

EMPLOYER PENAL LIABILITY AGAINST EMPLOYEE OFFENCE IN THEIR OCCUPATIONAL REALM

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Abstract

Essentially, penal responsibility is a personal affair and assuming any other person except committer of the crime is against the certain rules of Sharia and customary law. However, regarding to human progress and in line with the theory of others deed responsibility and danger theory which is accepted in civil responsibility, penal rights of committing criminal act is not on the committer but on other people. One of these examples is in the relation of employer and the worker so that the employer is liable for his workers criminal acts due to their fault. However, the question here is in which condition the worker fault responsibility is on employer? In other words, does the employer have penal responsibility on any criminal act done by his worker or it depends on some conditions? After the survey, it was found out that responsibility of others deed because of being against the rule and principle, conditions like not being intentional the criminal act done by worker and being under the supervision of the employer for assuming the employer as liable on the worker criminal act is obligatory.

Keywords: responsibility of others deed, crime, vicarious liability, atonement, causation, danger theory

Introduction

Penal liability resulting from others deed is the case when the other one is punished because of one's criminal act. In a case that in creating the criminal act he or she is not only participating but also is not aware of occurring such an action. And just because of his position is liable for the crime. In ancient societies if any one committed a crime, his family also was liable for his deed too and would be subject to penalties and sanctions imposed. But Islam and twelve centuries later European law annulled it and the principle of individual criminal responsibility of crime was settled. But from the second part of twenty century in order to meeting social necessities, criminal law again turned to criminal liability arising from the others deed. The principle of individual criminal responsibility was faced with exceptions. In order to get rid of these difficulties the criminal law scholars began to theorizing and justifying the liability of others criminal deed so that nowadays most of lawyers believe that penal liability of others criminal deed is not a true exception over the principle of individual criminal responsibility. But is some kind of return to individual crime responsibility theory and mediator subject liability is justifiable through one of the accepted theories like the theory of assisting in crime theory which is the best one. For example the liability of a chief editor about a press crime in his press, employer about the committed crime of his worker resulting from employment relation and liability of the store owner about his worker extortion is some kind of easing in committing crime and is defined as assisting in crime.

Lawyers have expressed some examples as a penal liability of others deed that through their analysis, we came to the conclusion that penal liability of others deed is clear and everyone is liable for his fault. So most of the cases mentioned under this subject in Iran law text because of having a law relation with fault or negligence in duty and imposing punishment cannot be assumed as a true exceptional example of penal liability. Surely, it does not mean to

refuse this issue in Iran judicial procedure; for example shutting down a store and punishing its owner for extortion of the seller despite the legal and ethical compliance employing the sellers is of clear examples of penal liability resulting from others deed. In this case liability is, not for committing crime by others but in easing condition to commit a crime by others. According to article 12 of civil law 1339 the employer is liable for the faults resulting from his professional and career affairs even if it is done by his worker (Katoozian, 2005, 111). But about penal law, Iran laws silenced about the penal liability of others deed until the article 143 approval in 1392 which to some extent removed this shortcoming from the penal laws of Iran. But it should be mentioned that this article has not determined the whole liability of others deed for example others behavior should not be intentional but it should be resulted of his fault.

Liability of others deed history can be divided in two parts; before and after modernism. (Salahi, 2001, 2) first period belong to before modernism and huge progresses in industry and because work do not perform by newly invented machines, little dangers from job and career activities are occurred. But the second period is after the modernism and superiority of machine force to humans. So that new occurring harms and dangers became frequent because of variable machines and their numerous functions. Afterwards the employers were forced to do their best to improve the conditions and using trained workers or they were liable for the civil and penal losses. But in assuming the employers as a guilty in workers deed there is too controversies. So that penal lawyers invented theories like vicarious liability. And have seen it as an exception for individual penal liability (Herring, 114). In France law despite the superiority of not being liable for others deed (Noor baha 2007, 329) but penal liability of workers deed is on the employers. (Ardebili, 1996, 225) in penal laws if Iran in article 142 before mentioned 1392 for the first time this issue was regarded and some regulations was settled. But before that also there were some controversies about the acceptance of this issue so that some scholar account paying atonement in cases determined by laws as an example of liability for others deed (Babaei, 2001, 10) however some were against that (Ardebili, 2005, volume 2, 68). So it can be seen that liability for others deed, which employers liability about his workers is one of these examples is accepted with huge controversies in penal law, despite these controversies we are going to study this theory, its basis, limitation and conditions of employer liability about his workers during job and career activities in this essay.

