An evaluation of The Equality Act in Civil Liability of Iran Islamic republic

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ABSTRACT

Background: The idea of equality was from the very beginning in all societies. All the concepts and beliefs were replete with this idea. All the divine religions have addressed the equality. The International Bill of Rights has assured the equality worldwide. The constitutions of different countries have supported the equality. Equality in all divisions of law has its specific functions, where it has also a specific function in civil liability. This paper is aimed at investigating the principle of equality in civil liability. The descriptive-analytic method of research has been used in this research where the data collection provided using the library sources, mentioning that the necessary items got provided based upon the judicial verdict. It can come into the conclusion that two types of vertical and horizontal equality in civil liability and how to redress danger have been discussed in this paper. Yet each type of Equality has different functions in order to realize the justice where each has been addressed in this paper.

INTRODUCTION

Civil liability reflects an understanding of equality such that no one is allowed to damage to the people who are in surrounding him/her, where on the equality with two types of horizontal equality and vertical equality can be enforced in civil liability. Accordingly, both these types of equality, redress danger and the causation between these two have to be investigated.

Descriptive Equality:

Every instance of equality is a relation between two or more things that are different in certain ways and the same in regard to some specific property. Accordingly, two things that are distinct can be equal in many respects. Indeed, the relation of equality is not empirical; all humans are equal in possessing bodies, most are equal in possessing intelligence, and others might be equal in possessing wealth. In this regards, there are several criteria for any conception of a real human equality; relation must constitute a distinctive category of being, one that is sustained by host properties in the things related, human equality must be a relation that is grounded upon a host property available to all rational persons. The belief in equality affects our ideal picture of how we should regard and actually treat one another [1].

Imperative equality (equal treatment):

According to this view, the equality means the necessity of equal treatment. What type of equality and among which individual lie in this concept of the equality. Here, it has to be stated that “all people are equal with each other” means that their behavior was equal not all their belongings. However, equality is human science means equality in treatment; it has to address the descriptive elements with their substantial role in ethic codes. It is of importance to know who have equal points with others. Equality of treatment as regards the grant of benefits shall be accorded without any condition of position: Provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on position in the case of nationals
of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory [2].

Equality resources:

To use the idea of equality, the resources embedded with the idea of equality have to be categorized.

International sources:

In the collection of the international sources for human rights, the idea of equality has been applied as “non discrimination” (3). Undoubtedly, Universal Declaration of Human Rights is predominating in the international sources. With regard to this resource, all human beings are born free and equal in dignity and rights. This declaration has been mentioned as a common standard of achievement for all peoples and all nations, mentioning that every individual and every organ of society, shall strive by teaching and education to promote respect for these rights and freedoms using this declaration. All human beings endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This declaration has made a relation between two concepts of equality and human dignity, such that it can conclude these two concepts besides freedom, justice, and peace are fundamentals for other concepts. European Convention for the Protection of Human Rights and Fundamental Freedoms engage the states in having the fundamental rights and freedoms. Getting provided with rights and freedoms in this convention has to be assured. Further, according to article 1 of the Islamic declaration in 1990 act, as all human beings are from a family, then all would be equal in their human dignity and position where non-discrimination among humans would be realized. In this regards, it has to be stated that any discrimination in terms of race, color, language, sex or religious belief or political dependence is forbidden.

Legal resources:

Equality in Islam is essential where it is the main origin for all Quranic verses and prophetic tradition, so as judicial and rational jurisprudence has been originated from the idea of equality, i.e., the people are exactly like comb teeth equal with each other. There is no difference between Arab and non-Arab, unless in the light of virtue. The prophet has said “all human beings are made of soil and all human beings are the grandson of Prophet Adam”. God says people “Have fear of God” who created first Prophet Adam and then the creation started in this way. All verses and Hadiths cannot be embedded in this paper. Further, it can understand the quality as the main principle. Islam has addressed the natural equality in Quran and Hadiths, where the origin of human is provided with the idea of equality regardless of their language and color. Human are different in terms of their body, color, intelligence, effort, laziness and ethic codes. For this, the differences are natural in human beings, however, equality in seen their creation origin. Yet this moral difference as well as difference in intelligence and effort do not prevent from recognition of equality. However, such equality in terms of social and natural characteristics has not regarded (4). The idea of social equality among human beings is not assured, because there is a world of difference in terms of wealth, poverty, knowledge and ignorance among humans. These cases as mentioned, poverty, knowledge, ignorance, wealth and so forth have caused unjust relations among human appear, manifesting in exploitation from social wealth. The discrimination which is manifested in a class of people is not assured in any divine religion. Equality is right among people in relation to how far they are similar in their gifts and talents. Differences among human beings must be reflected in treatment.

