Examine the Legal Capacity Rule ((Lazrr)) and its Position As the Imami Jurists Looked Civil Liability

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Abstract:
Despite the general consensus among Shia and Sunni scholars and the rule ((Lazrr)) that Article 40 of the constitution was, but a lot of uncertainty in the application of this rule is the reason for this ambiguity, multiplicity of views voluminous theoretical base and expand the provisions of this rule is legal.

This article seeks to target more accurate and more complete utilization of the rule of law ((La losses)), the legislative analysis of the rule on the various views on the answer. First determine the effectiveness of the rule, based on the different views and secondly, to answer the question with regard to the interpretation provided by jurists, Whether it can be accepted as a basis for civil liability of the law? To answer these questions we have come to the conclusion that the first rule of the jurists on the effectiveness of their interpretation is different, What is the ruling on the basis of the denial of harm Sheikh Sultan Azam Ansari highest efficiency, based on the superposition of Imam Khomeini (RA) has the lowest efficiency and only rule governing Taslyt and secondly because the research, Imam Khomeini accepted the terms of the holy founder, stated that the rule ((Lazrr)) does not have such legal capacity as a basis for civil liability based on it and stated that the common-law cited by some jurists, such as Baryklv was more attuned to the jurisprudence of rights and can be the basis of civil liability But the suggestion that the law Vhmt legislation such as the Consumer Protection from liability theory as applied and thus the assumption of responsibility by the manufacturer of consumer detriment is not even required to establish virtue of customary rights and respected him more.

Key words: Lazrr rule, hurt sentence negation, negation of the damage, the civil liability, fault

Introduction:
Precision, accuracy and validity of jurisprudence is one of the pillars of Islamic theologians throughout history and mission, which is the same exact design principles, and strong evidence for the interpretation of religion, of being caught in the trap of religion and religious superstition, prevent distortions and deviations, but in addition to this, the other thing that must not be ignored. The effectiveness of the application of this rule in

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practice and if the efforts of jurists to consider the principles and foundations of the rules and provisions allocated and how to apply and the neglect of their effectiveness, Maybe provided in the rules of operation, efficiency, and it did not feel that great scholars spend their precious time of their accountability and signposts and rules have consistently argued that the result did not act or practice, to the extent practical and theoretical obstacles, and the frequent withdrawals, Discrepancies into the difficulty used gradually efficiency case and or omitted to be isolated and customary norms, they are rational and empirical rather than the rule ((Lazrr)) including rules that are very careful about the principles and foundations and evidence of extensive , the application and the effectiveness of the civil liability of, much attention has been, it has not provided detailed arguments and This study seeks to address this aspect of the rule, the rule ((La loss or damage negation)) that 1400 years of Islamic rule in the story Szemere Ben Jndb Ansari man raised, then Szemere cause losses Ansari was the man who based his famous hadith ((la la Zarar losses)) to prevent harm to man Ansari was Szemere. In contrast to civil liability indebted to the ideas of the French Revolution (1798 AD) and the prospects of immediate revolution, especially under the influence of the Old Testament's lawyers thought the Duma (1697-1627 AD) and Pvtyh (1772-1695 AD), the rules (in particular Article 1382 of the French Civil Code) was developed and adopted in 1804 AD. French law of obligations and contract law derived from Roman law,and ((fault)) as the basis for civil liability of the importer French Civil Code and other laws of the world went from there. Rule ((Lazrr)) of 4 or 5 general rule is that many Muslim scholars believe that the formation of jurisprudence, not only in transactions that are also used in worship and the many religious orders.First loss as a jurist who deny the proposed legal base, the first martyr in the Alqvayd and Alfvayd. Obviously, when you do not provide a clear definition of the rule, the conflict in the evidence, that the rule ((Lazrr)) has also been identified, including the use of minutiae inference rule is effective and even decisive, in this paper, the researcher tried to make clear that this aspect of the rule, and the effectiveness and clarify the status of its application.

