



Civil liability of the Government for Damages Caused by Acts of Violence (Terrorist)

Based on the Rules of Islamic Jurisprudence and Risk Theory

Seyed Hassan Shobeiri (Zanjani)¹; Mohammad Javad Asghari²

¹Associate Professor of Law Faculty of Qom University, Iran

²A Doctoral Student in Private law at Al-Mustafa International University, Qom, Iran

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Abstract

The government's civil responsibility for violent acts of terrorism against citizens is one of the new and challenging issues that there is no explicit ruling on in the current laws and regulations of Iran and Afghanistan. The author has examined the government's civil responsibility for violent acts from the perspective of the rules of Islamic jurisprudence and its adaptation to the theory of risk. The findings of the research show that a person (natural and legal) who benefits from economic or any other beneficial activity is required to compensate for damages in case of damage to another person from the same activity. With this criterion and the connection between harm and benefit, the government can be introduced as responsible for compensating the damages caused to citizens due to the violent actions of violent groups, Because the government obtains a lot of benefits from the establishment of a system and system over the society through the use of mines and underground reserves and taxes and tributes. Therefore, the damages caused to the citizens and if the person responsible for compensation is not known or is not available or is not able to pay and there is no specific person responsible for compensation and the losses remain uncompensated, the government should compensate the losses incurred.

Keywords: *Civil Responsibility of the Government; Risk Theory; Rules of Jurisprudence; Benefit and Harm*

Introduction

Civil liability is one of the guarantees for the implementation of individual rights and plays an important role in the recovery of lost and damaged rights. If civil responsibility is developed and institutionalized in society, a kind of restraint will be created, and no one will dare to commit an act that harms people's lives, property, and rights; Because society and social institutions oblige the person who causes damage to compensate for the damage. One of the important types of responsibility is the government's civil responsibility; In the past, governments were unwilling to accept responsibility for the losses caused by the actions of their subordinate institutions and employees under the pretext of

exercising sovereignty. Over time and with the expansion of democratic governments, the rulers realized that reaching power and staying in power is not possible except with the support of the people, and the survival of governments depends on the support and support of the people, and sometimes the rulers benefit from the support of the people. To hold themselves accountable to the people, including for the damages incurred. Therefore, the hypothesis of the responsibility of the state took the place of absolute immunity, and therefore today we are talking about the scope and dimensions of the civil responsibility of the state and its nature, not its principle; In Islamic Sharia, the responsibility of the government for the harmful actions of its agents and for the ransom of the killed people who have no known killer has a long history. In the letter of Imam Ali (a.s.) to Malik Ashtar and letter 18 to Abdullah Ibn Abbas and some specific narrations from the judgments of Hazrat Ali (a.s.), the responsibility of the government is clearly stated (Kilini, 2022, p. 354). In French law, the government's civil responsibility was recognized for the first time after the 1789 revolution, and in 1870, the principle of government immunity completely gave way to the possibility of government responsibility. After that, this thought had an impact on other countries and the governments accepted the responsibility.

In today's era, which threatens the lives, property, and rights of citizens, many human and financial damages are inflicted on society as a result of violent acts of terrorism, but in the legislation, as well as in the field and action, no one is designated as the person responsible for compensating the damage; Because the main perpetrators of terrorist attacks are either killed or cannot be identified or run away and are out of reach. Considering the lack of access to terrorists, as well as the scope of human casualties (thousands of dead and disabled people) and extensive financial losses, and considering the mission of law in establishing and establishing rules that support a harmless life, it is necessary to discuss the responsibility for the damages incurred. Should the citizens be discussed in the area of violent acts, and the options and possibilities should be examined, which person or persons should compensate for the damage caused? In this research, among the responsible options that can be introduced as the one responsible for compensation, is the government; Because holding the government responsible is because it is available and can compensate for the damage, and it has a logical and legal justification for introducing it. It is possible to hold the government responsible for the harmful actions of terrorists and violent people that cause harm to citizens. The civil responsibility of the government here does not mean the responsibility resulting from the harmful actions of employees or institutions under the government, but rather the government's responsibility for the harmful actions of those who have no business relationship with the government and are neither under the command of the government nor obeying the government. Rather, they operate outside the control area of the government and are anti-government groups.

