



## Liability for Violating Standards in Shia Jurisprudence and Iranian Law

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### **Abstract**

Standards are of critical importance for protecting public health and ensuring the integrity of transactions and the consistency of the quality of goods and services. Violation of standards can do significant harm to individuals and the society as a whole. Since people are entitled to the right of consuming goods with adequate safety and quality, standards themselves can be considered a civil right. The issue of damages and compensation in relation to the violation of standards has been addressed in Iranian law as well as Shia jurisprudence. In Shia jurisprudence, causing harm to others makes a person liable to coercive action and compensation. According to Article 1 of the Iranian Civil Liability Law, anyone who has intentionally or unintentionally caused material or moral damage to another person's life, health, property, liberty, dignity, business reputation or any other right that the other person is entitled to by law is liable for compensation for the damages caused by his action. In this article, we examine the jurisprudential arguments that support the necessity of enforcing standards and the liabilities that arise from violation of standards in Iranian law. In this regard, Quran verses and hadiths call for accuracy and consistency in all matters, honesty in work, and respect for laws. The Shia jurisprudential principles that call for the observance of standards include La-zarar (no-harm), Tasbib (causation), and Ghorur (deception). Therefore, there is a strong foundation in Shia jurisprudence for enforcing standards. However, Iranian law requires stronger laws with harsher punishment for violators to prevent negligence in complying with standards.

**Keywords:** *Standards; Damage; Liability; Jurisprudential Principles*

### **Introduction**

Centuries ago, when goods were being produced by traditional means, quality assessments were quite rudimentary and mostly involved examining and rating the goods with your five senses. But as human communities became more scientifically and technologically advanced and grew in population, and exploding consumption led to the introduction of mass production and the replacement of human labor and hand tools with machines, it became increasingly difficult and eventually impossible to make quality assessments without laboratories and technical tools and capabilities. Standards were developed to in response to this problem.

Standards are the technical specifications produced for goods, services, methods, and technologies through the efforts, research, and trial and errors of thousands of scientists, researchers, and experts, sometimes over centuries. In many cases, standards have been specifically developed to protect the health of consumers against the dangers of goods and services that if not standardized can have adverse health implications and even life threatening effects.

Given the importance of standards in today's world, this paper explores the subject of liability for violating standards in industrial production from the perspective of Shia jurisprudence and Iranian law.

## 1. Definition of Standard

Standard is an English word literally meaning “flag”, which has been derived from the word “stand”. Today, this word “standard” is commonly used to refer to a scale for measuring, modeling and sampling objects, determining quantity and quality, and formal specifications<sup>1</sup>.

Standards are documents containing rules, guidelines, or specifications for processes or goods, especially those with frequent public use, which have been developed by a credible organization to ensure consistency and uniformity in quality and quantity, expedite development, facilitate communication, save national resources, protect public health and safety, and promote domestic and foreign trade<sup>2</sup>.

According to the International Organization for Standardization (ISO), each standard is the result of a concerted effort to create consistency in a particular process or product under the supervision of a competent authority and may be in one of the following forms: a) a document containing a series of requirements, b) a basic unit or a constant quantity such as ampere, absolute zero, etc., and c) a physical instrument for measurement, such as tape measure.

Standards are agreements that contain technical specifications or precise criteria meant to be used as rules, guidelines, definitions, or specifications in order to guarantee consistency and quality in materials, goods, processes, and services. When agreed upon by a large number of countries, these agreements are called international standards. Standards contribute to simplicity and efficiency of the exchange of goods and services (?).

## 2. View of Shia Jurisprudence (Fiqh) on the Necessity of Observing Standards

### 2.1. View of Quran on Standards

The Quranic term that is conceptually analogous to the meaning of standard is “ميزان” or “Mizan”, which literally means scale. As mentioned, the word “standard” refers to a precise measure for judging the quality and quantity of goods and services. In Quran, in verse 85 of Surah Hud, the term “Mizan” is used in a similar meaning:

*O my people! Give full measure and weigh with justice. Do not cheat people of their property, nor go about spreading corruption in the land.*

<sup>1</sup> . Akbari Haghighi, Karim, What is a standard and what is the purpose of standardization?, Tehran, Institute of Standards & Industrial Research of Iran, 1992, p.7.

<sup>2</sup> Haeri, Ali, Standards and their regulations in Iran, Tehran, Azar Printing, 1969, p.24.

