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An Analysis of the Legal Foundations of State Civil Liability for Violations of Citizens' Right to Health

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ABSTRACT

The right to health, as one of the fundamental human rights, is recognized in various legal systems and at the international level. The right to health encompasses the conditions that States are required to provide to enable individuals to lead healthy lives. Today, health is one of the essential components of human well-being and one of the principal concerns of everyday life. Regardless of age, gender, or social or racial background, health is regarded as one of the most important and vital social assets. Given that the enjoyment of the highest attainable standard of health is recognized as a fundamental right, States bear obligations to advance and protect the right to health. Like other human rights, these obligations have three dimensions: the obligation to respect, the obligation to protect, and the obligation to fulfil. One of the fundamental duties of States is to safeguard the right to health of members of society; accordingly, questions of State liability arise. The principal question addressed in this descriptive-analytical study is: what is the legal basis of State civil liability for violations of citizens' right to health? The analysis indicates that, under certain conditions, the State may be held liable for harm inflicted upon citizens. Although the theories of fault, risk, and guarantee of rights may provide grounds for compensating health-related harm caused by the State, the hypothesis of this study is that, given the importance and status of the right to health, together with the need for comprehensive protection of citizens and the absence of a requirement to prove fault, the mere establishment of a causal relationship between the harm and the injuring agent, namely the State, is sufficient to establish State strict liability for damage and loss resulting from failure to respect citizens' right to health.

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Introduction

The right to health is recognized in law as a fundamental right that encompasses not only access to quality health and medical services but also the social, economic, and environmental determinants of health. This right guarantees access to the highest attainable standard of physical and mental health for all individuals without discrimination. The right to health is recognized in a range of binding and

non-binding international instruments as well as in the domestic laws of various countries. As one of the obligations of the State, the right to health provides the necessary foundation for its effective implementation and enables citizens to exercise their legal rights to the fullest extent. States have duties to safeguard the health of their citizens, and where a State fails to fulfil its obligations and thereby causes harm to citizens, it must, in principle, compensate for the resulting damage.

State civil liability may arise from acts or omissions attributable to the State, its public employees, or private entities operating under State supervision in the health sector where such conduct contributes to circumstances that endanger public health or where the State has the capacity to prevent or remedy the harm but fails to take appropriate action. In the present descriptive-analytical study, various dimensions of citizens' right to health are examined together with the civil liability of the State in relation to that right.

For this purpose, the fundamental concepts of civil liability, the State, the right to health, and citizenship are briefly reviewed. The legal sources of the right to health, including Iranian legislation and international and regional human rights instruments, are then analyzed. In addition, the State's obligations concerning citizens' right to health are examined, including the relationship between citizenship rights and the right to health and the duties of States toward the realization of that right. Finally, the legal foundations of State civil liability in safeguarding the right to health are considered.

This study seeks to determine the circumstances under which the State may be held liable in relation to citizens' right to health and to examine which of the theories of fault, risk, guarantee of rights, and strict State liability may serve as the basis for such liability. The research hypothesis is that the State bears strict liability for harm resulting from failure to respect citizens' right to health.

1. Concepts

1-1. Liability

Although Iranian law does not provide an explicit definition of liability and, consequently, jurists have not adopted a uniform definition, they generally regard liability as a form of legal obligation. Some jurists have stated that "liability is the legal obligation of a person to remove harm that he has caused to another, whether that harm arises from his own fault or from his activity" (1). It has also been stated that "responsibility in its legal sense is the obligation of a person to answer for his acts and conduct toward people, the measure of whose manifestation is acts and conduct that cause loss or injury" (2).

Legal liability is generally divided into two principal categories: civil liability and criminal liability. In the present study, the focus is on the civil liability of the State in relation to citizens' right to health, although the criminal liability of the State arising from harm to citizens' health may also be contemplated.

1-2. Civil Liability

The term civil liability is used in contrast to criminal liability. It refers to liability for damage caused by one person to another, as well as liability arising from the breach of contractual obligations (1). Whenever a person is legally obliged to compensate another for a loss, that person is considered to bear civil liability (3). In civil liability, the occurrence of damage is a prerequisite for the realization of liability and constitutes one of its essential elements. From the perspective of enforcement, the injured party may seek compensation through the courts and request the protection of the State (3).

