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The basis of division of responsibility between the causes of damage in Iranian and British law

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Abstract

In British law, the principle is to divide responsibility according to the share of causes, and in liability based on fault, according to the necessity of predictability of damage, judgment is issued according to the amount of fault, and explicit reference to justice and fairness is also a standard that British judges adhere to. They pay attention and also apply in the issue of division of responsibility.

Analytical-descriptive method has been used in this article and we want to know that based on what criteria and criteria the division of responsibility is done, and according to the existing laws, how is the division of responsibility between the perpetrators of damage in Iranian and British law?

The Islamic Penal Code has chosen the theory of equal division, and the Civil Law has mentioned the division of responsibility according to fault, and in some laws, joint responsibility and division according to the intervention of causes have also been mentioned. From the point of view of the theory, the division according to the degree of intervention and the effect of the causes can better answer the problem and be closer to fairness, and in practice, according to the legal foundations of these theories, a single method cannot be proposed in all matters, and each method should be used in a specific case. He applied his argument.

In British law, the principle is to divide responsibility according to the share of causes, and in liability based on fault, according to the necessity of predictability of loss, judgment is issued according to the amount of fault, and explicit reference to justice and fairness is also a standard that British judges adhere to. They pay attention and also apply in the issue of division of responsibility.

Keywords: Loss of cause, identification of cause, division of responsibility.

Introduction

In today's complex and dependent world, sometimes a loss occurs that is difficult to attribute to a specific person or persons. The discussion that is raised here is that when the discussion of the group of causes is raised and several causes are introduced as responsible for the accident, how and based on what criteria should we divide the responsibility among them.

Sometimes they only pay attention to the relationship of causation in order to divide the responsibility, and if the damage is attributed to the perpetrators of the damage in any way, they will be held responsible, and sometimes they pay attention to the fault of the causes, that is, when an agent has committed a fault as the cause. It is introduced, now each of the bases and criteria according to which responsibility can be divided is explained below.

1_The methods of dividing responsibility between the perpetrators of harm in Iranian law

One of the important issues that is raised in the case of community of causes is how to divide the responsibility between the causes of harm, and considering that the law of our country does not follow a single method in this regard and presents different solutions in different places, therefore, regarding how to divide the responsibility of the theories many have been proposed, and the most important theories proposed in this case will be explained.

2- Division of responsibility by joint and several liability

Guarantee in the word means to include, include and commit, and solidarity means to include each other and commit to each other (Bander Rigi, 2013).

Joint responsibility in the term means the responsibility of several people towards a single debt in such a way that the creditor can turn to each of them to collect his debt and demand the whole amount, of course, this does not prevent the debtors from turning to each other.

In the discussion of collective causes, some people believe that when a loss is caused by the intervention of several people, the victim should be allowed to refer to each of the officials to compensate for all his losses.

Because it is assumed that the defendant and the third party have caused the damage together and the action of each has provided the basis for the effect of the other action. Responsibility cannot be divided in such cases, and none of the third

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defendants can claim that they were only the cause of a part of the loss.

For example, if due to the lack of proper balancing by the transport operator and carelessness of the driver of the cargo, the owner suffers damage, according to this theory, the owner can claim the entire damage from the transport operator. Proponents of this method say that the main goal of the lawsuit is compensation and not punishment.

Therefore, the aggrieved party can easily get his right and refer to any of the causes and officials and can collect the damage from one of the causes that currently has the property and is national, and the responsible parties and the perpetrators of the loss can compensate each other to the extent of they refer to their responsibility and fault, and in this way, it gives the victim the opportunity to quickly compensate for the damage without establishing fault and other factors.

The joint and several responsibility of those who have caused damage to the community is proportional to the theory of equality, because in this opinion, each of the necessary conditions for the creation of antagonism is the cause of it, so it is natural that each of the causes of responsibility is for the entire damage (Katouzian, 2008).

Legal cases of division of responsibility in a joint method

In some laws, the division of responsibility in a joint and several manner has been accepted, such as Article 14 of the Civil Liability Law, which says: "In Article 12, if several people collectively cause damage, they are jointly and severally responsible for compensating the damage." Article 12 M. It is about the responsibility of the employers who are jointly and severally responsible for paying the damages.

Another case of note 2 and 4 of article one of the law is the method of execution of financial punishments, which is stated in note 2: "In the case of loss and damage resulting from the crime, the court will order the steward, partner and deputy to pay the loss and damage in proportion to the responsibility of each of them.

He condemns, but the condemned are jointly and severally responsible for paying the total loss. In this article, it has been stated that the convicts are jointly and severally responsible for paying the total loss, and the victim of the crime can go to any of them to collect all the damages caused by the crime, and in Note 4 of the same article, he said that the loss which is issued based on criminal judgments from the legal court, will be subject to the above provisions.

Also, regarding the usurper's property, according to Article 317 of the Civil Code, the law provides joint and several liability for the usurper's property, and the owner can recover the same and, in case of loss, the full or part of the value of the usurper's property from the first usurper or from each of the later usurpers can make a demand and in this joint responsibility, ignorance, coercive powers, etc. have no effect.

Of course, the usurpers can refer to the person whose property has been lost, generally according to Article 318 of AH. The civil guarantor is responsible for the person who has lost the property of the angry person.

Among other legal cases that refer to the joint responsibility between the perpetrators of damage is Article 165 of the Maritime Law. In commercial lawsuits and documents, joint liability is also governed by the Commercial Law, and it has mentioned joint liability in various cases.

