

PalArch's Journal of Archaeology  
of Egypt / Egyptology

WARRANTY RESULTING FROM EARTHQUAKE AND SUPERVISOR  
LIABILITY IN THE QUASI-JUDICIAL PROCEDURE MIRROR IN IRAN

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**Bahman Moradifar, Hosein Sheykhholmolk: Warranty Resulting from Earthquake and  
Supervisor Liability in the Quasi-Judicial Procedure Mirror in Iran -- Palarch's Journal  
Of Archaeology Of Egypt/Egyptology 17(9). ISSN 1567-214x**

**Keywords: Natural Disasters, State Liability, Earthquake, Forced Accident**

## ABSTRACT

Liability arising from earthquake and responsibility of construction observers in the field of quasi-judicial precedent. This is a general rule that in natural disasters occurring throughout the world some incidents with the same effect must amount to the same consequences. This approach cannot be seen in practice because some natural disasters with the same intensity cause unequal damages. In Kermanshah province, statistics show that there are some natural incidents with the same intensity the outcome has been different <sup>1</sup>and this indicates that governments with long-term planning and standardization have been successful in decreasing damages. In the field of law, lawyers have paid attention to The Liability of government in these cases a type of civil liability that due to progress in science and technology is far from the traditional concept of civil liability and is regarded as evolutionary responsibility which is related to Philosophy and sociology.

In this research we are going to answer this question: 1) is it logical that a natural disaster happening centuries ago with a huge amount of damages should amount to the same amount of damages?

## INTRODUCTION

Today, natural disasters have found a different meaning from their traditional meanings, and although they cannot predict absolutely, they are at least relatively predictable. On the other hand, the government has moved from the traditional concept of sovereignty to new concepts such as the welfare state and the responsible government.

However, despite the occurrence of such incidents every year, no one has been found so far or few are found to claim such damages from the government and regulatory bodies. This matter has led to a kind of negligence in the performance of the government and regulatory agencies in Iran, and on

<sup>1</sup> Attachment to Aftab Magazine, Kermanshah Special Issue, November 2019, p.15

the other hand, because the judicial and quasi-judicial procedure in this area is not enough clear and judges Instead of creating procedures, innovating, and pushing the law toward modernist theories, they are more likely to seek out and try out methods that both make their judgments normal and safe from disciplinary action. This article seeks to break down the walls of doubt in both cases to open a new path in the rock of traditional beliefs.

Answer the questions that why?

1-Should an incident that happened thousands of years ago and causes irreparable financial and human losses to be just as damaging in the age of information technology?

2-An accident that happened in one part of the world and caused damage, its damage is different from another accident that happened in the same place with the same degree of severity and scale.

The subject of this article is the investigation of these problems in the quasi-judicial procedure and the attention paid to the supervisors.

## **RESPONSIBILITY OF THE GOVERNMENT**

Nowadays, traditional beliefs about the integration of pillars of civil liability with respect to the government are disappeared. The justification of the celestial plague has been removed and the belief has matured that in the shadow of a scientific regime, the government should be flexible to take constructive measures to prevent natural disasters and prevent human and financial consequences (Alsan, 2008: 9). The emergence of this idea will force the government to think sustainably in the face of natural disasters and will take it out of the passive garb and become active in the field of preventive measures.

The fundamental question about government responsibility is why should the government be held accountable for events that it has no role in causing? What is the basis of this commitment?

The answer to this question, that is, the very basis of the government's commitment, has aroused many opinions, and as a counter to the main discussion, we are forced to summarize it.

### **Theory of Compensation System**

The necessity of compensation is a concept that comes to mind as the first goal of civil liability. The principle of realization of loss, the existence of a causal relationship, the reality of the loss and not its probability or lack of benefit is one of the basic pillars of this theory in Iranian law. Therefore, it is natural that with these theories, the civil liability of the government cannot be achieved in the discussion of natural disasters. Because these factors are not involved in the issue of government responsibility.

Some justify the government's responsibility by relying on this theory, believing that the responsibility for compensation arises from the new basis, which in principle does not include financial damages and only refers to the loss of life. However, the distinction between financial and personal losses is baseless.

