

The Liability Distribution due to the Perpetrator and Accessory Combination in Iran Penal Code

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Abstract: We know that atonement is facing two views of penalties and compensation which in any case has to be paid either with the cause and perpetrator life, or both. The Penal Code has assigned it a particular penalty; different comments have been asserted on the occasions of which hurting and damage to the injured is caused by the cause and perpetrator interference. In comparative law, each of the causes is entitled to compensate as his/her fault and crime proportion against the injured person. This approach is more consistent with the general civil liability rules, but the former Penal Code was prescribed in Article 363: (in the case of the perpetrator and accessory combining in a crime, the perpetrator is the responsible; unless the cause is more liable than the perpetrator). Many criticized this legal article and even some courts, particularly regarding injury or death of construction workers happened due to different factors, shared the crime responsibility and paying atonement and the compensation according to the proportion of the their role in committing the crime. However, recently, the judicial procedures has got a legal order by passing the new Islamic Penal Code and applied in a legal form perused by the article 526. The basis of responsibility in this law is applying the crime to the factor act or the operating factors and each responsible as much as they have a role in the crime.

[Mahmood Shekarpour, Sadegh Esmaeili, Ghasem Aboo -Pour Bisheh. **The Liability Distribution due to the Perpetrator and Accessory Combination in Iran Penal Code.** *N Y Sci J* 2016;9(4):8-14]. ISSN 1554-0200 (print); ISSN 2375-723X (online). <http://www.sciencepub.net/newyork>. 2. doi: [10.7537/marsnys09041602](https://doi.org/10.7537/marsnys09041602).

Key words: Civil Liability, perpetrator and accessory combination, pure responsibility, fault

1. Introduction

According to the article 1 provisions of the civil liability law acted in 1961, anyone without an enabling clause, life, hurts the life, destroys the property, freedom or dignity, or business reputation or to any other right of which the law has assigned for every person deliberately or inadvertently, which causes the material and mental losses, in which the person is responsible for compensation arising out of his/her act. Despite the explicit emphasis of the this legal regulation recent episode on damages compensation resulting from the action of the agent, the article 363 in the former Islamic Penal Code considers the perpetrator as the responsible one without considering the cause or the perpetrator impacts on the act of damaging, unless the cause is more responsible than the perpetrator. In this regard, jurists, judges and lawyers have argued on some issues of which the cause is more responsible than perpetrator turned into the prevalent and usual trials procedure. However recently, in describing the article 526 of the Islamic Penal Code acted on 2014 the legislators state that: Whenever two or more factors, some to perpetration and some to causation have impacts in committing a crime, the factor illustrating there is more evidence against him/her as being responsible in committing the crime. If there is equal evidence against them, they

will be equally responsible for the crime. Unless the impact of the offenders' actions and the committed ones is different in which each of them will be responsible as much as their impact. If the perpetrator is ignorant, child, mad man or without discretion in committing the crime, only the cause is being responsible.

This not only meets the ambiguities and errors in article 363 of Islamic Penal Code, but also contains material on the distribution of liability and responsibility arising from the combination of perpetrator and accessory. However, in the field of each of the cause and the perpetrator responsibilities and their combination in a crime occurrence, there are some issues being debatable: in case of the perpetrator and accessory combination in committing a crime, is the perpetrator being considered as the sole responsible? If there is evidence against both of them, there will be the responsibility equilibrium as being a basis for judgment? How to evaluate the action and each factor impact? Does the purpose of not having discretion determination in committing a crime, being a child or a mad man mean that the cause is more responsible than the perpetrator? To answer these questions, we first study the background and the definition of the cause and the perpetrator, the basis for each of these factors liability and responsibility in

the Islamic Penal Code and Shi'as jurisprudence; we will study how to distribute the responsibility of each of these factors.

