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The Evaluation of the Penal Responsibility from a Non-Practice Process

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ABSTRACT

Background: Along with the appearance of the new civilization and the new progression, there have been constructed new achievements in relation to the criminal actions and one of these new cases are subjected to the penal responsibilities from a non-practice verb or action. **Objective:** Everyone is responsible for his or her actions and nobody can be committed to other ones' doings as responsible in this regard. However, is it possible to consider someone as responsible for not doing something as criminal actions or the same person as the partner of the criminal issues? Is it possible to issue an innocent person's prosecution trying to make him or her as convict? **Results:** The logical responsibility of paying the blood-money in one of these exceptional cases should be also considered here. **Conclusion** The approach of the personal affair is subjected to the origin that is roughly absolute and exceptional based on the punishments because the Islamic legislation knows everyone as his or her responsibility and nobody can be considered as the guilt of another one' penalties.

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INTRODUCTION

Along with the appearance of the new civilization and the new progression, there have been constructed new achievements in relation to the criminal actions and one of these new cases are subjected to the penal responsibilities from a non-practice verb or action; this establishment of the new penal issue should be entered into the punishment affairs. Because the person who never cooperating in a crime would be convicted to the criminal action.

Research purposes:

- 1- Due to the recent regulations in the penal rights, is it possible to accept the basics of the penal responsibility from a non-practice action?
- 2- The objection and compliment of the personal affair of the punishment would be represent able when the personal penal responsibility is accepted
- 3- Is it possible to specify the penal responsibility from a non-practice action in Iranian rights?
- 4- How can convict someone as a convict while he or she did not make a crime?

Research necessity:

Due to the exceptional nature of the subject and the acceptance of the representation of this regulation in Iranian penal courts and the arrangement of this regulation to the up-to-dated contexts, the necessity of achieving the related research is one of our main purposes in this regard.

MATERIALS AND METHODS

A direct referring to the library resources (Persian, Arabic, English and France) and the usage of the Internet can be considered as the main references of the research and the lack of cohesive legislation as well as its acceptance and in the other hand, the controversial disputes of some researchers and experts have been considered as the obstacles and problems of the present study in this regard.

Research hypotheses:

- 1- It cannot be considered the base of the penal responsibility from a non-practice action into a framework of the guilt, mistake and spiritual subject theories because in relation to the acceptance of these theories, the subject of the penal responsibility from a non-practice action would be negligible in this case.

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2- The basics of the personally affair of the penal responsibility is an absolute and exceptional affair; hence, the penal responsibility of a non-practice action would be represented. Usually, the punishments are from a non-practice action; therefore, the hypothesis of the penal responsibility would be negligible without the intervention of the material element and the representation of the criminal abuse in this case.

Chapter one:

Penal responsibility:

First discussion:

Terminology of the penal responsibility background:

The responsibility means the ability of asking something coming along with the obligation of something semantically; another author has defined the responsibility as following:

The legal commitment of a person to remove an event of damage happened to another one (Jaafari Langhroodi, 1999). In the edited law texts there is no specified a clear definition in this regard. But some researchers and professors have defined the responsibility as the obligation or task of tolerating the punishment that indeed it is subjected to the fulfillment or the lack of achieving of something (Ali Abadi, 1964). In fact, the penal responsibility is a kind of bridge between the crime and convict; that is, the action is called the crime that has been devoted to someone and this is the same convict legally; in terms of the background, the penal responsibility from a non-practice action is divided into two separated cycles that the first cycle is subjected to the Hamoorabi's legislation; in this cycle according to Article 116, 209, 229 and 230 the above mentioned legislation is related to the penal responsibility from the non-practice action and the publicity and the collectivism of the penal responsibility in ancient era have been devoted to its features; in the second cycle, the appearance of technology and industrial progression as well as the intense requirements of the job force have been regarded in the social relations in this pavement.