The absolute equality of human beings has been mentioned unrealistic. It can be stated that humans are basically equal in rights and duties as there is some degree of similarity in physical and mental traits which enables them to understand and apply rules and laws. It is obvious at the same time that diversity among humans in traits and talents is natural to them; therefore there will be limitations in natural, social and political positions. Some of the limitations are temporary, some permanent; some are infrequent, some frequent. However, a limitation is specific. It may not be generalized to inequality in other rights. The Islamic shariah, in accordance with original uncorrupted creation, does not propound such equality as may ignore individual differences and talents and the natural variety among humans. The very diversity is a great source of good for mankind that the Islamic religion has realized.

On the other hand, any differences in race, color, or language have no effect whatsoever on the application of shariah laws. Islam only points out that such difference are signs of God's greatness, omnipotence, and such differences have their practical advantage in human life as they are the means of identification and recognition. This may be supported with the following verse from the Holy Qur'an.

Comparative right:

In France, The equality is fundamental for legal system in each country. The idea of equality has been reflected in the first article of the declaration for human rights. All human beings are born free and equal in dignity and rights. Further, equality versus the law in article 6 is the equality in access to general occupations at the same article and equality versus expenditures in article 13 of this declaration has been clarified. In French
Types of equality applicable in civil liability:

After understanding the general concept of equality, the types of equality applicable in civil liability should be determined so that the research thematic range is specified. Primarily, we are concerned with explaining two types of equality.

1) Vertical equality:

Vertical equality is in connection with claimants who might affect the activities of each other. Parties who might see themselves in the position of doer and the injured. This concept of equality specifies that their similar conducts mean each is allowed only in a range of legal ways for influencing the latter and is forbidden from influencing by a group of unlawful activities that could be described as "mistakes".

It is observed through this claim that the civil liability system provides a mechanism for achieving equality. It protects one of the parties against the latter in face of mistakes, though it shall not make them equal in their properties, rather they shall be made equal against the protection the law provides in accordance with what they want to do. This is an Aristotelian thinking nature of the "corrective justice": on this basis, equality in the form of equal protection exists against the illegal deviation from the line of normative source (1).

2) Horizontal equality:

The concept of the horizontal equality is concerned with relations between private parties who see themselves in similar situations. This type of equality states people who have similar situations should without attention to the origin of loss receive similar social benefits. The main question concerning the horizontal equality is why should attention be made to a manner inflicting the loss? Are there any differences in a case where a child suffering damage due to a faulty medical action with a case arising from birth or that for all the victims of damage, reparation shall be made in compliance with their needs disrespect of the damage incurring process?

Of course, the concept of the horizontal equality is a more conceptual discussion that refers to states as to how to act in allocating resources. Clearly, it is just for any state to take care of the damage disrespect of the origin of loss and restitute it, but states has little attention to this type of reparation except for rare cases of prohibiting the losses resulting from natural disasters and international wars.

RESULTS AND DISCUSSION

Conflicts or consistencies in Horizontal and vertical equality in civil liability:

As stated previously, equality in civil liability entails two types of equality. On one hand, the discussion on vertical equality which is in terms of the equilibrium between the injured and the one who caused injury for another person, where such equality exists in inherence of the civil liability’s principles. On the other hand, a discussion on horizontal equality is that this one is opposite the vertical equality in civil liability. According to the fact that the relation between the injured and the one who injures people, at first glance, it seems that there is a conflict over horizontal and vertical equality. Now, the main question is lied in the fact that why the civil liability is in conflict with horizontal equality? In response to this question, there are two theories:

The first theory is the common attitude among the social reformists who believe that any compensation plan has to be enforced for the injured of a disaster (6). According to this theory, the right of civil liability is a bottleneck in access to horizontal equality. The second theory says the horizontal equality is required for reducing the need to the system of civil liability, but another method would not be provided. Hence, there is not inconsistency between two concepts of horizontal and vertical equality, but, the inconsistency clarifies the horizontal equality on one hand and continuous use of the system of civil liability as a mechanism in access to vertical liability on the other hand(1).
The barriers in the system of civil liability to access horizontal equality:

This theory says that even with the system of civil liability, horizontal equality cannot be obtained. This is due to the fact that there are barriers to access horizontal equality; refer to following for this.

The civil liability by means of a class of the injured:

Horizontal equality says that it has to be behaved with the injured with regard to their relative sufficiency in a circumstance not based upon the cause of the harm. Yet, civil liability means distraction from these affairs. Inconsistency between civil liability and horizontal equality turns back to the fact that the injured of the civil liability have to ask for the compensation from the one who injured them, but the one who injured others, beside the civil liability, have to be equipped with benefits and governmental facilities.