In the compensation system, civil and criminal liability comes together. The perpetrator must pay compensation because his/her criminal liability has evolved into a civil liability over time. And this is the aspect that relates to the theory of public liability, because government liability may be

due to the error of factors that have played a role in the accident due to a direct relationship with the government, such as employees, or an indirect relationship, such as contractors. Non-compliance with international standards, non-compliance with different structural patterns, non-compliance with national building regulations are among the errors that the designer, builder, and supervisor are committed to complying with these systems to ensure the strength of the building against natural disasters in general and earthquakes in particular with a certain scale and intensity. According to this theory and based on the theory of general liability, the government is obliged to bear all the damages if an earthquake with such intensity occurs and causes damages, but after compensation, the right to refer to the contractor, supervisor, and Executive agents have civil and criminal liability. If a building is destroyed due to an earthquake; it should not have been severely damaged in principle. There is no doubt about the general responsibility of design engineers, supervisors, and builders in terms of general and current rules of liability, but the issue is where the personal compensation system is not possible in practice or does not meet the preventive expectations of liability law.

### **Compliance system**

According to this view, the purpose of civil liability is to restore the injured party to the state before the loss.

From the point of view of this theory, compensation is not only related to the principle of loss but also includes all the costs and consequences of restoring the status quo ante. Therefore, the fairest system imaginable is to impose liability and compensation.

The objection is the idealism of this theory. Because sometimes it is not possible to compensate for all the damage. Especially in the case of loss of life, which, although its provision in the form of financial compensation is considered as a partial remedy, it is not a suitable remedy because a suitable remedy is not found.

What can be inferred from this theory in the discussion of the general responsibility of the government to hold the government accountable is that the government should make every effort to provide for the full loss. This system is more advanced than the compensation system, while it has the form of punishment to some extent.

Because in cases where group negligence has aggravated a natural disaster, it is expedient to do severe punishment.

### **Integrated system - deterrent**

This system is the civil liability of the government and punishment for the government officials and all those whose aggravation of natural disasters is due to laziness, indifference, negligence, carelessness, underemployment, fraud and fraud, fraud, embezzlement, bribery, and other crimes. As a rule, the government, as the top point of the pyramid, as the "responsible government" should compensate all the losses and the aid to the nation should be limited to some altruistic and urgent aid. Until, after full compensation, the successors of perpetrators themselves and the real and legal factors of intentional or nonchalant to which the escalation of the crisis is attributed.

In the current situation of the world today, this system is considered the best system of responsibility because reliance on punishment will cause the government to have a serious sense of responsibility for the issue if they see their jobs, positions, and even lives in danger of punishment and they will do their best in monitoring and good management.

Achieving this level of responsibility will lead the government to long-term and sustainable planning so that it does not see severe damage from natural disasters or, if it does occur, the damage is equal to that in other parts of the world.

This tendency reduces the ability of managers to avoid administrative-executive responsibility, a responsibility that was not previously governed by a specific rule.

### **Welfare State Theory**

Today, the main concern of governments is to provide public welfare. In this situation, governments cannot be expected to be indifferent to a stage of welfare provision, which is the highest level of welfare, which is the "provision of security for the lives of citizens" and not to guarantee the safety of public life. The only solution to this guarantee is to impose a commitment of safety from the lives of citizens to the government. In this way, the application of civil liability with its criminal consequences for violators is one of the acceptable solutions.

The political upheaval in the world today has changed the position of the government from a high and uncritical state to a level that can be criticized and equal to the citizens, and the title of "ruler" has been changed as the incumbent. So, the right to life and safety became so important.

The ability to improve the situation is one of the components that the caretaker government, not the ruling government, should seek to create the ability to protect citizens. In this way, the government should first feel responsible and then seek to improve the situation (Alsan, 2008: 18).

Since establishing a causal relationship between the damage caused by natural disasters and the act or omission of a government action is not as simple as the rules of tortious liability in other means of guarantee because the harmful act is caused by a natural factor and not by the state.

Although this act has a sudden and unexpected description, this lack of predictability is not absolute and today in the shadow of scientific progress is at least relatively predictable.

Therefore, the responsibility is attributed to the government from the respect that the refusal of the task that has been assigned to the government due to new political, social, and cultural developments has led to damage (Alsan, 2008: 19).

This theory faces two main obstacles:

At first, because of the novelty of the ability to adapt its meanings to the defined meanings, civil liability is not possible.

Second: One of the traditional theories of fault, danger, guarantee, etc. cannot be introduced as the sole basis of government.

Some believe that the government's responsibility for natural disasters can be analyzed based on "vicarious liability" (Katozian, 2003: 534).