PART I. Background and the cause and perpetrator definitions

A. Cause and perpetrator background in juristic content and law

In the traditions and the juridical books adapted from the Quran and other Islamic books, there is no hint to the principal cause and the perpetration and for the first time, only it was in the 5th century, the terms the cause and the perpetrator have been acclaimed by the jurists. However, in the books had been written in 7th century, these two issues had been studied in detail (Ghiasi, 2011). In Iran, since the beginning of the legislation, these two terms have been applied in the constitutional law due to the Islamic law, for example, the General Penal Code passed in 1926 call these two entities in articles 28 and 172. In General Penal Code passed in 1992; there are some discussions about the cause in the book on atonement. First, these two terms have been discussed regarding the causes of responsibility in article 317 and 318, and then, their Islamic and ordinances and judgments have been discussed in the followed articles and chapter 6. Also, the General Penal Code passed on 2014 issued some laws and ordinances in articles 492, 526 and 506 being different from the prior laws. In the article 322 in the civil code, regarding the property wasting by the cause and the perpetrator, it is argued that the perpetrator is one to blame not the cause, unless the cause is more responsible than the perpetrator.

B. The cause definition

The term "*Cause*" is rooted in the Islamic law and it should not be considered from the foreign law perspective. In the Islamic law (and surely in the civil law), the cause is the means of the collecting the effect or intention without having to reach the stage of the cause, since, a cause has an effect. However a cause may have some caused (Jafari Lagroudi, 1999).

The term *cause* is applied for explaining one of the following concepts: 1) The incident can certainly be transformed to the detriment, and in case of its lack, we will not have any detriment. 2) The incident that if it does not happen, there will be not any detriment and loss. But, its existence alone is not enough to create losses and it needs the impact of other factors. 3) The accident that its cause is intended to create the incident. 4) The incident with the kind of personal or identical fault and its cause is blamed for one the two faults. 5) The incident leads to the loss and detriment from the custom perspective, either its cause is blamed for the fault or not. 6) The incident, intermediary or non-intermediary, provides the risk creating losses and

detriment (Goldouzian, 1997). Articles 506 in the general penal code passed in 2014 states in this regard: "causation in a crime is that someone provides the caused for wasting and destroying a property or hurting another one and that person is not directly committed the crime so that in case of lacking his/ her wisdom, no crime will be done, is like someone digs a well, and someone else falls into it and hurts."

Some jurists categorize the causation into general and specific senses. In its general sense, committing a crime either intermediary or non-intermediary is not significant. What is of importance is the committed person here, the perpetrator or the material subject. However, in its general sense and according to the jurists, the cause is sometimes the committed person and sometimes the condition for being able to commit the crime. But, the causation in its specific sense, is a part of the perpetration as well as being recognized as the material subject of the crime such as digging a wells and asking someone being unaware of the wells to pass and then falling into and finally, due to the death of the injured one. According to these definitions, sometimes the cause refers to the material subject or the perpetrator on its general sense and sometimes it refers to accessory (in case of having mental impairment) (Mohammad Kani, 2011).

C. The perpetrator definition

Perpetrator refers to a person who committed the criminal act and according to the relationship between the perpetrator and the criminal act, either direct or non-intermediary can be considered as perpetrator or the accomplice (Ardebili, 2005). Based on this definition, perpetrator refers to the person having a complete power in every part of the criminal act or s/he committed the crime. Article 494 in Islamic Penal Code has defined the perpetrator as: "perpetration that the crime has been done directly by the committed one." in its specific sense, perpetrator is in contrast with the cause and is different from the cause. In this regard, what is meant by perpetration is committing a criminal act directly and non-intermediary, so that the custom attributed the crime to the person who committed it with no further interpretation (Mohammad Khani, 2011).

D. The basis for the responsibility of the cause and perpetrator

A brief look at the civil law transformation of show that four major theories hold this social relationship:

1. The fault theory states that the basis for the civil responsibility is the fault and also states that the behavior of any individual person should be evaluated separately.

2. The theory of creation of danger has different types. There is a general consensus on the fact that the fault cannot be considered as the subcategories of responsibility.

3. Theories of Complex and interfaces devote a rather less contribution to the theories of fault and the creation of danger or adopt a rather mediate basis.

