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The Civil Liability System of the Islamic Republic Government for Involuntarily Liabilities With emphasis on the Principles of Jurisprudence

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Abstract

The duties of the government in the system of the Islamic Republic of Iran in relation to involuntarily civil liabilities are one of the important and necessary issues that can be discussed considering the increasing importance of citizens' rights. The present study uses the library method to examine the mentioned questions. The results of the research indicate that in the law of the Islamic Republic, which is based on the jurisprudential principles of the religion of Islam, the government is committed for involuntarily responsibilities. The jurisprudential rules of "no harm[1], correlation[2], A big head has a big ache[3], surety is liable for compensation[4], murder will out[5], advantages and interests of an object follows the risk[6], the ruler is the abstaining guardian[7], the wise institution of the state" are related to involuntarily responsibilities of the state. Some examples of government duties for involuntarily responsibilities include the absence of an heir or the heir's inability to pay diyāt[8], the judge's mistake in judging, the government's obligation to deal with unforeseen events, and death due to overcrowding or involuntary falls of another person and the government's duty to pay the ransom for traffic accidents that do not identify the culprit.

Keywords: *Civil Liability; Government; Islamic Republic; Non-Voluntary Duties; Jurisprudential Principles*

[1] لاضرر
[2] تلازم
[3] من له الغنم فعليه الغرم
[4] الزعيم غارم
[5] لايبطل‌دم امر مسلم
[6] الخراج بالضمان
[7] الحاكم ولي الممتنع

[8] The financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm or property damage

The Concept of Taklīf

In the language of the lexicographers, "Taklīf[9]" is derived from the root "kalf" meaning to order to do something that is difficult (Jawādī Āmulī, 1375: 115). In the jurisprudential definition of this word, it is stated that "The order of legislator for doing or leaving something or choosing between the two includes Wājib[10], Ḥarām[11], Mustaḥab[12], Makrūh[13], and Mubāḥ [14]." (Hashemi Shahroudi, 1426: 261) It is clear from the definition of Taklīf (i.e. duty) that the belonging of the duty of the actions of the obligated, which is referred to as "obligated to" and to the addressee of the duty, "obligated" and the duty of the duties of the obligated is both rational and traditional and of the sources of Sharī'a (Lahiji, 1372: 346) the addressee of the Taklīf, in addition to the special conditions of each task must have the general conditions. These conditions include: maturity, intellect and power.

The Concept of Government

The concept of government is often used synonymously or with a number of other concepts (Vincent, 1389: 44). The words of "government" such as "country" have various concepts both in ancient literary texts and in the language of writing and speech of our time. (Judge Shari'at Panahi, 1383: 129). In constitutional law, the government has three concepts; in the first sense, it means the political society and represents the identity of a country, which is called the country; the second concept is political power from which the meaning of government is inferred and the third concept in the system of separation of powers refers to the executive branch. (Hashemi, 1390: 74), which, of course, the government in this discussion means the organizations or institutes or employees of the system that somehow are damaging to others in their actions. In other words, the concept of government in this matter is its generality and general meaning.

Limits of Government Liability

According to the scholars of administrative law, the state has two types of actions:

1- The actions of the government: The actions related to the government are actions in which the government is the absolute ruler and power, and it commands and strengthens the people through them. Therefore, these actions are legally different from the common actions between individuals. Such as the enactment of laws and regulations, the imposition of taxes and duties, the deprivation of property of individuals, and so on.

2- The actions of management: The actions of management are actions in which there is no sign of the political power of the government, but the government acts with the same conditions as for the people, and that's why these actions are legally similar to the actions of ordinary people. Like buying and selling, renting, mortgaging, borrowing, etc. (Ghamami, 1376: 115).

The Concept of Government Actions and Management Actions

A Governmental action is an action that the government performs in terms of having public power and as exercising public power, such as establishing public thoroughfares and squares and hiring

[9] Duty
[10] Obligatory
[11] Prohibited
[12] Recommended
[13] Abhorred
[14] Allowed

official agents. The action of government is used against the action of management. In jurisprudence, the term of management and government action has no precedent and is not considered equivalent to it. In the term, the right of God and the right of the people are not applicable to the issue in question; and the action of management is a legal act that the government performs it not due to exercising the general power but as the other people perform it like the government in the railroad firm. The operation of banks that are formed under commercial law and have legal personality in private law and their capital is from the government. Basically, because there is a separate character from the character of the government, it is neither an act of governance nor the act of management, so if such a bank goes bankrupt, the government is not obliged to pay its debts, and such banks are not exempt from court fees (Imāmī, 1394: 389).

