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INVESTİGATİNG THE PRİNCİPLES OF CİVİL LİABİLİTY OF THE IRANİAN STATE İN DİSCUSSİNG THE OUTBREAK OF COVID-19

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Abstract

States are responsible for supplying social benefits and achieve this through their managers and organizational enterprises. The expansion of the state's activities has inevitably damaged people in some cases . The arrival of COVID-19 in Iran and not informing accurately by the state, and the lack of medical and diagnostic equipment in the Ministry of Health and Medical Education have caused enormous human and

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financial damages . One of the essential principles of jurisprudence and law has always been the necessity of compensation for the damages caused, expressly stipulated in the Iranian Civil liability Code. Nonetheless, Article 11 of the Iranian Civil liability Code has not considered the state responsible for governmental affairs damages. Based on the existing jurisprudential and legal evidence, there is no justification for the state's non-responsibility and its directors . With a particular focus, the present article tries to solve this critical issue related to the damages incurred due to the outbreak of COVID-19. Hence, by the essential element of justice, which is a principal basis of law, we must consider the state responsible for compensation for the damages incurred. Therefore, accepting the state's civil liability, presuming that its brevity is proven, can help better manage and deal with the disease and other probable future pandemics.

Key words:

COVID-19, Iran, Civil liability of the state, Jurisprudential and legal principles, the Damage, Vaccination.

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Table 1: Abbreviations

COVID-19	Coronavirus disease 2019
COVAX	The COVID-19 Vaccines Global Access
GHSA	Global Health Security Agenda
IHR	International Health Regulations
PHEIC	Public Health Emergency of International Concern
SARS-CoV-2	Severe acute respiratory syndrome coronavirus 2

1. Introduction

The world is faced with a completely new pandemic of Coronavirus disease 2019. The way we defeat the disease can represent our humanity and be a lesson for the next generations. Challenges of overcoming COVID-19 have shown unprecedented issues. All people should cease continuing the spread of misinformation and collaborate by providing the groundwork to improve public health systems, even for future pandemics. Although the existing immune system is not efficient for tackling COVID-19, it should not defeat our humanity (Evanega et al., 2020; Limsira, 2020).

The disease is threatening the whole world, and the pandemic is still growing with devastating impacts on diverse aspects of human life, including health, social connections, and the economy (Gostin et al., 2020)**.**

According to reliable news published by the Islamic Republic of Iran's media, this virus has first entered the country in February 2020 and quickly infected all the provinces in a short period. Although the Iran government took many precautionary measures from the moment of the virus outbreak and even established the national anti-coronavirus headquarters under the President's direction to fight this disease, the epidemic was so complicated and widespread that it caused a great deal of material and moral damages (Ramezani,2020; Abadi,2020).

Despite all the practices, the government has been blamed for the current circumstance due to the late announcing of virus arrival in the country, continuing trades with China as the virus source, and ultimately the lack of sufficient and/or high-quality medical equipment.

However, the government claimed adherence to health protocols and expressed that had used all the facilities and power for preventing the outbreak.

Subsequent statements by the state officials appear to be proof for the critics' claim and a piece of circumstantial evidence indicating that the necessary precautionary measures were not sufficient since the President explicitly, at the meeting of the National Anti-coronavirus Headquarters, stated that the initial source of the COVID-19 break out in Iran was travelers returning from Wuhan, China, to Qom and Guilan provinces. The deputy minister of Health and Medical Education stated that the ignorance regarding the arrival of SARS-CoV-2 in the country and the simultaneous COVID-19 and the influenza epidemic are the reasons for an incorrect diagnosis. Therefore, the question that comes to mind is that if the Iran state failure in the spread of COVID-19, during which a large number of people were killed and undesirable economic circumstance were created, is proved, will it be possible to sue and blame the state due to moral and material damages incurred?

Immunization law cannot be considered a panacea. Nonetheless, this kind of law is a part of a vast series of national reforms essential for realizing global health security and promoting public health (Berkley, 2019; Ghedamu & Meier, 2019).

Therefore, if adverse effects and consequences are observed in the individuals who were injected as the result of vaccination and public immunization, will it be possible to hold the Iran state responsible as the one in charge?

2. The concept of civil liability of the state in Iran law

Measuring the possibility of claiming damages from the state, in the first place, requires that the civil liability of the state is proved and accepted. Civil liability in legal terms has a primary and specific meaning. In the basic definition, any obligation that the legislature imposes on the individual who caused the damage to compensate is called civil liability. This obligation may or may not have contractual roots (Badini, 2010).