It seems that the following of the theory of responsibility resulting from unintentional acts is not far from the mind because the government has

somehow failed in the task of supervising and directing activities, especially in the engineering and architecture of buildings.

Theories of "ruling guarantee" and the responsibility of the treasury have also been traced in Islamic jurisprudence.

### **Conventional government theory**

In this theory, the actions and behavior of the government in dealing with the occurrence and spread of the effects of natural disasters are measured under the responsibility of a conventional government. The very definition of the conventional state itself is one of the difficulties facing this theory. A conventional government is a government that over time, in terms of economic, social, and cultural facilities and conditions and the rate and type of natural hazards, has made the necessary predictions to prevent accidents and minimize their effects, and has a regular plan for the future of these hazards (Alsan, 2008: 21).

The second difficulty with this definition is that the obligations of a normal government are not limited to natural disasters, but exist in all cases necessary to protect human rights.

### **Theory of responsible government**

In this theory, it is believed that because structures, policies, cultures, and even events have changed, governments must sustain their programs and policies in line with these changes.

This theory considers the government to be the protector of the lives, property, and honor of the citizens. This theory is a step ahead of the welfare state theory. Some have equated both titles with the name of the welfare state, but it is an obvious fact that it will not create prosperity unless the government feels committed. The responsible government is the guardian government.

But this theory is not without its flaws.

At first, if the compensation is paid by the public representative "government", in the end, because the compensation is paid from the public budget the people themselves are compensating for the damage.

Secondly, what is the responsibility of the government? Will the payment be made from the national budget or will it ultimately be incumbent on the government officials?

Some people believe in the responsibility of violators, fraudsters, culprits, negligent and careless people. But imposing responsibility on these groups and individuals is not always easy. Because, first of all, such people are sometimes not very recognizable. Second, if they are identified, they will not be able to compensate for such damage. But the idea has the advantage that it has the power of deterrence against the authorities to prevent them from negligence, carelessness, and indifference.

In the theory of the responsible government, if it is intended to impose damage on the people, the intention will not be achieved.

But in the consolidated theory, it refers to both (collective) responsibility and the responsibility of government officials, contractors and supervisors (individual) on behalf of the government. It even holds criminally responsible to the point of execution for negligent or fraudulent individuals.

Finally, it should be said that the theory of government responsibility as described above has no precedent in Iranian law, but we can scratch the mind of society to move away from the traditional concepts of civil responsibility and find a way out of these forms.

What is certain about the interpretation of unforeseen events is that today the scope of this concept must be reduced and narrowly interpreted. Today's attitude towards the unpredictable event has changed. It is an unpredictable event that has no precedent and is a pure and non-repetitive event, such as a meteorite that may occur once in thousands of years (Alsan, 2008: 31). But for a place that is located in the catchment area of high mountains and wide plains. The flood flow that occurs every year cannot be considered as force majeure.

The criterion of predictability or unpredictability of an accident is a global standard today. Therefore, governments are obliged to provide advanced equipment for predicting and preventing accidents, and under the pretext of insufficient numbers, they cannot discharge themselves of responsibility.

If an accident is considered predictable, then Article 11 of the Civil Liability Law can be a protector. So that the negligence of the employees, the lack of government equipment and facilities or the general fault of the government (knowing the history of the accident and not taking action to prevent it without this action being against a specific person) all lead to the imposition of responsibility on the government and the injured are not faced with unknown and incapable people to compensate. In Iran, in 1960, a law was passed under the title of Civil Liability Law, Article 11 of which is that government employees, municipalities, and their affiliated institutions who intentionally or as a result of negligent damage to persons, are personally responsible for compensation. However, if the damage is not done by their actions and is related to the defects of the equipment of the said departments and institutions, then the compensation is the responsibility of the relevant department or institution, but in the case of government sovereignty, If some action is done for social benefits in accordance with the law, the government will not have to pay for any other damage.

Basically, the current custom of society is a reliable criterion in determining the predictability or unpredictability of an accident. Typically, people in some areas consider an accident to be predictable, and sometimes residents of an area have a mental history of floods, earthquakes, landslides, volcanic activity, and recurrence at appropriate intervals, and considered its recurrence contingent.

What has been misunderstood is a mentality called "government immunity." This misconception of the immunity of the government should be removed from the minds of the judges and the government should be moved from the position of a ruling government to the position of a responsible and conventional government. So that both the rulers feel responsible and the courts can, as easily as decide on the responsibility of other natural or legal entities, do not hesitate to impose responsibility on the government.