The executive branch has the most relationship with the people. Therefore, it is possible for the executive branch and its staff to inflict more damage on individuals than other branches. Because executive branch actions and decisions are made in a general division into two forms, one is individual actions and decisions that are meant to be actions and decisions that control specific individuals and specific cases. Such as when the administration decides and acts on the acquisition of special land belonging to certain persons, and the other is the decisions that are made in the form of general decisions in the written form of regulations and approvals and directives and notice a large group of people or the general public.

In general, it should be said that Article 473 and Note 2 of Article 514 of the Islamic Penal Code adopted in 1392 accepted the responsibility of the government and administrative bodies and, if damage is inflicted on other persons, requires them to compensate the same case.

The Concept of Civil Liability

Civil liability is the obligation that a person has to compensate the damage to another person, whether the loss is due to the action of the responsible person or the action of persons affiliated with him or due to the objects and property under his ownership or possession. Civil liability is realized when one person or persons inflict damage on another person. Therefore, the realization of legal responsibility depends on the damage to individuals or society. However, in criminal liability, damages to society are considered as criteria. While in civil liability, the damage caused to the society is not an issue but it is a private loss to the person in question (Razmi, 1390: 15).

Types of Civil Liabilities

Civil liability is divided into two main branches: contractual liability, also called contractual responsibility or guarantee arising from a contract, which includes liability that arises as a result of non-performance of an obligation arising from the contract, contractual liability has a contractual origin and the violator of the contract is obliged to compensate the damage caused to the obligee (Katooziyan, 1377: 14-18), the responsibility outside the contract, which is called irresistible liability or Compulsory liability, is obtained from legal orders and prohibitions. In other words, Compulsory liability exists when someone is harmed due to the breach of a legal duty. Therefore, there is no need for a contract or obligation in advance to fulfill the responsibility by compensating the damage, but any legal responsibility that does not have the specifications of contractual liability is called Compulsory liability (Ja'fari Langroodi, 1386: 643).

The contractual liability mark is a breach of contractual obligation and the extra-contractual liability mark is a breach of contractual obligation arising from the law. This distinction is sufficient for us to consider these two types of responsibility to have two separate natures, although they are common in many works (ibid: 29).

Compulsory or Involuntarily Responsibilities

Compulsory liability is considered to be a duty that the law directly entrusts to the person as a result of performing or refusing to perform an action without its basis being realized with the intention to initiate (Shahidi, 1386: 50) such as Article 307 of the Civil Code and Article 328 of Civil Code defines waste, and according to it, whoever causes a damage to another's property is the guarantor of it, and there is no difference between the intentional act and unintentional act, the messenger and the non-messenger, and also the possession of other's property without permission is also considered usurpation. The subject of these duties is compensation for damages.

Compulsory liability is the liability for compensating the damages resulting from doing or leaving an act that is considered a mistake by law and custom. Assuming that the two persons have no contract with each other and one of them intentionally or unintentionally causes a damage to the other, the contractual or non-contractual liability is realized. Compulsory liability is also said to be a liability arising out of a breach of duty originally prescribed by law. Such an obligation is general towards individuals and its violation can be compensated by bringing an action to claim unqualified damages (Badini, 1383: 37).

Under compulsory liability, assignments are determined by law, while in a contract, the assignments are determined by the parties themselves. In the classical and traditional view, liability in compulsory liability is arising out of an obligatory breach and that obligation is a liability arising from the law, but contractual liability is the result of a breach of the obligation arising out of the will of the parties. The difference in the nature of these two responsibilities has created the doctrine of the relativity of the effect of contracts and stipulates that a contractual obligation is binding only on its parties, but in compulsory liability, such a rule is not valid due to the fact that previously, there was no contract between the two parties so that it would be the turn of the rule that the effect would be relative (Bariklou, 1385: 10).

Considering the above contents, it seems that the most important goal is to compensate for the losses incurred, which is done in different ways.

The Government's Civil Liability System for Involuntarily Responsibilities

In this article, the government's civil liability system for involuntarily responsibilities is examined.

