

# CIVIL RESPONSIBILITY OF MAINTENANCE AND TRANSPORTATION ORGANIZATION AGAINST DAMAGES DUE TO ROAD DEFECTS IN IRAN' LAW

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**Abstract.** Maintenance organization is to maintain, establish, keep and securitization of roads. In the event when defects of road or lacking observation of safety principles are effective in accidents, their responsibility shall be based on patterns of civil responsibility and special laws for establishing and their responsibility. Civil responsibility for the custodians is discussed from two points, in one side, it is based on patterns of civil responsibility and fault theory and in other side, since road custodians are governmental and public institutes generally, and the analysis was performed in terms of civil responsibility of government. This research methodology is analytic-descriptive and the collection of data is as librarian. The results of this study show that the failure of maintenance and transportation organization and lacking observation of defect and inattention to securitization can result to mortal accidents and tolerate high costs on people and government and caused situations in which people or organizations are regarded as responsible to remove defects and control and prevent from accidents in roads.

**Key words:** Civil Responsibility, Transportation, Road Protectors, Road Defect, Fault.

**Introduction.** In Iran, yearly, thousands kilometer of road was established which are not conform to world standards because of its vast survey and the same roads play rich and pale role in road accidents. Civil responsibility for road custodians is analyzed from two aspects. In one side, it is based on civil responsibility patterns and fault theory and in other side, since custodians are governmental and public institutes, the analysis is done in terms of civil responsibility of government. The fault of persons and organizations during road construction operations are lacking install standard symbols and lacking removing and inattention to mortal accidents which tolerate significant costs on people and government. Defect of road which is pertinent to different kinds of holes, shortage of alarming symbols, lacking or defecting lighting in road which play important role and the most important roles are for death of our people are above cases. And the other factors for road accidents are. Thus, the present study tries to discuss civil responsibility of maintenance and transportation organization as main authority on construct and maintain roads and also investigate limitation of civil responsibility of ministry of road in compensating damages on driving accidents due to defects of roads.

**First Discourse: Theoretical Basis of Civil Responsibility.** The road custodians shall be responsible due not doing their actions and responsible for damages, thus, in terms of legal and judicial resources, they shall be responsible for damages. In other side, adding to it, in laws governing verdict, special judgments are predicated. Whereas, the road custodian causes loss because of leaving action and same as not removing defect of road and technical defect, because according the pattern, it is due to intentional mode and some of civil laws verdicts pointed to it which is due to leaving action including articles 122, 14, 594, 833, 333, 334 of civil law (Mohaghegh Damamd, 2003, 161). Adding to it, causality relation is basis of responsibility.

In safety law for roads (amended 2000), the regulations were stated on manner of maintenance and safety of roads and the tasks are undertaken on authorities. Article 19 (inserted 2000) obliged Ministry of Road and Transportation to install horizontal and vertical symbols during roads and install specified lights and alarms in order to prevent accidents (note below article 19), instead above law, in the cases of law, it is predicated to investigate driving violations approved 2010 (articles 12, 3 and note 26) which are responsible against damages due to violations on driving defects.

**First discussion: analysis responsibility of road legal custodians based on government responsibility theory.** About government' responsibility to outcomes of actions, two strategies are:

**First paragraph: responsibility based on fault.** Fault theory is the main theory in civil responsibility. In civil responsibility, government is regarded as a basis which is responsible against fault and it proves as error, according to theory, government' responsibility is due to leaving action or action of agents and it is realized when administrative faults proved and there is separation between administrative fault and fault of staff (Mosazadeh, 2009, 264, Tabatabaee Motameni, 2008).

Government' fault is stated as administrative fault and fault of government is attributed to article 11 of civil responsibility law and thus, administrative fault is equal with defect of administrative equipment, because above article realizes government' responsibility when damages are not due to staff and they are pertinent to defect of said institutes.

**Administrative failures are as different modes.** Defect of protection duty and leaving action as basis of responsibility. The governments and governmental offices are duties departments which their beneficiaries are persons and if they don't do their tasks, damages are on and from important emblems of tasks are to install danger alarms in roads.

**Inaccurate doing of legal duty (positive fault).** When governmental department is responsible to do and shall do it accurately which don't cause damage, in this manner, if results damaged others, positive fault shall occur. For example, during replacing explosive materials, if explosion occurs, compensation shall due to department and if ministry of road and municipality involved, it is responsible to compensate it.

**Second paragraph: responsibility without government' fault.** Following social and industrial variations, a new theory was inserted in civil responsibility which is known as danger theory. In this theory, fault is not necessary condition for responsibility, but everyone is responsible for his works and in order to realize, the relation between reasons and casuals is sufficient (Katouzian, 1995). On civil responsibility of government, today, in many countries, the courts recognized government as responsible for fault in the cases when damages are and because of personal freedom. It is stated that if fault is only scale and criteria of compensation, many damages are not compensated and this is regardless justice (Tabatabaee Motameni, 2008). In law of amending safety roads, responsibility of ministry of roads is not because of not installing safety emblems and in the event when employer is fault, it is substitute mode and in one side, this is responsibility without fault.

**Second discussion: legal identity responsibility for road' custodian.** Accordingly, the custodians are responsible to maintain and protect and construct roads, mean of legal custodians is Ministry of Road and Municipality which have legal identity, road means passing way where is a place for going and coming for people and vehicles including city roads (streets and alleys) and intra-city (alleys), about explanation of legal duties for custodians and establishment of roads were so considered but as well elementary duty, secondary task is to supervise on safety of roads. As for duties of ministry of roads on safety, if they don't their task accurately or in the event of committing, negative fault is considered and the emblems like leaving action caused legal custodians commits violation like defective construction of road which has non-standard slip and don't repair holes in road and damages to vehicles or not install safety symbols like guard rail, lighting systems in emergency places including tunnels and not removing barriers in roads like not cleansing roads and so on. If defect of road caused driving accidents, generally, the factors involved in construction and maintenance pf road shall be main points. But main point is to consider legal identity of offices and public institutes and to responsible government in realization of cases.

