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Emergency and Civil Liability from the Perspective of Judgment

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Abstract

Social justice is the essence of all human values and institutions when the community realized that the correct values and social justice will not prevail in society, except by taking into account the individual institutions of small and human morality. It is true that natural and human values dictate that everyone is responsible for their actions and if harm to a person or a group, whether civil or criminal should be compensated. According to the definitions of civil liability against damage that leads to the person responsible for compensation. But sometimes people due to internal or external pressures, material or spiritual, or task forces that do not leave without the propensity and might have intended. This kind of forced to coercion, duress and coercion are divided. Social justice is the lack of responsibility of the persons in distress to proceed. Seek mother who earns two sects of Islam regarding the urgency of this position are what get and see if emergency civil liability shall know, or not? To achieve examine this on scholars data to determine whether or not an emergency shall civic responsibility

Keywords: Civil Liability, Emergency, Islam, Shia, Sunni, Rafi

Introduction:

Since the creation of the absolute wise, vain and futile, but the text of the Qur'an which says Sry ((Jinan otherwise relatively high Lynden)) follows the good man and a good way. In order to achieve this objective laws which have been in compliance with the welfare of the rebellion, cruelty, sure it is.

Thus, the legislator, ruling task and if not natural factors and the specific internal, man has taken responsibility.

One of those factors is the state of emergency. Different religions against the agent shall not be responsible for the various positions taken.

Should saw that Islam was against the operating position and the jurisprudence of any Islamic sects, including Sunni and Shiite Islam revered how the emergency and its relation to civil liability How often? Therefore, the civil liability and defines it as the theoretical foundations of Islamic jurisprudence, then the sight of urgency, examine both Sunni and Shi'a.

The definition of civil liability:

In each case, the person responsible for the damages else, say to him or guarantor's liability (legal events consistory Nasser, p. 13)

So civil liability arises when a person is required to repair the damage ultimately results in another civil liability in other words when he realized that the other person is accountable. In other words, the responsibility in cases such as the one in charge and the other injured.

Civil liability as follows:

((Civil liability is to compensate for losses incurred obligations to another person. Whether the loss of the person responsible for the act or acts of his affiliated entities of the objects of property are the property of his or the seizure. (Civil liability, HosseiniHosseinQoli, p. 13)

Principles of civil liability:

Principles of civil liability can fault theory and risk theory, theory guaranteed the right to know.

Guilt theory:

According fault civil liability is not limited extent in the case of adverse events did wrong and only requires that compensation will be unconventional behavior committed was that it the behavior of the cause of the loss of (rules SeyedJavadBojnordi , vol. 1, p. 199).

According to theory to prove fault civil liability should be provided the following conditions.

1. The injured party must prove the guilt of the agent losses.
2. should the result of fault, have suffered losses realized.
3-needed between the fault and losses, causal relationship is established.

Subject losses, according to the theory of fault in the case because it would be absolved of responsibility.

1-Agrdrasrajray legal right to damages.

2-Chanchh damage caused by force Mazur ((force majeure)) or charitable branch is created.

3. In the event that caused the damage is suffered.

Risk theory:

Establish causality sufficient to warrant compensation. What action the agent may or may not involve error (Bojnordi, SM, Volume 1, p. 201)

The results of applying this theory is the result:

First, the injured party is exempt from proving the guilt of an agent.

Secondly, the cause of the accident leads to damages, even if to prove that the losses were not due to his fault, it will be responsible for compensation.

Thirdly, the injured party must be logged in loss or damage to prove causality between the agent and the agent.

Fourthly, if they prove just cause of the accident, the accident occurred due to external force and will be exempt from liability.

Theory guaranteed the right to:

According everybody healthy and safe society, the right to life and this right is granted by law for persons. And the purpose of the rules of civil liability and compensation and guarantee the right to support it.

Emergency (lexical definition)

Emergency Arabic verbal and source of distress Fatal and past participle is a word from Aztar the word from the root, multiplication, multiply, damage taken, as they Yuns verse (11) referred to .