In the specific definition, civil liability is the release of contractual liability. The legislature establishes basic duties for all members of society, and if those duties are violated, resulting in damages, the party shall be responsible for the damage incurred (Moosazadeh, 2008).

The term state has two meanings; In the basic definition, the government includes all public forces and governing bodies (Ostovar Sangari, 2011), and, in the specific definition, it only refers to the executive power (Bahrami Ahmadi & Alam Khani, 2013).

Compensation for the damages incurred on individuals has always been accepted as a principle by various states. However, accepting compensation by the state and public institutions has never been realized until the nineteenth century (Safai & Rahimi, 2013). Lawyers played a crucial role in changing this attitude. The doctrine has divided the functions of the state into two categories: governing and involvement. In the act of state, the state exercises its governing right and national authority in the role of a powerful commander to bring the members of society to the public interest. However, Acta Jure Gestionis refers to private, merchant-like, commercial acts of the state (Katouzian, 2013). This categorization was firstly proposed by French

lawyers and found many supporters in different parts of the world. In the year 1960, this categorization penetrated Iran law. Therefore, In Article 11 of the Civil liability Code of the Islamic Republic of Iran, it is stated that: "Employees of the state, municipalities, and their affiliated institutions shall be liable to compensation when intentionally or due to negligence injure individuals carrying out their duties. However, the respective departments and institutions are responsible for compensating the damage in case it does not result from their actions and is due to defects in the equipment of the aforementioned offices and institutions. Related to the sovereignty of the state, however, if the state takes measures that are necessary to ensure social benefits per the law and causes damage to a third party, shall not be liable to compensate for the damage." Over time, the number of supporters of this theory decreased, and the theory became abandoned mainly (Mirdadash, 2013).

There are several objections to the exception of state liability due to its governing role. Firstly, in Article 2 of the Constitution of the Islamic Republic of Iran, justice is mentioned as one of the main foundations of the Islamic system, and the lack of state liability in the governance affairs is not compatible with the goal of achieving justice (Bahrami Ahmadi, 2012). Secondly, there is no precise criterion in distinguishing and separating governance affairs from *Acta Jure Gestionis* (Safai & Rahimi, 2013), which will lead to misguidance and violation of citizens' rights in many circumstances.

The state infallibility theory has undergone many changes over time, and now states can be held responsible for damages on individuals such as natural or legal entities. The goal, realization of public interest, must

not be used as an excuse to violate the individuals' acquired rights; therefore, compensation must always be emphasized as an inevitable principle.

3. The Jurisprudential and legal principles on the damages resulted from COVID-19

Jurisprudence, as one of the main origins of law in Iran, has a high position. Furthermore, assuming silence, deficiency, brevity, and conflicts of laws, citations to the reliable Islamic sources, and valid juristic opinions to render judgment is an obligation that the legislature has declared. From amongst some of the jurisprudential principles and the purports of law, the state's civil liability shall be deduced for the remedy.

The rule of "prohibition of detriment" is one of the jurisprudential rules which has great importance in Islam, and it is observable in different laws of the Islamic Republic of Iran. On the grounds of this accepted principle in all the legal systems of the world, provided that the person inflicts an injury to someone, he/she has to compensate it; thereby, regardless of whether he/she is a natural or legal entity, the liability to remedy is a religious and lawful obligation (Jafari Langroodi, 2013). If a liable person does not perform the duties responsible for and omits an act whereby an injury inflicts on people, he/she is liable for the compensation of material and spiritual inflicted injuries and damages.

The COVID-19 caused damages to many people, thus well-adjusted to logic, and justice is the remedy. Wherefore, the state can be considered liable for the inflicted damages due to the lack of appropriate procedure

of assigned duties procedure about on-time information concerning the entrance of the disease and precautionary measures that should have been taken.

Having regard for other rules called causation, if a person engenders damages to others by doing the act or by its omission, he/she is considered responsible, as explicitly mentioned in the laws of other countries (Entezari & Mohaghegh Damad, 2012);

Despite the state's efforts, critics believe that the state can be looked upon as responsible for all the injuries of the recent epidemic inflicted due to the improper politics taken in the prevention of unnecessary traffics, lack of enough facilities for physical spacing in many places, and public transportation, reopening of schools at the height of COVID-19 outbreak and the encouragement and the requirement of the on-time presence of the employees in offices, creating cross-sectional measures with low efficiency during pandemics and, lack of presenting effective support packages. Assuming these allegations are proven, the state will undoubtedly be responsible for compensating for the economic damages.On the contrary, some have placed the state's lack of civil liability regarding the law rule of Ehsan[3] (Mortazavi, 2016). Under recent case law, if a person inflicts damage to serve and favors others,