The ability of the government to control the accident, or at least the ability to reduce its damaging consequences, the grandeur of "government immunity" will take its toll.

If the government is held responsible for such incidents, the occurrence of those incidents will be reduced to a minimum in terms of causing damage, but the government's immunity from liability will cause it to ask the people for help and support in preparing compensation.

Thirdly, it can be said that the theory of recognizing the government as responsible is an amazing and inevitable development in the field of liability law. Considering this theory and commitment of the government to adopt a preventive approach for the future is the best method for compensation of the mentioned calamities, as a precautionary measure, governments must make commitments to rehabilitate facilities and buildings and other matters exposed to natural disasters, to protect the privacy of canals and rivers, to monitor and manage their implementation, compliance of standards with international criteria, to provide facilities and ultimately deal with violators in their record.

Basically, the origin of the formation of governments is the existence of many dangers that people, in order to overcome problems and deal with the events of forcible events, nature, because they consider themselves incapable of individual confrontation, have inevitably turned to cooperation and social cooperation, and this is one of the foundations of forming a government.

As one of the theorists of social contracts, Jean-Jacques Rousseau believed that society, by agreeing to form a government and committing itself to it as a superior power, seeks to secure and prosper in the light of this limiting its authority and its transfer to the ruler.

In accidents in the general sense, whenever both the accident and its consequences are predictable, the cause of harm will always be of human origin; if the accident is unpredictable but the consequences are predictable, the responsibility will fall on the human factor (Emami, 1991: 9).

Following a strong earthquake in 2009 in the Italian city of La Aquila that killed more than 300 people, prosecutors prosecuted six seismologists and a government official for not providing enough information before the earthquake. Because these seven were members of a group that was responsible for assessing the dangers of rising seismic activity in the area, and some had told the public that there was no danger to them, Based on the testimony of the people, it caused that the group that intended to leave their homes trusted the statement of the National Geophysical Institute and changed their mind (Rahmani, 2014: 143).

### **It is concluded that**

From the point of view of the government liability system, it may be due to the error of factors that have played a role in the accident due to direct relationship with the government, such as employees, contractors, etc., and non-compliance with international structural systems and standards. Therefore, it is the responsibility of the government to refer to the culprits after compensation.

The compliance system, while acknowledging the principle of compensation and its subsidiaries, which imposes heavy civil penalties on those whose shortcomings have exacerbated the incident. At the same time, it believes in providing all the losses by the government.

In the integrated-deterrent system, it believed in the civil liability of the government and the punishment of failing government officials and believed that today events are at least relatively predictable.

The theories of the conventional government and the responsible government also believe in the responsibility of the government to compensate for the damage of natural disasters, and the custom of society was involved in the predictability or unpredictability of an accident.

In all these theories, while emphasizing the primary responsibility of the government, it is believed that the government, after compensation, can refer to government officials, engineers, contractors, and supervisors, whose negligence is somehow involved in intensifying the damage caused by the accident.

The government has a supervisory role and must pay for the regulatory shortcomings, lack of planning, non-compliance with standards in the first step. In the next step, those who have failed as government officials, employees, contractors, supervisors should compensate for the sustained damages.

Article 145 of the Criminal Procedure Code of Iran approved in 2013 and the amended note of 14.06.2015 is one of the legislators' innovations in recognizing the responsibility of the government. This article has stated that:

If the occupant of the house and place or objects under inspection refuses to open the premises and closed objects, the investigator can order their reopening, but as far as possible, actions that cause damage should be avoided.

Note: In case of material damage in the implementation of this article, and according to a final decision, a verdict for staying the proceeding or order of discharge is issued, as well as cases in which the guilty person does not refuse, even if the matter leads to trial or writ of summons or condemnation of defendant, the government is responsible for compensation unless the fault of the investigator or other officers is established, in which case, the government compensates and refers to the investigator or officers responsible.

Therefore, we see that if there arise any damages due to opening closed places or closed objects issued by the investigator, the government is responsible for compensating the damage, and if it is the fault of the investigator or officers, in the next step, the government goes to the culprit after compensation.

Article 11 of the Civil Liability Law in cases where the damage caused to persons by government employees and municipalities and their affiliated institutions is due to a defect in the equipment of the said departments and institutions, the compensation of the damage is the responsibility of the relevant department or institution.