Basis of Employer Liability about the Worker Criminal Act

Liability means being responsible to do some work and liable person is the one who have commitment about others in the case that others refrain of doing the assumed work he would be responsible instead of them. So liability is accompanied with commitment. These commitments have not the same domain in civil and penal laws (Ardebili, same, 74). In penal law realm this commitment means acceptance of the consequences of the criminal act. But just because of doing a crime it should not be assumed that committer is the one to punish but he should be acknowledged as a . . . , deserved to be punished first. It means that the committed crime should firstly be accepted by the committer and then we are able to charge him for his fault. Ability to accept the burden of a fault in law terminology is called assignability and they described it as doer having perception and selection power (Ardebili, same, 75). So penal liability is a liability in which the committer in addition to having knowledge and information should have a malicious will and criminal intention, and there should be a cause and effect relation between the crime and committer to assign it to him (Shambati, volume 2, 29). Essentially penal liability means that doing or quitting an act and or having criminal situation is obligatory in order for the law maker to assigning punishment.

However because of human progress and increasing the risks arising from jobs, for assuming the employer as liable for his worker deed who have tried to make profit for his employer in English law they made profit of using the term vicarious liability so that it became an exception in individual crime liability theory that the employer is responsible for his workers criminal deed (Daniel 60). However French law makers in order to justify such a liability regarding the basis of civil liability have referred to fault and danger theories (Mohseni, volume 2, 151) so that everyone due to his investment and fortune is liable for the risks and dangers occurring from it. Also fault theory shows that the criminal act of worker is the consequence of employer easy taking and irresponsibility over his workers. The difference of these two theories and vicarious liability is the fact that in vicarious liability all the liabilities of the criminal act of worker are on the employer (Elizabeth, 526). It means that employer is the only one liable for his worker. (Aghaei Janat makan, 2011, volume 2, 78) but none of these theories namely danger and fault theory as presented in French law, put all the liability on the employer from the stance of his negligence in supervision over his workers and the danger resulting from his investing. But in Iran law before approval of article 142 of Islamic penal law 1392 this issue that who is liable in the cases of others criminal act was not studied completely. However law maker has put this liability on the employer but the resource for such law making is not clear.

For example article 27 of press law 1364 revised 1379 about insulting and humiliating other people reads; when in a press the leader or other Maraje Taghliid were subject of humiliating, the press license would be cancelled and the

chief editor and the writer of the press would be referred to qualified justice court, in such a cases the editor in chief of the press even without any participation physically or intentionally is guilty and liable in this case. Of course the law maker has not determined his liability realm too. However from surveying the other articles like article 9 provisions 4 which say; liability of every one of the articles published in a press is on the editor in chief of that press, we can come to the conclusion that according to fault theory the editor in chief has penal liability to be responsible. Of course if editor in chief liability be assumed as liability for others act.

Even if in liability of others act just one person is responsible and others have no liability and law maker put all of his liabilities on the other one. And not like the article 27 of mentioned law two or more people are liable for the criminal act.so it may can be said that the editor in chief liability in mentioned article is not just for others act but also for not observing the provision 4 of the article 9 of the mentioned law because in liability resulting from others deed on the contrary of some scholars opinion who believe that in liability resulting from others deed, others either intentional or unintentional have committed a crime would be liable(Aghaei Janat makan, same , 82) the others are not liable and all the liability is on the other one because if the saying be acceptable we face a situation in which a criminal act is done and have two committers and two punishment should be applied which is against the justice.

Also law makers have considered the second provision of third article of revision of the laws of food and drink and health and beauty approved 1353 as an example of such a penal liabilities.(Ardebili, same,67). The mentioned provision is as follows; in all the cases mentioned in this law if it found out that some fake articles are mixed with original ones or produced and carried in any form, the director of the workshop or institute is liable and guilty as the committers of this action. It seems that this example also as before mentioned one cannot be assumed as liability of the others deed because there would be two liable and two punishments. The other example which has assumed as an example of others deed liability is wise warranty mentioned in articles number 306 and 605 of Islamic penal laws 1370 namely articles number 463 and 464 of 1392.(Noor Baha, previous, 332) of course with investigation in basis and rules of wise and warranty for paying atonement in specified situations ,its incorrectness became clear; because wise would not be accused to committing criminal act as the liable one is but paying atonement in specific positions is on his burden. However in liability of others deed liable one is condemned to others committed crime and this crime is counted as an penal condemnation for him and wise is not condemned to committing a crime but at the same time should pay the atonement of the committed crime.