Civil liability is generally divided into contractual and non-contractual liability. Contractual liability, also referred to as liability arising from a contract, is liability resulting from nonperformance or delay in performing contractual obligations. Non-contractual liability, by contrast, is legal liability that does not arise from a contractual relationship between the parties. Some jurists refer to this form of liability as delictual liability: "Delictual liability is the liability to perform an act or compensate for a loss that a person has caused another as a result of his act. Because this liability arises without a contract, it is called delictual liability" (4).

In the present study, the term civil liability refers to non-contractual liability whose source is not a contractual relationship between the injuring

party, namely the State, and the injured party, namely the citizen, but rather the State's violation of its legal duties.

1-3. State

Max Weber considers the State a form of institution or human association that claims a monopoly over the legitimate use of physical force within a defined territory. If this definition is accepted, the State may be regarded as a political institution. On this basis, the State is, first and foremost, an institution, distinguishing it from non-institutional entities. Its second characteristic is its political nature, which distinguishes it from non-political institutions. Its third characteristic is its distinctive institutional character in comparison with other political institutions (5).

The State may therefore be regarded as an organized and institutionalized political society distinct from other forms of social organization. In essence, the State possesses a distinct legal and political personality formed by its constituent elements, namely the population, territory, and government.

In public law and political theory, the term State may be understood in three senses. First, it may refer to the entire distinct political entity, which should not be confused with the governmental apparatus or with the individuals and institutions that constitute it. Second, it may refer to the ruling authority, including the governing body, rulers, and political office-holders in their relationship with the nation and the people. Third, it may refer to the highest political authorities, such as the Prime Minister and the Council of Ministers. In this third sense, the State refers to the cabinet or political body that, pursuant to law and in the exercise of its executive functions, is accountable to the representatives of the people. This body is also legally empowered to make high-level decisions concerning the enhancement of public services, including services in the health sector (6).

In this article, the term State is used in the third sense, namely the presidency where applicable, the Prime Minister, and the Council of Ministers, as the authorities responsible for administering the country and constituting the executive branch.

1-4. Right to Health

The right to health is recognized in law as a fundamental and comprehensive right that encompasses not only access to affordable and high-quality health and medical services but also the social, economic, and environmental determinants of health. It guarantees access to the highest attainable standard of physical and mental health for all individuals without discrimination.

According to the International Covenant on Economic, Social and Cultural Rights, everyone is entitled to enjoy the right to health without discrimination on grounds such as sex, age, skin color, nationality, race, language, religion, political opinion, or similar status. The right to health encompasses the conditions that States are required to provide to enable individuals to lead healthy lives (7). The right to health occupies a particular position in national and international instruments and is recognized as an established principle in legal systems, including that of the Islamic Republic of Iran.

According to international human rights norms, all human beings possess equal inherent worth and are therefore entitled to equal protection. Their dignity and bodily integrity must be respected. Human rights are grounded in the fundamental protection of human life, and enjoyment of minimum standards of healthcare is essential to the protection of life and inherent human dignity. The absence of such minimum standards may therefore amount to a denial of fundamental human values.

Accordingly, the right to health may be regarded as a fundamental right. Within the international human rights system, a fundamental right is a right that is necessary for the realization and enjoyment of other rights and freedoms. Today, health is one of the foundational components of human well-being and a major concern of everyday life. Regardless of age, gender, or social or racial background, health is among the most important and vital social assets (7). The right to a healthy environment, which is generally associated with the third generation of human rights, also derives from and is closely connected with the right to health (8).

1-5. Citizen

In international law, the term citizen, in its ordinary sense, refers to a natural person who enjoys political and civil rights within a particular political community. A citizen is a person who belongs to a State and satisfies the conditions necessary to participate in public affairs (9).

