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Principles of Liability without Causation

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ABSTRACT

Over past few years, various laws have been passed to face accidents increase and support aggrieved. Accordingly, it is not necessary to prove causation problem. In fact novel approaches took it for granted or perceived no need to confirm in terms of registry grounds. In both the issues no one can confirm its contradiction. Whereas, it cannot be claimed to be belonged to modern laws, but whatever it is, we can see its growing impact on a number of laws. For instance, we can talk about employer's liability about a worker who works in a hazardous environment and be damaged from. Regarding the fact that, the employer benefits from work outputs, then he is liable about the consequences of damages, although subject of such damages is the worker. Thus, in present work it is tried to study those issues in which liability goes back to the subject without causative relationship. The evaluations will be accomplished throughout introduction, discussion, aims, importance and historical backgrounds. Also in chapter 2 we will present theoretical grounds of the subject matter and absolute liability.

KEYWORDS: Absolute liability, strict liability, causation

INTRODUCTION

By participating in social life we deeply understand the impact of people's actions on the others' financial issues. These actions, either directly or indirectly, bring to the others' benefits or harms. With industrial and mechanical developments the linkage between accomplished action and occurred damage has been disturbed in a way that, despite its triviality can cause tremendous damages. This issues places law sciences in front of fundamental questions about liability.

What is the liability? Which kind of actions causes liability? Are we also liable when we leave the action? In order to have such liability what kind of relation should be established between the action and accruing damage? What qualifications are needed to fulfill the liability? These questions are among the most important queries regarding liability that by responding to and investigating its side problems we can formulate framework of liability.

Following the rules is a necessity for every one based on which, if someone harms some body, he or she should compensate. In liability the terms has been defined that if somebody harms the others unintentionally, he or she must pay for it. (Article No 1, law of liability). Liability means a duty to compensate others 'occurred damage [1]. Throughout recent years it has been changed to be one of the highlighted social law terms. Liability, being a trivial past time civil law term, now is a pivotal theoretical portion of it. It can be rationalize in two ways: Increased damages that are caused by development of mechanism and industries and the behavioral changes of damaged people that come from the changes in their ways of thinking toward compensating the damages. Technology advancement and increased the importance of liability are among other juristic subject matters. This problem naturally originates different theories about the factor.

Necessity of Discussion:

Nowadays, one can't find a social activity in which liability doesn't play a role. Liability is so vital that the principle of "not harming other and the necessity of compensation "has been regarded a facet of ethics and law. Changes in societies and civilizations duplicated the importance of liability. If somebody wants to realize the issue vitality he must focus on the challenges such as: unemployment, manufacturing deficiencies, medical errors/ damages and workers remissions. Only through liability one can propose the best approaches to compensate damages. This concept recognizes accident and potential agents and by doesn't pay attention to causative relations replace new methodologies to compensate problem. Such importance makes liability to be investigated in its true sense. By the time pass, principles of liability have undergone fundamental changes and from inside, novel benches and movements raise that each had influential position.

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Aims:

Every branch of science has its own aims to be accomplished. Identification of aims is essential in philosophy of law. Every subtle approach toward the philosophy of law should focus on intrinsic aims to demonstrate its scientific structure [2]. We know that there is close affinity between the aims and principles of law. To know about the principles is impossible without the identification of aims.

The same notion of linkage is true about liability. The kind of attitude toward its principle plays on important role regarding the demonstration of aims, scopes and functionally. On the basis of aggrieved, subject and society we can define exclusive aims and scopes for liability. Main purpose of liability is allocated to the aggrieved but it isn't the sole purpose of liability, moreover, it tries to avoid libellant's aggression of rights and prevent more damages. Liability can play vital role to punish the aggressor and prevent him to do it again in future. Hence, there are also limitations that liability face. But, by passing of time and the emergence of absolute, strict and vicarious liabilities and by charging individual on behalf of others mistakes and unexpected accidents, this aims was partially fulfilled. Aggressor was not liable anymore. Those who had political, intellectual land financial power were considered as liable as a potential harming agent. In fact liability was utilized to adapt protective actions and solicit the social effect of damage through public scale distribution [3]. The concept of justice must vary according to time and place. In society, at the beginning of the capitalism, justice defined liability as a retaliation of fault. But in industrial era it was understood that emphasizing solely on the concept of fault can bring injustice.

At first, injustice was highlighted in employer and workers common discourse, and then it emerged in transportation system and finally resulted in the development of strict liability. The main purpose was to eliminate inappropriate consequences. Justice tried to compensate the damaged that was happened to the supported right. This issue was not applicable on the basis of fault, so strict liability was developed and gathered numerous supporters [4].

