



Typology of Criminal Liability of Medical Staff in Cosmetic and Reconstructive Surgery

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Abstract

The increasing expansion of cosmetic and reconstructive surgeries in Iran has made the criminal liability of medical staff one of the important challenges of medical law. On the one hand, the Islamic Penal Code of 2013, by accepting the legitimacy of the principle of legitimate surgery and emphasizing consent and compliance with technical and scientific standards, has attempted to establish a balance between patient protection and physician job security. On the other hand, the increase in criminal cases and complaints resulting from medical errors in cosmetic procedures shows that the limits of criminal liability of physicians, anesthesiologists, and other members of the treatment team are still unclear for many litigants and even some review authorities. This study, with a descriptive-analytical approach and relying on sources Jurisprudence, case law, and doctrinal writings address the typology of criminal liability of medical staff in cosmetic and reconstructive surgeries and attempt to classify the types of this liability based on criteria such as the type of fault, type of procedure (purely cosmetic or reconstructive), the status of consent and innocence, and the severity of the harmful outcome. The results show that despite the principle of the innocence of the committed physician, if negligence, carelessness, lack of skill, or failure to comply with government regulations are established, criminal liability in the form of blood money, imprisonment, fines, or deprivation of employment will be imposed on the medical staff members, and the patient's consent alone is not sufficient to discharge the liability.

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.1 Introduction

The dramatic growth of cosmetic surgeries in Iran, especially procedures such as rhinoplasty, liposuction, breast and facial implants, has made Iran one of the regional hubs in this field (VakilTel, 2022; Vakilati, 2025). This increase in demand has been influenced by several factors such as cultural pressures to have an appearance in accordance with dominant beauty models, extensive advertising in cyberspace and economic incentives of beauty centers, and sometimes a lack of adequate supervision (Koochpayehzadeh Law Firm, 2024). Along with this trend, reconstructive surgeries performed to correct congenital anomalies, consequences of accidents or complications of diseases also constitute an important part of the specialized services of plastic surgeons and other specialists and create special therapeutic and psychological expectations in patients (Hadi Goshaiesh & Jadidi, 2020). At the same time, the increase in criminal complaints and lawsuits related to medical errors and negligence in these practices has highlighted the need to clearly explain the limits of criminal liability and separate it from civil and disciplinary liability (Talebi Rostami, n.d.; Civilica, n.d.). In such an environment, the typology of criminal

liability of medical personnel in cosmetic and reconstructive surgeries can provide a theoretical basis for judicial and professional decision-making (Journal of Medical Law, 2015.)

2. Statement of the Problem

The main issue of this research is how the types and limits of criminal liability of medical personnel in cosmetic and reconstructive surgeries can be classified in the Iranian legal system and what factors play a role in determining the type and severity of this liability (Talebi Rostami, n.d.). From a legal perspective, Article 158, paragraph "c" of the Islamic Penal Code of 1392 stipulates that any legitimate surgical or medical procedure performed with the consent of the person or his/her legal guardians and in compliance with technical and scientific standards and government regulations is not considered a crime; while Article 495 of the same law considers the physician to be the guarantor of blood money in the event of injury or death of the patient, unless he/she acted in accordance with the regulations and obtained the patient's or his/her guardian's acquittal (Journal of Medical Law, 2015). The apparent conflict between supporting legitimate medical practice and liability arising from harmful consequences has, in practice, led to ambiguity in determining the boundary between "normal risk of treatment" and "punishable criminal error" (Fiqh-e Moaser Digital Library, 2024). Another point is that cosmetic surgeries are often elective and unnecessary and are performed based on aesthetic motives, while reconstructive surgeries are more therapeutic in nature and are performed in response to injuries or abnormalities; This difference has direct implications for the analysis of criminal liability (Hadi Goshaiesh & Jadidi, 2020). At a practical level, the increase in complaints against cosmetic doctors, disagreements over the validity of pre-arranged acquittals and consents, and differences in practice across jurisdictions indicate the lack of a coherent model in the typology of criminal liability (Koochpayehzadeh Law Firm, 2024; VakilTel, 2022.)

