



Civil Liability for the Transmission of the Contagious Disease of the Couple to the Fetus (Supervising Article 23 of the Family Protection Law in Iran)

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Abstract

According to the note of Article 23 of the Family Protection Law approved in 2012, in situations where the contagious and dangerous disease of the couple leads to harm to the fetus, medical and educational care and supervision should lead to the prohibition of generation. The legislative reason for care and supervision and consequently the prohibition of procreation is the threats and dangers that infectious and dangerous diseases pose to the couple and the health of the fetus and society and can violate the right of fetal health and in some cases the right of community health. Given the importance of this issue, it is possible to identify and consider civil liability for the offender. However, preventive and educational and cultural measures related to the risks of infectious and dangerous diseases for the individual and society should be given priority in legislation, planning and implementation.

Keywords: *Infectious and Dangerous Diseases; Right of Fetal Health; Prohibition of Generation; Civil Liability; Public Interest; Iranian Legal System*

Introduction

From a medical point of view, children who are born can be divided into two groups of healthy or unhealthy children. Healthy children are children who are physically and mentally healthy at birth, and unhealthy children are children who lack physical and mental health. Advances in genetics and medicine are now able to identify a significant percentage of future unhealthy offspring and prevent the formation of fetuses and their eventual birth. In the Iranian legal system, Article 23 of the Family Protection Law adopted in 2012 refers to the prohibition of generation: "Before marriage registration, the marriage registry office must issue a certificate issued by doctors and centers approved by the Ministry of Health and Medical Education stating that they are not addicted to drugs and do not have the diseases mentioned in this article, or that they have to be vaccinated against these diseases."

Note: "If the issued certificate indicates the existence of addiction or illness, the registration of the marriage is unrestricted if the parties are informed. In the case of infectious and dangerous diseases, whose names are determined and announced by the Ministry of Health, Treatment and Medical

Education, the parties are introduced to the designated centers for care and supervision. In cases where a dangerous illness of the couple, at the discretion of the Ministry of Health and Medical Education, results in harm to the fetus, care and supervision should also include a ban on procreation."

In this article, for the first time in the Iranian legislative process, the prohibition of generation is explicitly mentioned for medical reasons. Based on this article, the legislator obliges the Ministry of Health and Medical Education to supervise and take care of couples who have a dangerous disease and the possibility of harm to the fetus, including the prohibition of procreation. Having a performance guarantee is one of the obvious and fundamental features of law. In fact, if the subjects of law consider themselves free and independent in the implementation of the rules of law, then the purpose of law, which is to regulate the relations of individuals and to establish order in society, cannot be guaranteed. Therefore, the realization of the goals of the legislator and law in general, which is the establishment of order and regulation of social relations, will be fruitful when the power arising from state sovereignty guarantees and supports the rule of law (Claude, 1332: 243).

In short, the question that arises in connection with the note to Article 23 of the Family Protection Law is what is the guarantee of the implementation of the legislator in the prohibition of procreation? Assuming the note of Article 23 of the Family Protection Law, if the couple violates and a sick or unhealthy child is born, is the child sick in the path of growth (puberty) or the prosecutor can restore their right from parents or not? Whether the legislator in the legislation has just declared the prohibition of generation or by considering different aspects have considered the guarantee aspect of its implementation? Preliminary answer regarding the guarantee of implementation of the note of Article 23 of the Family Protection Law is that the legislator has not paid enough attention to the guarantee of the implementation of the prohibition of procreation, but suggestions can be made regarding civil liability.

1-Concept, Principles, Source and Pillars of Civil Liability

1-1. Concept

Civil liability in the term means liability that arises against the occurrence of damages and requires the perpetrator to compensate. Therefore, it can be said that civil liability means the responsibility to pay damages and losses (Ja'fari Langroodi, 1378: 645). In other words, when a person is obliged to compensate another, he has in fact a civil liability or guarantee against him. This just rule has a historical background and has been customary: "Whoever harms another must compensate for it, unless the harm is unlawful or the harm to the person does not appear to be unlawful and unusual." In current law, the basis of civil liability is the same rule (Katoziyan, 1390: 13).