Second discussion:

The regular basis of the penal responsibility in Islamic and legislative systems:

The basic of the penal responsibility in the classic style of the 18th century is based on two beneficent approaches providing the social welfare through the government in this regard. it can be stated that the classic style is a combination of the punishment beneficent and absolute justice. The fanatics of the related style believed that the man commits a crime with his or her full virtue and wisdom; so, the same person has to be punished according to the social justice; but in contrast there have been critics on this theory that the most important critic is subjected to the fact that the related style is only devoting to the carried out action; that is, it is pointed to the crime not to the convict physically and spiritually. The basics of the penal responsibility in the 19th century is based on the freedom of virtue and neglecting of the authority and the founders of the theory consider the crime as a social disease and they believe that the punishment is the reflection of the social crime; based on this, the convicts have been divided into five groups of the crazy, mother-born, addiction, sudden and sensory people; and the most important theory is subjected to the rejection of the wisdom and virtue (Gholdoozia, 2004). The represented verses in the Holy Quran and the prophecy quotes have been pointed to the penal responsibility in Islamic rights. Also, the freedom and the perception elements of the penal responsibility issues can be structured in this mood.

Chapter two:

Penal responsibility from a non-practice action:

First discussion:

Basics and right theories:

Due to the exceptional nature of the punishment responsibility from another action and because of the composing elements of the action as positive and negative forms, the criminal action of a convict seems to be consciously; it also is considered as an interior form of a convict committing the crime in this path. The jurists have struggled more to represent a logical reason for this exception action not having any opposition against the punishment logics and penal justice (Gholdoozia, 2004). Hence, due to the legislation if we cannot design a righteous relationship between the crime and convict, it cannot be relied on the penal responsibility legislation at all. In the acceptance of the entire theories of the guilt, risk and spiritual subject of the crime, this penal responsibility will be neglected in this regard.

Second discussion: conditions of supplementation of penal responsibility from a non-practice action:

The necessary conditions of the punishment responsibility from another action are as following: (Validi, 1995):

- a- Criminal of the main action
- b- Non-intentional action in committing a crime
- c- The existence of a commitment or a task from a contraction

d- Commitment of a crime during the achievement of duty

Third discussion: penal and civil responsibilities from a non-practice action:

a- Logical responsibility in paying the blood-money:

The wisdom of Article 307 of Islamic punishment legislation represents that the relatives of the males of parents can heritage hierarchically and the payment of the blood-money should be paid by same offspring and Iranian administration has determined responsibility for the person who never committed a crime; according to the Articles of 50, 211, 221, 296, 305-315 of Islamic punishment legislation, the payment of the blood-money being committed by non-matured people has been predicted that it is considered as the clear reasons of the penal responsibility from a non-practice action in Iranian legislation.

The responsibility of a journal manager:

In Iranian legislation, the recognition of people as responsible is one of the most debating and challenging topics in terms of the judiciary and the press legislations. The manager is responsible for publishing the press. The main question is whether the responsibility of the manager can be related to the penal responsibility from a non-practice action or no. Some researchers consider the acceptance of the penal responsibility from a non-practice action in Iranian legislation from the Article 48 issued at 1945 and believed that the manager is the main responsible person of the published magazines; hence, the penal responsibility of the criminals in the press affairs is subjected to the responsibility of the manager of the magazine. Of course, the responsibility of the same person is not subjected to the criminal actions (Ardabili, 2002).

The governmental responsibility in paying the blood-money:

Sometimes a person commits a crime in a community but the government pays the blood-money due to the restricted conditions from the Beit Al Mal; there have been of course issued some regulations in this legislation as well; according to the Article 236, 244, 255, 260 and 313 of the Islamic penal legislation, the responsibility of the blood-money payment is subjected to the government considered as a non-practice action in Iranian legislative perspective.

Responsibility of the government in guilt or a judge's mistake:

In Iranian legislation, the mistake of a judge is one of those cases that the government is responsible for its recovery in this regard. The issue of this legislation is accordance to the Article 171 of the constitutional law and Article 58 of the Islamic penal legislation representing that when a judge makes a mistake giving financial damage on someone, the government is responsible for making the damage up immediately in this case. Thus, the subject has got its own civil aspect being considered as the civil responsibility from a non-practice action in Iranian legislation.

The governmental responsibility and municipality for their employers:

The Article 11 of the civil responsibility is one of those reasons in recovering and compensating any damages happened by the governmental staffs and their dependent organizations.

The responsibility of owner in versus of his workers and the workshop:

In relation to the responsibility of the job owners, it should be stated that it is one of the civil aspects of the legislation and any damages have to be compensated by the same owner; thus, relying on the Article 12 of the civil responsibility legislation, the responsibility of the owner is considered as the civil responsibility from a non-practice action (Shambiati, 2001).

Responsibility of a peer and keeper of a little baby or crazy person:

The parents and children are not necessarily try to pay the damage by their own property unless the subject is regarded to the Article 7 of the civil responsibility legislation issued at 1960; that is, the parents or peers responsibility is related to their guilt (Katozian, 2000).