Although the Constitution of the Islamic Republic of Iran does not use the term "citizen," it employs expressions such as "the people," "the nation," and "members of the nation," which may, in certain respects, be regarded as corresponding to the concept of citizenship. The term citizen is used in numerous Iranian statutes. The Law on Respect for Legitimate Freedoms and Preservation of Citizens' Rights, enacted in 2004, which seeks to safeguard the judicial rights of citizens, expressly uses this term. It appears that, in this law, the term citizen is not limited to nationals and may encompass individuals irrespective of nationality and residence. By contrast, Note 4 to Article 1 of the Law on the Structure of the Comprehensive Welfare and Social Security System of 2004 refers to "foreign citizens resident in the Islamic Republic of Iran," while Article 7 uses the expression "citizens' needs," suggesting that the term citizen may, in certain contexts, refer specifically to nationals.

The status of citizenship is determined by the laws of each State and generally depends on factors such as place of birth and parental nationality. Citizenship may also be acquired through marriage to a citizen, although such acquired citizenship may not necessarily confer all citizenship rights, including eligibility for certain public offices.

Some jurists consider all persons residing within a country's territorial boundaries, as well as nationals residing abroad, to be citizens. From this perspective, nationality is essentially a political relationship connecting an individual to a State, from which the individual's principal rights and duties arise (10).

Accordingly, citizenship rights comprise those rights whose realization safeguards and promotes the physical, psychological, cultural, moral, political, economic, and social well-being of citizens. These rights include personal and individual rights, social and civil rights, religious rights, economic rights, political rights, and judicial rights. The present study focuses exclusively on the right to health as one of the fundamental citizenship rights.

2. Legal Sources of the Right to Health

In examining the legal status of the right to health, relevant Iranian legislation is first reviewed, followed by a brief examination of international and regional human rights instruments.

2-1. Right to Health in Iranian Law

2-1-1. Constitution

Article 29 of the Constitution recognizes the right to health services and medical care, both of which constitute components of the broader right to health. Under this Article, the State is required to provide such services to all members of society.

In addition to Article 29, other constitutional provisions are relevant to health. Clause 12 of Article 3 provides that "establishing a correct and just economy in accordance with Islamic rules in order to create welfare, remove poverty, and eliminate all forms of deprivation in the areas of nutrition, housing, employment, health, and the extension of insurance" is among the duties of the State.

Clause 1 of Article 43 likewise identifies the provision of basic necessities, including housing, food, clothing, health, medical treatment, education, and the facilities necessary for the establishment of a family, for all persons as one of the principles upon which the economy of the Islamic Republic of Iran must be based.

Accordingly, given the importance and status of the right to health in the lives of citizens, this right is expressly reflected in the Constitution, which constitutes the fundamental law of the country.

2-1-2. Laws Relating to Health Insurance

The Islamic Consultative Assembly enacted the Law on Universal Health Insurance Services in 1994, and implementation of universal health insurance officially commenced in 1995. Under this law, responsibility for providing health insurance coverage to various groups, including government employees, villagers, and students, was assigned to the Medical Services Insurance Organization.

According to Article 5 of this law, the objective of the organization is to provide health insurance services to government employees, persons in need, villagers, and other social groups. Furthermore, under Article 4 of the Universal Health Insurance Law, the State is required to provide the necessary conditions for extending health insurance coverage to all eligible groups and individuals in society.

Another relevant statute is the Law on the Structure of the Comprehensive Welfare and Social Security System. Following its enactment in 2004, the Ministry of Welfare and Social Security was established, and the Social Security Organization was separated from the Ministry of Health and placed under the supervision of the Ministry of Welfare (7).

Accordingly, it may be concluded that the right to health has been an important concern of the Iranian State. In addition to enacting the Universal Health Insurance Law, the State established the Social Security Organization as a social insurance institution.

2-2. Right to Health in International and Regional Human Rights Instruments

Numerous international and regional instruments recognize the right to health as a fundamental human right. Some of the principal instruments are briefly discussed below.

2-2-1. Article 55 of the United Nations Charter, 1945

Article 55 of the United Nations Charter implicitly addresses the right to health. Under this provision, the United Nations is required to promote higher standards of living and conditions of economic and social progress and development, including measures relevant to health, and to promote appropriate solutions to international economic, social, health, and related problems (11).

2-2-2. Article 25 of the Universal Declaration of Human Rights

Article 25 does not expressly refer to a "right to health." Nevertheless, it contains important provisions concerning health. It provides:

"1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services…; 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection" (12).