Of course, there are two theories regarding the government's civil responsibility for the violent acts of terrorists. It has no business relationship with the government and does not follow the government; Because one of the important pillars of responsibility is the relationship of causation. This element in civil liability resulting from terrorist attacks is not clear. The attribution and citation of damage caused by terrorist acts to the government is not clear and obvious in terms of the general principles of civil and customary responsibility; Because the government is neither responsible for committing terrorist acts nor its direct cause so the government is considered responsible for compensation (Haji Dehabadi, 2008). Some other law professors believe that due to the government's shortcomings and negligence in providing citizens' security, they believe that the government is civilly responsible for the acts of violence by violent groups; Because the government is responsible for maintaining the order and security of society, whenever violent acts or crimes such as terrorist attacks happen and the order of the society breaks down, it becomes clear that the government has not performed its duty properly and has shortened it, so the damages should be paid to the victims(Reisman, 2003).

In this research, the civil responsibility of the government for terrorist acts is the civil responsibility of the "caretaker" of people who are not under care; Because terrorists are not like minors and madmen, the government assumes the responsibility for their actions, and the responsibility of the

subordinate is not from the subordinate either; Because they do not operate under the orders of the government and the supervision of the government, so that the government can control and monitor their actions and they are considered subordinate to the government. Therefore, what is the legal and logical justification for holding the government responsible for the harmful actions of persons whose "activities" are neither under the government's control nor the government's care, and what is the legal and jurisprudential basis of the government's civil responsibility in this regard? In this research, by referring to the rules of Islamic jurisprudence, the government's responsibility for the harmful acts of violent people is examined and researched, and it is discussed comparatively with the "danger theory", which is one of the practical foundations of civil responsibility in the subject law. and juridical and jurisprudential justification for the government's responsibility is provided.

Paragraph 1. Jurisprudential Rules

One of the sources of Islamic law is jurisprudence rules, which are considered general rules with numerous examples. Jurisprudence rules, according to the term, are a general theorem that can be adapted to all details. These rules are considered sources of partial jurisprudence and are widely used in the capacity of inference and interpretation (Tahiri, 1387, 13). Several jurisprudential rules have been proposed in the field of civil responsibility and imply the civil responsibility of the government, and based on these rules, the government can be considered responsible for compensating the damages caused to the citizens. These rules include some concepts that can be the basis of the government's civil responsibility. In this research, jurisprudential rules are discussed, which have concepts similar to the concepts and examples of risk theory.

A. Whoever Benefits, the Loss Will Also Be His Responsibility

1. The Concept of Rule

One of the rules that can be the basis of the government's civil responsibility for the harmful acts inflicted on the citizens is the rule of "**Whoever benefits, the loss will also be his responsibility**" (Bojnordi, 2022, p. 308). If he causes harm to another, he must compensate for the harm caused. The meaning of the rule is the combination of benefit and loss, whoever owns the benefits of the property, the loss and damage of the property will also be his and vice versa (Mustafawi, 2000, p. 284). Some have interpreted this rule as a rational rule (Al-Sadr, 1999, p. 258).

The Source of the Rule Is Two Things

1) Hadiths

Many hadiths have been narrated from the infallible:

- a. Ishaq Ibn Ammar says: I asked Abi Ibrahim Musa Ibn Jaafar (a.s.) that a man mortgages his slave and his house, but a pestilence and harm comes to his slave, who is responsible for this pestilence? Imam said that its owner is responsible because he benefits from the rent of his servant (Aamily, Har, Muhammad bin Hasan, Wasal al-Shi'a, Qom, Al-Bayt Institute, peace be upon them, first chapter, 1988, vol. 18, p. 387). This hadith indicates that the compensation of property is the responsibility of the one who benefits from the property and this is the sign of the rule. This hadith indicates that the compensation of property is the responsibility of the one who benefits from the property and this is the sign of the rule. The mentioned narration implies the connection between profit and loss. In general, jurists have considered the benefits of property in correct transactions and especially in mortgages to belong to the person who is responsible for the damage caused by the loss.

