CIVIL LIABILITY OF THE INCONCLUSIVE CAUSALITY OF THE MEDICAL TEAM IN IRAN, INDIA AND BRITAIN

Ali Ravanan,
Under graduating Student of Private Law, Faculty of human Sciences, Qom Branch of Sciences and Research, Qom, Iran
Seiyed Mahdi Mir Dadashi,
Assistant Professor Private Law, Faculty of human Sciences, Qom Branch of Sciences and Research, Qom, Iran
Mohammad Sadeqi,
Assistant Professor Private Law, Faculty of human Sciences, Qom Branch of Sciences and Research, Qom, Iran
Ebrahim Delshad Ma'aref,
Assistant Professor Private Law, Faculty of human Sciences, Qom Branch of Sciences and Research, Qom, Iran

Introduction. Statement of Problem and Research Questions. In the legal system of Iran, India, and England (Common Law), the issue of Tort committed by the medical team happens when in reality, there is the knowledge of damage inflicted by several causes, however it is not clear which cause has caused the damage. In the Iranian law, there have been suggested several ways for determining the liability of damage compensation such as the implementation of the right of choice in the cases of tort, the sentence establishment of the jurists as a rule, drawing, Citation to judicial circumstantial presumption, Compensation from public funds, treasury, Execution and aggregation of two conflicting sentences, Risk theory, presumption of responsibility, and the application of great judge authority, and in the Penal Code of 2015, the liability is equal. In the Indian Law, in terms of tort law in civil liability, there have not been offered any specific sentences. However, in the section 43 of the Contractual Law of 1872 on compensation of the shared damages in which the share of the parties is not determined, they are equally responsible for damage compensation, but in case one of the parties is deceased, the other party will be responsible for the compensation.

In the Law of England, the liability is equal and the confirmative aspect of the matter is of a great importance, and thus, the tort liability is evaluated based on the degree of culpability, in most cases.

The comparative study of the civil tort liability of the medical teams in the mentioned legal systems is indicative of the differences in the legal thoughts and processes, however all three legal systems are inclined towards the necessity of damage compensation and protection of the victim.

Regarding the current study, the most important questions which can be arisen, are as follows:

1- In cases the tort is committed by the medical team, what is the approach of the laws of Iran, India, and England in determining the liable party for damage compensation?
2- In evaluation of the right of choice, how is the damage to the third party by the medical team paid (compensated) in the legal systems of Iran, India, and England?

The Importance of Research

In the civil liability of medical team, among the rules and theories of tort liabilities, which rule is closer to the justice, which spirit of the law, and also, legal clarification of the liability resulted from tort committed by the medical team, or in other words, suggesting one or more clear legal provisions for obviation of the legal gap.

1-3-The Detailed Methodology

For conducting the current study and obtaining the results, the library-based method via indexing for direct quotations or deductions in the indirect quotation, was used among the other data collection methods. Also, like all other library-based studies, the books, articles, and reference to websites and related resources were used.

1-4- Review of Literature

The review of the related literature indicates that none of them have independently dealt with identifying, evaluating, and prioritizing determination of the responsible person for damage compensation and the way it should be paid in the medical teams' torts, in the legal systems of Iran, India, and England. Therefore, the author of the current study has tried to, through provision of appropriate solutions and full researching, evaluate the current challenges. The similar studies are as follows:

3- Safaei, Amir Hosein, the Journal of Jurisprudential Perspectives, Civil Liability of the Physicians Based on the New Penal Code Pezhhan, Mandana and Mirali, Majid and Shahabi, Mohsen, 2016, Journal of Civil Law Studies, Civil Liability of Physicians

1- The Rules of Civil Liability in Medical Teams Tort

1-1- Presumption of Responsibility

By presumption of responsibility, it is meant that with consideration for the fact that one of the medical team members is definitely held responsible for the damage, and the causality relationship is proven, in fact, each of the damage causes, with interference of the medical team, one of the members of which is attributed with damage, weakens the

possibility of establishment of causality relationship. Therefore, with putting a part of proof burden on the defendants, it would be possible that each of them will be able to prove the opposite of the causality assumption, and to be exempted from responsibility, and if he cannot prove he will be held responsible. Thus, it would be upon the defendants to prove themselves innocent, because there is a reasonable probability about the actions of each. This collective knowledge that exists here, and is credible, should not be ignored. Therefore, each of the members of the medical team should be held responsible unless the counter is proven, i.e. each of the defendants (the medical team members) is able to prove the cause of his noninterference in the incident and damage (Naser Katouzian, 2006, 445). In terms of the result, this theory is considerable, since on one hand, it sets the injured party free of proving a difficult or impossible task, and on the other hand, it provides the defendants with the opportunity to prove their non-liability.

However, it should be said that this presumption has neither legal aspect, nor judicial aspect, and it cannot be a credible cause for damage compensation, since it is possible that each of the members is liable and there is not legal possibility of abducting the counter reason. Besides, in this theory, we are facing a kind of cycle, since on one hand, we accept the presumption of responsibility in order to distribute the burden of claim among the defendants fairly, and on the other hand, we consider the fair distribution to be a necessary and conscientious, so that the presumption of responsibility can be proven (Mohsen Safari, 2000, 77).

In the law of England, if only one factor has interfered in the incident, investigation of liability or non-liability would have been dependent on application of "except with" criterion, so that the relationship between the defendant's fault and the damage that according to the plaintiff's claim, is inflicted due to defendant's fault (Erik S Knusten, 2009, 158). If it can be said the damages inflected would have not been inflicted except with the interference of the defendant, so the defendant would be held responsible for the incident and compensation of the damage due to failure in observance of conventional and reasonable care, would be upon him (Graham Stephenson, 2000, 137).