1- Damage Compensation System

In general, the purpose of civil liability rights can be considered as compensation for damages. Compensation for damages is also the most important mission of civil liability rights, and civil liability seeks compensation for damages, either in its public face that is based on fault or in exceptional cases that are pure and absolute (Ghaffari, 1391: 111).

The importance of finding compensation for the damage as the goal of civil liability is more the result of the influence of the school of legal research, which has led to the belief that civil liability is only in connection with losses and compensation for the damage, not moral judgment about people's behavior. The fact is that civil liability plays a major role in compensating for damages, and there is still no system in any government that is able to cover the losses incurred by individuals without the need for civil liability regulations, because the envisaged institutions have limitations and shortcomings that seem irreparable compared to the rules of civil liability. For example, social plans only consider physical damages to be compensable and do not cover material or spiritual damages (Badini, 1383: 90).

The injured party is in various ways the focus of civil liability, and the law is more concerned with injured party than the one who cause a damage, so that some believe that the main basis of civil liability is the guarantee of the victim's rights and protecting him. (Badini, 1384: 90).

Contrary to popular belief, compensation for damage, in the form of paying some money, is not the only goal of civil liability in relation to the injured party, but also the compensation of damages in the future and the elimination of rape against claimants is one of the obvious goals of civil liability. It is not possible to compensate for damages arising from rights that are not economic or financial in nature and are purely spiritual. Therefore, in order to justify it, another goal must be considered for civil liability, which is to satisfy or console the victim, and to pay a sum of money to the victim only to create a mental and emotional balance (Bariklou, 1385: 40).).

In the compensation system, civil and criminal liability come together; the loss agent must compensate for the damage, whose civil liability is a criminal liability. In fact, the one who should have been punished, only the evolution of criminal law over time, has reduced his responsibility. In some cases, the compensation for damages is accompanied by penalties. For example, a thief pays both the damages of the loser of the property and it is possible that his hand will be cut off from the crime forever.

As mentioned, this aspect of the compensation system relates to the theory of public responsibility, since government civil liability may be due to the error of factors that contractors have played a role in the occurrence of a compulsory accident due to direct or indirect contact with the government (employees) or they have done in conditions that have been able to prevent it.

2- The System of Deterrence and Attention to Social Order

Morality has been tied to people's beliefs, values, and ideals, and custom has a special sanctity for it, and rights, including civil liability rights that serve the people and society, cannot consider morality unimportant, because otherwise it will not have the adequate guarantee of implementation. Ethics plays a role in guiding civil liability rights, and it depicts its moral face considering the fundamental importance of the role of fault in civil liability rights. While the person, who causes a damage intentionally, the lawmaker has considered more prudent measures, and under no circumstances the perpetrator can be released with malice, because an act of malice is contrary to socially acceptable morality (Ghaffari, 1391: 111). Today, everyone agrees that the rights of any country cannot be summed up in the provisions of its laws. Law is a means of respecting social interests and the administration of justice, so its rules should not be considered in isolation from society, but in many cases the observance of legal techniques and the concept of order prevents a court from being able to administer justice, as it feels in any fighting that in the view of director and in civil liability, such barriers as in the case of usurpation or non-performance damages, only provide for a small part of the issues related to "liability", the Code of Civil Procedure and the Code of Civil Liability has decreased this violation to some extent. In matters of emergency and spiritual damages, the injured person and his relationship with the loss agent are considered, in order to determine whether the harmful act is considered a fault in the view of the custom or it is permissible, we should consider public morality. And the nature of the issues in question is such that custom and ethics play a key role in it. For example, the criterion for identifying right and wrong is the behavior of a normal human being (Katooziyan, 1377: 8).

In fact, in addition to the purpose of compensation for damage, the relevant regulations should be set up in such a way that they are considered a factor for punishment and intimidation of those causing damage and have some kind of deterrence too (Badini, 1383: 57). Specific (individual) deterrence refers to the role that civil liability can play in deterring the importer of damages (convicted in a civil liability lawsuit) from re-inflicting damages. This type of deterrence is opposed to general deterrence, which means prevention at the community level and preventing other members of society (in addition to the

importer of losses) that are more likely to engage in harmful behavior in the future, which in turn is divided into general deterrence in its economic sense and general deterrence in the non-economic sense.

