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PRINCIPLES OF JUDICIAL CIVIL LIABILITY IN THE AFGHAN LEGAL SYSTEM

The importance and status of civil liability and the need to pay damages, especially in the contemporary machine world, are hidden. Whereas responsibility for the judge can eliminate the worries and concerns raised by the lack of compensation from the judge and play a vital role in ensuring social justice and the realization of a healthy and better functioning judicial system; the civil responsibility of the judge and the outline of its principles seem very important and valuable. In this regard, the majority of the world's countries have focused on this issue to highlight the judge's civil liability in the laws. So the key question is whether the judge in the Afghan legal system has a civil responsibility as an important person in the community. Whenever a judge has civil responsibility, what is the position in the applicable laws of Afghanistan? Or what are the principles of a judge's civil liability? Then, considering the sensitivity of the case, it is understood that the Afghan constitution has not specifically addressed the civil liability of individuals in general and the judge in particular. But the Afghan Civil Code as the preferred law in its Article 776 has accepted the civil liability of persons (including the judge who is also a person) in the event of loss, fault, danger and error.

Therefore, the main purpose of this article is to examine the basics of the judge's civil liability by covering the four legal theories (guilt theory, risk theory, complex theory, and customary theory), so as to resolve the issues mentioned. The above theory received and recognized the preferred theory.

Key words: *Civil Liability, Judge, Guilt, Risk, Compensation.*

The concept of civic responsibility and responsibility

Responsibility is an Arabic word and is taken from the word responsible which means guarantee, commitment, responsibility, accountability, questioning and translation. As in Qur'an in the Asra verse 34: In the legal sense of responsibility, it is the response to one's own actions and non-actions.

Lawyers have used a variety of terms in explaining and defining the term "civil liability". To understand this term, a few examples are listed below.

Civil liability in the legal term is: a person's legal obligation to remedy the harm he has caused to another, whether it is due to his own guilty or to his activity [3]. Some have further used civil liability in the legal term in two general and specific terms: civil liability is used in the general sense where a person is liable to another because of a breach or breach of contract and damage to him or she has arrived responsive. In other words, civil liability is the guarantee of the enforcement of law and obligation on the subject of damages. However, in most cases civil liability is used in a specific sense, and this term applies to liability arising out of breach of contract or delay in the performance (contractual liability) of the contract. Civil liability means, in a particular sense, that a person be held liable for damages to another without the contract being concluded between the two. The responsibility some of the general rules and general principles of civil law, under the heading of "off-contract requirements", is also construed as coercive [9]. Civil liability arises when one is obliged to compensate another for damages; the person who is forced to compensate another is said to have "civil liability" against him [4]. With regard to the concept of civil liability in relation to a judge's civil liability, we can say: "Whenever a judge is responsible for damages to a person as a result of his or her judicial decisions, whether in court or in a lawsuit, Seemed to have civil responsibility" [12].

An important point to be taken into account in this definition is that the damage must be the result of a judicial decision so that we can discuss it in a judge's civil liability, or if a judge buys a house and pays part of the money, his responsibility here is contractual. Whether or not he or she is careless while driving and under someone else's responsibility, this is not the responsibility of the judge as a civil liability, but in such cases it is the other's responsibility, not the special responsibility of the judge.

Now, with a general understanding of the concept of civil liability, we will discuss the civil liability of a judge in the Afghan legal system:

Principles of Judicial Civil Liability in Afghanistan

There are many people in the society who do not perform their duties properly if they are not called interpellation. Therefore, being responsible and accountable for the exact execution of tasks and duties plays a vital role and can serve as a means of pushing for better things in society. In the case of the judge's civil liability, if the judges are held responsible, they will certainly be more vigilant in their judicial decisions and decisions, and any abuses, negligence or assistance in their work cases will be minimal. Of course, the jurisprudence of the judge's civil responsibility is an important and fundamental issue that demands another opportunity. Here we discuss the principles of civil liability of a judge in Afghanistan:

The Constitution and ordinary laws of Afghanistan provide for a privileged position in the judiciary and Article 116 of the Constitution defines the judiciary as an independent pillar of Government of the Islamic Republic of Afghanistan, which has jurisdiction over all natural and legal persons, including the government. He has been delegated and has not left any jurisdiction outside the jurisdiction. Recognizing such a basic position for the judiciary and the judiciary staff does not mean that they have absolute security and no responsibility in the field of judgment and arbitration. But, judges have civil responsibility in Afghan law [8].