Generally, in the Law of India, the responsibility is based on three bases: a) the existence of legal obligation, b) breach of obligation, and c) infliction of physical or financial damage (Defamation and certain, No. 45 of 1860). As we know, is based on the Common Law and especially, the legal system of England, however, in the sentences issued in this country's courts of law, an exquisite point can be see, which can be considered as the progress of the emergent law of responsibility. In one of the sentences issued, the judge puts it as follows that "the semi-criminal law of England cannot be inserted into the law of India without consideration for Indian law". Or in another sentence, he states that new bases should be created in the Indian law (on the issue of civil liability) with consideration for economic-industrial issues.

Group Culpability

Another theory on civil liability leading to tort in medical team is the group culpability theory, i.e. the physicians among whom is the cause, have all committed a shared culpability, and they are responsible for damage compensation due to this fault. The legal process of France considers the participation of in a group in which the wrong is committed, such as team hunting, to be the same as commitment of a shared wrong, and based on this rule, applies a case sentence in which several persons commit a wrong altogether, since all of the collection's members have created a dangerous environment (Naser Katouzian, 2006).

In the medical team, the group culpability is created when for example, a wrong method is used for surgery or curing of the patient, which forms a collective fault and creates a dangerous environment, and can be a reasonable basis for responsibility of all the members of group. Also, it is the case for the children who try a dangerous and prohibited game such as fire cracking and shooting game, since the fault is shared by all the members of group and the dangerous environment is also the outcome of this fault (Naser Katouzian, 2006).

It should be noted this theory has been also prone to criticism, since in many cases no faults have been committed and the necessity of existence of the fault for referring to this theory makes difficulty for the injured (Hasan Mohseni, 2010, 299). Therefore, this solution is also not flawless, because it causes a group of innocent people to be responsible. Thus, it should be investigated which solution is closer to justice and causes less corruption.

These ideas expressed for unfair damage compensation, are a proper basis for the advocates of right liability theory, who ignore the share of perpetrator fault and punishing him and try to introduce right liability as the basis for civil liability (Naser Katouzian, 2010, 445). Sometimes, the protected right liability requires that several persons who were not the cause of the incident be responsible for compensation of the damage caused by it. As in the case of the seized property, all of the usurpers are held responsible for damage compensation of the owner of property, even though they have not interfered in the damage at all (based on Article 317 of Civil Law) (Ratanlal & Dhirajlal, Butterworths).

Therefore, we cannot deny the existence of group responsibility in our country, however, for application of each of these theories, the existing backgrounds in our own legal system must be considered. As was mentioned, the basis in our civil liability, based on the Article 1 of the Law of Civil Liability, is the fault-based liability, i.e. the basis has been the fault. In terms of the investigated case, it seems that the shared fault basis exists and it can be referred to.

In the case of medical team civil liability, the assumption is that all the bases have happened, i.e. the harmful action has been done by one of the members of this group with all the conditions mentioned for such action. Therefore, the only part remaining in terms of the bases of civil liability is the causality relationship.

As we know, the mere execution of the action by the defendant (be it accompanied by fault or not) and also infliction of damage on the injured, cannot make the perpetrator liable for damage compensation, since it is necessary for proving the liability of the defendant, to prove that damage is the outcome of his action, and in jurists terms, the action is committed by the perpetrator, perhaps, after the defendant's action is executed, other events have happened that realize the convention of damage responsibility for all or some of the members of the group (Seyed Mohammad Hossein Bojnurdi, 1998, 36).

2- The Conditions of Medical Team Civil Liability

2-1- Law of Iran

Firstly, we evaluate the conditions of medical team civil liability in Law of Iran.

3-1-1- Existence of Collective Knowledge

The first thing which is a condition for realization of civil liability of medical team is the availability of knowledge. Since a combination of knowledge of damage infliction and the uncertainty of the damage cause exists among the collection, this knowledge is named collective knowledge. The collective knowledge is a general knowledge with doubts as many as its environment and each doubt is indicative of a probability among the general adaptation probabilities. Its opposite is the detailed knowledge which is a knowledge free of doubt and uncertainty (Ali Shirvani, 2009, 381).

For determining whether the collective knowledge is definitive, like detailed knowledge, it should be investigated whether the collective knowledge, like the detailed knowledge, include the prohibition of definitive opposition and obligation of definitive agreement, or not. The proof of obligation in collective knowledge can be introduced in two manners:

The first manner: prohibition of definitive opposition

The second manner: obligation of definitive agreement

The law theoreticians usually discuss the first aspect in Qat'a (certainty) terms and the second aspect in Eshteqal (opposition) terms. Regarding both aspects, we would obtain four theories through investigation of jurisprudence book.

The existence of collective knowledge in terms of obligation is the very initial doubt, due to lack of a reasonable or narrative cause for prohibition of opposition and its punishment. Also, there is not a consensus on its falseness (Mirza Abolhasan Meshkini, 1992, 167). In critique of this theory, it should be said: by referring to the wisdom and the wise, the falseness of this probability becomes manifest, since for being disgraced by the lord, there is no difference whether the person realizes that he is disgraced while doing the action or after the action is done (Fazel Lankarani, 1998).

The definitive opposition is prohibited but definitive agreement is not necessary and the probable agreement would suffice, due to Bera'at Akhbar (absolution narratives) and the lack of a reasonable or religious cause, even in the narratives, for allowing the release from obligation (Mirza Abolghasem Qomi, 1984).