Amadrnzr German scholars from the following meanings emergency amid culture, misery and desperation Draney has Aztrarzkr (Amid Amid culture, faith, p. 123). RaghibIsfahani, meaning it has in terms of urgency. ((Damages, portable parachute A. We attack Ali AmrykrhhVal Ali Zrbyn)) that is forced on the harm is human and humans make on practical mysticism means that despite the propensity, does this mean the Either that, (1) loss due to foreign matter such as the one that threatened to take action due to the loss of 2 is as if the pressure of drunkenness, committed verses of Surah Banaras 126 and 173 refer to the chapter Cow. (Pages 303 and 302 Mu'jam terms RaghibIsfahani words of the Quran) Drams Quran meaning it is an emergency. ((Urgency in the sense of need and compulsion and actually carrying non-on loss: the imposition of perhaps the side and perhaps the state, and it person like illness)) (The vocabulary of the Qur'an Qureshi, Ali Akbar vol. 4, p. 177) Thus, high definition, Necessity may be the socio-economic status, physical, emotional distress or natural disasters and emergencies caused by man. As it is possible that the state of emergency as a result of pressure and threats arise that are entered by the person to another, but the threat directly is not an emergency operation, but he avoided the threat of forced the action is (at the Dadhavthdat, Shahid Mehdi pp. 193 and 244). Among Shiite jurists, the late Mohammad KazemYazdi emphasized this point and in writes:

"The kinds of emergency, the case that one, the other is forced to pay money to the person, there is no choice but to sell the land or house; in this case, force the other to pay for the not selling home (or land) and necessity (urgency), which is located Treatment of sale "(margin Makasib book TabatabaiYazdi, Mohammad Kazem, 1423: vol. 2, p. 42). What words of scholars from German, it can be, that is, in the sense of desperation and emergency hand tight and put a person in this state is relatively spontaneously and Hajtmnd

Legal arguments emergency

Evidence of jurisprudence in Islam is derived from four sources: the Qur'an, traditions of wisdom that allows Vajma we also have to discuss the reasons for the urgency of their authenticity forgive my expression

1-Quran

Emergency Koran

The first and most important source of emergency rule is the Holy Quran. The Holy Quran mentioned 5 Verse the late Holy City (RA) book ((Zubdatul per the provisions of the al-Bayan)) defines an emergency situation and it states that the human being and the person unable to resist it.If these conditions are not met it can be concluded that distress can make use of this exemption.

Kharrazi late great interpretation says: ((emergency means of Fatal desperation and urgency, and originally comes from sinking)) states that the conditions for the realization of the state of emergency and said that God had allowed in case of necessity is forbidden objects. (TafsirKabir, Fkhrrazy Volume 5, 6, p. 24 and 12)

Alusi is a Sunni commentators interpret the spirit Albany says: ((that no human being has the power and starving and will perish if the property was not unlawful, then if at Mdakhvd to not be allowed to commit unlawful acts.))

(Spirit Almany per Karim Volume 1 second component Alusi, SM, pp. 43 and 42)

Tradition

Urgency of tradition is one of the resources for achieving the provisions of, used, among jurists whose accounts referred to tradition.

One of the famous prophetic traditions Drnzdjurists valid fix is very. The credit to the extent that Sunni scholars have and Drat own jurisprudence from the text of the hadith is as follows ((fireproof Prophet (PBUH): Fixed a nation as generosity objects

(Characteristics Sheikh Saduq Page 485, p. 353) But Khomeini's book (refinement principle) refer to their elimination is one of the reasons for the presumption of innocence as he says ((Where Drhdys meet the specified duty of punishment and retribution exempt)) (purification in principle, Imam Khomeini, Ayatollah Vol. 2, p. 233) MirzaNainiLma'asvlyn is a tradition fixes as one of the reasons it is considered valid and the presumption of innocence and says. ((Prophetic qualities of the book is brought to the correct document)) so late Nai (RA) from the famous prophetic Sandal not damaged (Fraydalasvl, MirzaeeNaiVol 3, p 366)

Consensus

Of all scholars and jurists are unanimous on the fact that the person is in distress when a state of emergency if they commit the act or omission, is exempt from criminal liability. However, the civil liability of a person in distress that he had dismissed the civil responsibilities and others to sponsor someone in distress are known.