In Iranian law, the Islamic Penal Code, following Islamic law, mixes civil and criminal liability, and in particular in the case of bodily harm, the goal is the more obvious revenge and punishment of other purposes of civil liability, such as damage compensation and loss distribution: The authority of the injured or the heir of the victim in the retaliation of the criminal (importer of damage) or taking diyāt and the unwillingness of the judicial procedure to collect between the retaliation and the diyāt (compensation of damage) based on Articles 1 and 5 of the Civil Liability Law approved in 1339 is reminiscent of the period when the body and soul of the importer of the damage was considered his asset and the injured could compensate his losses by imprisoning him. Thus, the idea of revenge and punishment has replaced the guarantee of the main exercise of civil liability (forcing importers of damage to pay a sum of money). The interruption of the diyāt and the unwillingness of the judiciary process to accept the compensation for the redundant damage; the difference between the diyāt of the man and the woman concentrating the diyāt in special places and times, has been distanced from the purpose of compensation and reminds the idea of punishment and deterrence.

The overall goals of the civil liability system are to compensate for the material and spiritual damage, and ultimately to punish the perpetrators of the damage, as well as to prevent them from committing harmful acts and activities. In the Iranian legal system, it seems that the civil liability system has adopted a kind of pluralism in the intended objectives and in some cases, such as the regulations related to the loss and anger of the legislator, seeks compensation for damages and protection of the injured rights.

In addition to the purpose of compensating the damages, deterrence is also of particular importance in the Indirect Regulations, in which the element of fault is a condition of liability. In some special systems, such as traffic accidents, compensation of damage is usually done through insurance or social security, the purpose of damage compensation is considered along the distribution of the responsibility for compensation (Badini, 1383: 57).

In this view, the purpose of civil liability is to return the position of the injured to the state in which he was before the occurrence of loss, so the person who breaks the glass of another house, in addition to paying the price, must pay the cost to repair it and take back the previous state. It is clear that this is the fairest system imaginable for accountability and compensation. However, it also brings a fact with itself and that it is often impossible to achieve this goal: how to compensate for the pain of a mother who has lost all her children in a tragic accident. Nothing can calm her burning heart, and money will not be valuable as the most important criterion for compensation in contemporary society in those turbulent times.

3- Integrated System

The integrated system is a mixture of civil liability for the government and civil-penal liability for government officials and all those who exacerbate the effects of natural disasters directly or indirectly, resulting from laziness, negligence, carelessness, underemployment, fraud, embezzlement and other crimes. At the top of the pyramid, the "responsible government" compensates for all the damages, and it does not have the right to take financial assistance from the nation except for first aid and essentials that are among the humanitarian acts.

After full compensation, the government can refer to the perpetrators and the real and legal factors that exacerbate the crisis attributed to them in terms of civil or criminal responsibility, or both. Despite the fundamental flaws in the system, which I will address in future discussions, it is the only system that can be relied upon to achieve its goal - to prevent force majeure and natural disasters -

because government officials see their job position and even their lives in danger (punishment), do their supervision and management as a follow-up and deterrence from the effects of natural disasters with full care and ability and they are not able to evade administrative / executive responsibilities (which doesn't have previously a certain performance guarantee.

To achieve this goal of accountability, the government is required to have long-term and sustainable planning, and in the near future it will be possible to see severe compulsory events that do no cause a damage or their damage is reduced in the world level. In that case, one can be proud of the pragmatic analysis of the dry concepts of civil liability and saving the lives of thousands of people and protecting millions of people's property.

Jurisprudential Foundations of the Government's Duty and Responsibility for Involuntarily Responsibilities

1. The Rule of No Harm

One of the jurisprudential rules that is cited throughout jurisprudence and is used in many different political and social issues is the rule of "no harm", whose role is to control and regulate other laws. In fact, Islam has considered "the right of veto" for this rule compared to other laws and regulations. (Motahhari, 1389: 135). This is one of the rules that have been accepted by Shiites and Sunnis, and scholars of both religions have cited it in many jurisprudential chapters, even a number of Sunni scholars believe that jurisprudence revolves around four or five pillars, and one of them is the rule of no harm (The First Martyr, 1411: 4).