Some believe in efficiency of collective knowledge and consider it to be complete cause towards the prohibition of definitive opposition, i.e. wherever exists the collective knowledge, the definitive opposition to it is prohibited. However, towards the obligation of definitive agreement, it is advisable, i.e. if there is not an obstacle (such as religious or reasonable release), the collective knowledge would be effective, since execution of the rule on the both sides leads to agreement of two contradictions meaning that actually, one of the two sides is obligatory and at the same time, according to the appearance and rule, it is not obligatory. Therefore, the collective knowledge is the complete cause for definitive opposition (Morteza ben Mohammad Amin Ansari, 1996, 33).

In the discussion of certainty, some other consider the collective knowledge to be advisable for the prohibition of definitive opposition and obligation of definitive agreement (Mohammad Kazim bin Hossein Akhund Khorasani, 1989, 314). However, at the end, in the discussion of opposition, the collective knowledge is considered as the complete cause in the second-hand agreement and the definitive agreement. Therefore, the lawgiver release in leaving a side is not allowable, let alone releasing both sides.

Through investigation of the ideas about mentioned about the collective knowledge, it can be inferred that there is no difference between the collective knowledge and detailed knowledge in terms of definitive agreement and definitive opposition. In other words "in fact, the collective knowledge, just like the detailed knowledge, is complete". Also, by referring the wisdom and the wise, the obviousness of the issue becomes evident. Therefore, the collective knowledge is the sufficient cause of the obligation's completeness, and the sentence for all the cases of collective knowledge including the mentioned case, is the same.

3-1-2- Obligation of the Doubt

The second necessary condition is that the number of the persons in the doubt should be limited. In cases in which the collective knowledge exists due to damage, there is a kind of doubt about the responsible person for the damage. Through determining the type of doubt, the sentence of the unlimited and limited doubt can be separated. Therefore, the limited and unlimited doubt are usually referred to as the collective knowledge-related doubts (Ahmad Gholizade, 1999, 123).

3-1-3- The Simultaneous Action of the Members of Medical Team

In the civil liability of the medical team, the causes among which one is definitely the cause of damage infliction might be categorized into active and passive groups. In the active group, in fact, the sentence on responsibility of the members of group can be issued when all the members have been active, but in passive causes, the sentence on collective responsibility cannot be issued, since this group have not taken any actions that makes them liable.

3-1-4- The Injured not being Guilty

The fourth condition for realization of the civil liability of the medical team is that the injured should not be guilty, since it is the duty of any person to save his property from any material and spiritual damage. Therefore, whenever the injured, as a result of damage or causality, or any other acts that has civil liability, is about to suffer more harm, must prevent infliction of more damage if he can, and if he fails to do so or he is delinquent, he has done a negative action to himself and is responsible (Mehrab Darab Poor, 2011, 88). The issues on fault and inaction of the injured is introduced as the 'action rule' in jurisprudence. This rule, as a jurisprudential rule, has been less addressed in law and jurisprudence books, and has been more discussed in side issues on usurp, deposit, Qisas, and the atonement (Mahmoud Kazemi, 1998). By the rule of action it is meant that the person does himself a harm and takes actions that lead to damage to his own soul or property, and accepts the harm consciously.

It may be inferred from the contents of rule of action that in Islamic jurisprudence, whenever the injured takes an action that harms himself, the damage compensation by others should not be expected, even though all the conditions are met (Jamal al-Sin abi Mansour al-Hasan Helli, 1991, 534). Nevertheless, this theory should be modified in a way that the effectiveness of the injured inaction in creation and exacerbation of the danger and extension of the damage must be considered and regraded in the resulted harm, so that he will not be deprived of the right for damage compensation. It should be investigated to what extent the action is effective in the damage (Naser Katouzian, 2006, 311).

3- The Law of England

It seems that in the law of England, there are not different approaches and when the damage inflected is the result of collective action of the causes, the responsibility of each cause would depend on their effectiveness in damage infliction. However, determination of the accurate extent of intervention or effect of each cause in the incident is not always easy (John Cooke, 2010, 170). For example, the Fitzgerald v Lane case can be mentioned. In this lawsuit, the damages inflicted were the result of the carelessness of the claimant and the defendants, i.e. the damages were the result of the shared actions of the claimant with the two defendants. Therefore, the court charged half of the liability upon the claimant and the other half upon the defendants (Ctherine Elliot, 2009, 370). However, in some cases in which the role of one of the causes is to the extent that it can be said the second cause was affected by the first cause and subsequently has caused the damage, the damage compensation would be upon the main cause or the cause that made the other factors interfere. For instance, in 'Corr v. IBC vehicles Ltd' case, the claimant's husband underwent mental disorders as result of a terrible accident and consequently, committed a suicide after 6 months. The court charged the defendant as liable for the mentioned person's death, and did not accept the defendant's reasoning that suicide is a voluntary act disconnecting the causal relationship between the accident and death, since it considered it to be the result of depression resulted from the accident.

4- Law of India

In the existing legal process of India, there has been mentioned three conditions for determination of professional liability. In the legal process 'Sishir Rajan Saha v. The state of Tripura', these three conditions on the duties of the physician were introduced as follows: a) the duty of care and decision-making about taking the responsibility of the subject, b) the duty of care in decision-making on what treatment method should be taken, c) the caring duty during the treatment. In this regard, the person who refers to the physician, needs a reasonable, emergent, and accurate treatment. In case the physician violates any of above three conditions, he might face civil liability or even penal actions.

Third Chapter: The rules and Laws Supervising the Civil Liability of Medical Team Tort:

In cases there are the bases and conditions for civil liability of medical team tort, the damage must be compensated in a way that firstly, the different solutions should be introduced an then, the method of damage compensation should be discussed.

5- Determination of the Responsible Body for Damage Compensation

The bone of contention is determination of the responsible person for damage compensation from the medical team side. There have been proposed different theories in this regard among which the judge optionality, drawing, compensation from public funds, and apportionment of the responsibility can be noted. In this chapter, these ideas and evaluation of each, would be addressed.

