

A Critical Analysis of Medical Crimes: From the Perspective of the Penal Code of Afghanistan



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Abstract

Aim: This study explores the phenomenon of medical crimes within the context of the penal code of Afghanistan, focusing on how legal frameworks address illegal activities in the healthcare sector. Medical crimes, such as revealing medical secrets, using expired medicine, refusing to offer treatment by medical personnel, negligence, carelessness, non-observance of medical regulations by medical personnel, and patient rights violations. These medical crimes pose significant risks to public health and patient safety and are punishable under the Penal Code. The Afghan penal code discusses these crimes in detail, specifically from Article 886 to Article 892. The importance of this study lies in removing ambiguities in the recognition of medical crimes and clarifying the position of the Afghan penal code regarding their classification and punishment.

Methods: By examining legislative texts, judicial practices, and real-world case studies, the research highlights gaps and challenges in the current criminal justice system. This work employs the doctrinal research methodology along with descriptive, explanatory, and analytical research approaches. It is worth mentioning that this research study is entirely based on library sources. Most of the sources are textbooks, scholarly published and unpublished journal articles, law reports, and online websites related to the research area.

Results: The findings underscore the need for enhanced legal reforms, improved judicial capacity, and greater accountability to ensure a safer and more equitable healthcare environment. This research contributes to the ongoing discourse on healthcare and legal reform in Afghanistan, offering insights for policymakers, legal professionals, and healthcare practitioners aiming to strengthen the intersection of law and medicine.

Keywords: *Medical crimes, medical negligence, misusing expired drugs, avoiding treatment.*

BACKGROUND OF THE STUDY

Almighty Allah says, “O you who have faith! Obey Allah and obey the Apostle and those vested with authority among you. And if you dispute anything, refer it to Allah and the Apostle, if you have faith in Allah and the Last Day. That is a better and more favorable outcome” (The Quran, 15:25). The above verse implies that a human being is a social being, existing in society to sustain their life and enjoy a range of legitimate rights. However, there are individuals who are dissatisfied with their rights and infringe upon the rights of others. For this reason, Almighty Allah orders all human beings to settle their disputes based on the sacred provisions of Islamic Sharia and the statutory laws of the land. The study of medical crimes within the penal code of Afghanistan provides a critical lens through which to examine the intersection of healthcare and legal accountability in Afghanistan. In a country where the healthcare system is evolving amidst ongoing social, economic, and political challenges, understanding the legal provisions and enforcement mechanisms against medical crimes is paramount.

The main objective of the research was to systematically analyze the penal code of Afghanistan approach to medical offenses, assess the implementation and enforcement of relevant laws, and explore the broader implications for the healthcare system and patient trust. By delving into the legislative framework, judicial practices, and real-world case studies, this study sought to contribute to the discourse on legal reforms and healthcare improvements in Afghanistan, ultimately striving for a more transparent, accountable, and equitable medical system. The discussion will delve into the types of medical crimes, the provisions of the Afghan penal code concerning medical offenses, the legal ramifications of distributing outdated medicines, the legal ramifications of avoiding medical personnel treatment, medical negligence, and intentional breaches of medical laws.

INTRODUCTION TO MEDICAL CRIMES

Medical crimes refer to illegal actions or omissions committed within the healthcare sector by healthcare professionals, organizations, or individuals that are punishable under the criminal justice system (Zainuddin, 2021). Moreover, medical offenses refer to illegal actions solely within the healthcare sector, subject to prosecution under specific rules and regulations. Examples include medical negligence and abortion, among others (Al-Qablawi, 2004). In other words, medical crimes are the types of crimes that are committed by medical staff in the process of medical treatment (Lafi, 2013).

TYPES OF MEDICAL CRIMES

Medical offenses include using expired medicine, refusing to offer medical personnel to provide treatment, negligence, carelessness, non-observance of medical regulations by medical personnel, patient rights violations, etc. (Bin Teesha, 2011). Due to the high number of medical offenses in the field of medicine, it is time-consuming to describe each offense in detail. The provisions of the penal code of Afghanistan will be examined in relation to the stated offenses. The penal code of Afghanistan contains several provisions aimed at addressing medical crimes, reflecting the importance of maintaining ethical standards and accountability within the healthcare sector. Third chapter from Article 886 to 892 discusses the major kinds of medical crimes.

Using Expired Medicine

Recommending and using expired medicine constitutes a serious medical crime with potentially harmful consequences for patients. The penal code of Afghanistan strictly prohibits such practices, recognizing the significant risks posed by degraded efficacy and possible toxicity of expired medications. (Bin Teesha, 2011). Healthcare professionals who prescribe or dispense expired drugs not only violate ethical and legal standards but also endanger patient safety.