Wisdom

One of the four reasons for the interpretation of religious orders reason is that wisdom is not wisdom aside religious and sacred religion apart from each other and both have always accompanied

It is only reasonable that the duty of the person in distress is removed. Because it is rationally impossible task Wise Lord and of His servant what He wants us Layton that is not possible

Emergencies in religious jurisprudence responsibility

For the state of emergency is one of the lifter. And this time realized that the condition exists Shiites and Sunnis. All Islamic schools have accepted the urgency is required because the reason is not to punish the person in distress. Religious course for the realization of emergency situations as they offer some kind of religion and how the conditions are different. Mother this part of the state of emergency conditions from the perspective of the four schools of Sunni Islamic sects discuss emergency at a slightly different so that the person in distress when impunity will be provided that the following conditions.

1 Apr Bayar is an absolute necessity in the sense that a person in distress in a state that he or members of his fears for his life.

2. The necessity to be realized. The hunger hungry man cannot come to carrion use.

(3) For the offense means there is no need for disposal. For example, the purchasing power of food to hungry person cannot rely on the theft to the state of emergency.

4-disposal need to be made to the extent necessary. For example, if a person hungry most of the action will be necessary to end his hunger Mosul

Ibn Qudama in the book ((Almghny)) and has a wide range of conditions, some say. ((Not just the size that the garlic is an emergency, but also eat carrion if necessary continuity can add and save to the extent that garlic can also be like this that in the desert of isolated Ghaflh (Almghny Ali Alhrfy brief Ibn Qudama, Sheikh Abdullah bin Ahmed al-Din successful, Volume 11, p. 80)

Compulsion in religion Khams
A compulsion in religion Imami:

Nevertheless, most jurists express terms or examples of the state of emergency have said: here is to briefly mention a few examples.

1. The late scholar al-laws solution in such a state of emergency cases
Return count ((If that fails religious duty and legal obligation to take the case to be brought into place the provisions of the Code (the laws of Islam solution scholar, Ibn Idris, Volume 1 Page 12 connects 166)
2. late Ayatollah Khoei (ra) in his book Al-MesbahAlfqahh and other emergency debate to discuss the presentations can be obtained from the following emergency occurs when be committed and that the law whether through action or omission to be, prohibited, so according to this principle shall be innocent from criminal and civil liability (adjutant Volume 2 Ayatollah Khoei, Seyed, pp. 176 and 169)
3-Imam Khomeini in the book ((pure)) in the definition of an emergency, be ((reason to exist if it is committed in the commission of a prohibited act the legal situation was innocent of responsibility and duty.
(B) Emergency Sunni religion
for achieving all the ideas about a particular issue should be referred to mingle religious books on jurisprudence as to the views that religion was directly or indirectly referred to all of the books is almost non- it may be very difficult, so we are here only refer to the most prominent scholars of religion.
1. Ibn Idris al-Shafi'i emergency Shāfi'īyah great Shafi'i school of Islamic jurisprudence in his book ((Alam)) directly attempt to define the state of emergency does not define the person in distress and emergency cases has been noted. According to the above mentioned in the book can be concluded that the state of emergency that prevailed Brshkhs crime becomes unlawful and criminal liability is not in distress. Imam Shafi'i writes that if the loss is on the rights of people, according to the promise, the compensation will be in distress (pains Shafei, MhmdabnIdris, Vol. 2, p. 270) Therefore, it can be said that the civil liability of a person in distress.