[3] Ehsan means Bona Fide or Good Faith; The rule of "Ehsan" is one of the essential rules of jurisprudence, which by paying attention to the content of this rule, can be drawn the principles of fundamentals of guaranty and non-state guarantee in different forms that are per the rule of Ehsan. As an example, it may be that a person acts as Ehsan possible damage, but because of benevolence, he is not the guarantor of compensation; this rule can prove the state's guaranty that the role of "Ehsan" includes negative affairs. One results in this study are that due to the admission of the religious ruler and priority comparison (in comparison the state with the doctor), cannot be proved the responsibility of the state; However, according to the rule of the province of Islamic governor and clearing, the legitimate defense can deny the state's civil responsibility for damages.

his act does not cause liability. It should be noted that the state is in charge of the public serving and supporting all the members of the community, which is compatible with the logic of the rule of Ehsan. Nevertheless, its staff and employees, due to providing such services, receive salaries and terms; thereof, the state deals with security for its target expenses by tax collection.

The next significant point is that providing services will be compatible with the logic of the rule of Ehsan if they shall not contain damages to Muslims. Thereto, if the state service causes troubles, it shall be deemed surety and responsible for the remedy. The legislature in the constitution, as the basis and foundation of all substantive rules of the country, has considered different obligations and duties for the state; but he has not stated anything concerning the sanction of withdrawal-execution from the assigned tasks. Thereon, on the grounds of the mentioned jurisprudential principles, in case of causing damage, the state shall be deemed responsible.

Besides the constitution, civil liability code has explicitly referred to the responsibility of the state. Though there is separation amongst the duties of sovereignty and incumbency and change in past attitudes, the state shall be considered responsible for all cases of causing damages.

4. Expected measures of the Iran state in the face of COVID-19 from the perspective of international regulatory organizations

Immunization is defined as the procedure of developing resistance or immunity intentionally to one or more transmissible diseases (Ghedamu & Meier, 2019; Porta, 2014). As the most routine immunization,

vaccination includes introducing a product, which is often an inactive infectious agent, to prepare the immune system to fight a disease without being subjected to the disease signs.
(Ghedamu & Meier, 2019; Porta, 2014).

Governments are constrained in national attempts to control the pandemic. It seems that COVID-19 cannot be controlled throughout the world without generating a vaccine. An influential vaccine is necessary to limit the SARS-CoV-2 virus spread, prevent reoccurrence, and bring about the final COVID-19 pandemic containment. A higher rate of transmission, repeated outbreaks, and needless deaths will occur without long-lasting protection due to infection and population immunity (Gostin et al., 2020; Graham, 2020).

Generally, international organizations are the key actors in terms of global solidarity issues. These settings do not replace but lead and assist national authorities in playing their roles (Von Bogdandy et al., 2017). Consequently, preventing the reoccurrence of catastrophes needs to be a part of any national or international decision-making. Therefore, the total absence of global solidarity is dubitable in terms of law, morality, and politics (von Bogdandy & Villarreal, 2020). Vaccine distribution and the quality of received or produced products are among the most extraordinary Iranian government challenges concerning COVID-19. As a result, some countries' lack of regulations might delay the rollout or cause the entry of substandard products into the market. (Ghedamu & Meier, 2019).

It is expected that the pandemic will inflict unprecedented suffering in the coming months, and it is now clear that exclusively vaccines can be promising for the COVID-19 threat (Gostin et al., 2020).

The obstacles to universal health coordination and vaccine access are complex. Global health law supports international solidarity in terms of confronting this common threat and can be beneficial in reaching agreements concerning equal access to a promising novel vaccine (Gostin et al., 2020).

Development of civil liability scope might oblige Iran's state to follow international organizations' licenses and adhere to regulatory plans for executing vaccination programs produced whether domestically or by foreign countries under the COVAX program. The COVAX setting distributes vaccines based on a blueprint expanded by the World Health Organization (WHO) as the "fair allocation framework" (World Health Organization, 2020a).

The WHO considers GHSA as "the actions needed both proactively and reactively for minimizing the hazard and influence of acute public health events endangering the health of people throughout geographical areas and international boundaries (Ventura et al., 2020; World Health Organization, 2020b, 2020a)." This alliance would aim to emphasize global health as a leading national priority and guarantee global health security (Gronvall, 2020). Considering the International Health Regulations, nations should be fully prepared to manage the diseases with global outbreak risk. In other words, the diseases need to be identified, diagnosed and treated promptly, and other countries should be informed of that. The IHR obligations necessary for an influential reaction to pandemic remain unfulfilled, and the facilities have been highly sidelined in the COVID-19 pandemic as the most challenging health crisis of the world in a century (Taylor et al., 2020).