Article 25 may more appropriately be understood as recognizing a right to an adequate standard of living that encompasses conditions necessary for health, rather than directly formulating a distinct right to health.

Paragraph 1 of the Article refers to two closely related rights. The first is the right to enjoy a standard of living in which the basic needs of individuals and their families are adequately satisfied. These needs include health and well-being. Accordingly, health constitutes an important element in the realization of the right to an adequate standard of living. The provision does not specify the precise means by which this right is to be realized. It does not mean that everything necessary for an individual's life must be directly provided to that person by the State (13).

The second right addressed in paragraph 1 is the right to social protection and services in circumstances such as sickness, unemployment, disability, widowhood, old age, or other situations in which, owing to circumstances beyond an individual's control, the person's means of subsistence have been lost. In such circumstances, the individual may temporarily or permanently be unable to secure the first right through personal efforts. The second right therefore requires access to a network of social services. In other words, where an individual lacks access to health or is otherwise unable to satisfy basic needs, including access to medical services, that individual is entitled to seek such services, and the State bears corresponding obligations.

2-2-3. Article 12 of the International Covenant on Economic, Social and Cultural Rights

Article 12 of the International Covenant on Economic, Social and Cultural Rights explicitly addresses the right to health in international human rights law. It provides:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and

mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child; (b) the improvement of all aspects of environmental and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness" (14).

Paragraph 1 recognizes the right to health, while paragraph 2 identifies measures necessary for the progressive realization of that right.

2-2-4. Committee on Economic, Social and Cultural Rights

On 11 May 2000, the Committee on Economic, Social and Cultural Rights issued General Comment No.14 concerning the right to the highest attainable standard of health. The purpose of the General Comment is to assist and guide States parties in implementing the Covenant, fulfilling their obligations, and reporting on compliance (15).

The Committee's General Comment contains several preliminary observations and five substantive sections. Its principal observations may be summarized as follows:

1. The right to health is a fundamental human right and is indispensable to the exercise of other human rights. Every human being is entitled to the highest attainable standard of physical and mental health conducive to living a life with dignity.

2. The right to health occupies a prominent position in numerous international instruments.

3. The right to health is closely related to other human rights recognized in international human rights instruments, and its realization depends upon the realization of those rights. Rights closely connected with health include the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, freedom from torture, privacy, access to information, and freedom of association and assembly. These rights and freedoms are integral to the realization of the right to health.

4. The right to health is not limited to the right to medical care. The terms of Article 12 demonstrate that it encompasses a broad range of socio-economic measures intended to create conditions in which individuals can live healthy lives (16).

The right to health therefore encompasses core elements such as adequate food and nutrition, housing, access to safe and potable water, sanitation and hygiene, safe and healthy working conditions, and a healthy environment.

2-2-5. Right to Health in Regional Human Rights Instruments

The right to health is recognized in several regional human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; Article 11 of the European Social Charter, adopted in 1961 and revised in 1996; the American Convention on Human Rights, 1969, together with the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988; and Article 16 of the African Charter on Human and Peoples' Rights, 1981 (17).

In addition to these instruments, the right to health is recognized in the constitutions of numerous countries (13).

3. State Obligations Regarding Citizens' Right to Health

The right to health is part of the fundamental rights of citizens in every political society. By virtue of membership in society, every citizen, regardless of racial, religious, political, or cultural considerations, is entitled to enjoy this right. This category of rights, often discussed in connection with the protection and safeguarding of the right to life, has a significant relationship with other human rights.

Accordingly, due attention by States to the public right to health, irrespective of their political systems, is essential. The adoption of numerous international instruments and treaties concerning public health, together with the enactment of domestic laws and regulations in this field, provides evidence of the importance attributed to this right.

Nevertheless, the historical background of activities and measures undertaken by States and public legal entities responsible for public health suggests that there has not always been a comprehensive understanding among the relevant authorities and institutions of public health challenges and the obligations of States in regulating public health.

The State is one of the most important human institutions, and its role and significance throughout social life are evident. For centuries, people have organized the institution of the State to establish public order, facilitate social life, maintain internal security, and provide protection against external threats. Although various social movements have emerged at different historical periods to alter the structure and limits of State powers and duties toward citizens, the public-oriented conception of the State has never entirely disappeared.