For example, in Article 272 of the Commercial Amendment Law, it says that in the event of a definitive ruling on the annulment of the company or the annulment of the company's operations or decisions, those who are responsible for the annulment are jointly and severally responsible for the damages caused to the owners of the shares and third parties, and Article 110 of the Commercial Law also mentions the joint and several liability of the legal entity and its representative.

Equal division of responsibility

Another way to divide the damage among the perpetrators is to decide on equality, that is, to divide the amount of the damage equally among all and let each of them bear an equal part of it.

The problems that existed regarding the employment of multiple dhimmis in a single religion have caused most of the jurists to vote on the issue of equal distribution of responsibility between the perpetrators of harm in the discussion of community of causes.

As Mirza Naini says while considering the impossibility of applying two obligations to a single debt: "If two causes cause damage at the same time, we must be able to verify that the guarantee for each of them is shared."

The ruling on shared guarantee and equality of responsibilities is due to the problems that a group of jurists have regarding the possibility of applying

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multiple duties to a single religion (Katouzian, 2018).

The Islamic Penal Code has also followed this group's point of view and in Article 365, it states in the presumption of interference of causes: "If several people together cause injury or damage, they will be equally responsible for the damage."

This ruling reduces the guarantee of compensation for damages and is against the spirit of the harmless rule, which tends to compensate for unjustified losses. Because in the discussion of the division of responsibility, some of the perpetrators of the loss may not have the financial ability, and on the other hand, the victim can refer to each of the causes according to his share.

One of the advantages of this method is its simplicity and it leads to the result quickly because it exempts the judge from dealing with the degree of involvement of each of the causes and factors affecting it, and there is no need for the judge to determine the degree of guilt of the causes.

But one of the disadvantages of this method is that it does not pay attention to the severity and weakness of the causes and their fault, and it is possible that a person who had a very small effect in causing damage or was not negligent will be held responsible like others, and the same level of responsibility will be directed at him. Which is not consistent with justice.

Division of responsibility according to the amount of intervention:

According to this method, when several causes are involved in causing a loss, the damage is divided according to the amount of intervention of each of the causes. According to this method, the cause and agent whose level of intervention and effect in causing damage was less, his responsibility will be less.

In order to determine the degree of intervention of factors in this method, the conditions and circumstances of causing damage and the way of intervention of factors and even the physical conditions of each of the factors should be investigated in order to determine to what extent each of the factors were involved in causing damage.

According to this method, the intervention of the factors is measured in proportion to the damage caused, and according to the existing conditions and factors, it is checked how much each of the factors had an effect on the occurrence of the damage, whether that agent was at fault or good is not the main criterion, but the effect of the factor and the amount Its intervention in the realization of harm is the criterion.

In order to determine the degree of intervention of means in realizing the loss, in addition to the relationship of causation of all the conditions, the intensity and weakness of the factors, their distance and proximity, and fault or non-fault, the way of realizing the loss and finally the amount of damage caused by the action of each of the means, A comment is made.

The same factors and criteria are manifested in different subjects in their own way, and the method of determining the effect of factors is different in different subjects, and it is necessary to seek help from experts in every subject, although many of the criteria are qualitative and it is not possible to measure the effect. It is defined in a precise way, but it is enough to be close to fairness.

The following part of Article 14 of the Civil Liability Law stipulates: "… In this case (regarding the responsibility of the worker and the employer), the amount of responsibility of each of them will be determined by the court according to the way of intervention of each of them. Also, in Article 320 of the Civil Law regarding the interests of the usurped property, each of the usurpers is responsible for the interests of the usurper to the extent of the time of seizure. In Paragraph C of Article 165 of the Maritime Law, the extent of the intervention of means is also mentioned.

Notes 2 and 4 of the Law on the Execution of Financial Convictions also refer to the amount of intervention of causes, as mentioned in the second note of this article, in the case of losses and damages resulting from the crime, the court will order the manager, partner, and deputy to pay the loss and damage in proportion to the responsibility of each of them. It condemns damage and in Note 4 of the same law, legal rulings are included in these provisions.

This opinion is also compatible with our legal foundations, because on the one hand, in Iranian law, joint liability is against the principle, and the principle is that responsibility and damages are personal, and that everyone is responsible for the damages caused by his own actions, and exceptional rules cannot be generalized to the whole. On the other hand, none of the articles 335 of the Civil Code and 365 of the Islamic Penal Code accepted the method of joint and several liability (Gasemzadeh, 2018).

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Division of responsibility according to the degree of fault

Another method based on which the responsibility is divided between the perpetrators of the damage is the division of responsibility based on the degree of fault, that is, the degree of fault of each of the factors is determined first, and then the responsibility is divided between them based on the degree and degree of fault, in other words, the damage.

Proponents of this method say that according to the principle of proportionality of damage and that everyone should be held responsible to the extent that they can be blamed, the damage should be divided according to the fault, and it is not a proper and fair criterion to divide the responsibility.

In the laws of our country, fault has been considered as a criterion for the division of responsibility, including Article 165 of the Maritime Law, which has paid attention to the extent of their fault in a collision between two ships. In the civil law, in the discussion of the cause and the steward, whenever the loss occurs as a result of the act of the steward and the cause, they pay attention to the fault to assign the loss.

And in principle, the steward is responsible unless the cause is at fault, and cause is a guarantor in the case that according to custom it is aggression, for this reason, fault is one of the pillars of cause guarantee (Katouzian, 2018).