4. The theory of the right guaranteed which views the basis for the civil responsibility from another perspective illustrated the theories of fault and creation of danger are wrong (Katouzian, 2011).

The theories of fault and creation of danger seem to be hyperbolic. We can consider committing the fault as the sole basis for the civil liability. Since sometimes justice requires someone to be blame and to suffer not being guilty, such as the relationship between the employee and the employer, no one can deny the fact that the employer bears the losses resulting from the work better than the employee.

In addition, generally, no one should be liable for the losses resulting from his/her legitimate activities because it does not seem to be reasonable to ignore and underestimate the social necessity or to put the responsibilities on no moral principle.

Social life is more complicated than what it looks at first. Justice is a rather fragile and relative concept and it is very difficult to restrict the public justice in a special theory article. We can take this as a principle that anyone is responsible for his mistakes and fault and s/he should loss because of his/her faults. However, this principle cannot be considered as a pure and unchangeable fact. What is important here is that no illegitimate losses should be remained without compensation for the loss. We discuss about is that what cases to consider the loss as illegitimate. The theories of fault and creation of danger are the basis for interpreting this concept and none of them should be considered as an exclusive entity.

The theory of the right guaranteed has an effective role in creating the civil reliability that cannot be denied. Not only can it be applied in determining the illegitimate losses, but also it can be placed in some cases such as responsibilities arising from.

Briefly, none of the above mentioned theories can be accepted as the sole basis for civil liability and we cannot make a fair system based on these theories. However, there is a fact in their essence that cannot be denied. It's worth note to reach the final point of justice and rational tools are the only way to achieve this goal (Katouzian, 2011). According to the regulations of the article 363 of the prior Islamic Penal Code, in the case of the perpetrator and accessory combination in committing crimes or imposing damage, the perpetrator is responsible, unless the cause is more responsible than the perpetrator. When

both the cause and the perpetrator have power in committing the crime and there is no certainty to consider one of them as the responsible one and there is the possibility of the cause and perpetrator impacts, most judges execute the perpetrator as guilty. Divergence of opinions, assenting and dissenting opinions regarding this subject create arguments on different analyses and it is not possible to settle this dispute without choosing and caring about the basis for liability. Therefore, we can figure from the sum of the theories out that the relationship between causality and its strengths and weaknesses is the main basis, and what is known as customary or conventional cause.

1. In the assumption that the perpetrator is the cause and the cause person is the condition for its impact, the perpetrator will be the responsible one.

2. In the assumption that the cause person is more responsible than the perpetrator and the cause, and the cause person is the responsible one.

3. In the assumption that both the cause person and the perpetrator are the cause and no one has a privilege over each other.

4. In this assumption, both of them should be considered as the responsible ones and it is reasonable to know the perpetrator more responsible that the cause person (Katouzian, 2011).

Since, according to the regulations of the article 363 in the prior Islamic Penal Code, if the custom considers the type of the intervention of the perpetrator and the caused equally, we should conventionally consider the perpetrator the responsible one. This fact is contrary to the Legal logic, since in this assumption and especially where both of them aimed to commit a crime or wasting and divided the responsibility of doing it, it is essential to consider both of them as being responsible for the crime. However, the legal judgment will prevent dividing the responsibility of committing the crime between the cause and the perpetrator. According to this, it means the pure responsibility based on the prior law regarding the responsibility of the perpetrator. Unless, the cause is more responsible that the perpetrator for reasons mentioned earlier or no other option is not predicted about the equality or the adverse impact in the event.

Issuing the regulations of the article 562 in the Islamic Penal Code passed in 2014; the basis for the responsibility of the cause and perpetrator has changed and the pure responsibility is no longer applicable against the perpetrator. The basis for responsibility where different factors (affecting both causation and perpetration) have power in committing a crime, the factor to be either the cause or the perpetrator whom there are some evidence against will be considered as the responsible one. In other words, attributing the evidence of the crime to the act of the subject or the

fault will make clear the responsibility of each of the factors.

