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The Nature of Government's Civil Responsibility

¹Reza Fanazad and ²Aboozar Shafie

¹Assistant Professor, Department of Law, Payame Noor University, I.R.Iran

²Graduate student of public law, Science and Research Branch, Islamic Azad University, Zahedan, Iran

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ABSTRACT

State's civil liability is one of the main levers to regulate the state power, the right and the freedoms of citizens are guaranteed through it. State's civil liability surely responds appropriately and compensates for all material and moral damages caused by actions and decisions made by government and its employees. The present study is aimed to investigate the nature of civil liability of the state and its organs, scope, foundations and justifications for identifying and establishing the legal entity, and ultimately achieving a mechanism to modulate both the state's civil liability institution and public power of government. The author has attempted to respond the following basic questions using library research method and judicial case study: what is the nature and origin of institution (the state's civil liability), what is the principle of justification to identify the state's civil liability? And what does the realm of the state's civil liability include? What solutions are there to balance between the state's civil liability and public power of government?

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INTRODUCTION

Each country's civil law is the core of legal system on which all rules related to contractual and non-contractual relationship of the society is set based. Standards and provisions of the civil code are even effective in criminal matters. Accepted criteria are applied in civil law especially in cases where criminal responsibility leads to civil liability.

Many civil rights standards are also being cited in public law and it generally can be said: legal principles reflected in each country's civil law are reflected in all legal fields of that country and indeed criteria, terms, and provisions of the civil rights are circulating like the blood in every organs and every spot of each country's legal system and the serious task should be undertaken by civil law which is the heart of this body. That's why they take great care to codify the civil law in every country and they get help the greatest jurists who predominates concepts, legal norms, and values of the society and even the other legal system and in many cases the higher authorities are monitoring the progress of citing civil law and sometimes the supervision is done directly. When a law is codified precisely, they attempt to maintain the integrity and sanctity strongly and safeguard it as a proud and national heritage and they avoid change it as far as it is possible and if the social changes rise the new needs, Supreme Court will devise solution adjusted to updated needs through appropriate interpret of the same materials. Undoubtedly, one of the most important questions is being raised is that how and by what strategy the order and justice can be established so that the population not to disturb the others, public endeavor to achieve the welfare, but they consider public safety, and not cause the others any harm? Islamic jurists and also legislators have long found the devise, and they declared no one has the right to harm the others and also no harm should be left uncompensated under juridical and legal rules, rather the harm is caused to the others should be compensated. Indemnity of a harm caused by a person is particularly significant in jurisprudence and law. Indemnification of the harm which has been caused intentionally or unintentionally is the main center of all conversations in civil liability.

In today's world, astonishing progress arts and crafts has caused the civil liability to achieve privileged and special position. Moreover, the damages are being done to social relationships are not limited to collisions and accidents.

Corresponding Author: Abouzar Shafie, Graduate student of public law, Science and Research Branch, Islamic Azad University, Zahedan, Iran
Tel: 00989106635979; E-mail: shafieie@yahoo.com

The civil liability scope is too wider to come to the mind, for instance a marketer refuses to take back the goods sold and does the damage to the purchaser, a writer do not deliver the book of commitment to the publisher on time, a farmer also benefits from the neighboring farm with conquest during the cultivation, etc. Making up for all these damages is within civil liability scope.

The significance of the issue has caused the Islamic scholars to have discussion on the issue.

Civil liability conception:

There is no identical definition for civil liability in legal texts. Sometimes the phrase has generally utilized as “legal liability” against “criminal responsibility” and “moral responsibility”. In this sense, all the following requirements out of contract titles are the subset of “civil liability”: confiscation, loss, indirect causation, demand, inappropriate use, managing the other properties and damages resulting from the failure to perform the obligation and the harm caused by crime. But, some individuals also consider the “civil liability” more limited and have proposed independent discussion of some requirements out of contract such as confiscation, demand, inappropriate use, and managing the other’s property. There is no definition for “civil liability” in law. However, it has been proposed in article 1 of the law on civil liability Act 1339. Everyone who does the damages to the life, health, property, freedom, reputation, or commercial reputation deliberately without legal license or as a result of recklessness, or according to any other right which has been provided by law, cause the damages which result in other material or moral harm is responsible for compensation. The definition is so general that include all the requirements alternative of the contract, sub-contract, crime, and tort. But, in the paper more attention has been paid to cases where the government has done damages to natural or legal persons out of requirements of contract, regardless of the issues exist in presenting a comprehensive definition for “civil liability”.

Our discussion is about state’s civil liability, but the concept of civil liability should be recognized before proceeding ahead. According to Mabsout, civil liability has two meaning in the terminology of rights:

1. The losses caused by crime which should be asked the court through lawsuit.
2. The responsibility of other action out of criminal cases like father responsibility for his children action.