The constitution of Afghanistan does not explicitly recognize the responsibility of a judge, but in Article 776 Civil Code the civil liability of individuals is generally stated in the event of a fault or danger. It is therefore understood from the context of this Article that the term (persons) is general and includes the Judge. Thus, in the Afghan legal system, the judge is responsible for his or her fault and should be held accountable [7]. The legislator stated in this article: "Whenever it fails to pay due to an error or fault, it commits to indemnification".

The word "blame" has been used in Afghan law, especially in civil law, in various cases, including the term "blame". The legislator in this article refers to a general law on civil liability that, if the damage is caused by a fault, the offender is responsible for any civil liability and is liable for damages. The judge may also be held liable for any wrongdoing or error in the judgment and trial, and as a result of damages to another. Although the substance of this article considers the effect of error and fault to be one and the same as giving rise to liability, care must be taken as to whether this article is intended or intended to warrant further

interpretation; Matter does not have a clear meaning. Because, according to the legislator, both cases, namely error and error in which the will does not play a role, and the blame which is usually the intention of the willful and malicious intent, are identical and require damages to be compensated. Such an understanding of this article and of knowing the effect of error and blame on this article can be contemplated.

Of course, the substance of this article can be argued that if we consider the judge's damages to be a waste and that the judgment of loss is inaccurate and prejudicial to the judge, this provision would be in accordance with the rule of loss in one of the cases. And it is accepted that: "There is no difference between intention and non-intention, knowledge and ignorance, puberty and immaturity and reason and madness; the reason for this is generally the prophetic rule or Hadith {I am the prophet of the Prophet". This arrangement is no different between error and willfulness, and is a guarantee of both. Article 580 of the Penal Code of Afghanistan also provides: a person who is guilty of an error resulting from an omission L inattention or inability to injure or injure a person, in addition to compensation for imprisonment of not less than 8 months and not more than 1 year, or to be punished with a cash fine. It would be similar to Article 776 of the Civil Code, and as we noted above, we have come to the conclusion that civil liability has been accepted for judges, now that the judge is responsible and We were required to make up for the damages, why we should be responsible for this, and to answer the question, "What is the basis of a judge's civil liability"? In the following we will discuss the theoretical foundations of the judge's civil liability.

Theoretical Foundations of Judicial Civil Liability in Afghanistan

One of the most important goals of civil liability is compensation for damages, and when anyone does harm to others, he must be compensated and held accountable. The question is, what is the basis of responsibility in general and the responsibility of the judge in particular? Why is the claimant liable for damages and not damaging or compensating someone else? In order to answer this question, lawyers have put forward various theories, the most important of which are:

1. Theory of Guilt

The oldest theory on the basis of civil liability, in particular the civil liability of a judge, is the fault theory. According to this theory, civil liability is based on fault, and only one can be held responsible for having committed a fault, and since the principle is justified, the loss must prove the fault of the cause of loss [11]. In the plea of guilty, the loser has a claim and must provide reasons to prove it.

Some of the provisions of Afghan civil law resemble the theory of guilt. For example, Article 793 Afghanistan states about the owner's liability for the act of the animal: "If the animal is found not to have taken the necessary precautions to prevent the occurrence of the accident the owner is liable for damages".

Legislator in Article 790 of Civil Law Afghanistan obliges grandfathers and father for minor damages if they do not take the necessary care: "Grandparents are obliged to compensate for minor damages. If he proves to be, he will take the necessary care in the field or the loss will be with the necessary care. "This article also presumes fault and grandparents are required to compensate for minor offenses; Article 51 of the Afghan Constitution also stipulates the responsibility of the office on the basis of the fault factor". Anyone who has been harmed without a cause is entitled to compensation and can file a lawsuit to obtain it". Although the term "without cause" in this Article is not so clear and precise it is not known. However, what is understood is that the constitution tends to be the culprit in the creation of civil liability and is not willing to accept civil liability without it. According to the Rules of Procedure for Judges' Offenses, the Judicial Offenses of 2008, which are recognized as disciplinary offenses, are as follows:

- Inappropriate treatment of clients;
- Delayed, delayed and inaccurate implementation of law and order duties;
- Violation of the provisions of internal regulations and bills in judicial and administrative matters;
- Violation of the ethical standards provided for in the Code of Conduct for Judges;
- Inaccuracies in office maintenance and supervision;
- lack of job discipline;
- Not paying attention to personal hygiene and the workplace.