- b. Ishaq bin Ammar asks Imam Sadiq (a.s.) that if someone buys a house with the right to condition, to whom does the benefit of the house belong? He said that the benefit is the property of the customer, don't you see that if the house burns, it is the owner's property that burns (Har Ameli, *ibid*: Vol. 12, p. 355, 1).
- c. Prophet of Islam (PBUH) said: "Taxes vs. Guarantees" refers to the tribute of the benefits of property and the meaning of the guarantee of compensation and losses of property. The content of the hadith is that the benefit comes after the compensation.

2) Induction

The second reason for the validity of the rule is induction, after examining the cases of possessions and possessions, it becomes clear that the connection between benefit and loss is valid and the cases are not out of bounds (Mustafavi, 2000, p. 285) The cases of application of this rule And the other two rules in jurisprudence can be applied in many cases, there are many cases and examples, it is mostly used for inheritance, and it is true for those who have a fixed share and their share does not change. If there is an increase or a deficit, their share will be reduced or will be increased (Sadr, 2006, p. 258).

The Rule of Connection between Guarantee and Tax

1) Concept of Rule

The Holy Prophet (PBUH) said: What is meant by guarantee (Al-Kharaj) is the benefit of property and what is meant is the guarantee of compensation. Sheikh Tusi says: that guarantee is the name of grain and the profit that is obtained from the seller. His property will be destroyed because if the seller is destroyed, it is the property of the customer; Because it has been transferred to him with the guarantee bill, then the tribute will also belong to him, and the result and the fruit if he has a sale will also belong to the customer (Tusi, 1986, p. 126). The case of the hadith is this - a person who sold an object, but it turned out to be defective, and the buyer has the right to cancel and can return the object to the seller. The discussion is that if during the time that the traded item was in the hands of the customer, whose benefit is obtained from it, does this benefit belong to the seller or the buyer? The Prophet was asked, and he said: that a guarantee means the benefit is subject to compensation (Allamah Hali, 1999, p. 127). The benefit is against losses and Kharaj is the name of the benefit obtained from the seller, and this benefit belongs to the customer in a transaction in which there is a right of cancellation, if there is a loss due to the loss of the seller, it should also be paid by the customer. suffer (Najafi, 1362, 81). It has been narrated from the Prophet of Islam (PBUH) that in some cases such as defective goods, or the existence of the right of cancellation for the customer and the non-payment of interest, the customer takes possession of the seller because if the seller was lost in the hands of the customer, he would be the guarantor.

The later scholars of Islam have mentioned several possibilities in the meaning of kharaj and said that the clearest meaning of kharaj is that someone takes tribute land from the government and the Islamic ruler must pay the tribute to the government. According to this theory, the concept of hadith is not related to the sale that has the right of cancellation (Khoei, 2004, p. 256; Sabzevari 1996, p. 259). Several other contemporary jurists have presented an extensive interpretation of the rule, which is different from the previous interpretations, and with this interpretation, the government can be declared responsible. It is said that there are several possibilities in the interpretation of this rule: one of the possibilities is that what is meant by al-kharaj is a tax that the government takes from the land and the citizens themselves, it is meant to guarantee the obligations of the Muslim ruler towards the nation in managing the affairs of society and meeting their needs and all that which is in the interest of the Islamic State and Muslims. What is meant by the tribute that he takes from the land and the like is in contrast to the obligation that the ruler has towards the nation in the administration of the country (Khomeini, 2000, p. 468; Montazeri, 1988, p. 497).

2. The Source of the Rule

Many hadiths are the source of this rule, including the famous prophet: that Prophet said: "Benefit vs. Tax" which refers to the tribute of the benefits of wealth and the meaning of the guarantee of compensation and losses of wealth. The content of the hadith is that benefit comes after compensation.

b. Combination of Benefits and Damages

1. The Concept of Rule

The meaning of the term "good fortune" or the benefits of wealth, and the meaning of "loss" is the damage that is caused to the property, and the meaning of the connection between the two is that whoever receives the benefit and financial benefits, the damage and loss of that property is also on him. Is. (Farhang Fiqh, 2015, 420). Ishaq bin Ammar also narrates from Imam Sadiq (a.s.) that the benefit of the goods in the sale is the property of the buyer, don't you see that if the goods were burned, you would lose the customer's property (Haraamili, 1983, p.114).