1-2. Theoretical foundations of civil liability

There are three theoretical perspectives on why one person is liable for damages to another:

One. Theory of Fault: emphasizes that human responsibility is where a mistake is made as a result of abuse and harm to another. In finding fault, the injured party as the plaintiff must state the reasons for proving it (Katoziyan, 1390: 22). According to this theory, fault is divided into two types: personal and specific. The meaning of personal fault is to take into account the circumstances and characteristics of the criminal in committing a harmful act, and the meaning of specific fault is to compare the action of this person with the action of a normal human being. According to this theory, the culprit is the one, whose behavior is not like the behavior of a normal human being (Katoziyan, 1390: 346). An important consequence of fault theory is that if the injured party fails to prove the fault of the culprit, the culprit has no responsibility.

Second. Theory of Risk: According to this theory, whoever engages in an activity creates a dangerous environment for others, and the person who benefits from this environment must also compensate for the losses caused by it. Therefore, the basis of civil liability is not fault but in return for the benefit that a person has gained from providing a dangerous environment. Although at first it seemed that removing the fault from the pillars of civil liability lawsuits, the compensation would be easier, but in practice the main cause cannot be easily found, since there are several causes of damage in civil liability lawsuits. (Katooziyan, 1390: 24-25).

Third. Right Guarantee Theory: Unlike the previous two theories that evaluate the behavior of a loss agent; and somehow neglects the main purpose of civil liability, which is to compensate the injured party, this theory emphasizes that everyone in society has the right to live in safety and health. Therefore, others must respect these rights and the law must protect them, and if a right is lost, it must be compensated by the agent who destroys the right (Bahrami Ahmadi, 1382: 37). The fundamental drawbacks of this theory arise when a person, in the ordinary course of exercising his right, causes another loss. In fact two rights conflict with each other (such as the conflict of the parents' right to educate their children and the possible material and spiritual losses to the child in the position of its implementation). However, proponents of this theory divide the rights of individuals into two groups to get rid of these drawbacks. On the one hand, there are economic and moral losses, in which case the perpetrator is not held responsible unless he is at fault in exercising the right, and in the second case, there are physical and financial losses, which include the right of life and physical integrity and property, in which the perpetrator is considered responsible (Bādīnī, 1384: 300). It seems that the provision of Article 23 of the Family Protection Law, which is the subject of this article can be considered from the third perspective, namely the theory of guaranteeing the right to recognize civil liability for parents. Because on the one hand, under normal circumstances, couples have the right to have children, and on the other hand, the fetus or child has the right of health. Now, in a situation where the right to have children of a couple who have an infectious and dangerous disease is in conflict with the right of fetal health, which right takes precedence?! The right to health of the fetus seems to take precedence, and if the couple don't consider this point in the process of childbearing, it seems that with the harm to the (health of) fetus or the future child, it is normal for the couple to have civil liability for the child and society for ignoring the right of fetal health.

1-3. The realm of civil liability

Civil liability in its general sense includes two types: contractual liability and non-contractual liability. The liability that the obligor acquires against the obligee is called contractual liability. In other words, contractual liability is an obligation that arises as a result of violating the provisions of private contracts for individuals. However, non-contractual liability, also known as tortious liability, occurs on the assumption that one person violates legal and public obligations and, as a result, harms another. It can be said that the root of this responsibility is not the pact between the culprit and the harmed, it is a violation of the legal obligations that exist for everyone (Katooziyan, 1390: 17-18). For example, the law obliges parents to vaccinate their children at a specified time if this is not done properly and the child becomes ill as a result of a particular illness, it is an example of non-contractual liability of the parents.

It can be said that the responsibility of parents for unhealthy birth, with the assumption mentioned in the note of Article 23 of the Family Protection Law, is an example of non-contractual responsibility of parents. Because the issue of the right to health is briefly identified in Article 23 of the Family Protection Law and the presentation of the couple's health certificate to the notary in the law will be recognized and the note of the said article recognizes some mechanisms to ensure the right to fetal and child health in the form of mechanisms such as care and control of prohibition of generation and obliges couples to commit to it. In addition, in such a situation, it can be said that parents are also responsible to society, because the fetus that is born sick, will be considered a member of society in the future and his life will be formed in interaction with others. On the one hand, his contagious and dangerous disease can be a threat to the

health of society, and on the other hand, a part of the public income of society, which is a public right, should be spent on health, care and even education expenses for such sick people.