1- Interpretations of Islamic jurists or discouraged by rejection of LA

1-1- Assessment theory warrant denial of harm

Under this basis, the provisions of the hadith ((Lazrr and Zarar la)) is the negation of the sentence rather than discouraged. This means that according to the tradition of the holy founder, any loss of Islam denies the sentence, the sentence I did not hurt and Zarar legislation, both in worship and in transactions , in other words, ((Lazrr fil Islam)), namely: ((La sentence harm fi al)), therefore, the judgment of the holy founder and legislation will be issued if necessary to carry out its loss or damage to the product back , The rule ((Lazrr)) meet legislation and removed from the page. In the case of someone who had hurt her water, ablution obligation pursuant to Rule ((Lazrr)) disclaims any means confined, or if the transaction was.The deal is that none of the parties swindle - and cause harm, the need to deal with ((Esalate Allozum)) pursuant to the warrant rule ((Lazrr)) is removed to avoid damage and loss to enter cheat . Here, the transaction remains, but someone will cheat option. On the effectiveness of this theory can be said that, for example, a woman can cause harm to the body because the baby or her job is to refuse or to prevent financial loss or society, cannibalized the fetus. A worker who is fasting in Ramadan sees itself hindered, causing economic loss could leave it and even with such an approach, sentences such as jihad and Hajj, which are often associated with financial losses and human obligating closed and

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canceled. More importantly, this interpretation of the rule on sentences and executives, it will be bridging the religious orders in each stage of the harm occurs, cancel it and issue a decree against it; Such judgment or destruction of religious sites in the house in case of refusal to urban development on the basis of respect for their property and the damage they cause damage to society and create difficulties in social and urban life and harmful to society. But if these provisions harm the exception of religious orders, we realized a dilemma ((allocation of)) that jurists, obscene and indecent and obscene work since the issuance of the Lord God is impossible, We conclude that the problem of the theory leads to the dilemma of the theologians said: ((void Alazm and mutilated Almlzvm)) .As is clear, the rule is based on the perception of the highest efficiency; Because this rule as a norm of principles and criteria for rejecting all ordinances raises harm it does to all other provisions governing. According to this view is inconsistent with the provisions of Lazrr harm even if the judgment has the strongest reason, is not tolerated; Because the rule that governs the harm despite being ruled out, so the rule is implemented, it will forward the implementation of the reasons for that decision.

1-2-Negation of the negation of the sentence in language assessment theory

Late mullah says, the provisions of rule ((Lazrr)) negation of negation is the order of the language. The lawyer claimed that the sacred ordinances of this issue has been fixed deny deny the allegation in respect of the commandments, Although there is development. So much in the news and even the Bible says. However, according to the late cleric, Sheik consider some form of stress, cannot be, especially forms and Istihsan allocate most of the books are illustrated in detail. And seems to back this theory is the theory of Sheikh. In practice, the differences are not significant because of the separation between the harm and the loss of a very difficult and can almost be said to be safe if the sentence is harmful; If the sentence is as safe as safe can negate issues decree, in the first instance, ruling that the harm would be negated, so a clear distinction between them is not there.

1-3- Assessment theory and divine injunction first

((La)) is prohibited in the Hadith means that the superposition of God and religious, and therefore, ((La loss)), and the suspension order, the traditions and the creation of a loss is forbidden, unless the loss or harm is prohibited. According to this, ((la)) is used in a virtual sense, Because the real meaning ((la)) when it Madkhul name is indefinite, the character of the negation. On the basis of tradition, God forbids the infliction of harm is like to be told ((La Tashareb Alkhamr)) or, as the verse ((La Yaghtab Bazekom bazeha)), which implies reverence God forbid absence . According to this view, the rule as a legal award just proves injurious and natural respect this rule, a minor penalty, other minor orders placed within and They are not applicable in case of conflict, but must use balance and Trajyh evidence, judge; This theory suggests effectiveness in comparison with the negation of the very low level of certainty that it is independent of reason to discover and Guidance for legal reasons, but there is nothing about this, and if so, to prove or deny the evidence that there is no need for a detailed discussion.

1-4- Assessment theory and further discourage Soltani

The idea of the Imam (RA) is. The Imam Khomeini based on a preamble that should be explained:

Introduction I: the separation between the various functions of the Prophet Muhammad (SA) had. In this regard, he says: The Messenger of Allah (SA) in people who commands his three species status

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should be assessed according to the three positions:

First place: Prophecy and mission, Second: the monarch and head of the Supreme Leader and President of the public because they are on the whole Islamic community, Third Place: judgeship and the hostility of the religious people in the struggle for the rights or property and take legal action before him.

Introduction II: Referring to the incoming traditions of the Prophet and Imam Ali (AS), the term ((Qzy)) or ((the)) or ((sentence)), and so it has been entered, we find that all the royal government or judicial ruling concerning the meaning of the expression of divine sutra not. But you should know that it is very clear that the Messenger of Allah (SA) as the judiciary and the cessation of hostilities and the quarrel between man and Szemere Ansari is not such an order; Because the land where palm trees and ownership dispute between Ansari and Szemere, not man Szemere Ansari behavior without the permission of his family and was a nuisance to the Ansari family, complained Ansarihadipour the Messenger of Allah of (SA) is not giving up the right to determine and judge them; But also of the opinion that the Messenger of Allah (SA) and head of the ruling king of the Muslims and their leader, had within him to overcome oppression and judgment with respect to the definition. Understand that the sentence is not a legal warrant.