The provisions set forth in this regulation, as set forth in Article 7 of the above regulation, include: recommendation, notice, deduction in accordance with the law, conversion and promotion bonus for one year [5]. It is understood from the above material that in this regulation, offenses that give rise to responsibility for a judge are certain disciplinary cases, not specifically the judge's civil liability.

Risk Theory

At the end of the 19th century, as the industrialization of society and the resulting disaster increased, new legal issues arose in the relations of individuals, especially in labor and labor relations, which the theory of fault could not answer. Occasionally, for example, accidents occurred where the person did not commit a fault and the origin of the technical failure was unforeseeable. This has led to the emergence of a risk theory in which the rule of responsibility is the causal relationship between the harmful acts.

According to this theory, civil liability is not to blame; rather, anyone who does something and causes damage to another not guilty will be liable for damages. According to this idea there is no difference between the wise and the mad, the minor and the great, the guilty and the non-guilty, the delinquent and the non-delinquent, and every person in every situation is liable for damages and damages inflicted on others. Proponents of this theory hold that proof of guilt is not necessary to prove fault, but merely that the causal relationship between the act of harm and the damage suffered is sufficient to fulfill the responsibility [1; 10].

Legal scholars have focused on the two theories of guilt and danger from different perspectives and foundations. Given the implications of these two views, the question that arises is whether the judge's civil liability is based on fault or danger?

Decisions and verdicts of a judge that have caused damages to the non-party, if caused by intentional, serious, or serious wrongdoing, will be the fault of the judge based on fault, in which case the judge will be held responsible and liable for damages. But if the judges' decisions and damages are caused by an error or omission that lacks the element of deliberate and grave guilt, the judge has no responsibility but is the responsibility of the government and should compensate the indemnity. In the second assumption, the judge's responsibility is based on the risk hypothesis, and the government assumes responsibility as the community manager and supporter of the judges. Referring to the Afghan Civil Code, some of its materials appear to be in conformity with the theory of risk, and it appears that the materials are based on the theory of risk because they are considered responsible for the harm, including Whether or not it's his fault.

Article 758 of the Civil Code requires non-property compensation to be recovered without prejudice to deliberate loss and deliberate. Article 759 of the Civil Code also states this distinction and states: "Whoever loses non-property, whether in his or her possession, deliberately or unintentionally, shall be liable for damages resulting from his act"; They have been held liable for their harmful acts under Article 762 of the Minor and Non-Auditors and the Hundreds, whilst the blame and intent of the harm other than those are not conceivable and as provided in Article 809 of the Civil Code: "Whenever a person, though It is indefinable to obtain benefits without cause to the detriment of another person, to the extent that he or she has obtained compensation in compensation to the injured party".

In Article 774 Civil Code Afghanistan also states: "A person who commits harmful acts such as murder, assault, assault or other forms of self-harm shall be liable for damages"; It is inferred that one of the important possibilities in relation to the principles of civil liability is in Afghan law, the risk theory that Afghan law in some cases does not require fault for the realization of civil liability and in this case it is likely that the risk theory is the basis of liability.

Complex theory

Initially, although advocates of fault and risk theories believed that their views were comprehensive and each criticized the other, they eventually proved that over time and social change, none of the theories could Loneliness is the basis of responsibility and in all areas responsive to the

basic needs of society. As a result, the proponents of the theories of guilt and danger accepted that their theory would only be perfected alongside competing theory. Because in some cases responsibility must be fault-based and in some cases risk-based liability is more appropriate and closer to justice [10], given the aforementioned provisions in Afghan civil law that appear to agree with Both theories suggest that it can be concluded that the theory of accountability is reinforced by mixed theory, and it seems that the legislator may not consider liability on one theory of risk or fault to be sufficient justice and a combination of the two theories.

Traditional Citation Theory

In Islamic jurisprudence and Islamic law, the theory of civil responsibility is the theory of customary citation. In other words, the jurisprudential basis of civil liability is the customary attribution of the loss to the agent of causation, and according to this theory, the criterion of liability is the causal relationship between customary attribution and the causal agent, and, if established, the causal agent is liable for damages. Whether his behavior is intentional or involuntary; his behavior is normal or abnormal; to profit or not profit from his work, whether it violates other economic or intellectual rights or the right to security and health. Physically and financially harming others, in all cases the loss agent is responsible for compensating the losses incurred [10].