3. Research Objectives

The general objective of this research is to explain and typify the criminal liability of medical personnel in cosmetic and reconstructive surgeries within the framework of Iranian criminal law (Talebi Rostami, n.d.). In line with this general objective, the following specific objectives are pursued:

1. To analyze the jurisprudential and legal foundations of criminal liability arising from medical practices, especially cosmetic and reconstructive surgeries, with an emphasis on the rules of guarantee, blood money, and the rule of loss and attabil (Fiqh-e Moaser Digital Library, 2024.)
2. To identify the material and moral elements of crimes attributable to medical personnel during cosmetic and reconstructive surgeries, such as murder and assault resulting from negligence or carelessness (Journal of Medical Law, 2015.)
3. Providing a coherent classification of the types of criminal liability of medical personnel based on the type of fault, type of procedure (purely cosmetic or restorative), and the patient's consent and acquittal status (Hadi Goshaiesh & Jadidi, 2020.)
4. Explaining the role of informed consent, written acquittal, and compliance with technical, scientific, and government regulations in the realization or elimination of criminal liability (Koochpayehzadeh Law Firm, 2024.)
5. Providing practical suggestions for amending regulations, promoting legal awareness of doctors and patients, and improving the procedures of the review authorities (Vakilati, 2025; Civilica, n.d.)

4. Research hypotheses

Based on the initial study of sources and analysis of regulations, the following hypotheses are put forward for the present study:

1. The predominant basis for criminal liability of medical staff in cosmetic and reconstructive surgeries in Iranian law is fault, and liability based solely on the result, without establishing fault, is exceptional and is mainly raised in the form of diyat without fault and responsibilities based on Sharia law (Hadi Goshaiesh & Jadidi, 2020.)

2 .The patient's informed consent and obtaining a written acquittal only remove the criminal liability of the physician and other members of the treatment team when the action is carried out within the framework of legitimacy, in compliance with technical and scientific standards and government regulations; otherwise, the consent and acquittal have no exculpatory effect (Journal of Medical Law, 2015; Fiqh-e Moaser Digital Library, 2024.)

3 .In cosmetic surgeries that are elective and unnecessary in nature, criminal law is more sensitive to medical malpractice, and courts take a stricter approach in determining fault and liability (Talebi Rostami, n.d.; VakilTel, 2022.)

4 .In reconstructive surgeries with high medical necessity, especially in emergency situations, the scope of acceptance of the normal risk of treatment is wider, and if professional standards are met, the possibility of exemption from criminal liability by citing innocence and necessity of the procedure increases (Journal of Medical Law, 2015; Hadi Goshaiesh & Jadidi, 2020.)

.5.1 Main Question

-What are the types of criminal liability of medical personnel in cosmetic and reconstructive surgeries in the Iranian legal system and what criteria can be provided for the separation and typology of these responsibilities? (Talebi Rostami, n.d.)

.5.2 Sub-Questions .1 What are the jurisprudential and legal foundations of criminal liability arising from cosmetic and reconstructive surgeries and what rules are most applicable in this field? (Fiqh-e Moaser Digital Library, 2024)

How are the material and moral elements of crimes resulting from medical error and negligence in cosmetic and reconstructive procedures established and proven? (Journal of Medical Law, 2015)

.What role does informed consent and written acquittal of the patient play in eliminating or mitigating the criminal liability of medical personnel and what are the limits of its validity? (KooHPayehzadeh Law Firm, 2024)

.4What are the differences between criminal liability in unnecessary cosmetic surgeries and treatment-oriented reconstructive surgeries? (Hadi Goshaiesh & Jadidi, 2020)

.5What is the practical procedure of criminal and law enforcement authorities in dealing with crimes resulting from cosmetic and reconstructive surgeries, and what are the challenges? (Civilica, n.d.; Vakilati, 2025)

.6Necessity and importance of research

The significant increase in the number of cosmetic surgery centers and the high variety of services provided in this field, along with intense economic competition and sometimes exaggerated advertising, has provided the basis for medical errors and violations of patients' rights (VakilTel, 2022; Vakilati, 2025). On the other hand, the constant threat of criminal charges and heavy sentences can undermine the job and psychological security of doctors and medical staff, leading them to become overly defensive or avoid taking on high-risk cases (KooHPayehzadeh Law Firm, 2024). The lack of a clear theoretical framework for the typology of criminal liability in cosmetic and reconstructive surgery has led to some cases being handled with inconsistent criteria, and sometimes the line between the natural risk of surgery and criminal wrongdoing is blurred (Talebi Rostami, n.d.; Civilica, n.d.).