In public law theory, preserving public health and safeguarding the health of citizens constitute among the fundamental and unavoidable duties of States. The protection of public health manifests itself across different aspects of social life and is exercised through competent public authorities.

State provision of public health, which encompasses a broad range of actions and measures in the health sector, constitutes a form of State intervention at the social level. Such intervention is intended to preserve and promote public health and improve population health through regulation, oversight, policymaking, and implementation of health policies. This issue has generated various legal theories concerning the extent and manner of State intervention in economic and social affairs in contemporary societies, making clarification of the State's position within legal systems necessary (18).

Nevertheless, considering the historical experience of different countries, an optimal level of State intervention appears necessary to ensure that society is protected both from the adverse consequences of excessive intervention and from the consequences of insufficient intervention. In this way, the public interests of citizens can be safeguarded.

The State, whether acting as an employer, regulator, supervisor, or policymaker, is inevitably required to intervene in the field of health. Accordingly, the preservation of public health and the protection of citizens' health without appropriate State intervention and oversight would face significant practical difficulties.

4. Duties of States Regarding Citizens' Right to Health

The right to health, in addition to its connection with various fields, is a universal human right. Every human being, regardless of location, is entitled to this right. The Universal Declaration of Human Rights refers to "everyone" having a right to a standard of living adequate for health and well-being. Likewise, the International Covenant on Economic, Social and Cultural Rights recognizes "the right of everyone" to enjoy the highest attainable standard of physical and mental health.

State obligations regarding the right to health, like obligations concerning other human rights, encompass three dimensions: the obligation to respect, the obligation to protect, and the obligation to fulfil. The Committee on Economic, Social and Cultural Rights employs this tripartite framework in General Comment No.14 to explain States parties' obligations concerning the right to health (15).

4-1. Obligation to Respect

The obligation to respect constitutes the negative dimension of human rights obligations and primarily requires State authorities to refrain from conduct that interferes with the enjoyment of rights. In other words, the obligation to respect requires States to refrain from acts or omissions that violate or unjustifiably restrict the right to health.

With regard to the right to health, this obligation means that States must not create unjustified obstacles or restrictions for individuals or groups in the enjoyment of the right and, where appropriate, must remove existing barriers.

General Comment No.14 identifies several examples of this obligation, including refraining from denying or restricting equal access to preventive, curative, and palliative health

services; avoiding deprivation or restriction of access to health services for groups such as prisoners, asylum seekers, minorities, and lawful migrants; refraining from adopting discriminatory policies or measures concerning health needs; and avoiding measures that prohibit or obstruct access to preventive and curative healthcare and traditional medicines (13).

The obligation to respect also includes refraining from marketing unsafe medicines, imposing compulsory medical treatment except where justified under applicable legal and public health standards, restricting access to contraceptives or other sexual and reproductive health services, censoring or deliberately withholding or misrepresenting health-related information, including health education, and preventing individuals from participating in health-related decisionmaking.

4-2. Obligation to Protect

The obligation to protect requires States to safeguard individuals' rights against violations by third parties. In this context, the Committee identifies several obligations, including the enactment of legislation and adoption of other measures to ensure equal access to healthcare and related services provided by third parties.

States must also ensure that privatization of the health sector does not undermine the availability, accessibility, acceptability, and quality of health facilities, goods, and services. Other obligations include regulating the marketing of medical equipment and pharmaceuticals by third parties and ensuring that health professionals possess appropriate educational, technical, and ethical qualifications.

The obligation to protect also requires States to ensure that harmful social or traditional practices do not constitute barriers to access to prenatal and postnatal care or family planning services.

4-3. Obligation to Fulfil

The obligation to fulfil is central to the realization of economic, social, and cultural rights. Accordingly, the obligation of States to realize the right to health requires them to take the necessary measures to meet individuals' health needs.

In other words, States must establish the conditions and facilities necessary for the enjoyment of the right to health. The right to health does not necessarily require the direct and free provision of healthcare to every person. Rather, it requires adequate conditions and facilities within the health system. Without such conditions, individual efforts to attain the highest attainable standard of health cannot be fully realized.