In the second paragraph of the fourth article of the civil liability law, it is also mentioned that the court can reduce the amount of damage by considering that the negligence is excusable and causes the poverty of the guilty party, which refers to excusable negligence and its opposite meaning. This is that if the negligence is not tolerable, i.e. the degree of negligence is higher, the court cannot reduce the damage, and this itself is considered a kind of grading.

The difference between the civil law and the Islamic Penal Code in this regard is that in the Civil Law, Article 335 regarding the division of responsibility considers fault as the criterion, but the Islamic Penal Code does not refer to fault in Articles 334, 336, 337 and 365, as in Article 365 A.H. M. It has been said: "Whenever several people together cause injury or damage, they will be equally responsible for the damage."

You see that the High Court, according to the opinion of the jurists, does not accept the relative guarantee based on the appearance of the articles of the Islamic Penal Code and the comparison of the matter with the community of the cause and the guardian, and believes that in the case of the community of causes, the ruling should be equal, but in response, it should be said that the opinion of the jurists is first.

In this regard, there is a place where the culpability of the causes should be equal, and the jurists were silent on the assumption that the culpability of the causes and the parties to the conflict are different.

And thirdly, one should not compare the issue of association of cause and agent with other situations, because in the case of the involvement of several causes, the extent of the involvement of the agents is different, and such an analogy does not seem correct, therefore, the division of responsibility is relative and according to the fault of the causes. There is no legal prohibition.

The responsibility of the agent whose fault is greater

According to this theory, in the case of interference of causes: if damage occurs as a result of the intervention of several causes, there is a responsible cause whose role and culpability is greater, and the rest of the causes are conventional. There should be no such method, but in practice, guidance and driving officers and official experts act in such a way that they act according to this theory.

Nowadays, guidance and driving officers and official experts in their opinion regarding the total cause of the accident or their theory with a rate of 50% for Each of the parties declare equally, or that one of the parties is 100% guilty, and never comment on the other side, for example, 30% and 70%.

Division of responsibility at the judge's discretion

According to this method, whenever a loss occurs as a result of the interference of different causes, the division of responsibility between different causes should be at the discretion of the judge and his free evaluation with the jury.

Their argument is that because in the end it is up to the judge to determine the fault and the involvement of different causes and the law has not specified how to divide the responsibility and sometimes it has stated the issue in a vague way, the division of responsibility between different causes should also be done by the judge, of course the value And the validity of this point of view is dependent on the share that each legal system

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gives to judicial competence and authority as a source of law.

Division of responsibility in different and special situations of the society of means

Now that the method of ascertaining the reason and different methods of division of responsibility has been explained and the advantages and disadvantages of each have been listed, we would like to examine how the division of responsibility is actually carried out according to the existing laws and what method is applied in its different divisions, because some of Issues are raised that do not fit within the framework of the mentioned rules or have a special text, so we examine the issue in two topics.

Division of responsibility in different cases of interference of causes:

It was found that the interference of devices can be created in different ways, and in each of the modes of interference of devices, the method of division of responsibility is also different, and each of these situations and the method of division of responsibility are explained below.

Division of responsibility in the case of interference of coercive force and defendant's action

Sometimes a loss is caused by the intervention of the petitioner and the force, for example, a third party is harmed due to the icy and slippery road and the carelessness of the driver, or a third party is harmed due to the fall of the mountain and the high speed of the driver. The question is, should the mentioned driver compensate for the entire damage or is he responsible for half of the damage?

French courts, on the basis of fairness, have long considered the authority of Cairo as one of the causes of the loss and divided the responsibility, because according to the assumption that the incident and the damage were caused jointly by the authority of Cairo and the act of the holder, the damage should be proportionate to the degree. The effect of each of the two factors was divided, but a group of professors criticized the judicial procedure and believed that according to logic, the owner should be held responsible (Junidi and Ghamami, 2010).

A group of jurists, Including Katouzian, consider the human cause to be the guarantor of the payment of the total damages in this assumption, and believe that due to the intervention of the Cairo authorities, the level of his responsibility will not be reduced, because logically, it should be said that the judge always searches for all the causes.

It is not the cause of harm, but among the conditions that have created the basis for the damage, it refers to a group that is caused by fault, therefore, in the case where a person's fault has caused damage with the authority of Cairo, only the reason for which the rights are responsible.

It is the fault of the person who has a moral causal relationship with the loss, so he should be recognized as responsible for compensating all the damage and the effect of the external accident should be ignored, and the authority of Cairo is responsible in the event that it is unavoidable, irresistible and unforeseeable for the perpetrator of the fault.

Division of responsibility in the case of petitioner and defendant

Sometimes the loss is the result of the intervention of the claimant and the defendant, that is, the victim himself also played a role in the occurrence of the loss and is one of the causes of the loss and a part of the loss is attributed to him. Although it is possible that according to the rule of action, he does not have the right to refer to other means to compensate for the damage caused to him (Faiz, 1998).

This category believes that when a person acts against himself and causes harm to himself, he does not have the right to refer to others to claim damages, and similar to this rule in British law, it is a common mistake. If the victim is involved in causing the loss due to his own fault, he cannot claim damages for this.

But it should be said that the rule of action is applied when the act of the victim is the main cause or stronger than the act of the person in charge of the loss, and it is more in the place where the victim is satisfied with the act of the victim rather than where his mistake is connected with someone else's fault.

Here, the victim's action Is one of the conventional causes of the accident, but other conventional causes also played a role in causing the damage.