Some people considered the lack of necessary training as an example of a lack of equipment and seek to develop the meaning of equipment to material and spiritual tools. Article 12 of the Civil Liability Law in the first step for those who are subject to labor law, the responsibility shall be borne by the employer and in the second stage, it has allowed the employer to refer to the importer who caused damages under the conditions stated in the article. The article states: Article 12 - Employers who are subject to the labor law shall be liable for compensation for damages incurred by administrative staff



or their workers during or on the occasion of work, unless it is established that they have taken all necessary precautions or they take these precautions, it would still not be possible to prevent the loss even if all the precautions have been taken into account, the employer can refer to the claimant in accordance with the law.

Similar to such establishment was introduced by the legislature in Article 25 of the damaged Compulsory Vehicle Insurance Act for damage to third parties as a result of vehicle accidents. Initially, the physical injury insurance fund was obliged to compensate for the damage and was allowed to return to the fund:

Another innovation of the Criminal Procedure Code, adopted in 2013, is the opening of a way for a claim for damages resulting from the detention of typically innocent defendants. Previously, however, Article 171 of the Constitution provided for compensation to the government for damages resulting from the issuance of a wrongful sentence by a judge. This principle is also reflected in ordinary laws, such as Article 58 of the former Islamic Penal Code.

However, Article 171 of the Iranian Constitution merely governed the issuance of a wrongful verdict by a judge and the damages resulting from the detention of defendants who acquit or will no longer be prosecuted and it had no clear verdict and was silent. In Articles 255, 256, 257, 258, 259, 260, 261 of the Code of Criminal Procedure, the legislator, in compliance with Article 14 of the same law, accepted the principle of entitlement and affiliation of damages in such cases, considered the method of claiming and hearing, and considered the source of financial credit and compensation. According to Article 14, the plaintiff can claim compensation for all material and moral losses and possible benefits from the crime.

Article 255 of the mentioned law states:

Persons who are detained during the preliminary investigation and trial for any reason and who have been discharged or writ of non-prosecution is issued for them by judicial authorities, in accordance with Article (14) of this law, can claim damages from the government during their detention.

As stated in Article 256 of the mentioned law, exceptions or, in other words, cases of legal withdrawal and non-attribution of damages, which is mainly focused on the rule of jurisprudential action (Khaleghi, 2015: 259). The rule of action, along with the rules of benevolence and trust, are among general exceptions to civil liability from a jurisprudential point of view.

The text of Article 256 of the Code of Criminal Procedure is as follows:

The detainee is not entitled to compensation in the following cases:

- A. The detention of a person is due to the refusal to provide documents, and evidence of his innocence.
- B. To escape the perpetrator of the crime, he has placed himself under the suspicion of charge and arrest.
- C. has unjustly provided the reasons for his arrest in any direction.
- D. D) be detained at the same time for another legal reason.

Claiming this right is an exception to the general rules of civil and criminal procedure and does not require the submission of petitions and formalities and even the need to refer to the offices of judicial services, but as in the text of Article 257 and Theory No. 912/93/7 dated 09.07.2014 The Legal Department of the Judiciary has stated that it can be claimed without such formalities (Karkhiran, 2014: 618).

Although the legislator has used the word “sentence” in the text of the above article, the revision authority has not put it in court but considers it objectionable in the National Compensation Commission. Article 258: The National Compensation Commission consisting of the President of the Supreme Court or one of his deputies and two judges of the Supreme Court is elected by the Chief Justice of the Judiciary. The decision of the commission is final.

Article 259 of the Criminal Procedure Code explicitly entrusts compensation to the government. Of course, the damage is detention, but as stated in the above-mentioned theory of the General Legal Department of the Judiciary, other damages due to the plaintiff or any institution that caused the filing of the case and the imposition of this arrest will be in demand in its place.

In the second step, if the arrest is due to the fault of the judge or the plaintiff's spiteful declaration of the plaintiff or false testimony, the government will have the right to refer to the main culprit.

## **DEFINITION OF EARTHQUAKE**

Earthquake is a sudden and transient movement and vibration in the ground that originates from a limited area and there is propagated in all directions (Sedaghat, 2012: 18). Sarpol-e-Zahab earthquake occurred on 12.11.2017 in a situation where this city is located on one of the large and well-known faults (Torkashvand, 2007: 17). Its strength of 7.3 Richter magnitude means the intensity that resistant buildings typically should have the necessary capability against such intensity and do not collapse easily (Appendix World of Economics, 2019: 17).