Generally when a person is assigned to compensate for the effects and results of damages done to others, he is deemed to be in charge based on civil law. The civil liability is either due to contract or non-contract which the harm is caused due to violation of general duty. In the former, if a person does the damage, he has to compensate for.

With regard to the civil liability conception, the concept of state’s civil liability will also go to be clear. It is defined that the damages are done to individuals on behalf of government or public institutions should be compensated. In other words, according to the state’s civil liability, the government should be responsible for its actions and decisions toward citizens and if the government made a decision or took an action based on good intention which is beneficial for the public, the costs and losses by the government also should be compensated and the state is obliged to compensate for the losses and damages done to individuals, companies, and artisans.

The state’s civil liability history:

The acceptance of state’s civil liability doesn’t go back too far rather it has been accepted by governor and public for a short period of time and they believed that the state can also have civil responsibility toward his behavior and his action. In the past, it was pointless to criticize or protest again the state because of its superior authority and deeming sacred the government privacy, alone he was required to compensate the damages done to individuals.

In the past the public were believed that the state is immunized and he cannot be prosecuted because of the action is performed by him. The opinion was in harmony with the principle of the state sovereignty. However, spreading the freedom ideas and respect for individual rights end that belief and today, the state is the symbol of justice and protect the right and equity and does not exclude of any legal principles.

In the current era, due to the open political circumstances are being observed in the most countries more or less, the people are also sensitive to the damages done by the state and demand for the compensation and deem it as a natural citizenship right and the government should be responsible for it.

The theory of irresponsibility might was acceptable when the government is just responsible for observation and constabulary and his social and economical activity was limited, since the possibility for doing the damages through the state has been low due to the lack of government intervention in economic and social activities. However, the theory cannot be acceptable with regard to the government intervention in the other economic and social affairs and the government is responsible to compensate the damages done to individuals, like the other persons.

In the past it was believed that the state responsibility for damages done is not absolute, but rather the state’s actions either pertain to governance or apply enterprise. The acts of sovereignty are those on their performance, the government is the absolute governor and power and command people and domineer through them.

Tenure practices are those in which there is no sign of political authority. But, the state acts based on the conditions appointed to individuals. Thus, the actions are like the others' such as purchase, sales, and rental. Proponents of the theory believe that the government is only responsible for his apply policies and has to compensate for the damages like the regular people. However, he is not responsible for his governance actions such as legislation or regulation and establishing the duties and taxes and damages done by that.

But, today the theory doesn't have such advocate and the executive responsibility is not public and foreclosing the government responsibility is limited to the cases which the law has determined.

According to one of common theories related to the origin of the state, the human has been living in natural form primarily and has had completed freedom and unlimited, and because the human were exposed to hazards in natural state and were not able to overcome the troubles by themselves, so they were actuated towards cooperation and collaboration to deal with the great power of nature, and the trend resulted in the social contract and government. Therefore, the state is the supreme will which all the population participate to create it through a social contract.

In other word, every person devote some of his freedom in the society with satisfaction to guarantees the utilization of the rest of his freedom. So, the people in the community expected to be provided with prosperity, security, growth, efflorescence, respect, and dignity by creating the government and obey the supreme power. However, gradually over time the government increases his power and violates their basic rights and foreclosed the welfare, security, and personal and social freedom instead of serving the people and they incur any responsibility against their own actions and behavior and also their agents, since it was publicly believed that the king cannot be mistaken. The secret of infallibility of the king is in the divinity of rule of the king. He was deemed as shadow of God on the earth and God never makes mistake. However, gradually after the objections were raised to this procedure and after overthrowing the oppressive rulers, the procedure was adjusted to some extent and rulers and kings were aware of the citizen's role in their government survival. They came to the conclusion that seizing the power is impossible, unless they are supported by people and the government survival depends on the support of supreme power by people. The support will not be provided, unless the governments are accountable and serving the people. Nowadays, people are involved in transferring the power and its legitimacy and the government continuity do not depend on the government material strength, but on the people support and the support cannot be provided, but through public contentment by governments performance. Compensation for the damages done by the government is part of the performance. On the other hand, nowadays the extent of the economical, political and ... activity of government has caused the government action to interference or influence the people's live more than the past, so that the widespread activity of the government and the intricacy of political systems and the government decision and individuals increasing communication and government employees have provided and environment that is more likely to do the damages to people. "The principle of compensation" and "the person responsible for compensation" are of the subjects has led to many discussions among the lawyers: are such damages compensatory regarding the nature of governments or are they immune to compensate? And who is responsible for compensation?