From a criminal policy perspective, developing a reliable and categorized model can help strike a balance between protecting patients' rights and protecting committed doctors, and provide a basis for better education of medical and law students about the regulations, as well as for public awareness of patients (Hadi Goshaiesh & Jadidi, 2020; Journal of Medical Law, 2015).

.7Research Background

The book "Criminal Liability of Plastic Surgery Physicians in the Mirror of Iranian Criminal Law" by Hadi Goshaiesh and Jadidi is one of the important works in this field, which, with an analytical approach, examines the foundations of the criminal liability of physicians in cosmetic surgeries, the role of fault, consent, and innocence, and some practical examples (Hadi Goshaiesh & Jadidi, 2020). Theses that have been compiled with titles such as "Investigation of Criminal Liability Arising from Cosmetic and Reconstructive Surgery in the Iranian Legal System" have focused more on analyzing the articles of the Islamic Penal Code 1392, the jurisprudential rules of guarantee, and an overview of judicial practice (Talebi Rostami, n.d.). An article titled "Cosmetic Surgery and the Conditions for Exempting Physicians from Criminal Liability" in the Quarterly Journal of Medical Law examined conditions such as the necessity of treatment, the legitimacy of the act, informed consent, and compliance with technical and scientific standards as the pillars of the physician's exemption from criminal liability (Journal of Medical Law, 2015). In addition, some jurisprudential-legal writings in the form of articles and treatises have attempted to apply jurisprudential rules such as the rule of "taṣliṭ", "mīnārār", "dāmān yad" and "itlāl va tasbīb" to cosmetic surgeries and, through this, explain the limits of liability (Fiqh-e Moaser Digital Library, 2024). In the practical aspect, articles and notes published on databases such as Civilica and specialized medical law sites mostly introduce examples of medical malpractice, how to claim damages and the disciplinary responsibilities of doctors (Civilica, n.d.; Vakilati, 2025). However, there is still no research that systematically and methodically presents the typology of criminal liability of medical staff in cosmetic and reconstructive surgeries by combining different criteria (Talebi Rostami, n.d.).

.8Theoretical foundations and key concepts

.8.1The concept of medical criminal liability

Medical criminal liability means the criminal liability of physicians and other members of the medical staff for behaviors that are considered crimes under criminal law and usually appear in the form of crimes such as murder, assault, or bodily harm caused by carelessness, negligence, lack of skill, or failure to comply with regulations (Journal of Medical Law, 2015). This liability is distinct from civil and disciplinary liability; civil liability primarily focuses on compensating the victim for financial and moral damages, and disciplinary liability deals with violations of professional and trade regulations, while criminal liability aims to maintain public order and prevent dangerous and irresponsible behaviors in the health sector (Hadi Goshaiesh & Jadidi, 2020). In Iranian law, several articles of the Islamic Penal Code directly or indirectly regulate the criminal liability of physicians for injuries and death resulting from medical practices (Journal of Medical Law, 2015).

.8.2Cosmetic and reconstructive surgery

Cosmetic surgery refers to procedures that are performed primarily to improve appearance, increase attractiveness, or conform to aesthetic standards and are usually not medically necessary; examples include rhinoplasty, liposuction, breast and facial implants (VakilTel, 2022). In contrast, reconstructive surgery is performed primarily to correct congenital abnormalities, the consequences of accidents and burns, or complications of diseases, and its therapeutic and rehabilitative aspects take precedence over the aesthetic aspects (Hadi Goshaiesh & Jadidi, 2020). This distinction is of great importance from a criminal law perspective, because in cosmetic surgery, courts usually have higher expectations from the doctor in terms of information, obtaining informed consent, and strict adherence to standards, and consider the scope of accepting the natural risk of the procedure to be more limited (Talebi Rostami, n.d.; Journal of Medical Law, 2015).