The need to compensate for losses is the oldest foundation left in civil liability for a long time; a foundation that today has distanced itself from the punishment of the guilty and has been called compensation in modern theories. Because the new dangers posed by the advances in industry and its products are not all derived from the fault, they are the mainstay of the results of start-up and useful economic activities. Therefore, justice compensates the losses caused by these legitimate and useful activities and the protection of the rights of the victims is not neglected. In Islamic law, the rule of "no harm" plays the same role (Mohaqiq Damad, 1429: 141).

2- The Basis of the Correlation and the Rule of "a Big Head Has a Big Ache"

According to this rule, anyone who uses the benefits and fruits of an object must be able to pay the damages that will be inflicted on others through that object. Here, the responsibility is based on leaving the responsibility of a person in charge of the people or objects that are responsible for ensuring their proper functioning (Mahmoud Salehi, 1379: 18).

This rule, of course, can be considered related to the "theory of guaranteeing the right" and it can be considered as a complement to the theory of the guarantee of the right, although it is different from it. Because, on the one hand, according to the rule of "A big head has a big ache", the person who uses his vehicle must also accept the damages caused by damaging his vehicle. On the other hand, according to the theory of guaranteeing the right, instead of paying attention to the work of the perpetrator and evaluating it, the damage to the lost interests of the injured and his lost rights are taken into account and all efforts are made to guarantee these rights. According to this theory, everyone has the right to live in a healthy and secure society and to have his human rights guaranteed, and no one has the right to endanger the health, safety or rights of others. As soon as a right is lost and a harm is inflicted on someone, the cause of the loss must be compensated, and it is this obligation and commitment to compensate for the loss that is called civil liability (Zamani, 1382: 144). This rule is not the same as the text or hadith

narrated by the holy legislator or the Infallible, but it is related to several narrations (Bojnourdi, 1419: 308).

Shiite jurists have generally considered the benefits and advantages of property in correct transactions, especially mortgages, to belong to a person who is liable for damages. Of course, invalid transactions and specialized usurpation are out of the examples of these narratives.

Ayatollah Makarem Shirazi, while explaining this rule, states that a number of Sunni jurists believe that one of the uses of the rule of "advantages and interests of an object follows the risk[15]" is the responsibility and guarantee of the government for compensating the damages to the people because the government takes taxes and fees from the people, so the government is the guarantor of the damages caused to them in the events. He is also surprised by the rejection of this argument from the discourse that considers the rule to be the basis of the state's guarantee for the people (Makarem, 1422: 312). He believes that it is difficult to generalize the rule to the guarantee of the state and the public and to include it, unless there is another reason or other symmetries in authority (ibid: 314).

3- The Rule of "Surety Is Liable for Compensation16"

This rule is one of the famous rules of jurisprudence that has been analyzed and interpreted by jurists in a comprehensive manner and it is in contrary to the rule "A big head has a big ache[17]" that is not the same as the narratives but it has been inferred from the sum of hadiths and narratives, the rule of "surety is liable for compensation" is the same as the phrase narrated from the Holy Prophet (PBUH).

"Za'īm[18]" in the word means boss, guarantor and supporter, and it has been also mentioned in the Holy Qur'an and in the interpretations, the meaning of "guarantor" and "responsible" has been inferred from it:

(They said:" We miss the great beaker of the king; for him who produces it, is (the reward of)a camel load; I will be bound by it.") (Yūsuf: 72)

It seems that the holy legislator has a broader and more important meaning in presenting the texts that have become the basis of this rule, which includes the employer's responsibility for the employee's behavior and the government's responsibility for the behavior of his relatives.

4- The Rule of "Definitely Murder Will Out19"

From the Islamic point of view, man has a high status and special value among other beings. Preserving human life has been given strict attention by Islam that has made it obligatory for others to protect the lives of each person and it has considered it as one of the most important duties. And it has been mentioned in the Holy Qur'an and the Prophetic tradition and the hadiths of the Ahl al-Bayt (AS) with great emphasis. "And whoever saves a person from death, it is as if he has made all the people alive." (Mā'idah: 32) In another verse, God says: "Whoever kills a believer intentionally and willingly and knowingly, his punishment is the fire of Hell, where he will abide forever, and he will be angered and punished by God and he will be deprived from His mercy, who has prepared and provided for him a very great and severe torment "(Nisā': 93). In a hadith from the Holy Prophet (PBUH) it has been stated: Swear by God who has my life in His hands that if the people of heaven and earth all share in the blood of a believer, God will set all of them on fire (Kulaynī, 1407: 402).) Considering that preserving the lives of

