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Responsibility of Compensating the Damages and Losses Caused by Terrorist Attacks in International Law and Penal Code of Iran

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ABSTRACT

In addition to their destructive effects on society's discipline and security, terroristic crimes result in inflicting several financial, intellectual and mental damages to their victims. Islamic Republic of Iran is from amongst the countries which has been one of the main victims of terrorism within more than three past decades and incurred numerous damages in this regard. After all, local legislators have not specifically identified these crimes and terrorism issues have been identified by the legislator since the beginning through the innovation of the men of law and judges by using some of the jurisprudential titles or been prosecuted as regular crimes and resulted in issuance of verdict. Such innovation has in turn caused several problems and unfortunately the issued verdicts lack international standards of verdict issuance. Studying with respect to crime considering and proving the responsibility of the natural and legal persons and organizations on terrorist actions and compensating the damages and losses resulted from the actions of a certain group of the same based on international law and domestic law of Iran shall be the subject of this article.

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INTRODUCTION

Generally speaking, crimes impose their certain physical, sentimental and financial damages to those exposed to them. In this regard, terrorist crimes inflict a severe wave of fear and panic together with abundant physical, mental and sentimental damages to their victims. Terrorism is a new concept, of which an important part is referred to the intention to generate fear and panic to reach certain goals. This action with the intention to commit certain crimes defined in domestic penal code composes the mental element of terrorism actions. Terrorist crimes, notwithstanding the purpose and motive, damage the victims in terms of different financial, physical, mental and intellectual aspects. Terrorism phenomenon, though quite extensive in the contemporary world, does not merely requires to be confronted, but also identifying those committing these crimes and imposing the responsibility of compensating the imposed losses and damages to the citizens and public and governmental properties is an issue which shall be importantly and specifically be considered.

First Chapter: Concept of Responsibility in Domestic Law of Iran and International Law:

Evidently, one of the legal plans of Islam to set the social relationships of human is prohibiting imposing losses to others and emphasizing on loss-free life. In Koran and tradition, this rule and duty of the humans have highly been emphasized and imposing losses to others in any manner has been prohibited. According to the clause 5 of Article 43 of Constitutional Law of Islamic Republic of Iran, imposing losses to others is prohibited, and even "nobody may take applying this right as a mean to imposing losses to others or intruding public benefits".

First Part: Responsibility Definition:

The need to compensate for the imposed damages to any person is called civil responsibility. Intentional loss impose not only generates civil responsibility for the committer, but also creates penal responsibility. In other words, civil responsibility assures execution of violation of law and commitment imposed on the loss

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imposer. Civil responsibility specifically means that one is taken responsible due to imposing losses to others without any contract has been concluded between the two. This responsibility, of which a certain part of general rules and principles have been given in civil code as “contract free requirements” is also referred to as natural guaranty. Guaranty or responsibility can be ethical or legal, while also the latter is classified into two groups of penal and civil. However, what matters here is: what are the fundamentals of responsibility in compensating damages? In other words, what is the compulsory power which force any person, namely responsible, to do something against the other? Concerning the offender’s responsibility, three theories are seen as fundamentals of responsibility in law references as the factor of loss imposing, as per the following:

Part 2: Governing Theories on proving Responsibility:

Clause 1- Default Theory:

According to this theory, the basis of responsibility of offender in imposed damages and losses is his default and it is included both intentional and unintentional. Like it may be taken as the basis for offender’s penal responsibility, default may also be seen as the basis of his civil responsibility.

Clause 2- Interests Theory:

This theory is the basis of another, which may be expressed for the offenders’ responsibility, and indicate that anybody who is benefited from the advantages of the action shall also be subject to the losses resulted from the same. Concerning terrorist crimes, as the subject of our discussion, definitely a terrorist criminal is benefitted from the attacks, which is establishing fear and panic and imposing physical, financial and mental damages horribly among the victims to reach his special goals.

Clause 3- Balancing Theory:

Through committing offence, the offender imposed damages to the offended person and the latter’s his financial, mental and physical status in comparison to the offender as well as other people of the society has been defected. Eventually, in order to keep the balance, here is referred to returning the offended person into the pre-committing crime status, the offender shall compensate for the damages of the offended person.

Part 3- Penal Responsibility of Legal Persons and Terrorist Organizations:

Considering the abovementioned discussions, who shall be taken responsible for compensating the damages and losses resulted from terrorist attacks as the discussion of this article shall be studied in the following.