5-1- The Law of Iran

6-1-1- Judge Optionality

If the rule of necessity and obligation is clear and the obligee is in doubt between the obligation and prohibition, and following both of them is possible, in this case, the prudence is the rule. Therefore, all the aspects of the collective knowledge must be considered to make sure that obligation made by the religious lawmaker is observed. The second

situation is that the obligation is between two avoided (obligation and prohibition) and following both of them is not possible. The law theoreticians refer to it as the obligation between the two avoided and due to impossibility of following both of them, the obligee is optional in following one of them (Morteza bin Mohammad Amin Ansari, 1994, 366).

In the medical issues, there is no records of suspects of liability, and if there is any, the assumption is that they have no effect on their current liability. In addition, since there is certainty on infliction of damage and there is collective knowledge regarding its cause, there is no doubt that the damage must be compensated. On the other hand, we cannot charge all of suspects with damage compensation, since the assumption is that one of the members has made the damage and claiming the damage from others is an instance of unjust demand and false seizure of property. Therefore, this issue is considered as the doubt in two or more non-aggregable sentences. In such condition, some believe that sentence is the obligation of damage compensation by the real responsible and prohibition of claiming it from others in the circulation. They believe it is an instance of circulation of sentence between the avoided, and state that optionality rule is the basis. However, it should be said that application of optionality and giving authority to judge to sentence lack of liability of all members or consider all of them liable, or oblige some of them compensate the damage and acquit the others, is not something that can be accepted by reason and wisdom (Mohsen Safari, 2000, 49).

The advocates of this theory believe that since the definitive agreement (claiming the damage from all the members) and definitive opposition (not claiming any damage) are not possible, and in addition, adjoining several actions with each other has not any credible reasoning in terms of liability. Therefore, each of them must be considered separately (Seyed Abolqasem Musavi al-Khoei, 1992, 370), in way that with considering one of the mentioned causes as liable and acquitting others, the way for lack of definitive opposition and probable agreement with collective knowledge is paved. Therefore, although we cannot definitely agree with the collective knowledge, at least the probable agreement can be obtained. This theory is based on the fact that we believe the prohibition of definitive opposition and lack of obligation for definitive agreement would suffice.

The result is that those agreeing with this theory, after detailed discussions on the subject and critique of different ideas, have concluded that determination of final sentence on tort liability should be upon the judge and religious authority. Thus, if the judge fails to invite the parties to the compromise, he can sentence to distribution of damage between the perpetrators, based on his religious authority, in a way that with assumption of shared liability of them, he is optional to consider each of them equally responsible for damage compensation, in order to end the conflict (Seyed Mir Abdolfattah bin Ali Hoseini Maraghi, 1996, 562).

6-1-2 Rule of Drawing

One of the ways to get out of dilemmas in the investigated issue, which is also in lines with Islamic Law, is the rule of drawing.

In the jurisprudence terms, drawing is: "a method used for obviation of doubt and dilemma, and a way of decision-making where there are no priorities" (Abolhasan Mohammadi, 2011, 95). Generally, the rule of drawing is applied in two occasions: the subjects whose sentence is actually and apparently unknown, and the subjects whose sentence is apparently dubious between two or more things, but actually it is clear, in which case, undoubtedly the drawing is cited for its determination (Mohammad Jafar Jafari Langroudi, 2009, 541).

The latter case can be the case for medical team tort. Therefore, in this regard, execution of rule of drawing has no problem. Some jurists also believe that drawing in the Badaviyah (initial) doubts and Hokmiyah (what has a sentence) doubts is not usable, since in such doubts, the doubt can be obviated by other reasons such as applied rules and evidences. In fact, it can be said that these cases are subjectively out of the scope of drawing rule reasons. In most cases, the drawing is specific to law, but it cannot be said to be a part of drawing nature, since even if there are no rights, it would be possible to use drawing (Naser Makarem Shirazi, 1991, 345).

Based on what is narrated by the jurists in the jurisprudence books and rules, the rule of drawing is a public rule, not specific to the narratives and sayings, and in cases such as civil liability of medical team tort, it can be also applicable. In other words, in cases the right and interests of people are equal, and there is fear that a conflict may outbreak between them, the 'drawing' has been religiously allowed, as it is the case in occasion in which two persons inflict a damage upon a third party, and their damage leads to a murder, and it is not clear who made the damage, the contemporary jurists has allowed drawing (Seyed Shahaboddin Mar'ashi Najafi, 1994, 156). Some other also, responding to the question that if two persons are accused of a murder, what should be done? have answered that through the words a person, being the killer is not proved, and in case there is collective knowledge about one of them being the killer, if the religious sentence cannot determine which one is the killer, and it is time to pay blood money, it can be claimed from one of them by drawing (Hosein Karimi, 1986, 163).

This rule has also been accepted in the law. The witness is the several cases provided in statute laws about application of this rule. For example, the Articles 598 and 599 of Civil Law and the Articles 319 and 320 of Probate Code can be noted, and most important of all, in the Article 315 of the former Islamic Penal Code (1991) the drawing has been also predicted for determination of liable body for blood money payment. In fact, it can be said that one of the main reasons why the lawyers accept the rule of drawing as a solution for finding the liable person has been the same article. Therefore,

with the assumption of medical malpractice, whenever merely some of the personnel of the medical team are guilty and some have no faults, only the culpable personnel are included in collective knowledge and the liable person would be chosen from among them through drawing. And whenever none of them are guilty, if their action is considered as loss, which is apparently so, all of them are included in the collective knowledge and the rule of drawing would be executed among them to determine the liable person (Seyed Hosein Safaei, 2009, 43).