.8.3Medical negligence and its types

In legal literature, medical negligence is commonly understood to include four forms: “negligence”, “negligence”, “lack of skill” and “failure to comply with government regulations” (Journal of Medical Law, 2015). Negligence is often manifested in behaviors in which a physician ignores foreseeable risks or fails to take necessary precautions; for example, choosing a high-risk anesthesia method for a patient with a history of heart disease without conducting the necessary examinations (Koochpayehzadeh Law Firm, 2024).

Negligence more often means neglecting professional duties, such as failing to follow up on a patient's condition after surgery, failing to prescribe necessary tests or neglecting necessary medications during recovery (Civilica, n.d.). Lack of skill arises when a doctor lacks sufficient knowledge or technical ability to perform a specific procedure or when someone outside their specialty performs a complex surgery (Hadi Goshaiesh & Jadidi, 2020). Failure to comply with government regulations also refers to the violation of regulations, guidelines, and standards issued by competent authorities such as the Ministry of Health and the Medical System Organization (Talebi Rostami, n.d.).

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.9.1Liability Due to Negligence

One of the important types of criminal liability in this area is liability due to negligence; such as inappropriately choosing a risky surgical method, ignoring medical equipment warnings, or failing to pay attention to the patient's specific condition during surgery (Koochpayehzadeh Law Firm, 2024). In such cases, if the negligence of the doctor or other members of the medical team directly or indirectly causes the patient's injury or death, criminal liability can be raised in the form of an unintentional crime against the patient's physical integrity (Journal of Medical Law, 2015).

.9.2Liability arising from negligence

Neglect usually manifests itself in the omission of necessary measures and failure to provide necessary care; for example, failure to follow up the patient's condition after rhinoplasty and ignoring obvious signs of danger such as severe shortness of breath or frequent bleeding (Civilica, n.d.). In this situation, if an

outcome such as limb loss or death occurs and a causal relationship between the negligence and the outcome is established, criminal liability for the doctor or medical staff is conceivable (Journal of Medical Law, 2015).

.9.3 Liability arising from lack of skill or lack of professional competence

Performing cosmetic surgery by individuals without the necessary expertise, or performing a complex procedure outside the scope of professional competence, is another important example of criminal liability (Hadi Goshaiesh & Jadidi, 2020). In this case, simply performing the procedure by a non-specialist, even in the absence of severe consequences, can be an example of dangerous behavior and subject to disciplinary and, in some cases, criminal prosecution; as in some cases, surgeries in unauthorized centers or by non-physicians have led to death or limb disability, and courts have accepted more severe criminal liability, citing lack of skill and lack of competence (Talebi Rostami, n.d.; VakilTel, 2022).

.9.4 Liability arising from failure to comply with government regulations

Failure to comply with the regulations of the Ministry of Health, the regulations of the Medical System Organization, and operating room standards are other examples of criminal fault in the field of cosmetic and reconstructive surgeries (Civilica, n.d.). For example, performing surgery in an unlicensed office, using substandard equipment, or failing to have an anesthesiologist present when required can lead to criminal liability in the event of a harmful outcome (Journal of Medical Law, 2015; Vakilati, 2025).

.9.5 Liability in Unnecessary Cosmetic Surgery

In purely elective cosmetic surgery, due to the lack of medical necessity, the physician is expected to be more careful in obtaining a patient's history, reviewing contraindications, and informing them about risks (Hadi Goshaiesh & Jadidi, 2020). Failure to do so, especially when the patient is unaware of the serious risks or has been exposed to misleading advertising, can result in more severe criminal liability for the physician (Talebi Rostami, n.d.; VakilTel, 2022).