1-4. Pillars of Civil Liability

To identify and fulfill responsibility, the existence of three elements is necessary:

1-4-1. Existence of losses

One of the necessary pillars for the realization of civil liability is the emergence of loss. In Article 1 of the Civil Liability Law, the legislature states: "Anyone who, without legal permission, intentionally or as a result of negligence, inflicts damage to life or health or property or liberty or prestige or commercial reputation or to any other right created by law for individuals which causes material or another spiritual damage, he is responsible for compensating for the damage caused by his action." Therefore, it can be said that there are several types of losses:

A. Types of losses

1. **Material loss:** It is a loss that is caused as a result of the loss of property or devaluation of intellectual property (damage to reputation and brand) or loss of profit and legitimate rights of persons. In other words, whenever what is lost can be valued in money and the financial rights of the individual are harmed, it is a material loss (Katoziyan, 1374: vol. 1, p. 219).

2. **Spiritual loss:** damage to a person's non-financial rights and values (Safaei and Rahimi, 1392: 115). Spiritual loss, then, is damage to the freedom, dignity, prestige, and family feelings and emotions, or it is a suffering created as a result of loss of physical health or intimacy: "Spiritual damage is psychological damage or loss of personal, family or social prestige." In addition to issuing a sentence for financial compensation, the court can also order to compensate damages through other means, such as requiring an apology and inserting the sentence in the press and the like." (Note 1 of the Code of Criminal Procedure). It should be noted that physical injuries can cause spiritual damage. For example, a child who is unhealthy due to a genetic disability, or due to non-observance of the principles of care during the fetal period, or who is unable to exercise, play, have fun, or be entertained due to lack of beauty or trauma, suffers spiritual damage.

3. **Physical loss:** Physical loss is damage to the human body that can have financial or spiritual consequences. Sometimes physical damage causes financial costs such as the cost of treatment, and sometimes it manifests itself in pain and suffering, and sometimes it may be a combination of material and spiritual damage. Since the human body is respected, therefore, injuries, beatings and any physical assault cause civil and criminal liability (Safaei, 1392: 34). Physical harm can be imagined in two ways: either it may harm the health and physical integrity of the person without leading to the death of the injured or it may lead to the death of the injured. According to Article 5 of the Civil Liability Law, all damages resulting from this injury, such as medical, surgical, pharmaceutical and moral damages, such as pain and suffering due to illness, can be compensated. In the second case (death), the heir can claim compensation for material damages as the successor of the deceased (Safaei and Rahimi, 1392: 136-138). The question that arises in this regard is whether the birth of a sick fetus - a sick child - assuming the provision of Article 23 of the Family Protection Law, entails the first pillar of civil liability - i.e. loss? Assuming the realization of this pillar, what is the extent of the loss? In relation to the condition of harm, it seems that one must first determine the nature of the harm of the individual who will incur civil liability to the fetus, as well as the nature of the social harm that entails civil liability to society. Personal loss refers to a set of personal, financial and spiritual losses that return to the individual or person and affect his or her life in social life. Social harm means a set of human, financial and spiritual losses that return to members of society and affect social life in society and disrupt social life. Regarding the element of harm in terms of civil liability to the fetus, as mentioned, it seems that if the fetus was born with a contagious disease of the couple and the couple actually did a little in the process of care and control, they actually

harmed the health of the fetus and future child. The realm of this loss is at least physical and spiritual. Because the sick child has suffered physical injuries, which will cost him a lot of medical and health expenses, and secondly, how the illness may prevent him from doing some activities or attending jobs and life opportunities, all of which can be based on physical injuries and its consequences.