The state's civil liability has not been introduced comprehensively and systematically in the law of Iran and the state has undertaken some of his employee's actions in the outspread and particular regulations such as articles 12 and 13 of the Act about the use of weapon by military, the law enforcement of buying and land acquisition to estate general civil and military programs approved by the forest Act 1358 and article 3 of the National Constitution in 1341 and the only general law which has been introduced is the article 11 which the spirit of the provision is not in harmony with the civil liability in law and doesn't guarantee it in jurisprudence based on and the lawyers have criticized the provision and have adjusted in a away.

The state's civil liability hasn't been investigated comprehensively in terms of jurisprudence due to the absence of jurists in government agencies. However, the cases such as compensation for judge fault (Article 171 BC.A, article 58 BC.M.A) and also paying the blood money from the treasure (Articles 244 and 313 BC.M.A) have been discussed by scholars in religious books which is somehow related to the topic. Thus, the blood money of a person who has been murdered in the street and the murder has not been found and also the blood money of a person who has been killed intentionally or unintentionally and the killer has escaped and it is not possible to pay the blood money through the killer properties or his/her relatives, the blood money is paid from the treasure, since providing security in all dimensions (economic, social, etc.) is of the intrinsic functions of the state. The government's first duty is to provide a context to avoid the emergence of those who somehow endanger the public safety and in case of observing such actions, defend the individual's right and if there is any inability he must compensate for the damages himself.

The civil liability theories:

The various theories and standpoints have been introduced about civil liability and its principle by scholars. Each of the theories has had some proponents at a period time of the history and has been accomplished. The main ideas are as follows:

Fault theory:

The first question comes to the mind after a harmful event—especially if it is widespread and done numerous damages—is that who is at fault and responsible for? In case the accident is happened by a particular person and the damages have been done to a given individual/individuals, the subject is not so much ambiguous. However, in case the accident is not imputed to a given factor and the maximum thing can be said is that the accident has happened due to legal person indifference, a legal person of public law—like the government and the institute related to it. In the case, the investigation is more intricate. As the point is proposed in various cases including bridge collapse, not having installed the guard and safety signs on the roadside and bridge, continuous malfunction lights, drilling the street without installing warning signs and cutting off the power continuously and frequently which all cause the abundant losses and damages. The point is proposed in factories explosion and fire, oil and gas refineries, educational and fun centers, etc. thus, according to fault theory the only reason can justify the responsibility of a person for compensation the damages is the causality relation between the fault and the loss. In other words the first thing comes to the mind of a person seeking for the responsible for a harmful event is who the damages is done due to his/her fault. Accordingly, the lost person should prove the loss factor fault as a claimant.

The question is being raised is that if it is necessary to seek for the main person who is at fault or it suffices to prove the responsibility and accountability of a legal or natural person. In such cases, if finding the guilty and proving his/her guilt is not impossible, there will exist a great hardship and consequently according to the view the right of claimant to compensation for the damages done unintentionally would be wasted and insisting to prove the guilt and finding the guilty doesn't permit us to achieve our main goal which is proving the civil liability of the cause of loss. Therefore, it seems it suffices the person to be accountable for and it is not necessary to find the guilty of an accident. On the other hand, the easy way to achieve the goal is to expand the concept of guilty and guilt is attributed to the legal person who is supporting the main reason instead of the direct and main reason.

As we observe, the votes manifest the fact that purpose and fault are not only the reasons of conscience guarantee, but also is its main and basic reason. So it can be said: wasting the others property is primarily the effect and purpose of the loss's causes and if the scholars don't explain the absence of difference between purpose cases and fault cases, the conception which express that civil liability is followed by the fault theory based on juridical, it was right and proper.

According to the theory, the state's liability and the others' can be proposed, if just they have committed any fault to perform the detrimental actions. The criteria of this responsibility are to measure the supervisor's behavior of damage morally. If the behavior is morally due to the person guilt, he/she is obliged to compensate for the damage and if his/her behavior cannot be blamed morally, there is no accountability for him/her. According to the fault theory, the only reason can justify a person's responsibility for compensation is the existence of causality relation between the fault and the damage has been done. The civil liability in the Europe and the other parts of the world was based on the fault up to 18 century, except for the article 1382 of French civil liability which had accepted the absolute and unlimited responsibility and the responsibility was radically based on the person's fault.

Endangering theory:

According to the theory, it suffices the causality relation to be in existence between the loss and action in order to the loss cause's responsibility determined. In other words, the action and activity of each natural or legal person endanger without existing the guilt or crime and should undergo its results. It means because the employers benefit from the job, the losses should be undertaken by him as well. For instance, if a company or factory takes an action to produce various products or a bureau is in charge of some social and economical affairs which benefit them, they should be responsible for the damages are done to individuals by their actions and their activities.