Similarly, verse 85 of Surah Al-A'raf states:

*And to the people of Midian, we sent their brother Shu'aib. He said, "O my people! Worship Allah—you have no other god except Him. A clear proof has already come to you from your Lord. So give just measure and weight, do not cheat people of their property, nor spread corruption in the land.*

In the interpretation of these verses, Allameh Tabatabai says: These verses tell the story of Shu'aib and his people, who are called Midian. Midian people were idol worshippers among whom cheating in trade (defrauding) and other corruptions were common. God almighty sent them the prophet Shu'aib to invite them to monotheism and advise them to use true weighs (in trade) and abandon their corrupt practices. Shu'aib told Midian people of afterlife and advised and preached them in many sermons with such fervor that our prophet describes him as the preacher of the prophets. But Midian people only responded with rejection and anger, even threatening him with banishment and stoning to death. They persecuted him and his few converts to the extreme and did all they could to prevent conversion, closing the way of God to the people. This continued until Shu'aib asked God to pass judgment on them.

Note that among all the sins of Midian people, this verse specifically mentions defrauding and cheating in trade by manipulating weighs. This indicates that this practice has been highly prevalent among Midian people to the extent that the resulting corruption has been brazen and thus the invitation to God had to be started with stopping this practice, which is why the focus is on this sin rather than all other sins of this people. To demonstrate how these verses relate to our discussion, it should be explained that one of the fundamental reasons why humans gather to form communities is to exchange goods and services, which inherently involve a give and take. Also, people of a community have inevitably some degree of collaboration in their life affairs that translates into giving away something in return for something more useful or to benefit from the need of others, which we call bartering.

One of the simplest examples of such transactions is trade. Trade involves exchanging goods of certain weight and volume, which must be measured by scales. This form of transaction is among the oldest manifestations of civilization, as human communities have had no choice but to invent a tradition for such exchanges<sup>3</sup>. Thus, trade in the sense of buying and selling is one of the pillars of humans' social life. Since the thing that a buyer needs and the price he has to pay in return are measured by scales such as weight, these scales and measurements play a fundamental role in human subsistence.

Therefore, cheating a person in trade by for example manipulating these scales and measurements is an act of betrayal that can hurt a person's subsistence in two ways: 1- by taking away from him unfairly what he buys to meet his subsistence needs, and 2- by taking away from him unfairly what he pays as a price. In the first case, the person's needs will not be met as they should be, and in the second case he pays more than he should, thus losing the resources that he has worked and sacrificed to earn. In either case, going forward, the person will be less likely to trust in the honesty of people and his own judgment, which will make him more likely to become misbehaving and confused in his own life; a process that can be viewed as the spreading of corruption<sup>4</sup>.

If you allow this corruption to spread from one or two people to others, soon after, the entire community will be affected and people will lose trust and confidence in each other. Such a community will also lose its public security, which will be a great catastrophe in its own right, affecting everyone in the same way, whether they be righteous or unrighteous and honest or dishonest. Such a community will be governed by deceit and corruption, rather than cooperation to achieve prosperity and happiness. In this regard, Quran states:

<sup>3</sup> Tabatabai, Mohammad Hossein, *Tafsir Al-Mizan*, Qom, Islamic Publications Office of the Society of Seminary Teachers of Qom, translated by Mousavi Hamedani, 1995, pp. 349-352

<sup>4</sup> *Ibid.*, Pp. 352-354

“Give in full when you measure, and weigh with an even balance. That is fairest and best in the end”.<sup>5</sup>

“What is left as a lawful gain by Allah is far better for you if you are truly believers”<sup>6</sup>

Therefore, Quran also directly advises people to observe the principles of fair measurement of goods. Standards are the modern equivalent of these principles.

## 2.2. Necessity of Enforcing Standards According to Shia jurisprudence

There are several principles in Shia jurisprudence based on which one can argue for the necessity of enforcing standards. These principles are as follows:

- Etlaf (damage) principle
- Tasbib (causation) principle
- Ghorur (deception) principle
- La-zarar (no-harm) principle
- Sabgh (passing) principle

### Etlaf (damage) Principle

Etlaf (damage) principle holds a person liable for any action that harms others directly (without any intermediary), for example, when a person recklessly drives his car into a shop or breaks a window. This is different from Tasbib (causation) principle in that Tasbib applies to an action or inaction that harms others indirectly. In this context, action refers to something that has been done, like when someone throws a melon peel on a passage, causing a passerby to fall and break what he is carrying. Inaction refers to the lack of action (or negligence), like when a trustee neglects to lease out a property or invest a fund that he has been entrusted, or when a railway guard neglects to put up a danger sign or act leisurely in sending safety signals.