In addition, the nature of infectious diseases is such that it causes spiritual harm to the individual. As a rule, a person born with AIDS has special limitations in the family, friends, community and work environment. These people also have limitations in forming a family, and the way others look at these people is more special and distinct, and it can all lead to spiritual damage to a person's emotions and feelings. At least, restricting the freedom of such people will lead to emotional distress for them. Regarding the element of harm in relation to civil liability to society, it should be said that the birth of a fetus with a contagious and dangerous disease can lead to loss of life, property and morals for society. It can be assumed that the type of disease is contagious and dangerous in such a way that it can be transmitted to others in the process of sexual intercourse - legitimate or illegitimate - or other risky behaviors such as transmission through infected blood or addiction to other members of society; normally, in such circumstances, the health of society's life is endangered, and the egg cell that caused the loss of life to the fetus - an individual - due to the carelessness of the couple, has now set fire to the health of society. There is no doubt that the financial loss of the birth of a fetus with a contagious and dangerous disease will not be returned only to him and his guardians. A sick or non-sick person in the course of life has to live a social life. The need for education, training, security, health, social security and access to basic goods are among the needs that a person has to interact with society. Under normal circumstances, meeting these needs for the general public will come at a high cost to the government, and basically governments, in the best of circumstances, are relatively successful in meeting that for the citizens. It is conceivable that the cost of meeting these needs for sick people will be doubled. A person with an infectious and dangerous disease will incur significant health, care and treatment costs for the community. From budgets spent on public education and research on the disease to the cost of treatment to care for and prevent the spread of the disease in the community. Perhaps the costs of this disease could be spent on depriving people who do not have the minimum of living just because of deprivation and unemployment, but who have the potential to build constructive service to society. The birth of a fetus with a contagious and dangerous disease can cause moral damage to society. In a society where infectious and dangerous diseases are spreading, there will be a real threat to public health. In such a situation, the peace of mind of the members of the society is gradually damaged. In acute conditions, people in the community may subconsciously always imagine themselves to be infected with the disease. Thus, peace that could only be a sense of altruism, cooperation and service to others has practically become a threat to others. It should be noted that the spiritual damage of the outbreak of a contagious and dangerous disease not only lead to disturbances in social peace and order, but in the international community can reduce the credibility, dignity and honor of a society compared to other societies. The high number of people living with certain diseases - such as AIDS - or absolute poverty in some African societies has marked their social prestige in the public eye and public opinion.

B. Claimable loss terms

In order for a loss to be claimed, the damage must have the following conditions:

1. The certainty of the loss: The damage of the perpetrator of the harmful act should be compensated if the damages is certain, so no one can be sentenced to compensate the damage just because there is a possibility of damage (Katoziyan, 1390: 47).

2. Being direct: It means that there is no other incident between the harmful act and the loss. In this regard, Article 520 of the Code of Civil Procedure provides as follows: "Regarding the claim for compensating the damage, the plaintiff must prove that the immediate damage was due to non-fulfillment of the promise or its delay or non-submission of the claim, otherwise the court will reject the claim for compensating the damage damages."

3. Predictability: This means that the perpetrator of the harmful act can predict the probability of loss due to his act. The ability to predict the cause or nature of the loss is sufficient for liability and predicting the amount of damage is not necessary (Safaei and Rahimi, 1389: 117).

4. Non-compensation: The injured party cannot combine two or more means of compensation. Article 316 of the Civil Code provides: "If the owner takes all or part of the usurped property from one of the usurpers, he has no right to take the same thing from the other usurpers." The question that arises in connection with the note to Article 23 is whether the harm to the health of the fetus or child complies with the above-mentioned conditions for claiming harm. It seems that the legislator's presumption regarding the prohibition of procreation in the note of Article 23 is the opinion of the physician or the specialized medical committee as to the existence of a contagious disease risk to the health of the fetus. It seems that medical knowledge, despite its current errors, can be based on the rule of referring to a specialist. However, human wisdom dictates that if the expert physician believes that more than 70% (for example) of a contagious disease of the couple affects the health of the fetus, the necessary precautions and restrictions should be taken. Therefore, if a doctor emphasizes the certainty of the risk and considers the threat to the health of the fetus as a contagious disease of the couple, there is the ability to claim the right to harm the child and society.

1-4-2. Harmful act

Civil liability, whether based on fault or not; harmful act is a condition for its realization. In liability based on fault, the necessary condition is that the act is considered fault and since the main basis of civil liability in the Iranian legal system is based on fault, therefore, according to this rule, harmful act must be considered fault to be held responsible (Safaei and Rahimi, 1392: 147 and 149). Civil liability is divided into three types according to the perpetrator of the harmful act: 1. Liability due to the act of the person 2. Liability due to objects 3. Liability due to the act of another.