Clause 1- Penal Responsibility of Legal Persons:

Evidently, legal persons are seen to be from amongst the main responsible bodies of these crimes concerning the terrorist crimes in domestic law of the countries as well as in terms of international law, either as ordering parties and main crime assistants or as crime assistants and partners. In addition to local courts, some international penal courts such as International Penal Supreme Court, as per Article 25 of its Articles of Association, are merely competent to apply trial concerning natural persons who committed international crimes.

According to Article 8 of “Declaration of basic principles of justice for victims of crime and Abuse of power, adopted General assembly Resolution 40/ of 29 November 1985: 8. Offenders or third parties responsible for their behavior should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. Responsibility of legal persons, not only is made possible through penalizing them, but also their properties may be used to compensate for the damages imposed to terrorism victims.

Clause 2- Responsibility of Legal Persons and Organizations in International Documents:

In the three clauses of Article 50 of International Convention on Suppression Terrorism Financial Support, it has been accepted that legal persons shall also be subject to penal responsibility proportionately:

a. Responsibility of Terrorist Organizations in International Documents:

In the three clauses of Article 50 of International Convention on Suppression Terrorism Financial Support, it has been accepted that legal persons shall also be subject to penal responsibility proportionately:

It seems although applicability of responsibility includes the government, but considering the fact that the governments are obliged to apply penal execution guaranty, it is meaningless that any government punishes itself or any entity or organization affiliated to it. Therefore, it seems that by legal persons in this article merely non-governmental bodies and organizations have been targeted.

Additionally, accepting penal responsibility for legal persons is one of the innovations of this convention.

b. Responsibility of Terrorist Organizations in Iranian Domestic Law:

Although no specific mentioning has been made in Iranian law to crime considering the establishment of terrorist organizations, but in some articles of Islamic Penal Code, considering mere establishing terrorist organizations as a crime may be found. For instance, in Article 186 of the said code, ratified in 1996, participating in any organized group or community who commit armed riot against Islamic government, presuming the survival of its core, has been subject to severe measures against its supporters and members.

Chapter 2- Conditions on proving Responsibility to compensate for the Damages resulted from Terrorist Actions:

In order to prove the responsibility to compensate the damages resulted from committing crime, existence of certain factors such as damages, harmful actions and causative relation are from amongst the main relevant pillars. Therefore, in this part, first of all we mentioned the financial actions of terrorist crimes as operations resulting in inflicting damages and losses as harmful action, and then we will mention different types of damages resulted from these crimes.

Part 1- Occurrence of Harmful Action (Physical Actions forming Terrorist Crimes according to International Legal System):

The physical element of terrorist crimes includes an extensive range of issues frequently mentioned in international resolutions and conventions and also in most of the countries they have separately been mentioned. There are four general regulations for terrorism in the draft of Anti-Terrorism Law, which consider physical actions included in terrorist crimes to be studied based on such purposes.

Clause 1- Disordering Public Discipline and Security:

By virtue of Article 421-1 of Nouveau code penal France, Decree No.97.757, <www.wings.Buffalo.edu/law/bcls>, terrorism crime has been defined as per the following: "When a person or a group intentionally and with the purpose of severely disordering the public order and law commits terror or threats to do so, then a terrorist action has been committed".

Also PR China Law has taken benefit from the same rule.

Clause 2- Endangering Citizens Lives and Health:

Some of the other international rules and documents have used the "death or severe injury of citizens" rule.

Clause 3- Compulsion of the Governments and International Organization to commit or omit to commit a Certain Action:

The main purpose of terrorists on committing terrorist actions is meeting the certain targets which usually cannot be met through normal methods. Therefore, they put pressure on the government, or in case, international organization, through adopting certain and fearing methods.

Clause 4- Dispersing Fear among People:

The final result of all the terrorist activities, notwithstanding their specific results, it generating fear among the people, whereas the terrorists put pressure on the governments through establishing fear among the people to reach their goals. In US Anti-Terrorism Law, this aspect of terrorism has specifically been emphasized.

Fighting is referred to baring arms or equipping and preparing the same to fearing the people and threat and waving public tranquility and security or with the purpose of make corruptions on the Earth through robbing properties forcefully, whether in land, air or water, at night or day, in city or village.