The IHR obliges states to notify WHO of any event that may constitute a PHEIC within 24 hour after public health authorities' assessment (Taylor et al., 2020; World Health Organization, 2016).

All organizations under the supervision of the Iran government to fight with COVID-19, including the Ministry of Health and Medical Education, are obliged to interact and cooperate with the World Health Organization or other crucial organizations in this field to prevent potential damages such as COVID-19 vaccine mafia by creating integrated plans and mechanisms.

5. The state of Iran and the possibility of claiming material and moral damages resulted from COVID-19

The legislature has accepted claiming material and spiritual damages in civil liability law and assumed these two damages along with each other in terms of potential demands by some applicability. Article 1 of the mentioned law stipulates that "everyone who intentionally or as a result of negligence, without legal justification, inflicts an injury to life or health or property or dignity or commercial reputation or any other right assigned to individuals, wherefore material or spiritual damage resulted, he/she is responsible for the damages caused by his act."

Additionally, having regard for Article 171 of the constitution referred to the judge's liability, the claiming material and spiritual damage, as a right, can be received for the aggrieved person. It should be noted that regarding claiming spiritual damage, though it is explicitly declared in the letter of the law, some deem the claiming of it without justification in theory, practice, and morality (Naghibi, 2010; Barikloo, 2000).

Whiles, some, regarding the argument of several jurists on the obligation of all remedies and the applicability of spiritual damage in the definition of loss (Ansari, 1995; Bojnordi, 1989; Al-Hosseini Al-Maraghi, 1996), deem it permissible to demand spiritual damages (Asghari Aghmeshadi, 2003); At present, the recent case has almost been accepted in the Iranian courts.

Regarding claiming the inflicted damages, most of the guarantee laws have referred to the natural entity. Whereas, on the grounds of the principle of unity of personality of natural and legal entities in Article 588 of the commercial law of Iran, the discretion between these people is not permissible except in rights and duties that just the human being may naturally have; therefore, the state must be regarded responsible for cases that cause damage to the other. In the events that the incumbent state acts as the legal entity, no doubt exists in its responsibility, but in the case of rendering sovereignty, the assumption of civil liability of the state face further questions, and the witness is the instance of the end part of Article 11 of the civil liability. Thus, assuming the confronting of the state with the hostile country at the occurred imposed war preventing damages to people, it might not be an appropriate and moral behavior to consider it liable, which has arisen with a valuable aim to keep the territory and existence of the country. Wherefore, in many cases, the compensation of the inflicted damages must be disregarded compulsorily.

The compensation of the inflicted loss and damages must be regarded as a principle in different situations; accordingly, even if some damage inflicts on community people, the state must compensate for it (Imam

Khomeini, 2006). Furthermore, if natural disasters inflict loss to the people, regarding the public resources and collected taxes, the state should remedy it; this matter can be deduced from the jurisprudential principle "Al-Kharaj bi Al-Dhiman" often neglected in the issue of jurisprudential documents of the civil liability of the state (Imam Khomeini, 2006). Wherefore, a fortiori must the state be responsible, hence Ayatollahs and sources of imitation in response to the request for a legal opinion concerning the inflicted damages derived from the deficiency of laboratory and medical equipment, Etc. have placed the responsibility of the state to pay the inflicted damages (Saberi, 2018); thereof, producing justice and recover human rights are the main duties of the Islamic state; thereby, one of the most essential is the compensation of the inflicted damages (Imam Khomeini, 2000).

On the issue of the prevalence of Coronavirus disease 2019, some consider the state culprit for the procrastination of the exact notification concerning the entrance of the SARS-CoV-2 to the country and the deficiencies existing in the health department. In the beginning, the state has not taken effective measures for issuing a warning regarding the entrance possibility of the disease to the country; thereof, on the grounds of the jurisprudential principle of warning (Alishahi & Daneshnahad, 2018), it assigned responsible and obliged to compensate for the inflicted damages, including economic problems derived from the prevalence of the virus and the payment of the blood money for the deceased.

Additionally, the lack of health facilities and inappropriate quality of some of the items caused more and more increase in the destructive prevalence of the virus; thereby, if the elements of causation are

presented as the features of tortious liability (the harmful action associated with the fault, loss, and causality), the state can be responsible for the compensation of the damages. Therewithin, proving the fault and laziness in performing the duty by the responsible authorities, particularly the president and the minister of health, the remedies by them is possible.