Moreover, some individuals, for reasons beyond their control, are unable to secure their own health needs or those of their families. States therefore have corresponding obligations to facilitate access to health services and the underlying determinants of health. This understanding is consistent with contemporary international human rights approaches to the right to health (15).

5. Legal Foundations of State Civil Liability in Safeguarding the Right to Health

To complete the analysis of State liability in relation to the citizenship right to health, this section examines the principal legal theories that may provide a basis for State civil liability.

5-1. Fault Theory

From a legal perspective, fault may be understood as a deviation from the conduct that a reasonable person would have adopted under the circumstances of the case. Accordingly, establishing fault requires comparison of the conduct in question with that which a reasonable person would have adopted under comparable circumstances. Where the conduct deviates from the applicable standard of reasonable conduct, the actor may be regarded as having acted negligently or wrongfully.

Under this theory, fault constitutes a necessary element of liability. Accordingly, an injured party seeking compensation must establish that the defendant's fault caused the damage. In other words, the basis for imposing liability is the causal relationship between the defendant's wrongful conduct and the resulting damage.

In determining whether fault exists, reference may be made to prevailing standards of conduct and expert assessment. Article 1 of the Civil Liability Law recognizes fault as a basis of liability and imposes liability for damage intentionally or

negligently caused to others without legal justification.

Accordingly, the provisions of the Iranian Civil Liability Law, particularly Article 1, may be understood as requiring proof of fault for the establishment of liability. It should therefore be accepted, as a general rule, that the State is liable for damage inflicted upon citizens in the field of health where such damage is attributable to State fault.

According to Article 11 of the Civil Liability Law, where harm to individuals' right to health resulting from phenomena such as dust particles is attributable to intentional conduct or errors committed by State employees or responsible officials, those employees or officials may be liable for compensation. Where, however, the harm results from deficiencies or defects in legislation or State action, the State bears responsibility for compensating citizens for the resulting damage (19).

5-2. Risk Theory

Under the risk theory, fault is not regarded as an essential element of civil liability. A person who causes damage is required to compensate for it. According to this theory, it is sufficient to establish that the damage resulted from the conduct or activity of the injuring party, rather than proving fault.

This theory makes it possible to compensate for many forms of harm associated with modern life that, under a fault-based approach, might be compensable only upon proof of fault. Moreover, risk-based liability may benefit socially vulnerable groups, including low-income individuals, for whom proving fault may be particularly difficult due to limited resources (20).

Although proof of fault is unnecessary under the risk theory, difficulties may arise where multiple causes contribute to the occurrence of damage. In such circumstances, determining the principal cause among several contributing causes may be challenging because, from a scientific perspective, both remote and proximate causes may contribute to the occurrence of harm (21).

Accordingly, under the risk theory, where citizens suffer health-related harm attributable to the State because of defects in laws and regulations, inadequate resources, or the conduct of State officials and managers, the State may be required to compensate for the resulting loss.

5-3. Guarantee of Rights Theory

Under the guarantee of rights theory, compensation is awarded on the basis of the violation of a protected right and the legal guarantee attached to that right. Infringement of a legally protected right is sufficient to trigger its legal protection and enforcement. Such enforcement may take the form of an obligation to compensate for the resulting harm and, consequently, liability on the part of the person responsible for the violation (22).

According to this theory, every individual in society possesses a right to live a healthy life, and these rights are protected by law. Accordingly, all persons in society, including the State, are required to respect them. A person who infringes another's protected rights and thereby causes harm should therefore be required to compensate for the resulting loss (23).

Under this theory, the State should compensate for losses inflicted upon third parties by its employees and officials because State personnel ordinarily lack sufficient personal financial resources to compensate for substantial harm, while the State benefits from their activities. In accordance with principles of justice and law, the injured party should not be left without compensation. Accordingly, the State guarantees the conduct of its personnel toward third parties, and its liability may be justified on the basis of this guarantee function (24).

Therefore, under this theory, where damage to citizens' health results from the conduct or performance of State officials or employees, the State is responsible for compensating the resulting loss.

5-4. Theory of State Strict Liability

Strict liability is a form of liability established by law on the basis of policy considerations and prudence and is not necessarily governed by the general rules applicable to fault-based civil liability. Its purpose is to impose liability on the basis of the harmful result rather than the quality or culpability of the conduct.