Historical background:

Progresses in all societies don't happen in a same way. It is complicated and heterogeneous. Throughout history, it had challenging story "from the emergence of primitive society "liability has changed and evaluated, as Gasemzadeh[3] said. Until the 18thcentury, liability didn't acquire independent attributes and it had only retributive or even almost religious characteristics. The aim was to punish a person who insulted a man or God [1]. Juridical experts, until 19th century believed that the liability of innocent is not ethical and those who intentionally insulted should be blamed and compensate. But later, the basis was hesitated for its difficulty to prove the concept of fault. Therefore, process of liability development changed and people's desire to be supported and collaborated increased their need to security. Then the concept of liability transferred from its initial structure on the basis of causation which forced the aggrieved to compensate. It was clear that due to industrial development damaged output increased in a way that made impossible to solve damage compensation by causation [5]. All such events, accidents and damages occurrences resulted in formation of theories and then the juridical principles that aimed to support victims. But naturally, by doing so, role of causation either fainted or eliminated. In fact through changes or reform of liability conditions and on the basis of economic grounds, this part of law of recognized liability without causation concept and made the people who did not traditionally obliged to compensate the damage, pay for their actions.

By industrial glorification and growth of capitalism a sort of industries which need great bulk of capital to be administrated was emerged. The golden age of investment passed. Capitals were supported by juridical approaches and exploitation begun. Workers worked for law wages and helped the great industries to flourish. On the contrary, workers tended toward unions to defend their rights and first signs of change emerged from such conflict of interests. People asked why employers should gain all benefits and remain irresponsible while an unsupported worker must damage from his trivial mistake and compensate it?. From such standpoint, fault comment who acted in the name of ethic manifested become unethical and needed to changed and reformed. Juridical systems gave up fault comment and preferred strict liability [4].Foresightedness and preventing from damage were the most important orientation of liability. This orientation gained increasing importance as time passed. Liability tended to prevent damages instead of waiting to see it happened. All this events resulted in the formation of strict liability. Among those the important issues were: ebbing of small-sized government concept and emergence of utilitarian state, emergence of new insurance systems, more socialized dangers and ethical considerations. Strict liability came in to the fore and gained much importance. Judges were permitted to prevent from some damages and in addition to conventional and unconventional liability formed a third kind of liability which imposed responsibility on specific class and included employer's liability, mother/ father and physician liability [3]. This kind of liability would cut the relation between the subjects of damage and the damage itself and made liable the one who didn't cause the damage. In present thesis it was tried to study all those ignored factors in which the role of causation has been ignored or fainted.

Basics of responsibility without causation:

In present chapter we study the basics of liability without causation. The basics are rooted in modern law and Imami Jurisprudence. Thus, at first, we study the sources of liability without causation in common law and then we will mention the source in Imami Jurisprudence.

Absolute liability:

According to some law scholars "absolute liability is the last degree of strictness and a sign of release from every constraint, while strict liability works when there are some defensive pretext for the liable so it's not absolute liability" [6].In fact absolute liability is a kind of responsibility in which causation cannot be discerned. Even if the liable has no causative relationship with the accident, again he is responsible. In the other words, to explain absolute liability we can compare it with instances from Islamic law. The best instance of such liability is the liability of usurper. In juridical books he is responsible for the damages even if he is not the cause of damage. DrImami[7] stated: "By waste of wealth we mean that it would be destroyed by external agent that is irrelevant to usurp and usurper. Therefore, for instance if a seep usurped and usurper keep it in his stable nearby the owner and if the flood come night and destroy the stable then the usurper is warrantor of the usurped sheep. Hence the usurped sheep would be killed even if it was in his owner's stable. Of course, some literature didn't make difference between absolute and strict liability.

Strict liability:

Liability has two general and specific meanings. In general, every obligation of people to compensate the damages is called liability. One issue regarding liability is that when a person is obliged to compensate the change? It has been said that "A person is socially liable when he is obliged to compensate the other person's occurred damage" [2]. We cannot define liability as a person's legal obligation to compensate or took it as a feasible compensation of happened damage. If one can prove the causative relationship then he can transfer the damage to the other. But sometimes an accident is in a way that always a person is liable to compensate without causing any fault. Some experts call it strict liability. It is a kind of responsibility diagram based on law and management and doesn't follow liability's general principles; therefore it is called strict liability. "Adding the word of strict is a sign that liability is unconditioned to the affaires for which liability is a prerequisite" [8].In fact strict liability doesn't aim to prove fault comment. It also doesn't try to confirm causation most of the time. By this it rejects the notion that without the concept of fault there is no liability. Accordingly, sometime a person would be forced to tolerate damage not attributable to his fault or action. In fact he is responsible for the output not action itself. In this sense, if a person would follow the cautions, again he is liable. Of course some believed that, in fact, strict liability has been resulted from the philosophical thinking's of jurists when they faced knowledge progress and complexity of social affinities. They actually tended to replace fault whit causation and facilitate the compensation of damage.