Considering that the main issue of this article is the prohibition of procreation, assuming the existence of a contagious and dangerous disease in couples and its transmission to the fetus, so we only examine the civil liability arising from the act of person - couple - in relation to the transmission of contagious and dangerous disease to the fetus and society. Man is responsible for his own actions and behavior and no one should be responsible for the actions of others. According to this rule, man has civil liability due to his fault (Safaei and Rahimi, 1392: 148). Article 1 of the Civil Liability Law defines a guarantor as a person who "intentionally or as a result of negligence" harms another. What is important in the element of harmful action is the issue of fault. The fault in legal term includes defect and violation (Article 953 BC). Defect is the abandonment of an action that is unnecessary under a contract or custom to preserve property (Article 952 BC) and violation is breaking the limits of permission or custom in relation to another property or right (Article 951 BC). Therefore, it can be said that there is no personal concept of fault in the Iranian legal system. Therefore, it can be said that normal human behavior is the criterion for diagnosis. In other words, the criterion of fault has been accepted by the majority of jurists. In fact, a normal person who is neither too cautious nor too careless is considered a role model. Therefore, the behavior of the harmful perpetrator is measured with the behavior of the normal person. If it is consistent in comparing the act with the normal human act, no fault has been occurred, and if compared to the normal person, aggression and rape are committed, what happens to the perpetrator is considered a fault, no matter that the perpetrator of the act is a cautious or reckless person in his behaviors (Qasemzadeh, 1386: 118). Given that the prohibition of procreation is the focus of Note 23 of the Family Protection Law, the concept of fault in the relationship between parents and children should be considered. It should be noted that not all parental obligations to children from pre-pregnancy and custody have been formulated by the legislature. However, customs and duties define responsibilities for parents towards their children. While accepting the standard of the common man, jurists consider it necessary to refer to custom to diagnose a guilty act or fault (Droudian, 1375: 120). In Imāmiyyah jurisprudence, the authority of custom has been accepted to prove the guarantee (Ansari Dezfuli, 1414: 130 and Khomeini, nd, 106). Regarding fetal health, which is the key concept of Note 23 of Article 23 of the Family

Protection Law, it seems that neglecting the health of the child during sperm coagulation and pregnancy is one of the examples that is traditionally considered as a harmful act of one or both parents. For example, older mothers are more likely to have children with Down syndrome, cleft lip, and hydrocephalus, and parental illnesses such as thalassemia, rubella, AIDS, and tetanus have a negative effect on fetal development and can lead to disorders such as deafness, blindness, abortion, and infecting the baby to the disease and ... that ultimately determine his death. (Mişbāh et al., 1374: 298).

Assuming the provision of Article 23 of the Family Protection Law, it seems that the harm to the health of the fetus due to the act of a person - couple with a contagious and dangerous disease – is certain if it is based on the opinion of a specialist doctor. But the question that arises is how to identify the fault of the couple in this regard. However, it can be analyzed what the legislator means in the provision of Article 23 of the Family Protection Law on care and control, which can lead to the prohibition of procreation? In relation to birth control, two states come to mind:

1. Temporary: By using conventional methods of contraception such as abortion, condoms, drugs, etc., couples prevent childbearing, and what is emphasized in this method is that at any time couples want to have children it is possible again.

2. Permanent: means methods in which a couple or other couples cannot return to the state of fertility. The most common method in the permanent method is sterilization. The problem with this is that temporary contraceptive methods are commonly seen in the tradition, although couples have used these methods to prevent pregnancy, but they have not been useful and they have had so-called unwanted children. This is also traditionally the case for couples with infectious diseases who, despite control and care, are forced to conceive and have children without fault. But with the second premise, which is sterilization, the jurists' view is that this practice is forbidden unless the health of the wife depends on it (Javid, 1394: 85-90). In this regard, the law is ambiguous unless we interpret the law in this way, assuming care and control, if the sick couple is trying to prevent childbearing (temporarily); in case the wife becomes pregnant for any reason, she is obliged to have an abortion before the fourth month, and if she does not perform an abortion against the opinion of a specialist, in fact, she is at fault and causes harm to the fetus.

1-4-3. Causation relationship

The third element that is necessary for the realization of the civil liability of the couple, assuming the note of Article 23 of the Family Protection Law, is the existence of a causal relationship between the loss and the harmful act. In fact, what needs to be achieved is that "there is a causal relationship between the two harmful factors and the harmful act that is the damage is caused by that act." the relationship between causality relationship and the injured party should be proved and he must show in court that there is a cause-and-effect relationship between the act and causing harm (Katoozian, 1390: 79).