6-1-3- Payment from Public Funds

Damage compensation from the public budget or public funds is among the other ways for solving the mentioned issue, which is strengthened by some reasons and has been predicted in the Islamic Law. For example, if the dead body of a person is found on a street and there is no definitive or conjectural evidence to attribute the murder to a person or some persons, or in a case in which somebody is killed by a crowd and there is no conjectural evidence to attribute the killing to a person or group of persons, the blood money would be paid from the public funds (Seyed Ruhollah Musavi Khomeini, 2011, 528). In this regard, the criterion of the Article 487 of Islamic Penal Code enacted in 2013, which has replaced the Article 255 of the former Islamic Penal Code, can also be used: "if someone is being killed and the killer is not identified, or he is killed due to overcrowding, the blood money is to be paid from the public funds". In this case, the Legal Department of the Judiciary, considered the instances mentioned in this article (being killed due to overcrowd or finding the dead body on the street) to be only two of several instances of blood money payment from the public funds (Hosein Mir Mohammad Sadeghi, 2013, 264). The sentence obligated in the Article 487, unlike the sentence in Article 255, is public and in any cases, if someone is killed and the killer is not identified, or he is killed by the crowd, the blood money would be paid from public funds. In addition to Article 487, in the Articles 484, 334, and 333 of the same Law, and Article 100 of the mandatory Insurance Law, the public funds have been considered to be responsible for damage compensation and payment of blood money.

More important of the above Articles is the Article 477 of the Islamic Penal Code, which is the clear manifestation of medical team civil liability, in the cases of collective knowledge on crime commitment by one or two, or more certain persons and lack of Loath (a judicial presumption confirming the allegation) for the avenger of the blood, has considered the right of taking an oath for the accused and if they all take the oath, (the blood money in the case of murder) will be paid from the public funds.

6-1-4- Distribution of Damage

Another solution mentioned is distribution and apportionment of damage among limited and specified persons. The advocates of this theory, cite the rule of equity for justifying themselves.

A group of jurists, in the assumption of the cause of damage, after proposing the equality in damage compensation, have sentenced to distribution of blood money. For example, Ayatollah Makarem Shirazi, in response to the question "if as a result of simultaneous shooting of several persons, someone is killed and it cannot be proven whose bullet stroke the victim, what would be the sentence?", has stated: "if it is proven that the person is killed by one of them and there is no way to identify the killer, the blood money would be apportioned between them". Ayatollah Golpaygani has also accepted the same idea. He, in response to an Estefta'a (a religious question) in this regard, has answered that with collective knowledge on the murder by one of the two shooters, the avengers of blood of the victim can make both of them to take an oath, so if both of them took the oath that they have not committed the murder, or none of them too the oath, must pay the blood money to the heirs of the victim (Mohammad Bagher Karimi, 1998, 92).

One of the contemporary scholars believes that the jurists have wrongly expressed concern on rule of drawing and rule of equity, and could not find any ways to obviate this concern, since wherever the rule of equity can be used, the rule of drawing which is the blind rule, would not be allowable. In terms of execution of rule of equity, the man sees himself intuitive and discerning. In addition, the main axis of the law and rules must be the fairness and justice. Therefore, as long as the rule of equity can be exploited, the rule of drawing should not be used, and it is self-evident (Mohammad Jafar Jafari Langeroodi, 1999, 75).

One of the contemporary jurists also considered the damage apportionment between the causes to be in lines with an authenticated narrative and believes that blood money of the victim, according to the rule of equity, must be distributed among all the participators in the damage and conflict, since if it is not so, the blood of a Muslim would be refused and denied, and since the killer is not identified, and the obligation of each of them is the definite priority, there is no way but distribution of the blood money among all of them. On the other hand, the drawing is opposed to the narratives, so it cannot be accepted as a general rule. Even if the drawing is general, it has been only mentioned in the content of some narratives (Seyed Mohammad Hasan Mar'ashi, 1986, 29).

Regarding the statute laws also the sentence of this issue has not been clearly mentioned, however it can be concluded from the general spirit of the rules that in such cases, the priority is precedence of rule of equity over the drawing.

Some are opposed to rule of equity and apportionment, and believe this rule to be limited to some specific cases mentioned in jurisprudence. Therefore, some of them believe that resorting to rule of equity is not allowable. For example, the late Ayatollah Khoei does not believe in confirmation rule of equity at all (Abolqasem Musavi al-Khoei, 1935, 56). And

also, Shahid Sani believes that narratives that consider the basis for the deposited property to be dividing in halves, are weak in terms of document, and states that the priority of rule in such cases is the rule of drawing (Seyed Jawad Zehni Tehrani, 1987, 198).

5-2- The Law of England

In the tort civil liability, there is no doubts that one of the several causes is the real culprit, however, due to the complexity, vagueness, or specialty of the subject, its perception is not possible. In this regard, the American courts, in cases the damage is inflicted only by one of the causes, and firstly, the number of the civil fault perpetrators is limited and secondly, all of the perpetrators are called to the court, and thirdly, it is not possible to identify the main cause, have accepted the joint responsibility (Graham Stephenson, 2000, 167). For better understanding of the issue in the Law of England, it is necessary to denote a controversial judgement.