Hence, some think that in strict liability there is no need to prove causation. So when the procedure of a defect good is unknown, the distributor is liable to compensate. They say that "one reason to the prevalence of strict theory and indifference to fault comment especially the personal is the emergence of vicarious liabilities that clearly manifests themselves in the example of employer's liability to his workers. In French and German laws, workers are exempt from liability even they would be faulty. According to Article 18 of French work contract law, the employer is liable of his choices in these issues and if a worker would do damage then the employer is liable. In this regard even if he prove that his choice and supervision of that specific worker was correct nothing changes and he is again liable. This fact is nothing but indifference to causation in search of liable person .Although juridical systems in industrial countries don't totally gave up causation, but when searching liable, if the cause of accident is hesitated, they distribute liability between the subject and non-subject agent. In this regard we can mention articles 10/105 of European liability principles which act as a guide in this term. Here the term strict, implies negation of fault, comment and necessity of contract commitment to make liability. Initially, strict liability was applied to dangerous activities but later on it has been developed due to the progresses in liability and social insurance that changed its aims and functionalities, it also has been used as a preventive factor to fight against discriminations and also has been reduce costs and damages in society.

We know that there is a close affinity between aims and principles of law. It was not possible to know principle without aims' identification. Such role is also applicable to liability. Type of attitude toward liability basis has fundamental role in demonstration of its nature aims and scopes. In past liability has undergone tremendous and remarkable change. Influenced by various society gradual evolutions in sciences, invention of modern phenomena and technology development liability has acquired its present principles through several stages. In fact everybody is liable and responsible for his actions and liability originations from personal actions. But sometimes a liability that comes from other's action can be exceptional and apposite to the rules. They are limited to the cases in which

lawmaker accept that in most strict liability cases, the specific person is liable for others action. In another explanation it has been said that: "strict liability principle is an unfair danger that is caused by a person's action toward others" [8].Therefore strict liability is a result oriented liability than action oriented one. Here subject of damage cannot be exempted from liability only by showing that his behavior is not blamable or inside behavioral norms. All liability terms (intentional or unintentional) are negated in strict liability. By accepting strict liability we have actually negated the principle that "without fault there would be no liability" [8].We must not intermingle strict liability with absolute liability. In absolute liability only damage itself is a sole request to know a person liable. Causative relationship has been omitted between action and damage. So it is the most severe kind of liability. Absolute liability is ultimate degree of strictness and sign of being free from any boundaries. While strict liability can be used about cases in which there are some defensive pretexts, because the liability isn't purely absolute. Usurper's liability (article 315 of civil law) and one who is considered usurper (article 310,631,493 of civil law) are two example of absolute liability in Iranian law. By the way in strict liability, if there would be causation it is unimportantly fainted. Hence in absolute such issue is so tight that needs no explanation.

Conclusion:

We cannot omit causation from liability due to the preventive role of fault, its ethical value and also the role of causation in policy making processes. But regarding its deficiency, its unfair consequences trying to compensate the damage in full terms, internalizing the external costs, facilitating liability main principles proof, distribution of accidental damages and making people to be more cautious it is totally necessary to implement absolute liability at least about dangerous activity that impose incomparable damages to society. There should be no further concern about the right to activity and freedom of producers when there is great development in compulsory and social insurance system. Through this rights and costs mechanism we can distribute damage to the members of society. For this the concept of absolute liability has been elaborated day by day in juridical system. Although there is emphasize on causation but absolute liability has faced the concept of causation with so many exceptions. We saw that in Iranian law many instances of absolute liability are available based on Imami Jurisprudence. But apparently, legislator is not tended to extend the domain of absolute liability to new fields upon which there is global consensus. Hence, we saw that instances of such liability are frequent in Jurisprudence, civil law and Islamic retribution law. For example usurpation and rational liability are among it instances. Therefore it is suggested to use absolute liability in other issues so as our juridical system wouldn't be dropped behind global changes and prevent aggrieved rights from violation.

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