executions such as retribution, Property damage, compensation for material and moral damage, warning, closure of the institution, exclusion from practicing medicine, etc.

Fourth; The complete law in health and medical affairs should be approved by the government based on Islamic Sharia and principle of legality.

Fifth; Normal abortion, medical abortion and criminal abortion should be approved by the relevant departments according to the characteristics and conditions of each other's in separate regulations and made available to the medical officials.

Sixth; The medical community can disclose secrets only the disclosure is for the benefit of the patient, or the disclosure by the doctor is in the position of self-defense, or the disclosure is in the capacity of an expert, or the disclosure by the doctor is as a witness. In other cases, in order to preserve the patient's dignity, disclosure of secrets is prohibited and considered a crime.

Seventh; The Penal Code is silent on all kinds of medical infractions, the author suggests that in order to prevent injustice and maintain order in the society, engaging in medical techniques without legal permission, prescribing unnecessary drugs for the patient, Failure to provide medical services (defrauding the patient, failure to comply with medical regulations, and infractions by the owners of pharmacies and medical diagnosis laboratories) as medical infractions and considering appropriate criminal or financial responses for each of them.

CONFLICT OF INTEREST:

The authors declared no conflicts of interest.

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