The necessity of establishing a causal relationship between the harmful act and the loss is important because sometimes other causes are involved in the loss and the harmful act is one of the causes of the loss and not the cause of monopoly (Qasemzadeh, 1386: 88). In other words, it is difficult to establish a causal relationship when it is briefly known that one of several causes has caused the damage, but it is not possible to say that what the conclusive cause of the accident is (Katoozian, 1390: 82). Regarding the main issue of this dissertation, namely the note of Article 23 of the Family Law Protection, it can be assumed that the birth of a sick fetus, assuming a contagious and dangerous disease of the parents, is due to the couple's lack of care and supervision in preventing procreation. The question that arises in this regard is what the main cause of harm to the sick child is. Or to what extent are they guilty? In discussing the multiplicity of harmful factors, it is necessary to pay attention to two issues: "cause and effect community" and "community of causes": According to Article 526 of the new Islamic Penal Code, in contrast to Article 363 of the former Penal Code, "If two or more factors, some of which have a direct effect and some of which interfere with the commission of a crime, the perpetrator is the guarantor. And if the crime is documented to all factors, they are equally guarantor." Therefore, it can be said that in the

current Iranian legal system, in the community of cause and effect, like other assumptions of the community of multiple factors in loss, the theory of causality can be decomposed and consequently the theory of division of responsibility of various causes has been accepted. Of course, if the damage is documented by the cause and effect and the effect of each is different, the legislator has rejected the equality of responsibility: "The effect of the perpetrators' behavior is different, in which case each is responsible for the effect of their behavior."

Assuming the note of Article 23 of the Protection Law, if the fault of parents along with the fault of the medical institution has led to injury to the child, who is responsible in this situation? Although various theories such as the theory of equality of causes and conditions, the theory of proximity and direct cause, the theory of conventional and main cause and the theory of cause precedence have been proposed (see Katooziyan: 1390, 85-90), Article 533 of the new Islamic Penal Code stipulates this: "When two or more persons jointly cause a crime or damage to another in such a way that the crime or damage is documented to both or all of them, they are equally liable." However, another assumption can be made in relation to the note to Article 23. For example, assuming the lack of health facilities in deprived areas, on the one hand, care and supervision of couples who have infectious and dangerous diseases may not be accurate and complete, and on the other hand, couples in the process of care and supervision due to deprivation have not encountered shortcomings, what is the task in this situation?

In this regard, two theories have been proposed: 1. According to the theory of general causality, the causal relationship is indivisible. In other words, each cause is the cause of the total damage and without it, no damage occurs and there is no criterion to evaluate the impact of each of the common factors. 2. According to the theory of partial causality, in case of multiplicity of causes, according to the effect of each cause, a certain amount of damage is attributed to each of the various causes. In fact, it is assumed that in the absence of other causes, it alone would not cause harm (Isaei Tafreshi et al., 1386: 205 and 204). It can be said that in the Iranian legal system, the legislator, citing Article 526, based on the acceptance of the division of responsibility of various causes in the community of cause and effect, also Article 533, based on the cross-participation of several causes in the entry of damages and Article 537, based on the theory of harmful action in aggravating damage, follows the theory of partial causality.

Regarding the causality of the note on Article 23 of the Family Protection Law, it can be said that the opinion of the expert and the specialist physician regarding the causal factor of harm to the fetus and the couple's lack of care and control must be valid. And in relation to the assumptions that can be caused by the influence of the environmental factor in the process of care and control (such as being in a deprived area) mores is decisive.

1-5. Compensation for damages of the injured party

The purpose of civil liability is to compensate the damages of the injured party. Assuming Note 23 of the Family Protection Law, the question arises that assuming that a couple has a contagious and dangerous disease and due to lack of necessary care and control, the patient's fetus is born; and according to experts, the couple was at fault; how is it possible to compensate the damages of the injured party i.e. the sick child and the community? Compensation for damage is usually done in two ways (Katooziyan, 1390: 159):

A. Compensation by restoring the status quo ante: This means that the damage incurred should be prepared as if it had not been incurred in principle. In relation to the subject matter, namely the birth of a sick fetus, it is not possible to return to the previous state.