[15] الخراج و بالضمان
[16] الزعيم غارم
[17] من له الغنم فعليه الغرم
[18] زعيم
[19] لايبطل دم امر مسلم

human beings is very important and respected in Islam, and whoever sheds another's blood intentionally is punished by Islam and the law of retribution, and if it is quasi-intentional or a pure error, the diyāt is the responsibility of the killer or his kinsman, but if the killer is not found, the diyāt will be paid from the Bayt al-Māl[20]. The narratives, which indicate that the Muslim blood is not trampled on, have become as a jurisprudential rule called "definitely murder will out." (Najafī, 1385: 129) The following narratives indicate that if the killer is not known, the royal treasury will pay the diyāt:

A. Amir al-Mu'minin (AS) judged a man who had been killed and it was not clear who his killer was, and said: If some kinsmen are known for him to demand his blood money, his blood money will be paid from the Muslim Bayt al-Māl, and the blood of the Muslim will not be wasted. Because his legacy is for the Imam, then his blood money is also for the Imam. The sanad of the narrative is correct and reliable (Majlisī, 1406: 174).

B. It is narrated from Imam Ṣ*ā*diq (AS): If a person's body is found in the desert, his blood money will be paid from the Bayt al-Māl. Indeed, Amir al-Mu'minin (AS) always said: "Muslim blood is not wasted" (Kulaynī, 1407: 515).

C. Abu BaṢīr narrates: I asked Imam Ṣ*ā*diq (AS) about a person who had committed a deliberate murder and then escaped: What should be done if there is no access to the killer? Imam (AS) said: "If the killer has money, the victim's blood money will be taken from his property, and if he has no money, it is taken from his relatives, and if the killer has no relatives, the Imam will pay the victim's blood money." Therefore, it is true that Muslim blood should not be wasted" (Kulaynī, 1407: 522). Apparently the reason is: just as inheritance is for the Imam, the blood money is also the responsibility of the Imam. However, the royal treasury is not the property of the Imam, because he has the right to take it without the permission of others. Therefore, it is said that the diyāt is the responsibility of the Imam, and it is up to him to pay it from the Bayt al-Māl. Muhammad Taqī Isfahani says: This narrative is authentic (Majlisī, 1406: 420).

D. Jamil ibn Darāj quotes Imam Ṣ*ā*diq (AS) as saying to the Imam: Is the testimony of women acceptable? The Imam said: It is accepted only in murder (because) Imam Ali (AS) constantly said: Muslim blood is not wasted. The sanad of narrative is good (Makarem, 1422: 102).

The purpose of this rule is to express the importance of the blood of a Muslim in order not to invalidate the blood money of the victim. The result of this rule is that if the killer is not known, or if the killer is known but it is not possible to take the diyāt from him because he is a fugitive, or poor or something else, the payment of the victim's diyāt will be paid by the royal treasury, because otherwise the blood of the victim is trampled.

Article 171 of the Constitution of the Islamic Republic of Iran stipulates: "If, as a result of the fault or error of a judge in a matter or in a sentence or in the application of a sentence in a particular case, material or moral damage is inflicted on someone, he is the guarantor, otherwise the damages will be compensated by the government and in any case the dignity of the accused will be restored. In cases where the killer of Muslim does not have any kinsman or his kinsman is not able to pay the diyāt, the responsibility for paying the diyāt rests with the Bayt al-Māl. In such cases, the government is, in fact, responsible for the payment of diyāt and compensation of damage, because in any case, in Islamic society, Muslim blood should not be wasted and, on the other hand, no harm should be left without compensation.

[20] The royal treasury

5- The Rule of "Advantages and Interests of an Object Follows the Risk"

The text of the rule is the prophetic hadith which is famous in Sunni hadith books (Sajestani, nd: 482) but in Shiite hadīthī books it is not mentioned with this title and text, except in the book "ʿAw*ā*lī al-Laʿ*ā*lī" that Ibn Abi Jumhūr has narrated it (Ibn Abi Jumhūr, 1403: 57).