Maliki compulsion in religion

Imam Malik ibn Ana's al-Maliki as religious leaders in the book ((Almdvnh Kubra)) has pointed out the necessity of carefully in the examples above it can be concluded that the state of emergency that has been caused to the person in distress and in this case committed Therefore, no legal action can be taken and in some cases criminal liability, he will have civil liability.
(Almdvnh Malik ibn Anas Al-Kubra, Vol. 1, p. 6 and 28 Vjld 5 p. 369)
3. EmergencyHanbalism

Ahmad ibn Hanbal, one of the Hanbali jurists in the name of religion according to the state of emergency and urgency of the factors responsible shall be punished exempt from Imam Ahmad. He made it a punishable eat meat it is aware that the state of emergency in, and commit permissible if the ḥarāmaction, for distress is essential. (Almghny Ibn Qudama, successful Sheikh al Volume 11, p. 1)

4. The urgency of the HanafiSchool

Abu HanifaHanafi school of Islamic jurisprudence as a leader, but not lose sight of the urgency of urgency, responsibility shall recognize one of the example of Abu Hanifa personal conflict with that of the property refuses helpless person authorized only by hand, not with guns (AltshryAljnayy al-Odeh, Abdul Qadir Volume 2 Page 285 Translation Abbas Shiri)

ShamsuddinSarakhsiHanafiSchool of jurisprudence famous book of his argument ((extended)) knows the state of emergency that has been. Commit an act that under normal circumstances it is the act of a crime and deserve punishment. (Almbsvt ferns, Shams al-Din, vol. 9, p. 141 and p. 270 267 265 30 140

Emergency limit

In case of emergency, it is possible that a person in distress to prevent a greater harm themselves or others, acts have to be caused by it, the harm to others.

On civil liability, considerable discussion about the type of damage and the danger that a person in a state of emergency and put him to repel the forces that act detrimental to the Yazd.

In this regard, some Islamic jurists consider the loss of life and believe that people in situations of emergency be prohibited if the act (unlawful) does not do, is destroyed.

Shiite jurists, the late Sheikh Tusi wrote in this regard:

"Distress a person who fears that if it does not die" (Almbsvt Gray Muhammad ibn al-Hasan, 1999: vol. 6, p. 284)

In this definition, the judge Ibn Albraj his student, Ibn Idris and he, in his book al-Shia have followed different (masalaAlafiaJay factor (martyr II), 1414: vol. 12, p. 113).

jurists also in the definition of public emergency writes:

"Urgency is that people come to the point that if it was not unlawful to die" (GhmzyvanAlbsayr, HanafiHamwi, 1405: vol. 1, p. 277).

Some would go further than, say if the risk of harm, threaten human health, although that killed him not, put the person in a state of emergency.

Shiite jurisprudents urgency in this regard that realized a few things:

Fear of loss: eat carrion if it dies, fear of disease if the patient does not eat carrion, fear of weakness that causes the man left behind, fear of prolonged illness or hardening treatment. . . (Resolution, 1409: vol. 6, pp. 169-168; FeizKashani, 1401: vol. 3, p. 226, in support of this view in public law: ZarkeshShafei, 1405: vol. 2, p. 319, Pearl, 1421: vol. 35, pp. 480-479).

Some jurists territory of urgency to the risk of financial loss if the fear of financial loss Vbrannd developed tolerance to the extent that it is usually difficult and caused hardship, the prohibitions on the commission will be permitted.

Among the writers Sunnis in the morning writes:

"The scholars of the principles of common law, a state of emergency is a situation in which the person seeks to preserve the religion, life, property or his generation from operations will inevitably perish" (fi al-Islam philosophy Lathery, 1980, p. 303).

It seems that in emergency cases of loss, was not limited to loss of life and property, but also when human dignity is threatened also, whether honor a person, less important than the lives and hers no. What is

important here, not the type of loss, but it is important that the person to commit an act is detrimental to avoid a loss, compared with a loss occurred, the larger and more important.

The impact of an emergency on the civil liability

The question raised is that if the person or persons committing acts which caused damage of emergency, would be responsible for them or not?