It must be noted that according to Articles 1 and 2 of the bills of Civil Liability of Iran Public Institutions, which unfortunately have not yet applied in practice:

"All ministries, organizations, institutions and public companies, public, non-governmental institutions, the Armed Forces and the judiciary, all bodies for which the inclusion of public laws and regulations requires that their title to be mentioned or specified, shall be called public institutions in this law and shall be responsible for compensating material, moral and physical damages that their employees incurred on natural or private legal entities as a result of carelessness, negligence, incompetence or unintentional non-compliance with the relevant laws, regulations or systems while carrying out their duties." Also, according to Article 2 of the respective law, "If the employees subject to Article 1 of the respective law, without a legal license, intentionally cause damage to others while carrying out their duties, they shall be responsible for compensating for damage together with the public institution that has hired or accepted them as an agent. If the injured party first refers to the public institution, the

institution then refers to the employee after the compensation for the damage."[4]

The principle of civil liability of the state and public institutions against the damaging actions of employees shall be accepted without any distinction between the possessive and governing roles and, by expanding the state liabilities, the justice realization shall be possible more than ever as the result of compensating the damage incurred on the victim.

Conclusion

The state and state managers' civil liability has always been one of the most challenging legal literature issues. The arrival of SARS-CoV-2 in Iran has been associated with many adverse effects and consequences, e.g., unemployment of a large number of citizens, the creation of an undesirable economic circumstance. And the death of many compatriots (Shamlou, 2020).

Some blamed the state for the current situation due to its failure to report epidemic outbreaks (which were later officially announced by the WHO as a pandemic), COVID-19, and the quantitative and qualitative lack of medical equipment, which led to the current situation.

Governments seek to provide social benefits and earn revenue to manage their affairs by carrying out affairs and involvement. In line with the *Acta Jure Gestionis*, if there is any damage incurred, the Iran Civil Liability Law holds the state liable for compensating while taking

[4] Note: In case that the damage was not incurred intentionally or as the result of the duty, the institution shall not be responsible for compensation due to the damage.

into account several circumstances; Whereas in governing affairs, due to the state's higher goal in realizing the public interest supported by the jurisprudential rule of Ehsan, the state shall be exempted from compensation.

This view has undergone tangible changes in the bills of Civil Liability of Iran Public Institutions; Without considering the separation as mentioned earlier of state and *Acta Jure Gestionis* and based on the fault theory, the state shall be held responsible for compensating the damages.

The principle of compensating for damages incurred has been accepted according to the rules of jurisprudence. Assuming that the state incurred damage concerning the regulations mentioned above, the state shall be obliged to compensate for those damages. Besides, this issue should be taken into special consideration by the legislator in the Iran Civil Liability Law.

It is worth noting that now is the time for the Iran government to seek expanded cooperation with the WHO and other international monitoring organizations. Furthermore, purposeful programs must be created for preparation to face the current epidemic, emerging diseases, and future re-emerging pathogens (e.g., to exchange experiences with other countries in the field of health development and treatment, to increase the capacity of IHR, to review the immunization law to join the GHSA, and to allocate the funds required to strengthen the infrastructure and the capacity of national health and treatment systems).

If there is global cohesion in the face of health and treatment-related crises, one can certainly imagine a clearer vision for overcoming such crises. Among the anticipated achievements in cooperation with international regulatory organizations, we can mention using the latest international experiences in pandemics/epidemics prevention and government officials' efforts to create coherent planning and measures to deal with COVID-19, e.g., the vaccination plan. It provides a way to prevent damage to people and benefiting those in need of immunization will be facilitated. On the other hand, membership in regulatory organizations and adhering to their plans will practically lead to a decline in corruption and intra-organizational and government mafias, such as piling up the vaccine, Etc. Emerging pathogens are still posing serious threats to global health. In case medical actions are taken in time, more lives will be saved (Simpson et al., 2020).

The production and use of national vaccines with high percent efficacy and low side effects, which have the international monitoring organizations' approval, will undoubtedly be more welcomed by the Iranians.

The Iran state must clarify the possible consequences of using vaccines that have not been approved by the WHO. Therefore, it is imperative to establish a coherent and regular monitoring system for vaccination and other treatment measures during the current situation or the next emerging infectious diseases.

To prevent the creation of a vaccine mafia or preparation and distribution of unsupported vaccinations whose effectiveness is unclear or has not been approved by a regulatory body, such as the WHO, strong and public legal actions must be applied against natural and legal

entities who have avoided to take responsibility for the consequences and possible complications after the vaccination process.

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