According to the Etlaf (damage) principle, in cases where a manufacturer’s failure to observe standards does physical or monetary harm to consumers, they should be hold liable.

### Tasbib (causation) Principle

Tasbib (causation) principle is a fundamental law of logic in Shia jurisprudence, which holds a person liable for the losses and damages that he has caused indirectly, forcing him to compensate accordingly. For example, this law states that when a person who is digging a foundation to build a multi-storey building neglects safety measures and causes the neighboring building to collapse, he should pay compensation for the building itself as well as all consequent losses (e.g. furniture and appliances). Another example is that if the owner of a transport vehicle knows that his vehicle has a damaged part that may cause it to crash, but still accepts transport orders, he should be held liable for any loss caused by the crash of that vehicle (e.g. loss of cargo). As another example, if a pharmacy manager orders his workers to sell a drug despite knowing that the drug has expired, the manager himself -and not the workers- is responsible for all the consequences. Unlike Etlaf (damage) principle, Tasbib (causation) principle is not conditioned on direct action and also requires a line of causation to be established by evidence. In the case of Tasbib (causation), this evidence could be reason, consensus, Quran, and hadith.

<sup>5</sup> Verse 35 of Surah Al-Isra

<sup>6</sup> Verse 86 of Surah Hud

In Shia jurisprudence, Tasbib (causation) principle is conditioned upon:

- 1- Occurrence of loss or damage (due to action or inaction of the accused)
- 2- Capacity of the accused
- 3- An established line of causation (there should be a causal relationship between the damage and the action/inaction)
- 3- Lack of malicious intent.
- 4- Damage being done indirectly (rather than directly).

In regard to the fifth condition, it should be explained that the cases where the accused has done the damage directly fall in the category of Etlaf (damage) rather than Tasbib (causation)<sup>7</sup>.

As for the relation of these principles to the subject of our discussion, it can be argued that since a standard is a set of principles developed with the intention of ensuring the quality of goods or services so as to prevent damage and harm, in case of the failure of a manufacturer to observe standards, the owners of the manufacturing unit -rather than distributors- should be held liable for the consequent damages.

### **Ghorur (deception) Principle**

This principle states that if a person has exploited another's lack of awareness or attention to do him harm, then he must pay compensation, and in some cases the transaction will be void.

### **La-zarar (no-harm) Principle**

La-zarar (no-harm) is one of the most commonly used principles of Shia jurisprudence that has been applied to a wide range of areas from worship rituals to trade. This principle is of so great importance for Shia jurisprudence that over the centuries many Shia jurists have written treatise and given lectures specifically devoted to this subject.

## **3. Civil and Criminal Liability for Violation of Standards in Iranian Law Civil Liability**

As mentioned, civil liability is the legal obligation of a person to compensate for the damages he has done to others. Civil liability arises when someone infringes on another's rights without legal permission, causing damage to the other party.

In Shia jurisprudence, civil liability for violation of standards can be pursued in accordance with general laws such as Etlaf (damage) principle, Tasbib (causation) principle, Ghorur (deception) principle, and La-zarar (no-harm) principle. In Iranian law, Article 1 of the Civil Liability Law adopted on 27/3/1960 explicitly affirms the right to compensation: "Anyone who has intentionally or unintentionally causes material or moral damage to another person's life, health, property, liberty, dignity, business reputation or any other right that the other person is entitled to by law shall be liable for compensation for the damages caused by his action". According to the above, manufacturers are obliged to pay compensation for the damages done to consumers due to manufacturer's violation of standards.

<sup>7</sup> . Madani, Jalaluddin, Civil Law, Tehran, vol. 1, p. 38.

## Criminal liability

The Law on Strengthening and Expanding the Standard System, approved by the Iranian parliament on 3/10/2017, has specified the domain and limits of liabilities for violations of standards in its fourth chapter, entitled “Crimes and Punishments”.