The involvement of the injured party, along with other causes, in causing a harmful accident is one of the presumptive confirmations that several conventional causes have led to the damage and according to the rule, the responsibility must be divided among them, and the third paragraph of Article 4 of the Civil Liability Law is one of the cases of reduction in the amount .

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He considered the damage to be the involvement of the victim in causing the damage, and Article 114 of the Maritime Law also pointed to this point. Therefore, the involvement of the victim in the occurrence of the loss is one of the situations of community of causes, and the responsibility is divided between them, and regarding how the responsibility is divided according to the issue, it is done according to the law of the issue.

If it is caused by driving accidents according to Article 336 of the Islamic Penal Code, responsibility is divided equally, and if it is caused by other issues, the responsibility is divided according to the degree of influence and fault of the parties.

Division of responsibility in the case of the community of cause and steward

Due to the fact that this matter was discussed in the initial discussions, here only the result of the state and its controversial issue are discussed. In the case of the community of cause and steward, such as when a person provides the ground for the realization of a loss and another directly causes the loss, there is almost a consensus that the steward is responsible both in terms of jurisprudence and in terms of the relevant laws, as in Article 332 of the Civil Code.

He stated the ruling of the case and says: "Whenever one person causes financial loss and another is in charge of the loss, the manager is responsible and not the causer, unless the cause is strong in such a way that the loss is usually documented to him. »

Therefore, he is responsible only in the case of the cause, whose role and action is stronger than that of the steward, such as someone who digs a hole in a public road and another person falls in it.

According to all jurisprudential opinions and judicial procedure, as well as according to the provisions of Article 332 of the Civil Code, in the case of the association of the cause and the steward, if their fault and effect are equal, the steward is responsible, and the restriction "unless it is the cause of the equals" conveys the same.

Distribution of damages in the case of indivisible damages

When a loss occurs as a result of the intervention of several causes, according to the previously mentioned material, the prevailing opinion of jurists is on the division of responsibility.

But sometimes a loss is caused by the intervention of several people, and this loss is in such a way that it cannot be separated and cannot be divided, for example, spiritual damages such as grief caused by the death of relatives, loss of prestige, and the loss of credit and reputation, among others. There are damages that cannot be divided and the issue of dividing the responsibility between the perpetrators of the damage poses a problem.

For example, when one person's reputation is damaged due to the intervention of several people, how should the damage be divided between them when compensating for the damage?

Some jurists have accepted the compensation of moral damages by means of money and believe that it is possible to evaluate the loss with money and issue an opinion in this regard, and some, including Dr. Katoozian, believe that according to the issue, an appropriate method for compensation should be chosen.

Nowadays, firstly, the courts rarely rule on moral damages, secondly, the method of declaration by them is also variable and different, and it seems that whenever there is an indivisible damage such as damage to reputation, the loss of beauty, mental anguish, etc. .. Due to the interference of several people, the division of responsibility between the perpetrators of the damage should be subject to the method of compensation.

In this regard, it seems that the best way is for the judge to adopt a method that is close to the request of the plaintiff and that is the best way to compensate, according to the subject and conditions and how the damage was caused.

For example, if a moral loss causes a loss of prestige and reputation of a person who has a proportionate financial situation, the best way is to include the issue in the newspapers and apologize to the person in the relevant trade. Perhaps, in the case of a poor family, the decision to compensate the damage by paying money is a better way.

Of course, some people believe that the right way to divide the responsibility for non-separable damages is to act jointly, and the injured party can refer to any of the causes he wants. However, the application of the joint method automatically causes other lawsuits between the parties themselves, and the same problems arise in the second stage.

Division of responsibility in the case of priority and delay of causes

The association of causes may be longitudinal or transverse, and longitudinal causes means that the emergence of causes and their effects in causing damage are associated with temporal precedence and delay, but in transverse causes, the causes have

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temporal symmetry. They are not associated with progress and delay.

For example, in the case of long tools, such as someone digs a well in the public crossing, and then someone else places a stone next to the well, and a person falls into the well due to hitting the stone. The question is, what is the task in this case and who is responsible?

In this regard, Article 364 A.H. M. Following the opinion of the famous jurists, he accepted the theory of the cause preceding the effect and says: "When two people are aggressively involved in the occurrence of a crime as a cause, the person whose action in the occurrence of the crime precedes the effect of the other cause will be the guarantor, as if one of those two people digs a hole and the other places a stone next to it, and a passer-by falls into the well due to hitting the stone. If the other person is non-aggressive, only the trespasser will be the guarantor."

This article has attached the following conditions to the theory of cause prior to effect

1- The effect and appearance of things should be accompanied by order.
2- The action of both causes aggression.
3- It only states the assumption of the existence of two causes and does not refer to the community of more than two causes.
4- It must cause a crime and does not refer to damages that are not caused by a crime.

The method provided in Article 364 of the M. The division of responsibility in the state of community of causes has long considered the above conditions to be excluded and the primary cause is responsible, but holding the primary cause responsible, especially where both causes intend to waste, seems far from fairness and has adverse effects.

Therefore, this article should be interpreted in a narrow way and it should be considered to refer to a case where the damage is caused by indivisible causes. It means that the interference of means in the occurrence of damage cannot be separated in any way, and also the action of means is aggressive in a way that leads to crime, and he refrained from extending this rule to other cases.

Aggressive (intentional) intervention in the discussion of responsibility division

Another issue that is raised is that if several causes are involved in the occurrence of a loss and the action of one of the causes is intentional in the occurrence of the loss, what is the duty?