In some narratives narrated from Sunnis, the reason for issuing the hadith has been stated and that is a man who bought a slave to keep him for himself forever, but after a while he found some fault in him, he went to the Prophet and asked for justice and wanted to return the slave to the seller. But the seller said, "O Messenger of God, he has made my slave to work for him." Then the Prophet said: "advantages and interests of an object follows the risk" (Suyūṭī, nd: 93) it means that against the guarantee of the buyer, the benefit and interest gained through the work and services of the slave is for the buyer, because he would be responsible if it was destroyed by the buyer, the benefits would also belong to him.

From Imam Khomeini's point of view, this rule is a governmental rule that includes obligations that the government is obliged to pay for receiving the tax from the people in various ways, and the government is obliged to fulfill its obligations and the people can demand the obliged issues from the government: "And this is the duty of the government and the people would demand it from the government" (Khomeini, nd: 473).

In accordance with what has been stated, compensation for damages resulting from the activities of government is the responsibility of the government (and the governor is obligated to do so). There is a demand from the government for compensating the damage (and, in particular, for their claims), because the principle of the necessity of compensating the damage and clarification of narrative and jurisprudential texts necessarily necessitates the compensation of the damage from the Bayt al-Māl in several cases and also, the principle of the security of the life, the property, the chastity, and the people's dignity will requires to be protected from any kind of aggression, so it is the duty of the government to protect them against any aggression; also, the establishment of justice is one of the duties of the Islamic government, and it is necessary for the citizens to benefit from the interests and harms of society equally and imposing the damages to the certain individuals resulted from the actions done by the government for the benefit of the public and not compensating those damages is an oppression to those individuals.

6- The Rule of "the Ruler Is the Abstaining Guardian 21"

This rule is not the same as the phrase in the Book and Sunnah, but it has been deduced from the words of the Infallibles (AS) and it has been widely used and cited by the jurists. Therefore, it has also been mentioned under the title of "the king is the abstaining guardian".

According to the narrative of Salma ibn Kumayl, Imam Ali (AS) ordered the Shurayḥ Qāḍī to take the rights of the people and, if necessary, "sell" the property of the debtors who have property, because the Holy Prophet said: "if the debtor is not able to pay the debt, leave him alone[22]" (Kulaynī, 1407: 412).

According to a narrative narrated by Muhammad ibn Ya'qub Kulaynī, quoting the chain of narratives from Salama ibn Kuhl that Amir al-Mu'minin Ali (AS) asked a man who had been intentionally murdered in Kufa and said that he has no relatives in that city: "Which city and which tribe he belongs to?" The man answered that he was born in Mosul and that his family lives in that city. The Imam sent a delegation to Mosul with a letter and asked his agent in that city to investigate the case of the man's relatives and if there is someone who inherits from the accused according to the Book of God, he must pay the diyāt during three years, and if he did not find anyone to pay the diyāt, the public property of

[21] الحاكم ولي الممتنع
[22] مطل المسلم الموسر ظلم للمسلم

Mosul, where the accused was born, would be obliged to pay the diyāt and it should be paid within three years. Finally Imam ordered that if the accused is not from Mosul and mistakenly introduced himself as one of its members, he would be returned to Kufa by the delegation. then Imam Ali (AS) emphasized that in that case I would be his "guardian" and would pay the diyāt on his behalf, because the Muslim blood would not be wasted because "definitely murder will out" (Ḥurr Āmulī, 1409: 119). As stated, the narratives explicitly state that Imam of Muslims is responsible for paying diyāt if non-Muslim refuses to pay diyāt, either the diyāt is related to "murder" or "injury." From all the narratives, it is concluded that the responsibility of the government generally includes all the damages inflicted on a citizen living in a Muslim country when somehow it is impossible for the debtor or the main responsible to compensate the damage. Respect for human rights and the need to prepare for loss as a rule requires that in such cases the responsibility be transferred to the Imam (AS) or the government, so that the need to compensate the damage as one of the basic foundations of social justice would not be endangered in the Islamic system.

7- Āqila Institution

*Ā*qila[23] (i.e. wise) is derived from the word "Aql[24]" (i.e. wisdom) and it means to tie and fasten. That is why the string that is for fastening is called ʿiqāl[25]. Shahid Thānī writes in this regard: they are called *Ā*qila because, by paying a diyāt to the parents of the victim, they close the tongues of the relatives of the murdered and prevent them from any kind of harassment (Shahid Thānī, 1409: 307). Another view says that *Ā*qila are the ones who inherit from the criminal in the event of his death, regardless of their class or rank.