The Glenhaven v Fairchild case was about the workers (claimants) who, while working in a factory, were exposed to dangerous and toxic material. This led to a specific fibre of the mentioned material to be entered into their lungs and with getting more severed, they changed into tumor and consequent death of some workers (mesothelioma). Unlike the Asbestosis, in this disease, the mentioned fibre is entered into the lung through a one-time exposure and being more or less exposed has no impacts on exacerbation of the disease, i.e. in any ways, only one of the factories in which the workers had worked in was responsible for the fibre entrance and disease affliction. But the mentioned factory was doubted among the other factories and it was no possible to recognize. The Supreme Court of England, based on the incidents, sentenced that the claimants should prove which fibre while working with which employer, has entered their lungs and only in this case, the main cause of damage infliction would be identified. Since the outbreak of the symptoms might take up to ten years and during this period, the workers may have worked for different factories, practically, the proof of what was necessitated by the court was impossible. After the issuance of the sentence, the liability of the defendants towards the workers was deemed to be a joint liability. A little while later, by the Supreme Court, the case was returned to the House of Lords of England, and based on this authority's comment, this solution was limited. In an allegation in 2006 (Berker v Corus UK ltd., 2006, 785), the House of Lords of England took a step backward and replaced the joint liability of defendants with relativity of their liability. It should be noted that tort should not be mixed with "independence of the causes" in the state in which identification of the liable body is not possible, since in causation in tort, only one of the existing causes has inflicted the damage upon the claimant and the damage rate is calculable, but identification of the main cause of the damage is not possible. This is despite the fact that in the subject of "independence of causes" in which a damage is inflicted upon the claimant, the identification of the cause among whose action and the inflicted damage there is causality, is possible.

The Law of India

On the subject of damage compensation in the Law of India, in the causation of tort regarding the civil liability, no especial sentence has been considered. However, in the section 43 of the Law of Contracts enacted in 1872 on compensation of the shared damages, without determination of the share, indicates that the guilty bodies will be equally liable for damage compensation, but in case each of them is deceased, each is held responsible for compensation of all the damage which has been upon the other party.

In the legal process also, a similar sentence can be seen. In the case of Baria Goman Hamji v Jakikanth j.Shah, a person who was injured and at work and died, complains from his employer and the employer, defending himself, states that he has been also working in another place. The court sentences both employer to be liable for damage compensation, but failed to explain about the share of each.

6- The Method of Liability Apportionment

In this chapter, we would address the method and howness of damage distribution and apportionment. There are two approaches in this regard. The first is the joint liability and the second is apportionment of the liability between the damage causes, equally.

6-1- The Joint Liability of Medical Team

Some Iranian lawyers believe that people liability in damage infliction is of the joint type, with the reasoning that several defendants have created the damage, altogether, and such liability cannot be parsed. And in confirmation of their idea, they have cited the Legal Articles such as Articles 316 and 327 of the Civil Law which are about the joint liability of the usurper, and the Article 14 of Civil Liability Law which states that whenever several persons collectively inflict a damage, they are jointly liable for damage compensation (Abdolmajid Amiri Qaem Maqami, 1999, 306).

It seems that although the results of this theory are effective on damage compensation and prevention of legal chaos, and as was mentioned, it is beneficial for the injured, in the case of medical team tort, it is not possible to resort to all of its forms, and in fact, the joint is meaningful where all the members of group are together in damage infliction. Therefore, in cases some of the members of group has not committed any wrong, and only one of them has inflicted the damage, it cannot be used. In addition, basically, the joint in Islamic jurisprudence is contrary to the rule and in cases in which the joint liability is accepted, they are unique and based on specific causes, and through induction in specific cases, the general sentence cannot be concluded (Morteza Qasemzade, 2006, 398). Some jurists believe that as putting the same property in two places at the same time is unlikely, charging the same property upon two different parties at the same time is also

impossible (Mohaqeq Naeini Amoli, 1992, 199). Some have also put this doubt and uncertainty about joint liability another way, such as the fact that while every thing cannot take more than one form, so how is it reasonable to charge several persons with its compensation?

6-2- Equality in Liability

When the damage is the result of a collective action of several causes in a way that it cannot be said the damage is the result of action or inaction of which cause, the decomposition of the damage and putting the responsibility of compensation of each component upon one of the causes, would have a reasonable justification. Among the bases of liability equality in tort liability, the distributive justice can be named. The distributive means that all the damages must be addressed as the bases of civil liability. Today, the civil liability has become a requirement for realization of distributive justice. The civil liability is not merely the provision for executive liability of the accused harm against the victim, but it should seek to apportion the unintentional and accidental damages and transfer it from the victim to other parties (Hasan Adini, 2005, 507). The shared and equal liability of several causes in the collective knowledge, in some assumptions and the liability of the public funds, in other assumptions mentioned in the law, can reflect the basis of distributive justice in civil liability law on damage compensation. Some Imamiyah jurists, have also deemed the equality of the causes in damage compensation to be more appropriate in the case of torts leading to death (Mohammad bin Makki Ameli, 1853, 255). Also, some judicatories have sentenced to equality of the causes of damage in distribution of damage compensation.

In the Law of England, when two or more separate causes inflict a damage on a victim, each cause would be held liable for the damage himself has inflected. However, if sue to reasons such as complexity of the causes involved in the damaging accident or scientific complexity, the clear attribution of each accident to the cause of damage infliction is not possible, the interfering causes should be equally liable for the inflicted damages. As it was observed, it seems that in this case, the same separation proposed between "apportionment of liability" and "attribution of liability" in the Law of Iran, also exists in the Law of England. For example, in "Fitzgerald v Lane" case, the claimant hesitantly, while the traffic light is still red, has entered an overcrowded street and was thrown to the other side of the lane after crashing into a moving car, and then, another car hit him and he suffered several other damages. Since it was not clear how effective was each of the defendant in inflicting the damages, the court sentence was equality of the defendants liability(Richard Owen, 2000, 42).