Generally, in this regard, there are two different perspectives:

In one view, the compulsion does not exempt a person from civil liability and damage suffered by the victim should not be left without compensation in another view, the urgency should be

In this part of the discussion, the study will examine the full Dizzy these two views:

1. The urgency of toys exemption for damage to the other person is not, as a general rule in Islamic law is accepted in Jurisprudence, the jewel of writes:

"If another person to fear for his life or comfort themselves or others (to sea) throw, if the owner does not leave him, because waste and other rules (rules of liability) is a guarantee in this respect, Among those are the wrong way against not seen "(al-KalamNajafi Jewelry, Jewel Mohammad Hasan 1981: vol 43, p 153).

In public law, as well as some jurists have emphasized this point that the emergency would not eliminate other rights (right LaybtlAlaztrarAlghyr). Therefore, since the waste is another person's property, in desperation, known sponsor (Alnmlh, 1420: pp. 95-93).

seems that from the point of view of law and jurisprudence, based on the rule of waste in cases where the distress is provided solely to destroy other property is also. The waste, in jurisprudence, there is no difference between stewardship and other medical practitioners and conventional waste is generated solely responsible for the truth.

Accordingly, for the can refer distress, it is sufficient that the causal relationship between his action and damage to their customary to prove. (Alnavyn MARAGHI Hosseini, Seyed Mir Qtah 1413: vol. 2, p. 435; rules FqhyhMakaremShirazi, 1416: vol. 2, p. 206).

It may be assumed that denial of responsibility in distress can be resolved in the tradition of clause (we Astra layer) invoked, but as has been said, Hadith mentioned in the gratitude to all imported (Ansari, 1986: p. 324).and it is not related to the civil liability.

Shafi'i but opposed by saying that when in distress with the permission of the law and without infringing the harmful act was committed, promised to guarantee distress is incompatible with religious Abahh (fi al-Islam philosophy Hmsany, 1948: vol. 1, p. 179).

The above argument is based on the legal principle "SharaAljvazYnafy bail", which is raised in public law and in accordance with any legal Sabah permission where there is the issue of liability is excluded.

Response in this regard is that once permission has been given and no liability umbilical legal Abahh (Najafi: p. 146), but with such Zany, only authorized person to be the property of another without consent waste. But just as the legislation requires that distress is not exempt from responsibility

In Iranian law, the legislator in a position consistent with Islamic law, despite emergency as a justification accepted shows the harmful act, and decreed that the emergency case commit a crime, will not be punished. Nonetheless, distress and necessity to guarantee compensation for damage to another's judgment.

According to Article 55 of the Penal Code, "Whoever the event of severe risk such as fire, flood and storm to protect the life or property of another is guilty of a crime, will not be punished, provided that

they do not create danger and act intentionally committed Also at risk is appropriate and necessary for its disposal."And in Note this article reads:" This article shall not blood money and financial liability is excluded. "

It is the responsibility of distress Explain that "emergency work in normal conditions justify fault, but does not rule out the assignment of work harmful to person (as opposed to mandatory) and in this way do not enter any effect on the principles of responsibility makes. So if one of your losses, another mine waste, should provide equivalent or the price (rule loss) (Nasser Katouzian legal events: pp. 179-178).

As an adjustment to the first theory, which can be seen in the countries of the Romano-Germanic legal family, in determining the amount of money they must pay in distress, with fairness and ethical considerations taken into account because although the losses suffered by the losses of another without justification, on the other hand, the distress sentenced to pay all damages to the injured party is incompatible with the principles of justice and fairness. Accordingly, the rights of these countries carte blanche given to judges in such cases, according to the rule of fairness, subject detrimental to pay as compensation for the condemned.

For instance, in paragraph 2 of Article 52 of the Swiss liability law reads: "" Judge, to be fair, the damages inflicted on a person to prevent damage to itself or the third party or avoid a risk another was imminent, determine."

Result:

To explore the views and opinions of jurists Shiite and Sunni scholars found that:

1. All religions have some kind of emergency have made in your legal issues.
2. Documentation of the Quran and the Sunna is often urgency jurists Question
3. The majority of jurists, one of the modal crime urgency and emergency, some accountability shall count from the elements.

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