But the damage and collapsed buildings indicated non-compliance with the required standards, Many of the material losses and even loss of life were due to non-compliance with regulations, the observance and implementation of which, both financially and economically, certainly did not cost significantly and from a scientific point of view was one of the most basic engineering lessons, such as non-compliance wall posts or window fasteners to the walls.

This incident sought to fillip the structure of the engineering and architectural system so that by analyzing past failures, they could take safer steps for the future. Haste should not be the basis of new constructions. One of the places that were seriously damaged in this earthquake was the issue of Mehr housing in this city. Failures that questioned all the lofty goals of the Mehr housing project in the country. The defaults on the part of the designers and supervisors ranged and the mistakes of the High Supervisory Authority and high-ranking executive officials, but as the government eventually escaped prosecution, give the responsibility to the engineering community.

An earthquake with a magnitude of 7.3 on the Richter scale occurred at 21.48 local time equal to 18:18 on November 12, 2017, in the Azgeleh

area, 37 km northwest of Sarpol-e Zahab County in Kermanshah province. The maximum acceleration of this earthquake, which was recorded at Sarpol-e-Zahab station, indicates that this acceleration occurred in the longitudinal components of 684 cm / s and the width of 533 cm / s in vertical acceleration to about 385 cm / s. has taken place. Because the acceleration in the horizontal direction is 2.3 times the acceleration of the basis of the plan stated in the building restoration regulations against earthquake, which in Iran is called the 2800 regulation for the city of Sarpol-e Zahab which has been considered with a relatively high-risk zone ( $A = 0.3g$ ), so the occurrence of any damages in this city is not far from expectation.

7400 aftershocks, 17 of which were above 5 Richter and one of which had a magnitude of 6.4, were the consequences of this earthquake.

One of the factors reducing human casualties in this earthquake was the occurrence of two pre-earthquakes with a magnitude of 4.4 and 4.1 on the Richter scale at 21:18 and 21:19, ie about 20 minutes before the main earthquake, which caused people to leave their homes.

According to studies, every year an earthquake with a magnitude of 6 or more has occurred in Iran during the last eighty years (Adeli, 1996: 7). What is important when considering earthquake engineering calculations is that the return time of an earthquake is estimated and based on a period that is typically 100 years?

The closer we get to the end of this period, the greater the possibility of realization. In the Zagros Mountains, in terms of the occurrence of mild earthquakes, the possibility of severe earthquakes is typically short. Contrary to what happens in the Alborz mountain range and vice versa. Therefore, the rare occurrence of earthquakes with a magnitude of 5 had caused the base acceleration of the plan of the city of Sarpol Zahab to be considered  $3g$ . But in the earthquake of 2017, the acceleration rate in the city reached  $6.08g$ . This was a warning that in the principles of urban planning, this component should be considered and the base number of acceleration should be assumed to be higher and at the same time, the strength of the structures should be considered higher.

The purpose of formulating and implementing Regulation 2800 is to observe the minimum rules and regulations of design and implementation in buildings against earthquakes. The scientific expectation is that if this regulation is observed, the building casualties will be minimized by maintaining the stagnation of the building in severe earthquakes, and in moderate to mild earthquakes without major structural damage, and by maintaining its strength, no significant damage will be caused.

According to paragraph 1-7- this regulation which deals with the grouping of buildings in terms of importance. Residential, office, commercial, hotels, multi-storey car parks, warehouses, workshops, and industrial buildings are in the third group (medium importance).

Al-Qaeda Group 3 buildings should not be damaged by the earthquake due to non-structural damage, and its casualties should be as low as possible, in the regulations by-law the shape and behavior of the walls against earthquakes are predicted.

Expert theory indicates that appropriate executive details such as (wall post) for restraining external walls in many buildings have not been

observed and the acceleration coefficient of the design basis is considered appropriate based on the high-risk zone in the city of Sarpol Zahab.

Finally, in one of these projects, which was severely damaged due to the presence of large protrusions and depressions in the project plan called Mehr Shahid Shiroodi housing, which has caused inconsistency in the behavior of the walls and consequently the collapse of the exterior and sidewalls of the structure. The use of light non-structural materials and the lack of stone facade scoops have been blamed on the architect and the architectural supervisor. The Disciplinary Council of the Engineering System Organization, in a decision issued in the position of investigating the violation of construction supervisors, argued that

### **"Vote of the Disciplinary Council"**

According to the above case, and pursuant to the earthquake dated 12.11.2017 (November 2017) in Sarpo-Zahab area, the General Departments of Roads, Urban Development and Inspection of Kermanshah Province have announced that Mr. ... architectural designer and Mr. ... and .. Structural designers ... Architectural supervisors and gentlemen ..., ..., ..., ... and ... Structural supervisors in the Mehr Shahid Shiroodi housing project in Sarpol Zahab committed ten negligence in performing their engineering duty. The project is in the course of the investigation of the Disciplinary Council of the Engineering System Organization, in which Ms. ... represented by Ms. ....as architectural supervisor are investigating the case.