7- Discussion and Conclusion

The causation in tort law is among the important subjects in civil liability, and it is realized when there is knowledge on damage infliction by a cause among the other causes, but the main cause cannot be determined with certainty. One of the important issues discussed in today's law is the civil liability of the physician. Before enactment of Islamic Penal Code in 2013, the liability of the medical team was based on an absolute liability, and it has led some to claim that regarding the clearness of penal code, the liability of medical team towards the patient is a kind of result obligation, however, the nonconformity of this theory with the nature of medical team liability and the criticisms of the mentioned law made the lawmaker to, in a appraisable act, change the basis medical team liability in the new Islamic Penal Code enacted in 2013, and with the assumption of its being guilty, give it the opportunity to get free of liability through proving its innocence.

In the comparative law, the medical team civil liability is basically based on theory of culpability, i.e. the medical team is liable and obliged to compensate the damage when its culpability is proven. This solution, besides being in lines with the general rules of civil liability, is also justifiable with the expedience of the patient and the society. As was mentioned, in the Islamic Penal Code enacted in 1995, based on the narratives of some of Imamiyah jurists, the total liability or liability without the culpability of the physician has been accepted, which can be criticizable, however, the mentioned rule, through acceptance of the acquittal of liability condition (non-liability condition) has been modified. Indeed, it should be noted that acquittal of liability does not totally exempt medical team off the liability, since in this assumption also, through the proof of culpability, he would be liable and obliged for damage compensation. Fortunately, the new Islamic Penal Code has compromised the former rule and accepted the culpability basis in physician liability. However, it seems that the basis of liability in this law is assumed culpability, and not the proven culpability, i.e. the law considers the medical team to be liable unless it is proved inculpable. Obtaining the acquittal of liability has been also predicted in the new law, whose benefit is the replacement of the reason burden. In the legal systems following the Common Law, such as that of England, formerly, the medical team liability was evaluated in the framework of non-contractual liability, however today, the treatment contract and the constitution of professional obligations of the physicians are considered to be dominant in physicians' liability. The procedures of determination of damage rate inflicted by the medical team, that should be compensated to the injured, also lack a clear and stable rule, and its specification and determination is upon the court, to finally decide, considering the all the subjective matters.

In the Law of India, generally, considerable progress have been made in terms of civil liability of professional activities, especially the medical liability, and this branch of law is not totally evolved yet. Regarding the determination of liability, the previously mentioned conditions must be realized, and the equality in damage compensation is considered in the law of this country.

The general structure of civil liability rules of "tort" in the laws of Iran, England, and India, for the medical team, have apparent differences. In the Law of England, just like the Law of India, both being based on Common Law legal system, unlike the Law of Iran, the intentionality and carelessness of the medical team are the two independent causes for civil liability lawsuits. In the concept of liabilities without culpability also there are not significant differences between the laws of Iran, England, and India and in all three systems, based on social interests, at times, the medical team are considered to be the liable for damage compensation regardless of any faults committed. These matters confirm the closeness and similarity of the two legal systems and state that although the laws of England and India are Common Law-based laws, but the concept of justice and unfair damage compensation, is the same in all legal systems and all existing systems attempt to reach a common goal, even though the path might be different.

References

1. Amiri Ghaemmaghami, Abdul Majid, 1999, Law of Obligations, First Edition, Tehran, Mizan Publishing.
2. Badini, Hassan, Civil Society Philosophy, 2005, First Printing, Tehran, Publishing Stock Company.
3. Bazgir, Yadollah, 2002, The Law Reflected in the Sentences of the Supreme Court, Academic Publishing.
4. Jafari Langroudi, Mohammad Jafar, 2009, Terminology of Law, Twenty-first Edition, Tehran, Ganj Danesh Publications.
5. Darabpour, Mehrab, 2011, Non-contractual liability for Compensation of damages and privileges, Second edition, Tehran, Majd Publications.
6. Shirvani, Ali and Gheraviyan, Mohsen, 2004, Translation of Principles of Inference, Volume I, First Printing, Qom, Daral-Fakr.
7. Shahri, Gholamreza (From 1980 to 1991), Opinions of the Judiciary's Legal Department, Volume I, Theory No. 7527/7 dated 08/06/1989.
8. Safaee, Seyyed Hossein and Ghasemzadeh, Seyyed Morteza, 2003, Civil Rights of Persons, Eighth Edition, Tehran, SAMT Publishers.
9. Safari, Mohsen, 2000, Civil liability in Torts, Journal of Faculty of Law and Political Science, No. 49.
10. Ghasmzadeh, Morteza, Principles of Civil Liability, Second Edition, Mizan Publishing, Tehran, 2006.
11. Gholizadeh, Ahmad, 2000, Glossary of Jurisprudence Principles, Volume I, First Printing, Tehran, Noor Al-Asfia.
12. Lankarani, Fazel, 1998, Full Introduction of the Principles of Jurisprudence, by the efforts of Mohammad Dadsetan, Vol. 12, First Printing, Qom, Islamic Publishing House, in association with the Teachers' community.
13. Katouzian, Naser, 2006, Proof and the Reasoning of Proof, Volume II, Third Edition, Tehran, Mizan Publishers.
14. Katouzian, Naser, first semester of 2000, adaptation of comparative civil responsibility course, private law Ph. D Course.
15. Kazemi, Mahmood, 1998, "The effects of loss satisfaction on civil liability", Master's degree in private law thesis, Tehran University Press.
16. Karami, Mohammad Bagher, 1998, Collection of jurisprudential documents and opinions of the Legal Department on Murder, First Printing, Tehran, Ferdowsi.
17. Karimi, Hussein, 1986, Judicial Standards from Imam Khomeini's Point of View, Volume I, First Printing, Qom, Shakoori.
18. Gorji, Abolghasem, 2001, Papers of Criminal Law Magistrate Criminal Law Courses, University of Tehran.
19. Mohammadi, Abolhassan, 2011, Rules of Jurisprudence, Twelfth Edition, Tehran, Mizan Publishing.
20. Marashi, Seyyed Mohammad Hassan, 1986, Explanation of the Law of Punishments and Qisas, First Edition, Tehran, Ministry of Islamic Guidance.
21. Makarem Shirazi, Nasser, 1991, The rules of jurisprudence, Volume I, Third edition, Qom, Alamam Ali ibn Abi Talib (AS) school.
22. Mir Mohammad Sadeghi, Hussein, 2013, Crimes against individuals, 11th Ed., Tehran, Mizan Publishers.
23. Raee, Masoud, Sharifian, Ali, 2011, Culpability in Civil and Justice, Journal of Law, No. 1, pp. 96-95.
24. Safaei, Seyyed Hossein, 2009, Civil liability in the causation of tort (comparative study), Quarterly journal of legal research in Qom.
25. Mohseni, Hassan, Moradi Nezhad, Reza, 2010, Comparative Study of Compensation for torts and damages with unknown responsible, Journal of Law and Political Science, Volume 40, Issue 1.
26. Akhund Khorasani, Muhammad Kazem bin Hassin, 1988, Kafayah al-Islam, the first chapter, Ahkul-Bayt Foundation.
27. Amoli, Mihaqeq Naeini, Sheikh Mohammad Taghi, 1994, Al-Makasib al-Bei'a, Volume II, First Printing, Qom, Islamic Publishing Institute.
28. Ansari, Morteza bin Mohammad Amin, 1995, Faraed al-Asl, Volume I, fifth edition, Qom, Al-Nashr al-Islami Institute.
29. Ansari, Morteza bin Mohammad Amin, 1994, Al-Mekhasb, Volume 5, First edition, Qom, World Congress on the commemoration of Sheikh Azam Ansari.
30. Bojnourdi, Seyyed Mohammad Hossein, 1998, Al-Qawaed al-Fiqahiye, Volume II, First edition, Qom, Nashr al-Hadi.