Text of the Article

Regarding the using of expired medicine, Article 887 of the penal code of Afghanistan states that a person who imports, stores, supplies, demands, buys, sells, or transfers expired medicine, in addition to the confiscation and disposal of the drugs, will be punished with a fine of twice the amount of the confiscated drugs (The penal code of Afghanistan, 2017). If the crime listed in clause 1 of this article is committed by a legal person, in addition to punishing the perpetrator and confiscating and disposing of the drugs, the perpetrator shall be fined four times the price of the confiscated drugs or punished with the suspension of the license. If a person's health is harmed due to the commission of the crimes listed in Article 886 and Clauses 1 and 2, in addition to the punishment for the crime committed, the perpetrator must pay to cover the medical expenses of the victim's treatment (The penal code of Afghanistan, 2017).

This chapter of the penal code of Afghanistan is dedicated to all healthcare and medical-related crimes; therefore, Article 887 discusses the misuse of expired drugs, which is one of the kinds of medical crimes. The misuse of outdated drugs involved a variety of activities. These activities include the import, storage, supply, demand, purchase, sale, and transfer of expired drugs. All these activities encompass the misuse of expired drugs, and the provisions of this article impose penalties on the perpetrator. The penalty of a legal entity clearly differs from that of a real entity. The first difference is that if the crime mentioned in this article is committed by a real person, the penalty is a fine of twice the amount of the confiscated expired drugs; if the same crime is committed by a legal person, the penalty is a fine of four times the amount of the confiscated expired drugs and the revocation of the work license.

Article 887 of Afghanistan's penal code clearly lists several activities that are related to the crime of misusing expired drugs and gives the same punishments (a double or quadruple fine and confiscation) for each. However, it doesn't make sense to recommend the same punishment for all cases of misusing expired drugs because the crimes can be very different in terms of how bad they are and what happens afterward. The author suggests amending the Afghan penal code to suggest a different penalty for each case.

The Medical Staff's Refusal to Provide Treatment

It is a serious ethical and legal issue, especially when such a refusal jeopardizes a patient's health or life. In many jurisdictions, including under the Afghan Penal Code, refusal of medical personnel to provide treatment is an important type of medical offense. Healthcare professionals have a duty to care for patients, and an unjustified refusal to treat can lead to severe consequences (Afrasyabi, 1995).

Regarding the refusal of medical personnel to provide treatment, Article 888 of the penal code of Afghanistan states that if a healthcare institution or medical personnel refuse to treat a patient while performing their duties, in case of physical or mental harm. In addition to compensation, the

perpetrator shall be convicted of the crime listed in this law. If the healthcare institution or related medical staff faces a fine of five thousand to fifteen thousand Afghanis if they refuse to cooperate with the forensic medicine specialist when necessary. (Afghan Penal Code, 2017). The article employs the term forensic medicine, a scientific approach to crime detection that utilizes medical data to ensure the correct application of criminal laws (Dictionary of Legal Terms, 2008).

Analysis of the Article

The article mentions the crime of negligence which are those whose material element is done in a negative way in the form of prohibition. Negligent crimes are defined as disobeying the directives of the Islamic Shari'ah or the penal code of Afghanistan, and failure to comply with these directives carries consequences. Consider a scenario where a doctor neglects their duties or declines to attend to a patient. Another example is a mother's failure to provide her child with milk or food (Rahimi, 2013). In some countries, negligence crimes occur less frequently than executive crimes. Negligence crimes are further divided into two categories: negligent execution crimes and pure negligent crimes (Sadarat, 1961).

Beside negligence crimes another category of crimes are Executive crimes which are those crimes whose material element is positively executed by doing an act. In other words, executive crimes refer to the execution of actions that the Islamic Shari'ah and the Penal Code of Afghanistan forbid and impose penalties for. Examples of these crimes include murder, assault, robbery, among others. Executive crimes comprise most crimes committed in any given country (Afrasyabi, 1995).

Negligently executed offenses, also known as crimes of negligence or negligent offenses, occur when an individual fails to exercise the standard of care that a reasonable person would in a similar situation, leading to harm or potential harm. Carelessness, inattention, or a lack of due diligence rather than intent leads to these offenses. Here are some common examples of negligently executed offenses. When parents or caregivers neglect to provide essential care, supervision, or protection for a child, resulting in harm or potential harm to the child, they commit homicide. In this case, the crime happened in the form of negligent executed crime.

Pure negligent crimes are those crimes are said to be committed only based on refusal and neglect and cannot be committed by the execution of an act. These crimes do not consider the criminal outcome. Only the refusal or neglect of an action, regardless of the criminal outcome, qualifies as a crime. Examples of such actions include failing to testify in favor of an innocent person, failing to prevent a crime, and failing to assist a person in danger, etc (Noor Baha, 2001).