According to the last part of Article 364 A.H. M. If the action is one of the causes of aggression, the responsibility will be towards the perpetrator of aggression and it will cause the guarantee to be removed from other causes, even though the jurists consider aggression and intent to harm in the discussion of the group of causes to be the guarantee of the trespasser.

In general, wherever there is intent in damages, the relationship of causation is broken between the error (cause) and the damage, and the damage is imposed only on the intent, because he is considered responsible for the loss. In other words, in the case of compensation for intentional damages, the defendant, despite his fault and negligence, is considered the sole cause of the accident, for the reason that he intentionally uses it as a means of harming and achieving his goal and directs the accidents towards it.

As stated in the last part of Article 331 of the Islamic Penal Code: ".. Unless the passerby intentionally collides with the width of the road and place, in which case not only will he not be awarded damages, but he will also be responsible for the damages. »

According to the rule of action, he should not expect compensation for the damage he caused to himself, and he is considered responsible for the damage he caused to another person, and stopping is the basis and cause (Katouzian, 2018).

The result is that if one of the causes is intentional, it will cause the relationship of causation to be broken and the guarantee will be the responsibility of the intentional cause because it is considered responsible for the loss.

Division of responsibility in British law

In British law, before the adoption of the Common Fault Amendment Law of 1945, according to the rule of common fault, if the injured party was involved in causing the damage, he did not have the right to file a lawsuit and demand damages, and in the common law system, the plaintiff's involvement and fault in the damage caused, in other words, proof Common mistake was considered a complete defense and the severity of this rule and its heavy effects caused the British courts to consider measures for it, including the rule of the last clear opportunity to avoid damage, and this rule was amended with the approval of the amendment law of 1945. The damage would be reduced by the amount of the claimant's share.

If this law stipulates. "In a case where a person suffers a loss as a result of his own fault and the

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fault of another person, the claim for loss and damage of the said person due to the fault of the victim will not be dismissed or canceled; Rather, the losses that can be collected to the extent that the court will reduce the responsibility justly and fairly according to the claimant's share. »

According to the amendment law of 1945, it can be said that the main and first method in the division of responsibility in the complete Lo system is the division of responsibility based on the degree of influence.

Methods of division of responsibility in British law

Division of responsibility based on the degree of influence

According to the phrase "plaintiff's share of responsibility" in the amendment law of 1945, some British lawyers consider the degree of influence as an important factor in the division of responsibility.

As the judge stated in the case of Stapley against Cape Sam Mines Company, the court should discuss the issue of division of responsibility in detail and pay attention to the degree of reprehensibility of each party's actions as a matter of justice and fairness. But I think the claimant's share of responsibility cannot be evaluated without considering the relative importance of his action in causing the loss, regardless of how blameworthy it is (Clarke and Lindsell, 1955).

According to the joint fault law of 1945 and the provisions of civil liability in the 1978 Law of Participation in Claiming Loss, and also the judicial practice of this country, British writers have concluded that in the division of responsibility between multiple causes of loss, the share of each of the officials should be based on two criteria of causation. And determine the ability to blame (Joneidi and Ghamami, 2010).

Therefore, the precision in some of the opinions of the British judges indicates that they consider the share of the parties in the loss as an important factor in the division of responsibility. In addition, the blameworthiness of the act is important for them in cases where the damage is based on carelessness and recklessness.

Division of responsibility based on the degree of fault

In British law, one of the two important criteria resulting from the requirements of justice and fairness is the degree of guilt or blameworthiness of the act.

As the authors say, the term share of responsibility used in the 1978 Law on Participation in Claims of Loss indicates that the division of responsibility is not based only on the criterion of causation, i.e. the degree of influence, and as Judge Denning in the case of Dawiz against "Su On Motor" company.

It has been stated: "Not only the power of causation (degree of effect) of a specific factor but also the degree of blameworthiness should be taken into account in determining the share of responsibility" (Junidi and Ghamami, 2010).

One of the important factors for ascertaining the guilt and responsibility of individuals in British law is the foreseeability of the harm caused, and when a person foresees such harm and causes harm by considering the behavior of a normal human being, he is guilty. And he is responsible for the damage.

Division of responsibility based on justice and fairness

Explicit reference to justice and fairness can be seen in the law of common fault and the law of participation in the objection of damages in England.

According to the amendment law of 1945, in the case of common fault, where the claimant is guilty and blameworthy for a part of the damage, the responsibility of the defendant is reduced. The amount of reduction is the amount that in the opinion of the court is just and fair according to the claimant's share of responsibility.

According to the provisions of the Civil Liability Law of 1978 regarding participation in damage in Iran, where another factor is responsible for a part of the damage, the defendant can, after paying the total damage, receive that part of the damage to be paid to the plaintiff, which is documented in the act. The said agent is to refer to him, the share that can be received is the amount that the court deems to be fair and just according to the level of responsibility of the mentioned person for the loss in question.

So, the main criterion for the division of responsibility in the common law systems, especially in England, is the criterion of justice and fairness, but the court, in the position of examining the requirements of justice and fairness, basically considers the degree of influence and the degree of fault in determining the share of responsibility and the amount of responsibility. Fairness is mentioned as a principle that judges explicitly refer to in their opinion.

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Equal division of responsibility

This method has not been independently accepted as a method and rule for dividing responsibility in British law, and only when the damage is divided equally between the parties who caused the damage, it is not possible to prove different degrees of fault on the part of both parties, and the degree of fault of different causes is unknown.