31. Horr Amoli, Mohammad ibn al-Hassan, 1988, Tafsil al-Vasael Al-Shi'a, Volume I, Qom, Al-Al-Bait Dar-ol-Ehya Al-Torath Institute.
32. Hosseini Maraghi, Seyyed Mir Abdolfattah ibn Ali, 1996, Anavin Al-Fiqahi, Volume II, First edition, Qom, Qom Teachers Society.
33. Helli, Jamal al-Din Abi Mansur al-Hassan, 1991, The Rules of Al-Ahkam, Vol. 25, First Edition, Beirut, Included in the Al-Nabiyya al-Fiqahi dynasty, Al-Dar al-Torath al-Arab al-Arabi and Dar al-Islamlamyyah publications.
34. Hakim, Seyyed Mohsen, Nahj al-Fiqaha, Qom, 22th of Bahman Publication, Bita.
35. Khomeini, Seyyed Roohollah Mousavi, Tahrir al-Wasilah, Volume II, Second edition, Qom, Dar al-Kutob Al-Elmiyah.
36. Zehni Tehrani, Seyyed Javad, 1987, al-Mabahith al-Fiqhiyah fi Sharh al-Rowdhah al-Behyihah, First Edition, Qom, Vejdan Publishing.
37. Ghomi, Mirza Abolghasem, Qavanin al-Osul, Bija, Bita.
38. Marashi Najafi, Seyyed Shahaboddin, 1994, Qisas ala al-Zua al-Quran and al-Sunnah, first print, Qom, Ayatullah Marashi Library publication.
39. Meshkini, Mirza Abolhassan, 1992, Kifaya al-Osul Mahsha, Investigated by Sami Khafaghi, Volume Four, First Printing, Qom, Loghman Publishing.
40. Musavi Al-Khouei, Seyyed Abolghasem, 1896, Mesbah Al-Osul, Papers by Va'ez Hosseini Behesoodi, Mohammad Sarvar, Volume II, First Printing, Qom, Maktab al-Dawari.

.1 Barker v. Corus, 2006 UK ltd 3 All ER 785.
.2 Cooke, John, 2010, Law of Tort, ninth revised edn. London, Longman.
.3 st ed., North Carolina, Carolina Academic Press. Calnan, Alan, 2009, Duty and Integrity in Tort Law,
.4 Corr v. IBC vehicles Ltd. 2 All ER 943.
.5 Elliot, Catherine & Frances Quinn, 2009, Tort Law, seventh edn. London, Longman.
.6 Fairchild v. Glenhaven, 2009, Funeral services Ltd 5 ER All 3.
.7 Knutsen, Erik S,2009, Clarifying Causation in Tort ,Dalhousie Law Journal, Vol. 33, No. 1, p. 158, Available at SSRN: http://ssrn.com/abstract=1448828
.8 Owen, Richard, 2000, Essential Tort Law, 3rd. edn., London, Routledge- Cavendish
.9 Stephenson, Graham, 2000, Sourcebook on Torts, Second edn. London, Cavendish.
.11 Thurrock & Basildon. V Carter. 2007, (University Hospital) NHS Foundation Trust EWHC 1882 (QB).
.11 The Indian Penal Code 1860
.12 J. Kuppanna Chetty, Ambati Ramayya Chetty and Co. v Collector of Anantapur and Ors 1965
.13 Ratanlal & Dhirajlal, Singh J, G.P., ed., The Law of Torts (24th. ed.), Butterworths
.14 Rohtas Industries Ltd vs Rohtas Industries Staff Union, (1976)
.15 C. Mehta v. Union of India, AIR 1987 SC 1086 (Oleum Gas Leak Case)
.16 Sishir Rajan Saha v. The state of Tripura
.17 Baria Guman Hamji and Anr. Vs. Rajanikant J. Shah[17]