3. How to Argue the Rules of Jurisprudence for the Civil Responsibility of the Government?

It can be deduced from all the documented narrations of these three rules that there is a connection between benefiting from benefits and the responsibility of paying debts it does not matter whether this pride and financial responsibility is caused by the individual or by a crime that has been committed. and the general rule of the rules includes all. Holding the government responsible for compensating the victims of terrorist crimes is justified based on the logic of these hadiths and the criteria mentioned in the aforementioned rules; It has both intellectual and logical support and is customary. The logic of this argument is that the government obtains a lot of material benefits from the formation of the government and receives huge sums of money daily from taxes, sales of minerals, underground reserves, as well as country taxes, and ownerless property.

If the victims and perpetrators are both nationals of the country, they are partners in these financial resources and have a share and right in these properties, and if a perpetrator (terrorist person) harms a citizen and is not available, he is killed. or has escaped, the government should compensate for the losses incurred from the share of the harming party which is at the disposal of the government as the representative of the general society. If the person causing damage and attacking (terrorist person) is a foreign citizen and he was killed or fled after the attack, then the government should also compensate his loss from the share and right that the victim has in the treasury. On the other hand, the general philosophy of the public treasury and Bait-al-Mal is to help the people and the needy, it requires the government to compensate the victims of the crime that has been suffered by a citizen of the country or any person living in the country, especially the victims of attacks. Terrorists whose losses remain uncompensated, then according to the mentioned rule, the government is responsible for compensating them. The government's civil responsibility towards the victims is due to the benefits of the society.

As mentioned in the interpretation of tax versus guarantee, the government has duties in return for the tax it collects from the people, and one of the main and important duties of the Islamic government is to take the necessary measures to protect and protect the right to human life. It is one of the most important issues of human rights in Islam, and this right is known to all human beings, both Muslims and non-Muslims, in such a way that non-Muslims also create such an obligation and responsibility for the Islamic government by paying taxes. Therefore, in cases where due to the lack of security and public order and the lack of appropriate measures to preserve the right to life, citizens suffer injuries, including suicide and injuries, if it is not possible to claim damages from the murderer, the payment of ransom should be the responsibility of Bait Al-Mal. As in Islamic jurisprudence, the issue of payment of money for the dead people from Bait al-Mal has been raised in many cases, such as people being killed or injured due to crowding during religious ceremonies such as Friday prayers, Arafah, religious ceremonies, or

people being injured during street riots and riots in Roads and bazaars have been ordered to pay money from the treasury (Aamili, 1983, p.p. 19).

In the narration of Abdullah Ibn Bakir, it is narrated from Imam Sadiq (a.s.) that Hazrat Ali (a.s.) said about a murdered person whose killer is not known: If a saint demands his money from the treasury, he should pay it from the Muslims' treasury. should be given and Muslim blood should not be wasted; Because the inheritance of people who have no heirs belongs to the imam, and the ransom of the murdered person whose killer is not known is the responsibility of the imam (Har Ameli, Vasal al-Shia, vol. 19, p. 109). The interpretation of the hadith shows that what is meant by the property of the Muslims is the property of the Imam. The reason is that when the inheritance of a person who does not have an heir is the property of the Imam, then the dowry of a person whose murderer is unknown is also the responsibility of the Imam, and this is the meaning of the rule of tax versus guarantee.

Abu Khaled Kabuli quotes from Imam Baqir (a.s.) that the reason for the financial responsibility of the ruler is that God has given the land (and mines, etc.) to the ruler, and whoever revives the land must pay tribute to the imam (Kolini, 2008, p. 432). With this possibility that was mentioned, the concept of narrative will go beyond transactions and will include all civil responsibilities and forced guarantees. Because the one who benefits from tribute will also be responsible according to the common sense of the world. Just as the responsibility of the "guardian" to compensate the damage caused to third parties by a minor or insane child because he has the authority to sell and benefit from the property of a minor or an insane person, the responsibility of the heirs in paying the debts of the heir depends on their acceptance of the estate and their enjoyment of the inheritance. Therefore, it is the basis of responsibility and guarantee of benefiting from benefits (Bahrul _U_ loom, p. 231, 1982).