Under general rules, where harmful conduct gives rise to liability, it is generally necessary to establish that the conduct was wrongful and attributable to the responsible party. Under strict liability, by contrast, emphasis is placed on the harmful result, and the occurrence of the legally relevant harm may be sufficient to establish liability, subject to the applicable conditions and defenses.

Strict liability has a protective character because it seeks to ensure that protected rights are not left without an effective remedy. In strict liability, it is generally sufficient for the claimant to establish that the defendant engaged in conduct that resulted in damage.

Strict liability should not, however, be confused with absolute liability. Absolute liability represents a more stringent form of liability in which the availability of defenses is substantially restricted. Strict liability, by contrast, may operate in circumstances where certain legitimate defenses remain available to the responsible party.

For example, strict liability generally requires a causal relationship between the breach of duty attributable to the State and the resulting damage, whereas absolute liability may operate without such limitations in particular legal contexts.

Liability without fault is also narrower in one respect than strict liability. The term "liability without fault" specifically indicates the absence of a requirement to establish fault, whereas strict liability may additionally concern the legal treatment of the causal relationship between conduct and harm.

The distinction between fault-based liability and strict liability may be expressed as follows: "Fault-based liability in most cases requires proof of fault in the act and rarely requires fault in the agent, while strict liability does not require proof of fault in the act nor of fault in the agent. In clearer terms, neither through excuses nor through justifications can one easily escape strict liability" (22).

Accordingly, given the importance and status of the right to health, the need for comprehensive protection of citizens, and the absence of a requirement to prove fault where the applicable legal basis establishes strict liability, it may be concluded that establishing a causal relationship between the harm and the injuring agent, namely the State, is sufficient to establish State liability. On this basis, the State is strictly liable for damage and loss resulting from failure to respect citizens' right to health.

Conclusion

The right to health is recognized in a range of binding and non-binding international instruments as well as in the domestic laws of various countries. States have obligations to safeguard the health of their citizens, and where a State fails to fulfil its obligations and thereby causes harm to citizens, the resulting damage may give rise to an obligation to compensate.

Liability, as a form of legal obligation, is generally divided into civil and criminal liability. Civil liability may, in turn, be divided into contractual and non-contractual liability. In the present study, civil liability refers to non-contractual liability whose source is not an agreement between the injuring party, namely the State, and the injured party, namely the citizen, but rather the State's violation of its legal duties.

Although various definitions of the State have been proposed, this article uses the term State to refer to the presidency where applicable, the Prime Minister, and the Council of Ministers, as the authorities responsible for administering the country and constituting the executive branch.

Citizenship is a legal status establishing a relationship between an individual and a State and is also recognized in international law. The status of citizenship is determined by the laws of each State.

According to the International Covenant on Economic, Social and Cultural Rights, all persons are entitled to enjoy the right to health without discrimination on grounds such as sex, age, skin color, nationality, race, language, religion, political opinion, or similar status. The right to health encompasses the conditions that States are required to provide to enable individuals to lead healthy lives.

The right to health is recognized in the Constitution of the Islamic Republic of Iran, the Universal Health Insurance Law, the Law on the Structure of the Comprehensive Welfare and Social Security System, and international instruments such as the United Nations Charter and the Universal Declaration of Human Rights, as well as regional instruments such as the European Social Charter.

State obligations regarding the right to health, like obligations concerning other human rights, consist of three dimensions: the obligation to respect, the obligation to protect, and the obligation to fulfil.

With regard to the legal foundations of State civil liability in safeguarding citizens' right to health, several theories may be considered, including the fault theory, risk theory, guarantee of rights theory, and the theory of strict State liability.

Although the theories of fault, risk, and guarantee of rights may provide grounds for compensating health-related harm caused by the State, it appears that, given the importance and status of the right to health, the need for comprehensive protection of citizens, and the absence of a requirement to prove fault where strict liability applies, the establishment of a causal relationship between the harm and the injuring agent, namely the State, is sufficient. Accordingly, the State may be regarded as strictly liable for damage and loss resulting from failure to respect citizens' right to health.

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The authors declare no competing interests.

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