Apparently the theory has been emerged in response to the fault theory and indeed it accepts the responsibility without fault and it deems every harmful action to be guaranteed and it consider any activity which is generating interest to create the responsibility. Thus, in addition to the many criticisms, it is an optimal approach toward civil liability according to some scholars. There are some cases of acceptance this theory in religious texts:

If a person has been invited to another's house and he/she enters with the permission of host and in the meanwhile the dog of host hurts him/her, the host is responsible.

A person who is riding a horse or is dragging it, is responsible for the damages done to the properties by the animal.

A person who put the animal on the way of people is responsible for the damages done to individuals by the animal.

If a person dig a well on his/her land and cover it, but do not inform the others and somebody or something fall in it and lost, that person is responsible.

If a person drop the water on his property and another person's property is drowned due to that or fire in his property and is informed or suspicious of the harm, is responsible.

If a person's wall collapse due to the exhaustion and cause the human or animal to die or cause the financial loss, the owner of the wall is responsible in case he is aware of exhaustion.

As it is observed, according to jurisprudence the existence of causal relation between action and loss result in responsibility and it means that endangering theory is also has been accepted in jurisprudence.

The middle theory:

According to the theory, the activity which is exotic and unusual results in responsibility. This view emphasizes on individual liberty and doesn't consider dangerous all their actions and activities but it only considers responsibility for those actions which are exotic and irregular.

While this theory supports the agent of loss and devise of harm, it is a criterion to achieve civil liability which is an abstract and subjective concept and it seems it is difficult to achieve and finally it will be relative. Yet, it is evident in both religious texts and narrative sources. The cases such as digging wall in other's property or on the road travelling center, irrigation or opening the fire in one's own property to excessive necessity, riding the rental animal in an unusual way, and so on emphasize that performing the exotic and unusual action result in responsibility, because these actions are highly due to the fault of the agent or at least the role of fault is more prominent than the other factors.

Loss separation theory:

Based on this theory, the physical and financial damages and moral and economical damages have been separated and it has been predicted the responsibility without fault for the first time and the responsibility based on fault for the second type, because according to this conception financial and physical damages mean the loss insertion but moral and economical damages is to foreclose the interest. Therefore, if the damages are done to a person due to the other one's actions, the principle of liability is without the governor fault, but where one activity leads to interest insertion, the basic condition of responsibility is to take the blame.

What expressed about the theoretical principle of civil liability result us in coming to the conclusion that none of the theories can be accepted as the mere principle of civil liability and establish a justly system based on. On the other hand, the reality which is in existence within them cannot be denied. What is significant is to do the justice to the society and this logical goal is the only way to achieve the goal. It probably can be said: it's because of this consideration that no definite theory has been presented in jurisprudence regarding the civil liability. Sometimes it has been emphasized on the cause of fault, sometimes on the risk factor, and sometimes on violation the conventional and in some cases all the factors have been considered.

Therefore, the fundamental strategies on civil liability are to provide the justice and defend the rights of those who have been hurt by the actions and activities of natural and legal persons. In fact, what is important in this regard is the presence of the direct causality relationship between the loss and the doer of the action so that we can say: typically, in terms of feature the loss is necessary and judgment is the best criterion to distinguish between the overseer and those who have caused the damages. None of the triple titles, stewardship, causation, and creating the context has been presented in narrative texts. Apply the law as a loss title—intentionally or unintentionally—has the pivotal role and the particular texts apparently doesn't implicate beyond the conventional verity.

Discussion and conclusion:

According to what presented up to now we came to the conclusion that:

According to loss rule, any damage is done to the property or interests of others result in liability and the person has the civil responsibility. In other words, the provision of the loss rule is public and it includes any damages done due to incursion or carelessness and the personal negligence.

According to the religious view, the endangering theory is stronger to prove the civil liability. Because, first, the scholars explained the lack of difference between the intentional and unintentional states to prove the civil liability and second, Third, the proof of civil liability regard to the fault and necessity of compensation for damages in intentional conditions is so clear that there is no doubt about it. Thus, to prove the civil liability has the great importance in unintentional cases and delinquency states and it needs to be investigated more accurate. Consistency of civil liability of the loss cause is what obtains through the religious discussions.

With regard to the elements and components of the state's civil liability and considering the aforementioned points we conclude that the government is responsible for the losses due to his actions and activities and he is obliged to compensate for the damages done to the citizens—weather they are due to the governance or the actions related to the tenure—namely the government is accountable for all his actions and activities against the citizens. However, what justifies some of actions due to governance is to protect the interests and providing the benefit of the society. In this case the government is not responsible for the actions are being done in this field and it might cause the damage to the citizens.

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