PART II. Different scenarios of the cause and perpetrator interferences to damage

According to the theme and title, the cause and the perpetrator combination in the adverse events occurrence, depicted in three possible scenarios:

A. The perpetrator being more responsible than the cause

In this case, although, the outcome of the crime act is due to the interference of both cause and perpetrator, the relationship between the adverse event and the criminal act of the perpetrator is more powerful than the relationship between the cause and outcome of the criminal act, perpetrator is more responsible than the cause. In accordance with article 332 of the Civil Code in such cases, the steward is responsible for loss compensation because they believed the Iranian legislator steward of the causality between actions and thus caused is traditionally stronger. These materials are intended legal judgment based on certain rule based on the arguments as follow:

1. If the crime involved the relationship between the foreman and the cause is much stronger and closer relationship between the crime and criminality.
2. The subject of numerous traditions is accountable that jurisprudence invoked only in cases where the cause is stronger than the perpetrator.
3. The cause is just a means for to the perpetrator.
4. In general, the socially responsible perpetrator of the things that is both.
5. Consensus of all jurisprudence to few people is that if the community perpetrator and the cause due to the responsibilities, the base of the intention are directed for the perpetrator. The proposed jurisprudence ratio is two considerations based on the jurisprudence researcher as follows: 1. the powerful perpetrator do not provide an absolute statistic for the cause as not being responsible 2. The perpetrator does not cause any responsibility in the event that the intention is not crime. The only way of punishment in criminal law and may not compensate for the loss induces be prosecuted as complicity in crime

2. The responsibility does not cause the perpetrator in the event that the intention is not crime. The only way of punishment in criminal law and may not compensate for the loss induces be prosecuted as complicity in the crime (Zeraat, 2004).

B. Since the perpetrator is a stronger view

Some lawyers have significant imitation of the perpetrator (spiritual perpetrator): Who crime

attributed to him rationally, for example, a person who is a minor a knife or tribunals to kill (the verb by mad or non-point done, but because they will not hold themselves and realize their actions are, in fact, be considered as a means), the child is the perpetrator and the person may be known as the steward stronger view of a prosecution and punishment of. Article 363 states in the Islamic Penal Code of the former that "socially perpetrator and causes of crime, are the guarantors unless the foreman is stronger view of the perpetrator." Article 332 show in the Civil Code that: "Whenever one person could cause financial loss and the loss of Steward be mine, is responsible steward is not the way that traditionally stronger view, unless the waste is documented to him."

The stronger view of the perpetrator purpose in these materials, overcome the influence of the severity of the crime perpetrator is not the criteria and standards of the condition dates back stronger view that the infringement enemies and makes it stronger view of perpetrator and is not least its material impact (Sadeghi, 2005). Article 316 of the Penal Code, adopted in 1992 in the community and stewardship of crime premises liability cases considered, and on the 8th volume of the fourth book (*Tenements*) in Article 363 in order to determine the overall social causes and perpetrators, and responsible for the stronger view that the cause of the perpetrator:

1. Perpetrator is animals or natural factors.

In crimes, administrators, and the man must be both, so the animal or object cannot be considered perpetrator crime, and in this case, the sponsor is not human for animal or act as perpetrator animals.

2. Disruption or instability achieved in the spiritual pillar perpetrator.

In cases where the disorder or condition, or shake the spiritual pillar of criminal responsibility (wisdom, maturity, optional) perpetrator achieved in a way that crime does not happen or is not attributable to him, including the following examples:

1.2. Perpetrator's Ignorance

If the perpetrator is ignorant of judgment or issue, not responsible are unaware of it for the stronger view of him, as if someone without a permit to dig a well in other properties, and on the cover, and landlords and takes him on an individual wells in the well and would have died. In this example, the sponsor is dug and the landlord is not responsible because of ignorance.

2.2. Perpetrator Pride

If the foreman has deceived the perpetrator and the perpetrator committed a criminal act was in charge

of the pride (deception) includes a man without meaning to do something with deception leads him to do something such as a judge on some false testimony, sentence to death and execute the show. Both arrogant and ignorant are the ignorance of the common, but they differ on the origin of ignorance, ignorance is the source of the ignorant, but arrogant is in his ignorance ignorant of the source of origin of ignorance, goose or sham surgery.