.9.6 Liability in Therapeutic Reconstructive Surgeries

In reconstructive surgeries, the necessity of treatment, the patient's emergency situation, and the limited alternatives are factors that should be considered in the analysis of criminal liability (Journal of Medical Law, 2015). In these cases, if the physician has complied with all professional standards and has obtained consent and acquittal in accordance with the law, even if some unwanted complications occur, there is a greater possibility of exemption from criminal liability (Hadi Goshaiesh & Jadidi, 2020; Fiqh-e Moaser Digital Library, 2024).

10 .The Role of Consent, Exoneration, and Technical Criteria in Criminal Liability

10.1 .Informed Consent

Informed consent requires that the patient is sufficiently informed about the nature of the procedure, the steps involved, possible complications, alternative options, and the consequences of not treating the procedure, and that he or she has made the decision with free will (KooHPayehzadeh Law Firm, 2024). In cosmetic surgery, the importance of informed consent is doubly important because the patient often acts to improve their quality of life and appearance and expects to be clearly informed about the possibility of not achieving the desired result or the occurrence of complications (VakilTel, 2022).

Whenever consent is obtained based on incomplete or misleading information, its validity will be legally impaired (Journal of Medical Law, 2015).

10.2 .Exoneration

Exoneration is an agreement by which the patient or his or her guardian exempts the physician from liability for possible complications of the procedure in advance, provided that the physician has not committed any fault (Journal of Medical Law, 2015). In the Islamic Penal Code of 1392, acquittal plays an important role in exemption from blood money, but in the event of gross negligence, acquittal will not have

an exculpatory effect (Fiqh-e Moaser Digital Library, 2024). In cosmetic surgery, the widespread use of pre-prepared acquittal forms is itself a subject of debate and criticism; because they are sometimes presented and signed by the patient without sufficient explanation (Talebi Rostami, n.d.; Vakilati, 2025.)

10.3 .Compliance with technical and scientific standards and government regulations

Compliance with scientific and technical guidelines, treatment protocols, and administrative regulations is one of the fundamental pillars of the physician's exemption from criminal liability in Article 158, Clause "C" of the Islamic Penal Code (Journal of Medical Law, 2015). Even in the presence of consent and acquittal, if the physician or medical staff violate these standards, the possibility of invoking legal exemption is reduced (Hadi Goshaiesh & Jadidi, 2020). Therefore, criminal liability in this area can be analyzed as a three-way network of "consent", "acquittal" and "compliance with technical standards and regulations" (Fiqh-e Moaser Digital Library, 2024.)

11 .Conclusion

In conclusion, it can be said that the criminal liability of medical staff in cosmetic and reconstructive surgeries in the Iranian legal system is mainly based on fault and its realization is subject to the establishment of one of the forms of fault (negligence, carelessness, lack of skill, failure to comply with regulations), the causal relationship and the occurrence of a harmful result (Journal of Medical Law, 2015; Hadi Goshaiesh & Jadidi, 2020). Cosmetic surgeries are more criminally sensitive due to their unnecessary nature and the strong role of economic and advertising incentives, and courts in this area are more strict about technical errors and violations of the duty of information (Talebi Rostami, n.d.; VakilTel, 2022). In reconstructive surgeries, the necessity of treatment, urgency, and limited alternatives increase the scope of conventional risk acceptance, and if standards are met, the possibility of exemption from criminal liability based on necessity and innocence is greater (Journal of Medical Law, 2015; Fiqh-e Moaser Digital Library, 2024). Informed consent and acquittal, although important tools for reducing conflicts and clarifying patient expectations, cannot absolve the physician or other members of the medical staff from criminal liability in the event of proven medical negligence or a clear violation of technical standards and government regulations (Koochpayehzadeh Law Firm, 2024; Civilica, n.d.). Accordingly, reforming and clarifying regulations, educating medical law students and medical staff, developing standard consent and acquittal forms, and strengthening professional supervision can provide the basis for reducing conflicts and better realizing criminal justice in the field of cosmetic and reconstructive surgery (Vakilati, 2025; Hadi Goshaiesh & Jadidi, 2020.)

List of resources

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