It seems that the only example for counting as others deed liability is in the work law approved in1369 where it reads; liability of performing all of the regulation and technical issues is on the employer or managers burden mentioned in article number 80 of this law. Whenever an event occur due to the manager negligence in performing standard regulation, manager or liable one should be responsible for the penal punishments.in this case also the law maker seems to accept the fault theory because employer or liable person specified in this article in fact had negligence in doing his burden so is liable for the committed crime by his workers. Employer is liable not for committing crime but for his liability in regard to his workers. As seen before, because of the law makers refrained of introducing the liable person for others deed before approval of article 142 of Islamic punishment law, even in law texts in the country its result is clear because in expressing the basis and examples of liability of others deed there was controversies among the lawyers so that each of these arguments were flawed. However, as article 142 shows law maker is tended to the fault theory rather than other theories like vicarious liability or danger theory for this kind of liability. (Nabipour, 2010, 133).

Because law maker in this article for assuming others liable for criminal act is regarding not the dangerous act of penal liable of others deed and not essentially to the others liability or vicarious liability but to the fault and negligence taken place of the supervisor or liable person for preparing such allocation for crime to be committed, it in fact is accepting fault theory in liability for others deed. Fault theory says employer is liable for the unintentional criminal act of the workers. Accepting this theory for the basis of such penal liability is not the reason to sum up that penal liability of others deed is not an exception for individual penal liability but as a special rule and for the result of dangerous acts which others was liable in supervising it, is accepted accompanied with individual rule in Islamic punishment law.as the fault theory says liable person should be responsible for his negligence and penal liability is not on others burden and other one vicariously or according to law be liable for it.

Current Status of Liability of Others Deed

Accuracy in article142 of Islamic punishment law 1392 and law texts and also penal liability principles resulting from others deed and other law rules like individuality of penal liability we can exploit two group of conditions in

investigating penal liability of others deed that existence of all are necessary and if one of the conditions be annulled penal liability is put not to the others burden but to the others themselves.

Others conduct condition: One of the most important condition of counting supervisor as a guilty is that the criminal act be done unintentionally (Stephani, 1998, 439).because according to the main principles of the law no one is liable for others criminal act unless the cases where the lawmaker has assumed the people liable in others action according to the penal law and of course this case is not plausible when the case is intentional.so the liability should be limited to unintentional actions only Because of every person being liable for his own criminal act. So committing intentional criminal act is a barrier to accusing his act to the employer and protect employer of being liable on it. According to Islamic law employer liability is one of the most important features in justifying the job and career duties (Ghiyasi, 2011, 229) because when the workers are working under the supervision of their employers , their fault is not compromised because of the employer liability and thus the employer is just liable for unintentional criminal actions of their workers.

There is other reason apart from employers being liable on the worker unintentional criminal act which is violating the regulation set by the supervisor in job and career circumstances.so it should be a kind of difference between this intentional violation of the engineering, technical, sanitary and professional regulations and criminal consequences which employer is liable for them, and there be some cause and effect relation and the committed crime be resulted of these unintentional violation of regulations, in other cases where it would not be possible to set this cause and effect reason , the employer is not liable for it. For example in workshop and with providing the prerequisite conditions by the employer and unintentional uncovering the electricity wires of high voltage by the worker, someone intentionally touch the wires and be killed with the touch, it seems neither employer nor the worker be liable, because despite the intentional negligence of the worker, there is no common causality between this regulation violation and the criminal consequence and the dead person has tried to kill himself. And according to this rule no one is liable for his death, because he intentionally has touched the killing high voltage electricity wires and causality reason between the death and regulation violation is over. Also in this case one can use article 2 of the material 95 of the work law 1368 which reads as follows; if the employers and managers subject to the material 85 of this law if the employer provide all the requisite conditions and utensils and the worker intentionally do not use them, the employer has no liability on the events occurred there. So, intentional violation of sanitary and technical regulations is reason for employer to be irresponsible on the occurred events. The other condition for penal liability is complete penal liability which should be described in upcoming parts.

Conduct condition of liable person for others deed: Material 142 of Islamic punishment law 1392 mention the penal liability of employer on workers criminal actions in work time which is one of the obvious examples for it, merely regards the requisite condition for taking someone liable for the committed crime and declares having liability is the only plausible reason to count someone liable on it. With accuracy on the material and using the conjunctions like "or" among the mentioned conditions, it seems that these two conditions are enough for completing the liability condition for others deed. However, in second condition it should not be forgotten that liable person due to liability in for example providing utensils and negligence in these works is responsible according to the fault theory which says everyone is liable for his duties.