In this regard, Article 41 of this law stipulates: “If a production and service entity that is licensed to use the standard mark or approval issued by ISIRI<sup>8</sup> produces sub-standard goods or services, the matter shall be decided in the commission specified in Article 42 of the same law”. According to this article, violations of standards must be initially examined in a commission that is composed of a judge appointed by the head of the judiciary, the director general of the province’s ISIRI office, the representative of the Producers and Consumers Protection Organization, and the representative of the chambers of commerce, industry, mines, and agriculture, cooperatives and guilds of Iran. Article 42 of this law stipulates: “A commission composed of a judge appointed by the head of the judiciary, the director general of the province’s ISIRI office, the representative of the Producers and Consumers Protection Organization, and the representative of the chambers of commerce, industry, mines, and agriculture, cooperatives and guilds shall be formed to initially investigate the cases mentioned in this law and either refer the matter to the competent judicial authority or decide, with attention to the condition and capability of the violator and the frequency of violations, to issue a warning, issue a fine, shut down the production or service unit, order product recall, sell or destroy the affected goods, or obtain a formal commitment from the violator obliging it to change and improve. The decisions of the commission will be subject to appeal to the competent judicial authorities within three days after issuance and otherwise will be final”. Article 43 of the same law also states: “In cases where delayed action may lead to loss of life and property, the head of ISIRI can temporarily hold a product at the centers of production, distribution and sale and temporarily lock and seal the related tools, machines and equipment to prevent further production”.

This article contains a note stating that the products subject to this article must be examined by the inspectors and experts of ISIRI, who must determine whether the product can be improved, made usable, and sold or should be destroyed, and this decision must be implemented through the order of the commission of Article (42). Also, the proceeds from the sale of these goods should be deposited in the national treasury account, and its equivalent must be used to fund the development and equipping of ISIRI laboratories within the framework of the budget law.

According to the above law, as long as the violation of standards does not have criminal implications, it should be responded with: warning, obtaining formal commitment, fines, closure of production or service unit, ordering product recall, requiring improvement and modification, and sale and destruction of goods.

Article 44 of this law stipulates: “If the violations mentioned in this law causes illness, physical or mental damage, or death, the violator shall be sentenced as follows by a court order:

- 1- If the duration of treatment is less than two months, the punishment shall be imprisonment of the sixth degree or fine of the fifth degree.
- 2- If the duration of treatment is more than two months and less than six months, the punishment shall be the maximum of punishment of paragraph (1) of this article.
- 3- If the duration of treatment is more than six months, the punishment shall be imprisonment of the fifth degree or fine of the third degree.

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<sup>8</sup> Institute of Standards & Industrial Research of Iran

Note: In cases where the violation of standards results in mutilation or death of a person, the violator shall be prosecuted in accordance with the provisions of the Islamic Penal Code.

According to Article 45 of the same law, “If substandard goods or services cause damage to a consumer, the supplier, producer, or service provider is not only liable to pay compensation but shall also be sentenced to the punishment specified in Article (18) of the Consumer Protection Law approved on 7/10/2009.”

Article 46 of this also stipulates: “For any natural or legal person who is engaged in the production, trade and provision of goods and services in any way, the possession of counterfeit or illegal weights, scales and measuring instruments, or trading with such weights and scales shall be punished with the payment of a compensation equivalent to the fraudulent gain and imprisonment of the sixth-degree or fine of the third-degree, or both, and the confiscation of the measuring instruments by ISIRI.”

It should also be mentioned that according to Article 51 of this law, the crimes mentioned in this law classify as public and unpardonable crimes.

## **Results**

In Islam, causing harm to others and the society is condemned, and accordingly Islamic jurisprudence has specified a series of methods for compensating for damages.

Since the most important purpose of standards is to protect people against potential dangers and damages resulting from the consumption of inferior goods, the principles of Shia jurisprudence provide a solid foundation for justifying the enforcement of standards.

Violation of standards in a way that causes damage to others will lead to criminal and civil liability for the individuals as well as industrial units. The civil liability of the violator can be adjudicated according to Article 1 of the Civil Liability Law approved in 1960 and by Etlaf (damage), Tasbib (causation), Ghorur (deception), and La-zarar (no-harm) principle of Shia jurisprudence. As for criminal liability, the Law on Strengthening and Expanding the Standard System, approved by the Iranian parliament on 3/10/2017, has specified the domain and limits of liabilities for violations of standards in the chapter titled “Crimes and Punishments”, with punishments ranging from fines to imprisonment.

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