B. Compensation by giving an equivalent: This means that since the restoration of the status quo ante is not possible, a value equal to what was lost can be added to the damaged asset. It seems that in relation to the subject in question, the only way to compensate is through giving an equivalent. This method of compensation is possible by giving three means of giving an exchange, a payment and an equivalent price (cash) (Katooziyan, 1390: 163). According to the subject under discussion, the method of compensation by exchange is out of the subject of discussion. Of course, it should be noted that the

damage caused by the birth of a sick fetus caused by a contagious and dangerous disease of the couple is subject to moral, physical and financial losses (medical expenses) to the individual and society, which must be considered separately. According to Article 1 of the Civil Liability Law, the culprit party is responsible for compensating for the damage caused by his action - material and moral damage. Also, according to Article 5 of the Civil Liability Law, "If, as a result of an injury to a person's body or health, a defect is found in his body, or the injured workforce is reduced or destroyed, or his living expenses increase, the culprit is responsible for compensating all these damages. The court determines the compensation according to the circumstances of the case through a pension or the payment of money, and in cases where the compensation must be done through a pension, it is up to the court to determine how much and to what extent the culprit can pay." Regarding the compensation of the damage done to the person, it should be said that on the one hand, it seems that one of the appropriate ways to compensate the sick child - due to the contagious disease of the parents - is cash compensation. On the other hand, it seems that the presence of infectious and dangerous diseases in the child, such as AIDS, hepatitis, etc., not only causes physical damage, but also causes significant spiritual damage to the sick child. For example, a child born with AIDS will gradually suffer from the limitations of others and society, and his or her emotions will always be dull. This child even faces limitations in choosing a spouse and marriage, all of which can indicate the spiritual dimensions of the damage, and in some cases, the pain and suffering of the spiritual damage outweighs the physical and material damage. The question that arises in this regard is whether it is possible to compensate moral damages in cash? Or is it the best way? Financial compensation against spiritual damage can lead to some compensation for spiritual damage - mental and emotional damage - for example, a child with a contagious and dangerous disease can provide special conditions for entertainment and play with money. Of course, the possibility of accurate assessment of spiritual damages with financial compensation is questionable, and in some cases it can be imagined that restoring the honor and dignity of a contagious and dangerous patient with financial compensation is not possible at all. For example, it is an opportunity to get some full physical and mental health jobs; now, a person who, due to a contagious and dangerous disease, is able to achieve his dream of working in these positions, but the employment conditions prevent him from fulfilling his dream, he will suffer irreparable dissatisfaction. Therefore, it can be said that compensation in such a situation should be defined and determined in accordance with each situation and case. Because the consequences of infectious diseases are not the same and can lead to different conditions for people. Each case must take appropriate action to compensate for the loss in accordance with its special circumstances in order to eliminate the maximum material and spiritual dimensions of the loss. Regarding the compensation of the damage caused to the society due to the birth of a sick fetus, it should be discussed separately according to the type of disease and the amount of material, physical and spiritual losses to the society. But in short, in terms of compensating for the damage done to society, one of the effective mechanisms is our payment of financial value. On the one hand, the education, treatment and health expenses that the government pays for these diseases should be taken from the guilty parents. And even cut off the payment of social security fees and services for the sick parents and demand all expenses related to the treatment and care of themselves and their sick children. In a situation where the transmission of a contagious and dangerous disease from a sick child to other members of society, according to experts, it is clear that the guilty parents who are the source of this disease should be obliged to compensate the damage caused to other members. On the other hand, it seems that to compensate for the moral damage, a mechanism can be defined in which the offending parents can restore their status in the society by undertaking some cultural and educational activities. For example, it required careless parents to establish or become active members of non-governmental associations and NGOs that work in a benevolent and humanitarian manner to combat infectious and dangerous diseases (such as the AIDS Association). Trying to compensate the loss and retelling the experience of the guilty parents and highlighting the bitterness of the consequences of transmitting a contagious and dangerous disease to the individual and society can to some extent be a deterrent and alleviate the pain caused by the spiritual losses of society.

Conclusion

It can be concluded that it is possible to identify and provide legal guarantees for the provision of Article 23 of the Family Protection Law. In terms of guaranteeing the implementation of civil liability, it can be said that the guilty spouses have civil liability towards the fetus and society. On the one hand, couples have caused material, spiritual and physical harm to the child, and on the other hand, they have threatened the health of society and imposed heavy costs on society. The pillars of civil liability such as loss, harmful act and causal relationship seem to be identifiable. Regarding the compensation of the damage done to the fetus and the society, it should be said that paying cash compensation to the sick person can be a relief to some extent, but restoring honor and dignity (spiritual damage) is not easily possible. However, compensation for the damage done to the community can be done in such a way that the huge costs of treatment, care and health in this particular case, which is the duty of the government, are imposed on the offender. And in cases where the disease has harmed the health of the community, the guilty parents must compensate the damage depending on the type of damage and the amount of it.

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