As paragraph one of article one of the common law of England also stipulates: "If it is not possible to prove different degrees of guilt on both sides, taking into account all the evidence and evidence and the circumstances of the fault, the responsibility will be divided equally."

Sharing responsibility jointly

In the assumption that the act of the defendant has a substantial and main part in this damage, most of the courts in common law are inclined to solidarity and some have also commented on the division of damages, especially in the case where it turns out that the fault of the defendant alone could have caused all the damage. Creates the idea of joint and several responsibility is strengthened and it is one of the hypothetical forms that caused several sufficient causes of damage (Katouzian, 2018).

Division of responsibility and the theory of balance of probabilities (51% law)

According to this theory, the plaintiff must prove that there is at least a 51% probability that the reckless and careless act of the defendant has caused damage, that is, the condition of the defendant's responsibility is that his action has caused damage to the plaintiff in a stronger and more likely way. And if there is a probability that there is more than a fifty percent chance of damage caused by the action of the claimant, the defendant will not be held liable.

The most Important criterion by which the judge considers it possible to prove the attribution of damage to the defendant and order compensation is the criterion known as "but for". That is, the plaintiff must prove that if it were not for the fault or wrongdoing of the defendant, the harmful accident would not have happened and no damage would have been caused.

In this regard, he must at least prove more than 50% probability about the cause of the defendant's act in relation to the damage caused. Perhaps the theory of remoteness is another facet of the application of this criterion (Joneidi and Ghammami, 2010).

This all-or-nothing method is logically compatible with the existing law in civil laws, according to which it is necessary to prove a legal claim based on the balance between possibilities (Harpwood, 2003).

A comparison between the bases of determining the cause in Iranian and British law

We have seen that the laws of our country have proposed several theories regarding the diagnosis of the cause, and each of these theories is based on a separate basis. The theory of equality of causes, regardless of the degree of influence or fault of all the factors involved in the realization of the loss, introduces their sum as the cause.

It is slow and assumes the equality of the factors, and the proximate and immediate cause theory introduces the closest and last factor to the loss as the cause, and the conventional and main cause theory also introduces the factor to which the loss is traditionally attributed as the cause.

In British law, the theory of common fault has been proposed, a theory that has no place in the laws of our country, as we have seen, according to this theory, if two factors are involved in causing a loss, it is considered as a common fault, and we no longer look for the cause in the real sense, because according to In this theory, they believed that no responsibility is created, therefore, the introduction of the cause was practically meaningless, because the plaintiff's involvement in causing the damage makes him unable to file a claim for damages.

Effective factors in the division of responsibility in Iranian law

The discussion that is raised here is that when the discussion of the group of causes is raised and several causes are introduced as responsible for the accident, how and based on what criteria should we divide the responsibility among them? There are several opinions about the cause, and each of these opinions used a basis to determine the cause, and these grounds are the criteria by which the cause is diagnosed and the responsibility is divided accordingly.

Sometimes they only pay attention to the relationship of causation in order to divide the responsibility, and if the damage is attributed to the perpetrators of the damage in any way, they become responsible, and sometimes they pay attention to the fault of the causes, that is, when an agent has committed a fault as the cause. It is introduced, now each of the bases and criteria according to which responsibility can be divided is explained below.

Attribution (causation)

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The first criterion based on which they identify the cause and divide the responsibility according to that is attribution, that is, there is a causal relationship between the damage and the cause of it, and the damage is attributed to it.

This standard is basically applied to absolute and no-fault responsibilities, because in this type of responsibilities, the only factor for knowing the cause of the existence of the causal relationship is in such a way that the loss is usually attributed to the cause.

In the discussion of waste, which does not have an effect on the fault or the mode of intervention in the creation of responsibility, only reference is sufficient, and even if several people directly cause financial destruction, it is sufficient to establish a causal relationship to divide the responsibility between them.

The result of using this criterion is the attribution of the theory of equality of causes and the division of responsibility equally, because in the case of community of causes, when we do not seek the fault of the factors, if the causal relationship is established, the responsibility of the causes will be considered equal.

Fault (foreseeability)

The doctrine of legal scholars also supports the word, as Dr. Katouzian says in this case: "cause is warranted in the case that according to custom it is aggression and aggression, for this reason, fault is one of the pillars of the guarantee of couse" (Katouzian, 2010).

How to intervene

Another criterion according to which the cause and responsibility of the causes are given is the mode of intervention of the causes, the meaning is that by examining the issue and the way of entering the loss according to all the situations and conditions of the realization of the loss, the amount of intervention and the effect of each of the causes is determined. And then divide the responsibility according to that.

According to this standard, non-human factors such as forced accidents and the facilities available during the accident and the manner in which the act is realized are investigated and the extent of the effect of the said factor in the realization of the loss is investigated. And based on that, we divide the responsibility.

The difference with fault is that where the fault is based on the sensory and mental factors of the cause of the damage, such as intent and intention, predictability, carelessness, etc., attention is paid to the way of intervention. Attention is paid to the result of a person's action and its impact.

Discretion of the judge

Perhaps the appearance of the word about the judge's discretion indicates that this issue is related to the time when the standard law does not determine and leaves the matter to the discretion of the judge.

The accuracy of the laws of our country indicates that regarding the purity of the cause and the division of responsibility between the perpetrators of the harm, the law has used different bases and sometimes has kept the issue silent. For example, when the text of the article simply mentions that the responsibility should be divided equally between the perpetrators of the damage (Article 365 of the Islamic Republic of Iran).