Conditions in above mentioned material especially from committing crime and legal duties is very similar with civil liability principles against the quarantined damaging actions mentioned in material 7 of civil law 1339. Because in material 7 the condition for maintaining the quarantined person has been expressed the maintenance condition. However it should be regarded that if the maintaining person commit fault in his duties and the quarantined person commit a crime , the maintaining person is not liable for his crime but the adult quarantined person is condemned to pay the atonement of the committed crime, also if the insane person commit a crime not to himself but to the others like insulting, the maintaining person is not liable for his action because as said in materials 146 and 140 , this person has no penal liability on his actions. So, conditions mentioned in the above mentioned subject about having conditions of others deed on having penal liability by the others are illustrated. Because penal liability for others deed is imagined where that the others also have the qualification for penal liability completely and liability of committing criminal crime is on the other person. As it is clear penal liability of others deed cannot be put on others burden.

The other condition for putting the burden of criminal act of worker to the employer burden is that committed crime is occurred due to job and career activities related to the employer and employer has legal liability about the environment safety where there has occurred crime. So if the crime is occurred in a place where is not of worker burden, then the worker is responsible about it. And there is no others deed liability to discuss. For example a case can be imagined in which a worker doing his recommended work and workshop environment have problem of electricity

insulation and the floor is not insulated also and worker knows this fact and bring his child to the workshop to teach him professional activities without safety condition and his child was hurt by electricity and severe burning causing from electricity. In this case despite the employer fault in not covering the floor there cannot put the burden on the employer because presence of the worker child is not mentioned in the agreement and his presence liability is on the worker himself.

However, as cited in fault theory the basic principle here is the fact that the employer should do his best to protect the worker safety by providing the best safety condition for his workers. And if any other condition except these lead to workers loss is not of employers liabilities. For example imagine a condition in which employer has provided all the needed condition for safety but worker intentionally or unintentionally refrain of using the safety conditions and cause to some loss. Provision 2 of article 95 of work law 1368 correctly calls the employer innocent in these cases because by providing safety conditions have done his duty completely. The worker by violating the lawmaker condition here is the liable and in other words guilty for his negligence here.

Evaluation of some Assumptions

With accuracy in some materials of work law, civil liability law, Islamic punishment law, jurisprudence principles and rules some of the following assumptions can be investigated about the penal liability of others deed:

- First assumption is a case that employer do not teach the proper instruction to worker in order to do works well and safe. So if the crime is occurred the employer is liable because worker is forced to do a work with high amount of risks.
- Second assumption is that worker commits a crime in the given responsibility. This assumption has the qualification of assuming the employer being liable and having penal liability about it.
- Third assumption is where a crime is committed due to doing some work but there is doubt whether lack of education or worker negligence is the crime cause. In this case we can conclude that worker is not liable but in employers liability there is some doubts because it is clear that the crime has occurred due to negligence or lack of provisions by the employer. If worker had fault in his duty he is liable. But if worker have no knowledge and have no instruments the employer is liable.
- Fourth assumption is the case that worker deliberately commits a crime in his duty; in this case due to the lack of penal liability condition resulting from others deed and occurring such crimes un intentionally, employer has no liability and worker himself is liable because intention in employer and worker relation cause to not assigning the committed crime to the employer.

Conclusion

Nowadays liability of others deed which one of its obvious examples are the employer liability on the workers committed crimes, accompanied with individual penal liability principle are determined by authoritative resources because of job and career necessities and removing dangers to the others.

Due to the Islamic punishment law 1392 penal liability for others deed according to the fault and mistake theory is accepted and its prerequisite condition is being unintentional in committing crime by the others and negligence of liable person in providing the instruments and removing possible dangers from the work place. Thus by accepting the fault theory namely fault and negligence of employer in providing safe work place it can be emphasized that liability of others deed as cited in Iran law and Islamic punishment law 1392 is not an exception to individuality of penal liability but as a necessary rule accompanied with human huge progresses is accepted by lawyers and Islamic punishment laws. From the jurisprudence point of view liability of others deed is not a new case. It is cited in Islamic punishment rule as a rule of " cause is stronger than assistant". In which the worker as an assistant of doing a crime unintentionally has less liability in comparison to the employer who has not provided a safe place to work. Also liability of others deed cited in Iran law is not as same as cited in common law's vicarious liability, because in vicarious liability, all the liability is on the worker and due to the laws command it is the employer who has the liability.

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