Decrease of the accessible sources dedicated to the non-civil liability for injured by means of civil liability system:

A strong discussion on the inconsistency between the system of civil liability and horizontal equality is that, only the financial resources are not sufficient for supporting from these two, because the horizontal equality by means of financial resources can be gained, where the loss due to the civil liability would be paid by means of insurance companies or general supports. In this regards, it has to be stated that a majority of people invest on social benefits by means of funds, where they pay less and the requirement for redress danger in civil liability is that less funds would be spent for developing horizontal equality.

Invalidity of moral declaration of non-civil liability for injured by means of the system of civil liability:

The last declaration for forbidding the civil liability from horizontal equality is that only the ones who are injured by others have the right to redress danger with regard to justice. Hence, negative moral judgment and positive moral judgment can be regarded for the declaration of a civil liability (7).

Decline of judicial system of civil liability in developing the horizontal equality:

According to this theory, there is not conflict on horizontal equality, but the inconsistency of the theory of horizontal equality is clarified, i.e., with the existence of horizontal equality, less space for civil liability would be built. The vertical equality is oriented on the concept that the guilty has not to act based upon injuring victim.

The equality of the civil liability:

As stated previously in the philosophical fundamental of civil liability, in civil liability, the main discussion is over the point that while a loss incur, then some people are injured, so here a question comes into mind that who has to pay for the loss?. Which principles have to be applied in the research in order to give response to such question, where what entities have to be built to come to realize such principles? ; In other words, for what reason and with what justification the one who injured people have to be identified in terms of civil liability?, What is the right of the injured for redress danger?, moreover, the objectives and functions of the system of civil liability have to be identified. Further, the main question is ‘does a principle act properly in analyzing the civil liability in order that the equality to be realized’. It is evident that the liability of anyone requires his/her fault, and the main criterion is fault in the system of civil liability. Yet, the criteria of typical fault and personal culpability have been clarified in taking the blame, where the typical fault is more conventional. Here, it is asked whether is a fundamental in a civil liability sufficient?, where it can be referred to the idea of equality to avoid discrimination in the system of civil liability. The writ for redress danger is rational by means of the guilty, because anyone is responsible for his/her actions. The one who cause loss incurs would pay for it, i.e., redress danger. This is not fair some tolerates the effects of other’s actions. The justice says that everyone has to tolerate other’s liabilities (8). With evolution of industrial revolution, monsters appeared who took all capital, influence, technical and academic efficiency, where combat with them came difficult. A worker who used to be injured in a big industrial workshop or a consumer who used to be harmed and injured due to defects of the products, failed to combat with the injury. In other words, the events including the industrial world occurred which no prediction for those event brought about. Gradually, the justice was jeopardized, thus, the idea of equality in civil liability caused inequality appears and this turns back to the fact that unequal behavior in unequal situations is against the real equality. For this, without any doubt, it is assumed that redress danger due to the person’s fault is rational, and it is recommended everyone has to care his/her deeds, but sometimes this is unfair, because approving the fault is difficult and then fault does not have any role in the light of incurred losses. In this regards, a theory oriented to the concept of fault and the circumstances for realization of civil liability were created by which it is stated that the requirement for the idea of equality is paying attention to the effective circumstances, justifying the fundamental of liability and acting a criterion based upon justifying the liability.
Equality and redress danger:
The topic of redress danger is approached in civil liability. Further, one of the main signs for how to redress danger by the use of equality in Iran’s law has been proposed. Redress danger appearing on body can be possible by means of paying for blood money.

Conclusion:
The idea of equality is ambiguous and disputable where two meanings of equality including the descriptive equality and imperative equality have to be differentiated in order to understand what the equality means. According to descriptive equality, all the human beings are equal in terms of their body and being the grandson of Prophet Adam, but, the equal behavior is a necessity in imperative equality. Equality is one of the fundamental principles of human rights which are mentioned in all the acts of human rights particularly in the declaration of human rights. Further, this principle has been assured in Iran’s domestic system. It goes without saying that equality is the fundamental origin in all Quranic verses, where this idea “equality” has been brought about prophetic tradition. It was found out that there are two types of equality including vertical and horizontal equality, where each of them has different function. The relation between the injured and the one who incurred danger has been discussed where redress danger is necessary at this time in order that social justice to be realized. The necessities in today’s life have caused a fundamental in justifying the liabilities appear. Hence, beside the theory of fault, the theories in specific cases have to be acted. In topic of blood money to respect equality, the losses beside the blood money are assured, because everyone’s position in the society is different from other’s position, so the losses incurred to the person would be different.

REFERENCES