Jurists believe that he stated the assumption that the causes are equal and is silent on the assumption that the causes of their fault are different, and also indicates when the responsibility is divided according to the fault (Article 335 of the Civil Code).

It Is true that the basis for ascertaining the cause of fault. But the determination of guilt and the way of dividing the responsibility is a matter that is done by the judge. The existence of different opinions among legal scholars indicates a flaw in the law, if there is a text of practice of religious jurisprudence against it, it is not permissible.

Therefore, in some cases, the law leaves the issue to the court, such as the last part of Article 14. M. M. who states that the court determines the level of responsibility of each of the causes and the way of their intervention.

The law and the society look at the judge as a just and trustworthy person who, with the permission he has from the legal guardian and with mastery of the law and legal sources, is a place of trust and will judge the matter and in many matters that the law relates to. It is silent to them or it is a new issue. If there is no legal text, the judge cannot complain about the opinion and must specify the assignment of the issue.

Effective factors of division of responsibility in British law

In general, civil liability in common law is based on one of the following factors:

A- Intention B- Absolute responsibility C- Negligence and imprudence (Gasemzadeh, 1999).

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According to these principles, it can be said that the criteria for the division of responsibility in British law are intent, causation, predictability, and fairness.

Intention

The first criterion according to which responsibility can be determined is intent. In crimes whose realization is based on the intent of the perpetrator, the realization of responsibility is based on the intent and malice of the cause of harm. In such cases, the intent of the person must be established.

Of course, establishing intent is specific to crimes and cases where intent is one of the main elements of committing a crime. In defense of this theory, British jurist Salmond says: "Every civil wrong is not a crime, and the plaintiff must prove that the harmful act is based on criminal laws." Of course, this standard is raised in the discussion of intentional crimes, it cannot be a suitable factor in coercive and contractual liability.

In the case of association of causes, in case of intentional determination of the parties, the responsibility is towards the intentional agent, as Judge Sumner stated in the case of Blondel against Stevens, "If B, who is a stranger to A, is intentionally involved in causing damage and injury to C, A Even in the case of committing a fault, he is not responsible for the damages caused to C. (Junidi and Ghamami, 2015).

Deliberate action is one of the causes that breaks the chain of causes and the relationship of causality with other causes, and places the responsibility on the agent who was intentional in his act. (Rostami and Shabani Kandsari, 2015).

Causality (reference)

Causality is meant here in terms of the causal relationship, that is, the existence of a customary relationship between the harm and its perpetrator, which is one of the criteria according to which the cause of discrimination is given and the responsibility is distributed according to it.

The existence of a causal relationship means that the harm is attributed to the perpetrator, that is, whenever several people cause harm in an incident, it is checked whether there is a causal relationship between the harm and the perpetrator, and in other words, whether the harm is attributed to him or not?

In the case of absolute responsibilities, the criterion for distinguishing the cause and establishing responsibility is the existence of a causal relationship, and there is no need to prove the fault of the cause of damage. In such responsibilities, the work of the judge is basically easier.

In the laws of our own country

In some cases, such as the provisions related to waste, the mere existence of a causal relationship was sufficient to establish the responsibility of the cause of the loss.

Foreseeability (fault)

From the provisions of Article 221 M. which stipulates: "If someone makes a commitment to act on something or makes a commitment to refrain from doing something, in case of violation, he is responsible for the damage of the other party."

A similar verdict can be drawn. With the explanation that any violation by the obligee in the capacity of fulfilling the obligation makes it impossible to consider what he has done, in whole or in part, in accordance with the agreed action; Therefore, he is considered a violator and is subject to the above article.

This rule has been accepted in British law in almost the same way, and the basic rule in the subject of contractual obligation implementation is considered to be "doing the specific action in a way that exactly matches the conditions stipulated in the contract" (Richard, 1999).

One of the most important criteria used in British law to determine the cause and determine responsibility is foreseeability of loss.

That is, whenever a loss is caused by the actions of one or more persons, in order to determine the cause in fault-based responsibilities, they pay attention to whether the possible loss was foreseeable by the agent or not.

And if a normal person foresees the occurrence of harm in those conditions, they say that the person committed a fault and is responsible for the harm caused.

If in the laws of our country, one of the important criteria for determining a person's guilt is predictability.

The precision in the British judicial procedure indicates that in the case of responsibilities based on carelessness and negligence, in order to determine the carelessness and negligence of the cause of harm, they pay attention to the possibility of foreseeing the harm caused by the cause, and in determining this ability, the behavior of a normal human being (typical criterion) takes into account.

In British law, the defendant is only responsible for foreseeable damages, whether it is contractual liability or coercion, and the rule of foreseeability

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of damages is the behavior of a normal human being in each case (Carroll, 1988).

Fairness

Justice and fairness is the main essence in the establishment of laws and regulations and the legislator pays attention to the point that the law should not be discriminatory and unfair, but should be in the direction of justice, therefore it is assumed that the legislator is wise and justice and Justice is considered in the establishment of laws, and also the judge's opinion and judgment must be fair and just, and this is also assumed in issuing opinions, for this reason, in the dominant legal systems of countries, fairness is not mentioned as an independent rule and in their opinions Judges do not refer to it either.

But in British law, judges seek fairness in their judgments. The explicit reference to justice and fairness in the law of joint fault and the law of participation in the British damages claim is a proof.

According to the amendment law of 1945 in the case of joint fault where the claimant is guilty and blameworthy for a part of the damage. The defendant's responsibility for compensation is reduced and the amount of reduction is as much as the court thinks is fair according to the claimant's share of responsibility (Clarke and Lindsell, 1955).