Physical element of fighting is taking and using arms, while it is not merely limited to those takers and users and its intellectual element as per the law is establishing fear and panic and waiving freedom and security of the public. In legal interpretation, arms are referred to any hot or cold arms, explosives, and other similar items. Therefore, certain actions such as terror, sabotage and fire and wasting properties to confront the regime (Note 1o Article 675 of Islamic Penal Law, ratified in 1996) as well as other similar issues may be considered as fighting. By virtue of Article 286 of Islamic Penal Law, ratified in 2013: Any person, who extensively, commits: felony against the bodily entity of people, crimes against national and international security of the state, spreading lies, disruption in the economic system of the state, arson and destruction of properties, distribution of poisonous and bacterial and dangerous materials, and establishment of, or aiding and abetting in, places for corruption and prostitution, as it causes severe disruption in the public order of the state and insecurity, or causes harsh damages to the bodily entity of people or public or private properties, or causes distribution of corruption and prostitution in a large scale, shall be considered as *mofsed-e-fel-arz* [corrupt on earth] and shall be sentenced to death." All the foregoing issues compose terrorist crimes physical elements.

Part 2- Imposing Damages:

The second element in proving the responsibility to compensate the damages resulted from committing crime is imposing damages. Whereas terrorist crimes are also considered from amongst the crimes against persons, both crimes against properties and security, therefore they include physical as well as mental damages resulted from these crimes.

The range of terrorist crimes victims primarily include persons (legal or natural) and then also include the government in the next level.

Clause 1- Damages imposed to Natural Persons:

Damages imposed to natural persons may be classified into two groups:

a. Damages imposed to physical integrity or physical damage:

These commence from the most severe type thereof, i.e. murder and massacre and also include some issues such as serious physical damages resulted from intentional physical harming, losing body parts, losing senses and different physical harms.

Damages inflicted to the physical integrity and physical damages may include mental effects such as disappointment from life, suffering from losing talents. Therefore, suffer is referred to mental and nervous pressures caused by the damage, e.g. excitement, fear and anxiety, spiritual concern and disorder which is seen in turn as a kind of intellectual damage. In other words, intellectual damages regarding physical damages are the result of the following two issues:

1. Physical pain: that mean, a pain incurred by the offended due to injury or damage imposed and losing body parts.
2. Mental damages: one of the kinds of intellectual damages named in clause 2 of Article 9 of Ex- Iranian Penal Judgment Bylaw, are the mental and spiritual damages incurred to the victim due to the crime in different levels. Mental damages are the result of several causes, inter alia the following:

Mental suffering due to damaged physical integrity: physical damages which result in losing body parts. Mental damages caused by death or physical and mental damages of the relatives: death or severe physical damages caused by terrorist attacks.

The purpose of compensating the damages is not always reinstating the issues to the status prior to the occurrence of the losses and damages appeared, but are relative and alternative compensating for an equal, even concerning some focused financial damages.

Clause 2- Damages imposed to Legal Persons:

Legal persons suffering from terrorist crimes are legal person subject to general law, of which the government is seen as the most significant offended legal person.

Part 3- Causative Relationship:

One of the other conditions on proving civil responsibility is the existence of causative relationship between imposed damage and loss and the action committed by the offender. In other words, it shall be proved that the damages have been caused by illegal action or neglect by the offender.

Chapter 3- Method of prosecuting Terrorists in Iranian Legal System:

No certain mentioning has been made in Iranian legal system to consider terrorist actions as crimes and the method of compensating the damages resulted by the same. Therefore, we shall study the method of compensating the terrorist crimes damages by taking benefit from all the available references.

*Part 1- Compensating the Damages of the Victims of Terrorist Crimes based on Legal Articles:**Clause 1- Jurisprudent Titles identified by the Legislators representing some of Terrorist Manifestations:*

Considering the abovementioned descriptions, whereas processing the terrorist issues is a undeniable necessity, some of the men of law, judges and even new jurisprudents have made these issues to be hearable as documented to some jurisprudent titles such as fighting and corruption in earth.

Clause 2- Problems of documenting on Fighting and Corruption on Earth to confront Terrorist Crimes:

Through monitoring the judgment procedure regarding terrorist issues and the concept of the said jurisprudent titles, certain problems may be extracted in documenting on fighting and corruption on earth to process terrorist crimes as per the following:

- a. Failure to cover all the aspects of terrorist crimes,
- b. Limited nature of fighting and corruption on earth crimes,
- c. Failure to provide the needed pre-conditions to attract the international judicial cooperation,
- d. Disgracing nature of fighting punishments,

e. Failure to issue legal orders representing compensation of damages.