**First paragraph: no fault of staff.** Although, some of lawyers believed that regardless article 11 of civil responsibility law, it is possible to collect responsively of legal identity (Katouzian, 1995). For example, in note 3 of article 14 of water fair distribution law, if mistake of staff of ministry of energy caused drying or shortage of water for lands, ministry of energy is responsible for it. In article 19 of safety roads laws, it is predicated too.

**Second paragraph: government' fault.** According to pattern which is stipulated in article 11 of civil responsibility law and theory precedent to fault, if a damage tolerated on someone in terms of operation of governmental department, it supposes that agency is responsible and when governmental department is responsible that its fault proved. Therefore, if because of defect of road, experts of driving accidents offered their view in terms of defect ministry of road shall be responsible and if it is not due to defect of equipment like lacking facilities and structural weakness, another person shall be responsible.

Thus, if we can recognize fault party in defect of road, we shall discuss fault of departments as well another factor. Fortunately, note of article 14 of Islamic punishment laws approved 2013 accepted an insight which is possible to pay blood money by other party.

**Third discourse: legal staff and employee of road.** In the event when driving accidents are due to defect of roads, and this is same as special conditions in order to realize laws, and according to note 3 of article 14 of laws for investigating driving violations, public patterns for civil responsibility of government and article 11 of civil responsibility law shall be precedent. When the accident is due to lacking installation of safety symbols during construction and maintenance of roads, article 19 of safety laws for roads regard ministry of roads and railways for damages and allowed them to compensate damages. Thus, the ministry is obliged to pay the damages from credits or credits of contractors. Accordingly, responsibility of government and employee is not total, so that in realization of government' responsibility, the main condition for not fault is employee, because article 11 of civil responsibility law realizes responsibility of department, of course, in violation of the fact, some accepted personal fault (Katouzian, 1995, 458). In this manner, responsibility of office and employee is regarded as violation and it shall be shared between them (Katouzian, 1995, 460).

**Second discourse: Duties of Protectors in road reform.** By increasing going of heavy vehicles, old surface of road, the capacity of load carrier of road networks was reduced. Reforming projects is to return status of roads into former mode or prepare them for acceptance and tolerate volume of going and new status all performed by aiming to prepare equal services to all road 'users (Hejazi and Amozadeh, 2006, 14). Deep groove (the groove with deep more than 20 mm is dangerous) cracking plots and other problems caused losing balance of vehicle or explosion of tire and caused pollution and accident. In repair and reforming of protector and guard, all safety actions shall be considered. In the even when reforming of roads is done, the limitations pertain to deviance of channel surface and city roads and water ways and height of bridges are considered not to necessary standards and as result, doesn't make dangerous place and accurate management can minimize traffic distortion and the conditions of protection shall be done as if the users can pass it (Vivienne Harpwood, 2005, 131).

**Second discourse: safety conditions in operation of reforming.** In the event when reforming and surface leveling is under construction, the roads are slipper and there is danger for stone in passing way. In these cases, firstly, the sufficient symbols are installed and secondly, when the road is slippy because of tar, the renovation shall be done

completely specially during night and authorized speed symbol is installed, since many users cannot guess to drive with what speed. This event is so more in hot regions where tar is so slippery and in any case, the protection shall be done by attention to prevent from accident.

**Conclusion.** When person makes a road, he is responsible to all damages where occur due to it and if the defect is effective to damage others, this is due to it. It is necessary to say that responsibility due to different legal discussions are so important and by increasing government' responsibility against citizens, special responsibility shall be increased. Note 3 of article 14 of law for investigating driving violations approved 2010 stated that when in terms of driving expert' view, defect of road or vehicle shall be effective to accident, the authorized persons shall be responsible and if the defect is regarded as sub-defect, each responsibility can be regarded. Also, when effectiveness of violation is due to responsibility, the responsibility is that scale of responsibility shall be compensated or not? And if damage is due to collection of factors, and defect of road is as part of reason, in this manner, the responsibility shall be same as effect and as result, the aim of note is that official experts of road and accidents state percent of defect to issue compensation for it.

**Suggestions.** 1-As for importance of civil responsibility pf government and ministry of road and transportation, it is suggested to perform studies to compensate by affiliation of other ministries and as for separated legal form in Iran law, it is suggested that compare them as comparatively.

2-Installation of vertical and horizontal symbols and safety and lighting systems on roads and renovation and maintenance of roads to increase safety factor and reduce accidents by ministry of road and urbanism

3-As for findings on place of ministry of maintenance and transportation, it is suggested that the protectors and their role in compensation shall be discussed more and it is emphasized that the organization can perform the subjective duties of Iran accurately.

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## IDENTIFYING THE EFFECTIVE FACTORS ON DEVELOPMENT OF PEOPLE PARTNERSHIP AND ITS EFFECT ON PERFORMANCE OF MUNICIPALITIES (CASE STUDY: TEHRAN MUNICIPALITY)

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**Abstract.** Municipalities and participation of citizens are two basic steps of civil management in realization of civil planning (beauty, health, calmness and safety) and play important role in developing and progressing economic aims. This study is investigating the effective factors on development of People Partnership and its effect on performance of Municipalities. The current research method in terms of purpose is applied research, and in terms of data collection is correlational research the statistical population consists of 330 persons who are selected in order to test hypothesis. The data have been extracted by questionnaire and was analyzed by structural equations modeling and