According to the provisions of the Civil Liability Law of 1978 regarding participation in the cause of damage where another factor is responsible for a part of the damage, the defendant can, after paying the total damage to the damage, receive that part of the damage paid to the plaintiff, which is documented in the act. The mentioned agent should refer to him. The share that can be received is the amount that the court deems to be fair and just according to the level of responsibility of the said person for the loss in question.

Inference

It can be seen that in the laws of our country, which has written laws, the law is used as the primary basis and way of working, but in England, the judicial procedure is the primary source. And on the other hand, since fairness is one of the bases of responsibility in the common law, judges can consider the matter according to the rule of fairness.

Another point is that in British law, predictability is the main factor in establishing fault in the case of liability based on fault. And when the loss has the predictability of the cause of the loss, responsibility is realized, and in this predictability, the behavior of a normal human being is the criterion (Faizabadi et al., 2015).

In the country of Iran, there is also this multiplicity of basis and the law has not chosen a single basis for responsibility and division of responsibility. And in some cases it is only reference and in other places fault is considered as the criterion and regarding the way of ascertaining fault, in responsibilities based on fault foreseeability along with other factors and criteria such as carelessness, impudence, violation and so on. .. in order to determine the fault, the criterion is set, and in some places, it is possible to pay attention to the behavior of the person causing the damage.

Conclusion

Due to the fact that the legislator used different bases in the issue of division of responsibility, therefore, the methods of division of responsibility and the opinions raised in this regard are also different, and each of these methods has merits and demerits.

According to the author, dividing the amount of intervention and the effect of means is closer to justice. Because in determining the cause, in addition to the amount of loss and attributing it to the cause of loss, fault and other conditions of loss are included as criteria, and it has fewer disadvantages than other methods.

For example, in dividing equally, it should be said that the effect and fault of the causes are not always the same, and the verdict of equality may be unfair to some of the causes.

And regarding the division according to fault, first of all, determining the fault of the problem and the criteria for determining its level are qualitative and cannot be accurately measured.

Secondly, in civil liability, we seek to compensate for the loss, and our goal is not to punish, but to make only fault as the criterion of division.

And in the case of joint and several responsibility, in addition to the problems that the jurists have caused, it is an exception rule, so it cannot be extended to other issues, and it is not possible to reach a general rule and rule by inferring some legal articles.

And methods such as judicial discretion and just cause cannot be a suitable criterion for dividing responsibility, because first of all, the requirement of judicial discretion is not exactly clear.

But from a scientific point of view, at present, each of the methods mentioned by the law is only applied in the related matters.

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And in cases where the law is silent, the hand of the judge is open in applying the method of use, and according to the issue, he can divide the responsibility between the perpetrators of the damage. Some of the methods we mentioned above are applied in practice in a scattered way in different subjects.

In the case where the movement of objects is longitudinal and is associated with the order of the effect. In Article 364 of the Islamic Penal Code, the guarantor considers the cause preceding the effect and does not accept participation in the guarantee in this case.

Of course, accepting this rule in all cases where the appearance of causes is longitudinal has adverse effects and is not in line with justice, because the primary cause is not necessarily a strong cause, and ignoring other causes, especially where they intend to waste, is far from fair.

Therefore, the text of this article should be interpreted in the place where the interference of two causes aggressively causes the crime and this interference is irreversible. But in the place where the interference of the causes is not aggressive and causes damage, the division of responsibility should be done according to the amount and interference of the causes.

Where the claimant himself is involved in causing the loss and the so-called loss is the result of the joint action of the claimant and the defendant, the loss is reduced in proportion to the claimant's involvement. But if the loss is the result of the intervention of the defendant and coercive factors, then only the human factor is responsible, and the degree of coercive factors' involvement is ignored, and the discussion of the division of responsibility will not be raised.

In the case of community, the cause and the steward, the law has solved the problem, and according to Article 332 of the civil law, the steward is responsible unless the cause is stronger than the steward, so the discussion of the division of responsibility is eliminated in this regard as well.

In the case of moral damages that cannot be separated, the method of dividing the responsibility is subject to the compensation method, and the courts divide the responsibility among the perpetrators according to the method they choose to compensate the loss.

Regarding the damages caused by the collision of vehicles, the legislator did not leave anything for dispute. And according to Article 336 A.H. M. In any case, regardless of whether the fault of the parties is equal or not.

The responsibility Is divided equally, but the provision of this article has caused a dispute among jurists regarding bodily injuries caused by driving or non-driving accidents caused by the involvement of several people.

And some according to the articles 336 and 365 A.H. M. are of the opinion that compensation, like damages, is divided equally in any case.

And some others believe that the articles of the Penal Law regarding dowry, although they have mentioned the division, but they have stated the assumption that the fault of the causes is equal, and if the fault of the causes and the parties to the conflict are different, it is divided according to the fault of the compensation.

According to the author, in the case of compensation, it should be divided according to the proportion of fault, and if the legislator has an opinion on equal responsibility, such as Article 336 AH. M. He was explicitly pointing to this point, and on the other hand, we have no reason to divide equally, even though this is the practical procedure of the courts.

In British law, according to the 1945 joint fault amendment law and the 1978 law of participation in causing damage, the principle is to divide the responsibility based on the share of each party, but in responsibilities based on fault, the necessity of predictability of the loss causes the responsibility to be divided according to the fault. But the role of fairness cannot be ignored in this regard.

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