The representative of the General Director of Roads and Urban Development wrote in the review session in completing the report of the respective organization that the change of lateral location of the building in the direction where there is no shear wall has not been controlled. Necessary care is not taken in making concrete. The defendants have stated extensive defenses, both in the offered bills and during the hearing conference that the most important points are as follows. Some have considered their supervision to be periodic, bear the responsibility of the resident supervisor. The problems are due to the weakness of the design, not the weakness in the implementation of the strength of the earthquake, which is twice as much as what was expressed in medium-strength buildings such as Mehr housing, and objected to the location and handful of soil under the project and the responsibility shall be borne by Organization of Road and Urban Development.

They insisted on the accuracy of the concrete results and sometimes the discussion of the surrounding walls and their control was disputed between the supervisors of structure and architecture, and each of them considered it among the duty of other fields. Using the contents of the file and the defenses of some of the defendants, the plans signed by the defendant are different from the executed plans. And the design contractor before the plan is prepared by the complained designers based on the same plans that are related to other cities and have been provided to the contractor to expedite the work, and in the structural stage, the building plans are prepared. The Mehr housing construction license was issued by Sarpol Zahab Municipality on 25.09.2010, which was implemented based on the consultant's plan.... Meanwhile, the office plans ... have left the engineering system on 05.02.2011. That is, when the blocks were executed and were built on the

third and fourth floors, and the supervision of the supervisors was carried out according to the consultant's plan. Subsequently, according to this<sup>3</sup>, other floors were added to the building, and in fact, a map was prepared by the office of the Engineer. It was prepared and removed from the Kermanshah engineering system and the buildings of Mehr housing of Shahid Shiroodi Sarpol Zahab are based on the same plans. The design of the.... company is more like a formal action to complete the administrative procedure, and even the designers did not have a special role in approving the completion of work and issuing work completion license, and because their drawing plan has not been implemented, according to the principle, the responsibility for destruction due to earthquake cannot be caused by computational errors or their mismanagement.

Because the current officials and those in charge of Mehr Housing do not go through the legal process of designing, issuing supervision and execution licenses to expedite the work or any other purpose outside the legal rules and regulations that have been intended for this purpose and based on the same type and adaptation plans, take action to build and execute, and during the design work, the defendant and Supervision of the final stages of work by supervisors complements actions that beginning of the work without legal basis begins regardless of national building regulations and continued and only along with the work, asked for help from engineering system of Kermanshah province and engineers of the defendant. Accordingly, although in the quake and destruction caused by the earthquake, in addition to the coercive factor, we should be pointed out the fault of the observers and designers, especially the architectural supervisors, in not observing the "Wall Post" and the equality of the causes in the occurrence of the destruction that based on this, the disciplinary responsibility of the designers and supervisors of architecture and structures for the disciplinary council is evident, and their defenses regarding the actions taken and to complete the operation and complete the work have designed a plan that has not been implemented and they have started monitoring after the implementation. But the same amount of guilt and participation in formal actions that result in the unfounded trust of the residents of Mehr housing in its strength and incorrect belief in the good supervision of regulators, and the losses and damage caused by the earthquake, at least in part, are related to these design weaknesses. Therefore, their defenses are unreasonable and have no legal burden.

However, considering that the above mentioned has not been able to oppose the views resulting from the implementation of hasty policies to complete housing in terms of administrative position, On the other hand, in the face of the action taken and the prevailing intellectual atmosphere of the case, it has caused them to be passive in accepting this responsibility. This is in terms of mitigation of disciplinary punishment, ie the same special circumstances that are in the general public as in Article 38 of the Islamic Penal Code in paragraph 2. However, it is outside the instances of the reluctance of Article 151 of the same law and cannot be a liability of designers and supervisors, and Note 2, Article 514 of the Islamic Penal Code, which deals with cases in which the interference of individuals or institutions can provide the means to reduce, or eliminate it. It focuses on liability, and Article 526 also deals with liability, whether by difference or equality.