In short, the mentioned three rules have a single meaning and their explanation and application to the government's civil responsibility is because the government's activity is in the context of the society, and the material income of the society and its macroeconomic benefits are at the disposal of the government. If human and financial losses are caused to citizens by domestic or foreign deviant or violent people, if the perpetrators are not known or are unavailable or unable to compensate, according to the aforementioned rule, the government is obliged to compensate for the damages; Because every person who benefits must compensate for the loss. On the other hand, based on the concept of the rule of al-kharaj with bail, since the government is responsible for ensuring the security of the citizens and the government's commitment to providing security is due to the commitment to the result, the government should reduce the occurrence of murders and arrests to the minimum possible by establishing security and public order. If there is a possibility of a murder, the government should use appropriate measures to identify and arrest the murderer and punish him for his act, and pay the damages caused to the citizens by the perpetrators. to pay, so that the damage caused to a victim's family through negligence and possible failure of the government to establish and maintain order and security will be compensated (Bojnordi, 1980, p.p. 30-31-50). The generalization of the provisions of the rule of "Whoever benefits, the loss will also be his responsibility" to civil liability is also evident in the works of contemporary jurists, for example, Nasser Katouzian, a prominent Iranian jurist, has used this rule with the basis of civil liability based on the theory of risk, which is against the deficiency of the rule of fault in civil liability by the French jurist. It has been proposed, and it is known by one (Katouzian, 2000, p. 62).

Clause 2. Risk Theory

This theory, which is considered one of the theories of responsibility without fault, was proposed and accepted after that, many objections and problems were raised on the theory of fault, such as that without proving the defendant's fault, many claims become ineffective and because it was difficult to prove fault, new theories were proposed, including the risk theory. According to the basis of risk, only the occurrence of loss and its connection with the cause of loss must be proven, and there is no need to prove

fault. Every person is required to bear the possible loss of his actions based on inherent responsibility, whether it is due to fault or without fault (Fahimi, 2012, p.p. 137-138).

The Concept of Risk Theory

The theory of risk is based on the principle that any person who creates risks and causes losses to others as a result of his profitable activity, is responsible and bound to compensate for the damages, and it is enough to prove the causal relationship between the harmful act and the loss to realize the civil liability (Josran, 1933, p.p. 10-14). In other words, any person who, for any reason, including his benefit, creates a risk and benefits from the material and spiritual benefits of this activity, must accept the harm caused to others by this activity (Savatieh, 1951, p. 349). According to this theory, our civil responsibility is for the benefit and pleasure that a person gets from an activity or an object that belongs to him (Reaper and Boulanger, n.d, p. 910). In this way, the basis of civil responsibility is not the punishment of guilt, but instead the benefit that A person takes from creating a dangerous environment. In objective or risk-based responsibility, the criterion of responsibility is the causal relationship that exists between a person's activity and the damage caused to another person. In this system, anyone who harms another due to his actions is considered responsible. regardless of whether his behavior was legitimate or not: everyone is responsible for the risks caused by his actions (Lor Rasa, 1978, p.p.40 - 41).

The most important advantage of this theory is that by removing the fault from the civil responsibility, claims for damages are easier to reach, and the victim is exempted from proving the defendant's fault (Katouzian, 2000, p. 197). Also, the supporters of the risk theory believe that one of the positive consequences of it is the emergence of social solidarity and the sense of responsibility of individuals towards others, and they have said that this will moderate the selfishness and extravagance of capitalists. And they inevitably stop when they face the responsibility of their actions (Bahrami Ahmadi, 2014, p. 116).