Part 2- Law of Iran in which the principles of compensating the damages of the victim have been mentioned:

Islamic Penal Code, Civil Code, Civil Responsibility Code, and Penal and Civil Judgment Code, Media Code and other rules and codes in which compensation of damages have been mentioned in case.

Clause 1- Civil Responsibility Code:

One of the most important legal references explicitly named the physical and intellectual damages caused by committing crimes is Civil Responsibility Code, ratified on 27/Apr/1960, by virtue of which, civil responsibility of persons shall be based on default. In fact, action without legal permission intentionally resulting in physical or intellectual damages shall result in the offender's responsibility.

Clause 2- Penal Judgment Code:

In Article 14 of this code, dated 2013, it has been stipulated that:

The plaintiff may claim for any and all the physical and intellectual damages and losses as well as those imposed to the potential benefits caused by the crime.

Clause 3- Islamic Penal Code:

Certain parts of terrorist operations were included as crimes by the legislation power through ratification of Penal Code in 1996.

Chapter 3- Compensation the Damages of the Victims of Terrorism Crimes through the Ministry of the Interior:

Since 1996, the Ministry of the Interior has embarked compensating the damages of victims of some of the crimes and provided the measures thereof. It should be explained that the ex- Ministry of the Interior ratified a directive on 16/Jun/1996, namely "method of identification and allocation of credit item No. 105022".

Conclusion:

Notwithstanding the purpose and motivation, terrorism is a violent action or threat which results in fear and panic among the people of the society, endangers their life, freedom and security and eventually disorders the social public discipline and security.

The issue of terrorist crimes in the first step and responsibility to compensate the damages inflicted to the victims of these crimes by those responsible for it in the second, are some ambiguous issues in Iranian and international legal systems. From amongst the important legal and judicial issues ignored in Islamic Republic of Iran, the issue of terrorist actions seems more significant due to its effects on Islamic Republic of Iran country and her people. As mentioned earlier, the methods have been used by the men of law and judges to make terrorist crimes prosecutable and hearable, though having certain uses, but represented several and unbearable problems. These problems, when being with the daily routines and lack of innovation of the judges, shall result in a certain situation that is now seen in Islamic Republic of Iran, where this country simultaneously incurred irreplaceable damages from terror, even those supported by foreign governments, and shall be recognized as one the most important victims of terror in the international society, and it also condemned to commit terror and finance terrorism, and more painfully that such blames are addressed by certain governments who have supported terror in this country and where terrorists live in and travel to them.

According to Article 3 of Islamic Penal Code, hearing crimes committed throughout the country is in the scope of competency of our country's courts and from amongst the duties of these judicial centers. Therefore, no judicial authority is permitted to stop processing the crimes committed domestically and determining punishment for the offenders and their sentences to compensate the damages resulted from the crimes for any excuse, inter alia, unavailability of the defendant(s).

It is essential that the judges in charge issue verdicts as per the global standards to make the terrorist crimes prosecutable and the put into trial the offenders thereof and make the other governments cooperate with Iranian judicial system by documenting on the requirements based on international rules, which a desirable goal not only representing administration of justice for Iran and Iranian people, but also prevents addressing any type of blame in this regard against Iran and may also further result in the legal responsibility of the governments supporting terrorism against Iran, in a way recognizable in the international society. What shall be considered in making good the rights of terrorist victims is that in case of finding the offenders of such crimes, the victims shall have the right to punish them. However, often due to failure to know the offenders, severity of the damages imposed to the victims and extensiveness of these crimes and dominance of victims in making good the rights thereof, the governments shall involved instead of the victims and also the punishments shall be applied by the governments. Compensating the damages of the terrorist crimes victims suffers principal ambiguity and briefing in domestic and international legal and law system and this is a way for the legislator, so conserving its seriously. The purpose of compensating the damages by the government and public bodies in the first stage is

remove the damages and compensating the same as much as possible and reinstating the status to those of prior to the crime. After that, it is the duty of the government and judicial system to take all the required measures for identifying and prosecuting all those responsible for terrorist crimes and punishing and making them to compensate for the damages inflicted to their victims.

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