According to this theory that the mystic is the one who is personally harmed, he will be liable for damages. Therefore, those who do not intend to act as harmful minors will be liable for damages if they are deliberate, such as minor insane and insane, because they are legally responsible for the loss.

In Afghan civil law, some believe that since Afghan civil law is based on Islamic jurisprudence and Islamic law, and therefore, in the absence of a legal ruling, a judge is required under Articles 1 of this Act and Articles 130 and 131 of the Constitution, Refer to the general principles of Islamic jurisprudence and Shari' a; also, according to Article 3 of the Constitution, which considers it necessary to disagree with the provisions of Islamic religion, the judge must refer to the general principles of jurisprudence and Shari' a. On the other hand, we know that the line of responsibility without fault in Islamic jurisprudence goes back centuries before the theory of danger was introduced in Europe in the late 19th century [6]. Therefore, the theory of risk cannot be regarded as the basis of civil liability in Afghan law, since the theory of risk has been put forward centuries after the formation of responsibility without Islamic jurisprudence; the theory of fault cannot be the basis of civil liability in Afghan law because it The 18th century, centuries after the emergence of the theory of customary citation in Islamic jurisprudence, cannot be regarded as a complex theory of civil liability in Afghan law, since it is only when the theory of responsibility is based on theories of risk and fault. Because the function of the complex theory is the sum of the two theories. Therefore, none of the above principles can be considered the basis of civil liability in Afghan law, but given the dependence of Afghan law on Islamic jurisprudence and the necessity to comply with its provisions with Islamic law, it can be argued that the basis of civil liability in Afghan law, like Islamic jurisprudence, is customary citation. Impairment is a damaging factor, and fault is one of the factors that help the judge to make this citation, and the claim that Afghan civil law may derive from Islamic jurisprudence and principles from Western law is unreasonable. It seems, because in every legal system, the bases are based on sentences Wish to be imposed. Therefore, the order cannot be obtained elsewhere [10].

Conclusion

Civil liability is the obligation to compensate for the harm those results from one person's action to another. The discussion of civil responsibility as one of the prominent issues in the world is the subject of discussion not only for judges but for all individuals and society. But what has been highlighted in this article is the civil responsibility of the judge and the recognition of its principles in Afghanistan. Thus, the judge has civil responsibility under the laws of Afghanistan and on the basis of four legal theories (fault theory, risk theory, mixed theory, and customary citation theory). Then, whenever a judge commits an error or omission in the execution of a judgment that causes prejudice, Article 776 of the Civil Code of Afghanistan is liable to redress, whether the act is harmful or intentional.

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ПРИНЦИПЫ СУДЕБНОЙ ГРАЖДАНСКОЙ ОТВЕТСТВЕННОСТИ В АФГАНСКОЙ ПРАВОВОЙ СИСТЕМЕ

Значение и статус гражданской ответственности, а также необходимость возмещения убытков, особенно в современном мире, остаются не вполне раскрытыми. Принимая во внимание, что ответственность судьи может порождать собой беспокойство и озабоченность, вызванные отсутствием какой бы то ни было компенсации, и сыграть жизненно важную роль в обеспечении социальной справедливости и реализации здоровой и более эффективно функционирующей судебной системы, гражданская ответственность судьи и изложение ее принципов представляются очень важными и ценными. В этой связи большинство стран мира сосредоточили свое внимание на этом вопросе, чтобы подчеркнуть гражданскую ответственность судьи в законах. Таким образом, ключевой вопрос заключается в том, несет ли судья в афганской правовой системе гражданскую ответственность как важная личность в обществе. Когда судья несет гражданскую ответственность, какова его позиция в применяемых законах Афганистана? Или каковы принципы гражданской ответственности судьи? Затем, учитывая деликатность данного дела, следует понимать, что в Конституции Афганистана конкретно не говорится о гражданской ответственности отдельных лиц в целом и судьи в частности. Но афганский Гражданский кодекс в качестве предпочтительного закона в своей статье 776 признал гражданскую ответственность лиц (включая судью, который также является лицом) в случае утраты, вины, опасности и ошибки.

Поэтому основной целью данной статьи является изучение основ гражданской ответственности судьи путем охвата четырех правовых теорий (теории вины, теории риска, комплексной теории и теории обычного права), с тем чтобы решить указанные вопросы. Вышеприведенная теория рассмотрена в качестве предпочтительной теории.

Ключевые слова: гражданская ответственность, судья, вина, риск, компенсация.