2. The Background of Risk Theory

After the industrial revolution in the 19th century and the use of machinery in various economic activities, especially in production and industry, the accidents and damages caused by machinery activities became more and more dangerous day by day and the loss of life and body was increasing. On the other hand, the victims of production and industrial activities could demand compensation when they had to prove the fault of the employer and it was very difficult and the victims were often denied compensation. (Badini, 2012, 241). In other words, the mechanization of the industry had created unknown incidents in which the theory of fault in the field of civil responsibility was not effective in these cases; Because in most of the cases of accidents caused by the working of different machines, losses and damages were inflicted on people and persons that the employer did not commit any fault and if there was any fault, it was difficult to prove it on the part of the injured worker. In this way, the injured workers, who were mostly from the low-income and weak sections of society, were deprived of receiving damages, and sometimes they were reduced to complete poverty due to the loss of the ability to work as a result of the accident (Mazo and Tanak, 1995, 77). Due to the unfairness of such a situation, lawyers wanted to help the injured workers. Therefore, to solve this problem, a group presented an extended interpretation of Article 1386 of the French Civil Code, and another group presented a new analysis of the labor contract (Mazo and Tank, 1995, p.p. 77 - 78), but jurists such as Saleilles and Josran (Josserand) declared: "Whoever creates a dangerous environment, such as a factory, in case of danger, without the need to prove the fault of the owner of the factory, must compensate for the resulting damage (Lor Rasa, 1998, p. 15; Al-Awji, 1994, p. 228).

Sally in a treatise in 1897, titled "Accidents caused by Work and Civil Liability" and Josserand in a treatise entitled "Civil Liability caused by the Act of Inanimate Objects" (Josserand, 1897) in fact to overcome the shortcomings of the theory of fault, in the late 19th century and at the same time with the industrial revolution, they presented the theory of risk (Badini, 2012, 244). To compensate the victims in

a better way (Hakmatnia, 2016, 62), therefore, the theory of risk emerged under the influence of the beliefs of Sali and Josran, the basis and intellectual foundation of these two scientists was that accepting the fault as the basis and the basis of civil responsibility is not as intended. First, if we accept the theory of blame, many losses that are the result of the new civilization and the development of machine life whose origin is unknown, will remain uncompensated. Secondly, from the social point of view, it should be said that the victims of these new types of accidents, such as workers injured in accidents and pedestrians and traffic victims, often belong to the lower social classes, and while the car user, even if he is not at fault, is in the situation It has a much better economy (Lor Rasa, 1996, p.p. 40 - 41). Due to the impossibility of proving fault and the inadequacy of the theory of fault in compensating the victims and as a result of not compensating the damages, especially in accidents caused by vehicles, the "theory of risk" was presented. Therefore, it can be considered as a result of the transformation of human economic structure and the result of the industrial revolution.

3. Multiple Approaches to Risk Theory

When the theory of risk was proposed by several legal scholars, it was faced with many problems and objections from the proponents of the theory of fault, and in the confrontation and conflict and the process of discussion around this theory with the theory of fault, finally, several approaches in the theory of risk emerged. Among them, we can mention the "absolute theory of risk", "the theory of risk caused by unusual action", "theory of risk caused by material benefit" (Reaper and Boulanger, Beta, 910), and the "theory of specific fault". in which authenticity is given to the result of the action, not the cause of the action, and finally the theory of risk was modified, because accepting the theory of risk absolutely would make life impossible. Therefore, criteria and conditions were considered for it, and the first criterion proposed by the theory of risk is profit (Lor Rasa, 2015, 44). Among the different approaches in this research, the main and first approach is the theory of risk, which is the profit and profiting from a person's activity.

4. Government Responsibility Based on Risk

Now the question is, based on the risk theory, how can the government be considered responsible for the violent acts of violent terrorist groups? The main criterion for determining the person responsible in one of the main and important approaches of risk theory is the profit approach, that is, a person who benefits from his activities and causes losses to others is responsible; Because the government's civil liability approach based on profit is non-fault liability, in the sense that the government is not at fault for causing losses caused by terrorist acts, but the government's responsibility is from another direction, and that responsibility is caused by the risk that the government has created. Because it was said about the theory of risk that if someone organizes an activity in various fields and gets a benefit, but someone is harmed, he must compensate for the harm caused (Badini, 392, 242). It was said about the theory of risk that if someone organizes an activity in various fields and gets a benefit, but someone is harmed, he must compensate for the harm caused (Badini, 392, 242).