2- The civil liability of the rights and status of the rule.

2-1- Theory of fault

The word means the fault of the palace and come up short or very short. Langroodi doctor came in terminology: ((Not the fault of action despite its ability to act as)). Qasemzadeh doctor say: ((jurists known as the fault has various definitions have been proposed, some of which are known to exceed the previous commitment. rape cautious and aware of his behavior or normal human behavior, violation of the duty of recognition and respect, trespass of treatment compliance is necessary for the protection of others)). Roman law as the basis for liability based on fault was accepted. The theory of guilt was thinking about the man in charge of that place ((error)) or ((fault)) is committed in another sense, where is the man responsible for the uncomfortable conscience and morally responsible. In this case, the criminal liability and civil liability unity was based. This means that people in both criminal and civil arena wherein it was held that it was morally responsible and therefore affects the appearance of the theory of fault currents are: First: the unity of criminal liability and civil liability as stated above. The second cause of morality, which was formed by the teachings of the Church, Considering these features to blame but to compare him with an ordinary human, That remains to be seen how the average person in the same circumstances.

2-2- Theory of Risk

It has many forms and varieties: some are the person who will benefit from the activity, must also bear losses from natural and it complies with morality and justice. This theory is called the theory of risk-benefit. According to this view, the object of interest, financial and economic benefits and responsibilities will lead to profitable economic activity, although not the fault. Some of the lawyers say, the civil liability ((risk of)) and take advantage of the loss of activity, liability is not a criterion for anyone Hence, the mere fact that their activities pose a danger, should bear the consequences of it, proponents of this theory argue that any activity is not without interest, but the interest may be material or spiritual. In any case, the result of accepting any of the fundamentals of the theory of justification regardless of the liability of the agent's fault. In this theory, the current that causes the damage is

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not a right or wrong but what is important is the loss attributable to read. Thus, the theory is limited to where the person workshop or factory or other nonprofit institution operates or manages way. Such a person is committed without fault for damage to other people know. In connection with the theory of risk is essential to mention two theories: First, although the theory of liability without fault, is in fact also. But the theory of objective liability or ((Lazrr)) expressed in Islamic law, not one. Islamic law is any harm to another, the operating losses, even if sleep is guaranteed, In theory, the risk of loss to be compensated by the expected return of his second Note: Some professors.

2-3- Theory cite common feature

Another theory is that it can be the basis for civil liability, according to the person in charge. With the support of common actions performed on the basis of the theory of liability to compensate for the loss caused to the other party, acts harmful to cite customary owned accountable the of the person for his performance, a certain rational and secular principle is not to deny or dispute. Each person is responsible for the acts that have been traditionally referred to him, so according to certain principles of individual accountability for its actions with all the wise, The scope and extent of the action is limited to actions which are commonly referred to him and his responsibility is based on the basis of common. As a result of the liability based on causality relationship still remains valid and Article 1 of the law of civil liability, and do not add anything to the former provisions of its territory is no less))

2-4- The idea of basing the review on the civil liability rule ((Lazrr))

2-4-1- Basing the civil liability rule ((Lazrr))

Many lawyers believe that to build upon the civil liability rule ((Lazrr)) are, according to the doctor jafary origin rule ((Lazrr)) could be a basis for civil liability in Iranian law, he says: Undoubtedly scrutiny over the ambiguity ((Lazrr)) is added, Stricture that lawyers have to understand the meaning of this rule, it means your student has been vacant and the implications are even more misleading, if not attention to the fact that religious rulings for astuteness norm and not to rational scrutiny. Whether this principle, the negation of the negation of loss or damage warrant discussion that the principle of simple and useful means of this rule makes sense empty. It must be said liability system based on the law of ((Lazrr and Lazrar)) is not guaranteed, and neither fault nor responsibility soon and if a mirror should do a comparison of these systems should be more consistent as La loss liability, On Iran's rights, damage, so that the fault is your responsibility to perform contractual obligation not to blame coming. Wherever harm (in the conventional sense) is evident in the work that preceded the fault and should be rectified unless the causality relationship between the loss and the entry is not found, because factors such the Force Majeure Event loss or have a fault and or fault of a third party, in theory, as they say: United States of America as soon as the rights and responsibilities of the old Lazrr and Lazrar on Iran. Many philosophers believe that criminal and liberal philosophers Only where the government can not interfere with the rights and freedoms of the individual and non-criminal behavior that causes damage to persons in and even those who do not know it's damage only in terms of the most important terms to know. Including whether to avoid behavior that implies ((probable loss)), there is also the possibility criminalized. It is noteworthy that the necessity of probable losses is also part of the legal rules.