This article classifies the crime as negligent, implying that it stems from either negligence or non-execution. Furthermore, this crime qualifies as a negligent execution crime, as the perpetrator (a healthcare institution or medical staff) bears responsibility when they witness the patient suffering physical or mental harm due to treatment refusal, and the article explicitly stipulates that the offender must also provide compensation for the resulting harm. In the second clause of the article, neglecting to cooperate with a forensic medicine specialist is considered an offense. This is due to their legal duty to collaborate with the forensic medicine officer, and failure to do so will result in a guilty verdict and a fine ranging from 5,000 to 15,000 Afghanis.

Healthcare is a fundamental component of a well-functioning society. It plays a critical role in ensuring the health and well-being of individuals and communities. All Islamic scholars believe that if a medical doctor cures one person and saves his or her life, it is considered as if he saved

the entire humanity. As a result, the law has classified refusal of treatment as a criminal act and determined punishment for the perpetrator. It is also observed that this article has provided a punishment proportionate to the crime related to the crime of refusing medical personnel treatment.

Negligence, Carelessness, Non-observance of Medical Regulations by Medical Personnel

When healthcare providers fail to adhere to established standards of care, disregard necessary protocols, or act with a lack of attention and diligence, it can result in misdiagnoses, improper treatments, and preventable complications. Under the Afghan penal code, negligence, carelessness, and non-observance of medical regulations by medical personnel is considered crime (The Penal Code of Afghanistan, 2017).

Regarding negligence, carelessness, and non-observance of medical regulations by medical personnel, Article 889 stipulates that if medical personnel, due to carelessness, negligence, or non-observance of medical regulations, commit an error (action) in the diagnosis or treatment of a patient that causes physical or mental harm to the patient, they are guilty and must face punishment in accordance with the provisions of this code (The Penal Code of Afghanistan, 2017).

Negligence, carelessness, and non-observance of medical regulations by medical personnel are considered negligent crime signifying that the medical staff should adhere to these regulations but fails to do so. If the medical staff commits an error during the diagnosis or treatment process due to negligence, carelessness, or non-observance of medical regulations that results in physical or mental harm to the patient, the perpetrator faces the penalty of unintentional crime. The Penal Code of Afghanistan states that a person who injures another person due to negligence, carelessness, or lack of skill shall face a fine of 5,000 to 20,000 Afghanis (The Penal Code of Afghanistan, 2017).

The above article implies that a medical professional's act of causing harm due to negligence, carelessness, or non-observance of medical regulations is considered a crime, carrying a fine of up to 20,000 Afghanis. According to the author, the proposed punishment for this crime is not enough. There should be a balance between the offense and the relevant punishment. For instance, based on Islamic Sharia, the victim should receive compensation in the form of blood money (Diyah) if the crime is serious.

CONCLUSION

The research study on medical crimes from the perspective of the Afghan Penal Code highlights the challenges of addressing healthcare-related offenses within a legal framework influenced by both traditional and modern principles. The Afghan Penal Code seeks to regulate medical crimes, such as revealing medical secrets, misusing expired medicine, refusal of medical personnel to provide treatment, negligence, carelessness, non-observance of medical regulations by medical personnel, patient rights violations, etc., by integrating Sharia principles and contemporary legal standards. Additionally, the healthcare system's infrastructure and the need for more specialized legal provisions further complicate the effective prosecution and prevention of medical crimes. This study highlights the necessity for ongoing legal reforms, improved enforcement mechanisms, and increased awareness among healthcare professionals and the public to ensure a more robust and equitable approach to medical crimes in Afghanistan.

RECOMMENDATIONS

1. To ensure alignment with international standards and best practices in medical ethics and patient care, the Islamic Emirate of Afghanistan should update and refine the Afghan Penal Code to include clear and specific provisions for various types of medical crimes, while maintaining a balance between the offense and the appropriate penalty.
2. The ministry of health had better increase the overall quality of the healthcare infrastructure that will help reduce the number of medical crimes. One of the things that falls under this category is making certain that medical facilities are well-equipped and that medical staff receive proper training and supervision.
3. The provincial departments of health must initiate public awareness programs with the purpose of educating citizens regarding their rights as patients and the legal routes that are available for reporting medical malpractice and other violations related to healthcare.
4. The Afghan media must establish and uphold robust safeguards for whistleblowers in the medical field to encourage the reporting of unethical activities without fear of reprisals.
5. The ministry of health must work together with global legal and healthcare institutions to implement best practices, acquire technical support, and strengthen the local ability to handle medical offenses.

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