Transportation manager responsibility:

The responsibility of the transportation manager according to the Article 388 of the trading legislation is one of the reasons of the civil responsibility of a non-practice action that the legislator has merely pointed to this responsibility and according to the same Article the manager has to be himself as the responsible for his employers.

Fourth discussion:

The penal responsibility from a non-practice action in foreign countries:

Here, we evaluate the penal responsibility of France, England, USA and Italy.

The legislation of France:

In France legislation, this has been issued at 1945 considering those ones committing a crime intentionally or non-intentionally as guilt in this legislation exceptionally. They have been also considered as convict in this case and have to be punished in this path; these people have been devoted to the job owners or principal of a school and some employers or workers at their job location. The superior court of the country has voted that if the mistake of a rail man happens, the boss of the rail station is responsible for the guilt or mistake (Shambiati, 2001). In the basics and theories of the penal responsibility legislation, the French researchers have emphasized on two main theories and later the legislators of the France developed the theory in this regard. They expanded the legislation over the insurance companies.

The legislation of England:

It has been recognized formally in this country. In some special situations, the legislation has issued that the person who committing a crime without interference any criminal action will be responsible for the action; I other words, when an owner recognizes a criminal action that has been committed by a worker, he will be also responsible for it; for example, if an unsuitable food or service is sold or given to a customer, the owner is also responsible for the case (Mohseni, 1997).

The legislation of the US:

In the US the penal responsibility has been accepted for many years; it is considered as the Respondent Superior; in other words, the landlord or a job owner should be responsible for the case.

According to this legislation, the entire landlords and job owner are responsible even at the special times for their workers and employers; it is assumed that the job has not been enough done or considered and it is against the related legislation and has to be compensated by the owner or the landlord (Saneiee, 2003). But of course the responsibility conditions of the above mentioned cases are subjected to the fulfillment of wrong actions happening by the workers or employers.

The legislation of Italy:

In Italy the penal legislation is pointing to the person who committed a crime but there is an Article in the country that some people are responsible for others wrong or mistakes.

This legislation is roughly pointed to the payment of the blood-money and if the person is not able to pay the relatives have to recover the payment. This responsibility is due to the same person careless actions that resulted in the penal responsibility for the same person. There is no necessary payment for the financial tolls in this case (Validi, M.S., 1995).

Conclusion:

In relation to the conclusion, it can be deduced that in elementary communities like tribe-based communities, the personal responsibility and individualism do not have any semantically meaning; in other words, the collectivism and family-based responsibility is subjected to the penal responsibility in elementary communities and the penal responsibility is a bridge between the crime and convict because the convict actually knows about what he or she is going to do consciously. In terms of the background it is subjected to Hamoorabi legislation and in the Holy Quran there have been many various verses supervising on it as well. Due to the exceptional nature of the penal responsibility from a non-practice action, the researchers have given three theories of the guilt, subject and spiritual crimes that the acceptance of these theories would neglect the penal responsibility. The approach of the personal affair is subjected to the origin that is roughly absolute and exceptional based on the punishments because the Islamic legislation knows everyone as his or her responsibility and nobody can be considered as the guilt of another one's penalties. However, in the legislations of some countries, a person can be punished due to another one's guilt; also, the origin of the penal responsibility has been accepted in the US, the UK, Italy and France formally.

Suggestions:

- 1- The necessity of issuing and amending some articles of the Islamic legislation because due to the lack of an edited legislation and cohesion fulfillment of the justice, there have been confronting and challenging problems in this case; and it may cause to perplexing resources of the various approaches in this path.
- 2- In relation to the wisdom responsibility the appearance of the Islam and the financial cooperation based on the tribe-based protocols has been supplemented in terms of the Islamic legislation. Thus:
 - a- The responsibility has to be only paid attention on the committed person not the wisdom
 - b- By optimizing the insurance institutions and the amendment of their regulations in structuring the blood-money boxes, the application of the legislative responsibility for the third party will have up-to-dated application in this case.
- 3- Holding conferences and symposiums in relation to the penal responsibility from a non-practice action

- 4- It has to be issued that the referred guilt or the lack of the guilt to the judge ask his or her damage and the government has to pay and then try to refer to the court in this case.
- 5- Through executive Bill, the way of compensating loses and the scandal should be determined and specified.

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