2-4-2- Critical theory basing the civil liability rule ((Lazrr))

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It seems that lawyers consider that civil liability attaches to build on the base of ((Lazrr)) are entered into the forms, Why not be the basis for understanding the religious rulings common all comments jurists in this case aside and rules to be interpreted according to their needs, Whether this rule, the rule is legal and should be understood in terms of the holy founder, therefore, must be understood to be the founder of the base and then act on it, Comments are classified according to the study and interpretation of the prohibition of the denial and opinions famous jurists ,it was argued that all forms of criticism and comments entered and only looks great jurist Imam Khomeini's views, and I believe other forms defensible and is considered the founder of this rule and since, according to this interpretation, the principle of the least efficient and the only rule governing Taslyt, So ((rule)) can not be a basis for civil liability of the law. Imam Khomeini (RA) at the end of the debate ((Lazrr)) states: On the assumption that another reason (other than Lazrr) are not, why should we take for granted in the first sentence, and then trying to solve the masonry, but in this case it's not right to judge or reason to it than we invent.

2-5- Choice Theory

Since the basics such as the theory of guilt, danger and complex functionality and documentation of customary law as the basis of civil liability has been raised by various lawyers, But in my opinion the best in terms of functionality as the basis for liability on the basis of customary rights in Iran, First, the principles borrowed from the West and the Islamic law rights that form the foundation of law are incompatible, The problems can be answered and obvious damage inflicted upon the idea expressed in it justified, The result is consistent with the jurisprudence of the Imam's responsibilities in law theory common feature is invoked, It is suggested that the consumer protection law in cases such as the use of the theory of liability and thus the assumption of responsibility by the manufacturer of consumer detriment is not even required to prove the basis of common law and consumer rights more respected.

Conclusion:

Of all the issues raised, the following conclusions and recommendations have been summarized:

1 - Due to increasing growth and progress of human society, the flawed theory ((fault)) has become clear that the civil liability, a theory that has been indebted to Roman law and the French Revolution, in the year 1804 France adopted and then found their way to other countries, European and Iranian lawyers have acknowledged the inadequacy of the theory of evolution represents the adjustment of the rights of Europe's theory or even remove it.

2 - the rule of Islamic law ((Lazrr)) means the negation of loss as a legal rule about 1400 years ago by the Messenger of God (SA) mentioned in the story Smriti, the argument is that given the trends new law to remove the theory of fault-rule ((Lazrr)) could be a basis for civil liability. Since the rule ((Lazrr)) is a legal rule is necessary to consider the holy founder of the rule is obtained and interpreted according to the lawyer, So you must check the effectiveness of the rule, according to the holy lawgiver find answers to your question: If rule ((Lazrr)), La as negation consider, especially if it is based on the idea of the Grand Sheikh Ansari (RA) is negated sentence interpretation hurt, we have the highest efficiency. and this rule is based on civil liability, claim that the article mentioned, but if the injunction La interpret and especially Imam Khomeini, the sultan ordered the government to admit that the lowest effective have only to rule Taslyt government.

In my opinion the interpretation of the prohibition of Sultan Imam Khomeini, the founder considered sacred in this narrative, Because it

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seems that the promise of Allah's Messenger (SA) in the case Semere to eliminate nuisance and oppression Szmere Ansari man who, according to state regulations and their enforcement are So this injunction, prohibiting the implementation and administration of the provisions of the secondary, resulting in very limited scope of the rule, otherwise it should go to the other rules. As a result of this interpretation, as it does in the article referred to other forms of interpretation and thus, Rule ((Lazrr)) cannot be a basis for civil liability and this rule has the legal capacity, so it is best to solve the problems of the theory of ((fault)), The civil liability theory ((cited customary)) understand and accept it as a basis for civil liability by the disadvantages of the ((fault)) to cover, Because the base of the foundation of the rights that the law is consistent Emami, It was suggested that the rule of law and protection of the consumer by the legislator in cases such as the use of the theory of liability and thus assuming responsibility for the manufacturer even require proof of loss by virtue of the common law and the rights of consumers were more respected.

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