According to this criterion, as previously explained in the jurisprudential rules section, the formation of the government and the activities within that framework is beneficial for those who established and formed the government, whether it is a material benefit or spiritual benefit. Therefore, because the rulers benefit from the formation of the government and the country's material benefits and economic incomes are collected at the expense of the government and for their benefit, it also has a spiritual use and benefit.

Clause 3. Adapting Risk Theory to Jurisprudence Rules

Now that the three rules of jurisprudence and the theory of risk have been explained, in this part we will compare both and measure how the rules of jurisprudence are compatible with the theory of risk, and what are the similarities and differences between this theory and the rules of jurisprudence? As was

mentioned in the explanation of the provisions of the rule of Whoever benefits, the loss will also be his responsibility, in Islamic law there are similar concepts and the same meaning as the concepts proposed in the theory of risk.

a. Common Aspects

A brief study of traditions and jurisprudential texts and the concept of the aforementioned rules is used, which shows that some of the concepts raised in Islamic jurisprudence are similar to the concepts mentioned in the theory of risk and have the same meaning:

1. The issue of profit is raised in the theory of risk. A person who benefits from an activity and as a result of that activity causes damage to another person, the person who gains the benefit is responsible for compensating for the loss and there is a connection between profit and loss. In all three jurisprudence rules mentioned, there was a connection between benefit and harm; That is, the profit that is obtained from the property belongs to the owner of the property and the loss that occurs from the property must also be borne by the owner of the property. In the theory of risk, it is interpreted as inanimate objects, but in jurisprudence, it is interpreted as wealth. The basis of responsibility and guarantee in jurisprudence is the enjoyment of benefits (Bahrul -U- loom, 1982, p. 231).
2. Civil liability is for the benefit and pleasure that a person takes from an activity or an object that belongs to him. This meaning exists both in jurisprudence and in the theory of risk. It is explicitly stated that benefit may be realized from the area of activity, such as the creation of a factory in the theory of risk and like collecting tribute in jurisprudence, or the benefit of something belonging to the owner of the property is income.
3. Another similarity is that if we pay attention to the responsibility of the government both from the point of view of the theory of risk and from the point of view of jurisprudence, it is due to causation, in the sense that although the harmful act of terrorism was committed by terrorists, the primary cause and background of such violence is the government with the formation of the government has provided; Because the government has created a system and structure in the direction of governance and obtains benefits in this way, against which dangerous activities have been carried out by terrorist movements against the government and these subversive activities have caused the citizens to be exposed to danger and harm and suffer damages. The purpose of terrorists in carrying out violent acts is to attack the government, and they fight against the government and do not have enmity with the masses of people. They engage in violent acts to overthrow the government or to force the government to give concessions or flexibility and yield to their demands. Therefore, the state has created a danger for the citizens and must accept the civil responsibility of compensation for the damages and losses that have been caused as a result of creating the danger, finally, the government is civilly responsible for the losses caused by terrorist acts based on the risk.

b. Difference Aspects

1. The first difference between the two entities is that the theory of risk is a result of the industrial revolution and the theory of fault is not effective. For this reason, there are new examples and examples such as factories, machines and industrial tools, but jurisprudence rules have a history of 1400 years and for example It has an individual aspect.
2. The meaning of benefit and profit in risk theory is financial profit and economic profit; That is, from the perspective of risk theory, profitable economic activity causes responsibility; While the concept of benefit is common in jurisprudence, it includes material and spiritual benefit. Due to the deficiency of profit theory of risk, absolute theory or risk of activity was proposed to fill this gap, which includes spiritual benefit as well (Safaei, 2012, 70).

3. The theory of risk has generally said that everyone benefits from an activity and if a loss is caused to someone by the same activity, he is responsible for compensation, but in the jurisprudence rules, in addition to the general rule, a special rule has also been proposed from the rule of "benefit vs. tax" Government responsibility is used; because the benefit is the winner of the government and tribute belongs to the government, and according to the interpretation that was quoted from the contemporary jurists, the government is responsible for providing welfare and security to the society in exchange for taking tribute from the nation.
4. In some hadiths, the rule of law explicitly identified the government as the one responsible for paying the dowry, and the argument was that since the inheritance of those without heirs belongs to the imam, and the benefit that has accrued to the imam, the imam should also compensate for the loss. According to the relationship between profit and loss, when the inheritance reaches the imam, the dowry of the killed people whose killers are not known is also the responsibility of the imam and public treasury. While this meaning does not exist in risk theory.