3.2. Perpetrator's reluctance

Reluctance that causes the common responsibility for the perpetrator is not allowed, for example, someone else force the private harvesters fire the steward here (the delude person) is not responsible for the guarantor is not optional self. In the case of Paragraph 1 of article 211 in Penal Code, which is about reluctance in the murder of a child early if reluctantly sentenced to death reluctance is only non-point or insane. However, in the case of murder has been reluctant to license homicide and retaliation will be the perpetrator (Hojati, 2005).

4.2. Perpetrator emergency

Emergency, in which case the perpetrator who is doing something desperate, weak and the perpetrator had to make is stronger. Example: to frighten someone else and that person escape route, from where long throw themselves if this scare caused and prevented the decline will be his decision either liable for it. (Article 499 of the Penal Code, 2014).

5.2. The young age or perpetrator's dementia

The minor in all legal systems is relative to innocent of criminal responsibility. According to the traditions of Islamic law, known as insane and the child or the dementia has no responsibility (Ardebili, 2006). Legislator in Articles 146 and 149 of the Penal Code in 2014 the insane accepted immature and lack of criminal responsibility, but if the conditions imposed security measures and training in case there is a minor perpetrator. However, each time the stronger view is considered as and guarantee. In the case of the removal of criminal responsibility is madness to say that madness and insane perpetrator is responsible for any and lead sponsor of article 149 of the Penal Code refers to this issue in 2014.

6.2. The Legitimacy of the Perpetrator Actions

Some of the lawyers equal the cause and the perpetrator as legal action in the case in order to perform official duties, he is exempt from responsibility to know and the stronger view of the perpetrator sing glory, such a person hostage by police officers killed by gunfire, hostage-taking as a result responsible for the system.

Equality of the Cause and Perpetrator

Some of the scholars prefer the equality between the cause and the perpetrator in the guarantee and some assigned the sentence to the conventional referee (Katouzian, 2011), some of them state that this assumption is impossible and the perpetrator is more powerful than the cause (Katouzian, 2011), so s/he is the guarantee, although there are many cases in which the cause with the perpetrator are relevant based on having the responsibility. These cases can be obtained by careful isolation between the mental item of the cause and the perpetrator. Both direct and explicit guarantee knew but legislative provisions relating to the issue (the equality between the cause and the perpetrator in the criminal action are both mentally resemble in the time of the former government, in order to prevent some conventional sentences performances in the doubtful mentioned article 363 of former IPC based on some jurisprudence basics was doubted in interpretation way in the mentioned article and rejecting some cases due to mismatch between the cause and the perpetrator and then, based on article 167 of the constitutional law, the cause and the perpetrator were both known as the guarantees regarding the reliable and valid resources (Ghiasi, 2011), however the legislator should be stated directly and explicitly related to the subject in the form of article 526 of the Penal Code as amended in 2014 and can be expressed based on the judgment of each particular case.

Part III. Analysis the article 526 of the penal code in 2014

Contrary to the provisions of Article 326 of the Penal Code, which stipulates the former, if the community is the guarantor unless the perpetrator and the cause in crime is stronger view of the perpetrator, Article 526 of the Penal Code subsequent (approved in 1392) to develop reading various assumptions predict and judge each individual assumes to explain better to study and describe the following material will discuss each of these assumptions.

A. According to the act of crime unit agent

In the first part of Article stated (Whenever two or more factors, some of them being the cause of the crime stewardship to affect some factor that documentary crime is his sponsor). According to the provisions of this article and the provisions under Chapter VI wrote before the law as grounds for liability, especially 492, 495 and 504, it seems that the legislator has accepted responsibility for pure or strict liability and negligence basis of responsibility, there is cause of the accident for this factor authentication is

operating fault or his fault sponsor another factor that is related crime.