Sheikh Tūsī also considers the heirs of the murderer to be the wise ones, and those who believe in this saying have also cited narratives, one of which is mentioned: Abi BaṢīr asked from Imam Ṣ*ā*diq (AS) about a man who intentionally killed another man and then the killer escaped and there is no access to arrest him. The Imam said: If the killer has some property, the blood money should be taken from his money; otherwise, it should be taken from those who have a closer relationship with him. If there was no relative for him, Imam (AS) would pay his blood money, because the blood of a Muslim is not wasted (Ḥurr Āmulī, 1409: 303).

Sometimes the wise institution is the government, that is, in some cases the government is responsible for paying the diyāt as the wise party. According to Article 15 of the Islamic Penal Code, diyāt is defined as "a finance prescribed by the holy legislator for a crime" and another Article 294 states that "diyāt is a finance that is given to the family or relatives of the victim due to a crime against the soul or the body of victim.

Some Cases that the Diyāt Is Paid from the Bayt Al-Māl

Sometimes the victim's blood money is paid to his heirs by the government. Paying the diyāt from the royal treasury is made under certain conditions. According to Article 58 of this law, "Whenever a material or moral damage is caused to a person due to the fault or error of a judge in a matter or in the application of a judgment on a specific case."

If, as a result of a judge's error, a person is sentenced to death and incurred bodily harm in the verdict or the determination of the case or the imposition of a verdict on the case, the diyāt of murder or

[23] عاقله

[24] عقل

[25] It is a black cord, worn doubled, used to keep a ghutrah in place on the wearer's head.

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injury should be paid from the royal treasury, because the judge does not have the conditions to judge or he has ruled against the Book and the Sunnah.

If a person or persons are killed in a riot or the body of a victim is found on the street and in public places and the murder cannot be attributed to anyone, the diyāt will be paid from the royal treasury.

The blood money of people who have been injured or killed due to the riots.

The blood money of the victim who has been killed due to the involuntary fall of another person.

If there is an event such as an accident that results in an unintentional death and the deceased is identified and the close relatives of the victim are identified but the accused is not identified, the prosecutor will deal with the case. According to Article 255, diyāt is paid from the royal treasury.

Conclusion

In administrative law, the actions and measures of the government are either in terms of incumbency, which includes service and cultural affairs, and the government is in charge of affairs, or in terms of governance, in which the government is the absolute ruler and power, and these actions cannot be applied by individuals. Just as if someone dies and has no heir, the Imam (AS) or the ruler are his heirs, in the same way, if the perpetrator of an unintentional murder or injury has no heir, the ruler is considered his heir.

The Holy Qur'an, as the most important source of legislation in the Islamic legal system, introduces one of the uses of the royal treasury as helping the helpless and paying the unpaid debts of the victims and the Prophetic Sunnah, as the second most important source of Shari'ah due to the sanctity of Muslim blood and the need to prevent it from being wasted, has placed the payment of unpaid diyāt on the ruler.

Contrary to the interpretations that some jurists have mentioned from the jurisprudential sources and the fact that the Imam (AS) is solely responsible for the unpaid diyāt resulting from murder, the hadiths and narratives received from the Holy Prophet of Islam (PBUH) and the Imams (AS) explicitly and repeatedly hold that the Imam's responsibility is not limited to paying the diyāt for the murder and extended it to the diyāt for the injury. The responsibility of the ruler in creating social justice is so advanced that he has even held the ruler responsible for paying the debts arising from the ordinary transactions of the poor, provided that the debts would not be arising from corruption or dissipation.

Despite the beginning of a favorable change in the legal system of government regarding the approval of compulsory insurance and the establishment of a special fund to provide compensation for diyāt of murder, the Islamic Penal Code is implemented in a very limited level in the country and there is no separate, independent judicial organ or institution involved in the case. Therefore, in most cases, families who have lost a number of their family members and breadwinners in accidents or as a result of crimes, after so many years of being in the abyss of despair, they are not helped effectively. The responsibility for enforcing the explicit rules of Islamic law in explaining the comprehensive responsibility of the deputy governor and the establishment of independent organizations is the responsibility of compassionate officials and jurists of the Islamic Republic.

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