In summary, based on the concept of jurisprudence and risk theory, the government's civil responsibility for damages caused by violence and terrorist acts is due to the benefits it obtains, as it was said that the formation of the government and activities within that framework, for those who run the government established and formed, it is profitable whether it is material profit or spiritual profit. On this basis, if a certain area of citizenship or several citizens causes damage to other citizens, according to the jurisprudence rule and the theory of usufruct of risk, the government must compensate for this damage, because the main approach of the theory of risk of usufruct was and the provisions of the jurisprudence rule It was also the case that anyone who benefits must bear the loss as well.

Conclusion

One of the important issues in legal discussions is compensation for the damages caused to citizens as a result of violent acts of terrorism. In this case, there are no clear and codified regulations in the countries that are victims of terrorism, and due to the lack of law and also the killing and escape of violent people, these damages remain uncompensated. The research is aimed at finding a legal solution and determining the person responsible for compensation in the absence of the main perpetrators, and a number of Islamic jurisprudence rules and its adaptation to the theory of risk were studied. The most important approach of this research is to introduce the government to compensate the damages caused to the citizens. The explanation of this issue is that holding the government responsible has a long history in Islamic jurisprudence, in Islamic traditions in specific cases such as when a corpse is found in the desert or in another place and the killer is not known, or in social situations such as Friday prayers or If someone's bridge is destroyed due to crowding and the killer is not known, and in general, wherever the killer is not known or is not available, or the killer is unable to pay the dowry, in the mentioned narrations, it is ruled that the government is responsible for the dowry of the victim from the Treasury. should be paid and the blood of a Muslim should not be wasted.

In this research, in addition to the mentioned cases, other jurisprudential rules on the government's responsibility were cited, the basis of which was usufruct, in the sense that based on the rational and theoretical rule, a person who benefits from an activity or money, if from the same activity or property If a loss is caused to another person, the rational rule dictates that the owner of the property or the person performing the beneficial activity must also bear the loss. Referring to this manat, because the government takes a lot of material benefits from the society from governing, according to the rule of "Whoever benefits, the loss will also be his responsibility", the government is responsible for compensating the damage caused to the citizens by those who want violence. The most important approach of the theory of risk was usufruct, which was consistent with the concept derived from the rules of jurisprudence, based on this theory, the government was recognized as responsible. Regarding the

reason and justification of the government's responsibility, it was said that the losers and losers, if they are nationals of the country, have a share and right in the assets of the treasury. Therefore, the government does not pay the damages from its pocket, if the violent people who have caused damage to the people and are fugitives and are not available to be prosecuted, if the violent people are citizens of the government, the government will take from the share that they have in the treasury, they compensate the damage from their share. If the perpetrators are nationals of other countries, the government will compensate them from the share of the victims in the treasury. On the other hand, the existence of the government has provoked the violent groups, the violent groups do not have any particular enmity with the people, the violent actions against the people are to put pressure on the government to overthrow the government or to gain a privilege, and the government in this level is responsible for glorification. Another approach is that the government is responsible for the fault; Because the government is committed to providing the life and financial security of the citizens in exchange for receiving social benefits and the authority to issue legal rulings to the society, damage to the society shows the fault of the government in providing security; Because the government's commitment to providing security is a commitment to the result. In short, the government's civil responsibility for the losses caused by violence and terrorist acts is due to the interests that the government benefits from, on this basis, if a citizen's area or several citizens suffer losses to other citizens, According to the jurisprudence rules and the theory of usufruct of risk, the government is responsible for compensating this created loss, because the main approach of the theory of usufruct risk was and the provisions of the jurisprudence rules were that anyone who benefits must also bear the loss: whoever benefits, the loss will also be his responsibility.

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