Based on the former definitions in context and legal opinions, the perpetrator is someone who directly and without intermediaries' loss or criminal action does lead to physical harm (i.e. Article 494 of the Penal Code 2014), being responsible for causing injury or crime and provide another property not directly subject so that if he did not, despite the loss wasted or not happen (i.e. Article 318 Penal Code former) the perpetrator if as a result of the crime is cooperative.

- The agent is the guarantor of action is a factor that documentary crime. And agent is like someone who likes to force the sponsor to another field fire, fire pulsing in which case the guarantee is damage, because their free will and wise while being selective is prejudicing but if in the same example, simple personal perpetrator, lacking intelligence and determination, and would have exploited the weakness of his soul, the director will be responsible, because here is without the power by the perpetrator, so the barrier does not cite the verb.

2. In an assumption in which the crime is documented to the whole agents. In this assumption which is the very point of sharing the criminal, so that all the agents of the cause and the perpetrator are equally bound to compensation in other words these factors are equally responsible as an example, if someone is pointing to the place automatic weapon with intent to injure or kill a third party and the other party to place the shot, he has this intention as to draw reference to both factors, they are equally responsible.

3. The other mode is the behavior of each of the different agents. In this particular example that can be suggested that the injured person is car accident after seeking help from emergency departments, the injured is transformed by ambulance for treatment while the ambulance was dispatched and only in proportion to the damage caused by the fault of the driver who caused the first fault.

4. Due to stronger view is the perpetrator of this mode in the latter part of Article 526 of the Penal Code in 2014 defined as " the crime perpetrator if involuntarily, ignorant, non-point, child or insane, as it is only the guarantor" in theory if someone is injured minor or non-point the other to cheat, the deceiver will be the guarantor of the cause and type of crime.

In the written materials on crime basis in the act of identifying the sponsor, in order that if the legislator is considering other legal materials before and after the 2014 Islamic Penal Code Article 526 coveys clear strategy to identify and understand the civil liability of the public according to the expression by which the following can be deduced in this regard.

4.1. Fault: According to the provisions of Article 956 of the Civil Code is guilty of negligence and abuse, including measures to illuminate the fault of conventional human behavior with the accused behavior to blame the controversy on the same conditions subject as being measured with a description in the mentioned article (Katouzian, 2011), the integrated definition of fault, but it seems that is not the fault of negligence or indulgence in doing something that is appropriate to the norm of society. An example cited in this regard is the traffic rules that are guilty depreciation in the case of violation of any of these regulations.

4.2. Intentionality: The case of conventional human deliberately with his will predict adverse operating results and in this regard, to study the behavior of language to another entry result predict the result of intentional whether perpetrator or expected results and current documents in his behavior or intentional responsibilities.

4.3. Cruelty: Cruelty means being wrongdoing, enmity, oppression and injustice. In law and jurisprudence cruelty is that if it means violating the rights of others, we carefully we realize that cruelty means the intentional lies and violence. Usurp dominion over another person's property to be cruel. Literally cruelty means oppression apparent. And to condemn the so-called action or omission is contrary to common law or statute or surrender of reason (Rahiminia, 2005). So far, guilt, responsibility or authority on crime to act deliberately and cruelty will be agent or agents (Jafari, Langroudi, 2000).

Conclusions

In the former case law and the community in crime perpetrator, the strict liability perpetrator compensates the loss unless the cause was stronger view of perpetrator and perpetrator even assume the equality of cause and effect, the distribution of responsibilities between the two, is something in unexpected ways in spite of its inconsistency with justice and the rule of law liable to a perpetrator until 2014 to comply with recently enacted subsequent to article 526 in the Penal Code for the proper distribution of responsibility between perpetrators is responsible for compensating the loss although the written law states explicitly the way for detecting the crime based on the agent's action or the agents are effective in the crime occurrence however, based on the conventional routine that formerly was the inferences and the analyses of the law opponents that can be inferred based on the experts' views as the representative for the social traditions for this matter

and the relative justice is placed on the sentence subject a at least is precise for the legislator.

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3/23/2016