In the articles of a Civil Liability Law, 533 Islamic Penal Code and 331 Civil Code, all are ready to pay attention to:

However, the Disciplinary Council, by finding their violation and complying with clause A of the first clause of clause B and clause 22 of the same clause of Article 91 of the Executive Regulations of the Law on Engineering System and Supervisor Building and Article 90 regarding professional and adaptive violations, decides as follows:

- A. Regarding the architectural designer, Mr. (Engr.).....  
considering that the initial plans have been provided to the architectural designer and the above mentioned should issue an order in case of any defects and shortcomings in the event of an accident to review and complete it. However, in the design of the architectural plan, no connection of the wall to the structure called "Wall Post" has been seen. In particular, most of the injuries have been caused by this fault. The Disciplinary Council, observing the appropriate discounts in the case of the above mentioned, issued a verdict on the sentence of serving a third-degree disciplinary punishment (nine months temporary suspension from using the employment license and confiscation for the above period and deprivation of the first part of clause B of the same article for 5 years).
- B. In the case of an architect supervisor named Ms. ..., considering that the above mentioned were responsible for supervising the completion of all architectural supervision sheets, but the above-mentioned shortcomings were not reflected in her opinions and she did not attend the meetings of the Disciplinary Council. and the main problems in the field of architecture can be defined that the lack of quality in implementation has not been reported by them and on the other hand has not had the necessary capacity to monitor the above projects. The Disciplinary Council shall issue and announce the verdict on the 4th-degree disciplinary basis (temporary suspension of thirty months from using the confiscation employment license for the above period and the consequential punishment of the last part of paragraph 2, Clause B of Article 91 for 5 years).
- C. Regarding structural designers in the names of Mr. ... and Mr. ... considering that they have had the opportunity to review and control the bills and their statements, albeit in a limited way. Considering that at the same time, the executive activity was being carried out according to the previous plans of the consultant.

In such a case, the structural designer had the task of designing and reinforcing it according to the current situation. Not just to draw and present a plan that has not been implemented. Rather, retrofitting should be done based on the current situation and the plans that are being implemented. In the case file, there is no trace of correspondence in possible objections to the

employer to oblige the employer to change the executive work process and strengthen it. In particular, according to the theory of soil consulting engineers, the soil of the floor of the blocks has 2.5 to 4 meters of hand soil, which in itself requires strength measures. This description justifies the fact that these buildings were built in a city that is located on one of the large and well-known faults of the Zagros, and the justifications for the severity of the earthquake cannot be absolved of responsibility. Because of the earthquake today. In the strict sense of the word, it is not considered an unexpected event because it has lost its description of absolute unpredictability and is at least relatively predictable. Where it is the intersection of the earth's plates and the fault zone, such a thing is not only a probable thing, but it can be said that its occurrence is a certain thing. The extent of the severity or time of occurrence is merely ambiguous but not unexpected. Structural designers are obliged to receive the results of soil mechanics tests, obtain theories of soil strength, infrastructure, and repair the amount of reinforcement based on those data. The shortcomings of the housing consulting company cannot relieve the responsibility of structural designers. Because such people are considered scholars and the legislature has imposed the assumption of being a scholar on them. Therefore, the Disciplinary Council, based on the above-mentioned articles, ruled that each man should be sentenced to a third-degree disciplinary punishment (6 months of temporary deprivation of employment license and confiscation for the above period and subordinate punishment of the first part of paragraph 2 Subordinate punishments under Article 90 of the same law for 5 years).

A. Structural Supervisors: Considering the above mentioned, in the names of Messrs....., ....., .... and ....., Once they signed the initial consultant's plan and once again they signed the plans of the new designers and during the work, no report was announced indicating the change of maps, and even the handicrafts of the soil were not mentioned and continuity was not seen in the monitoring reports. Their guilt is proven and the Disciplinary Council, based on the mentioned case decides on their disciplinary conviction, each to bear the disciplinary punishment of 4th grade (15 months of temporary deprivation of employment license and confiscation of the license for the above period and the punishment of the last part of paragraph 2 Subordinate punishments of Article 90 for 5 years). The above-mentioned decision is in person and can be challenged in the Disciplinary Council within one month from the notification. Besides, regarding the responsibility of other institutions with natural and legal entities such as the construction consulting company and the executing company and other institutions in the case, considering that no report has been submitted against them and no complaint has been filed, this council does not face a legal obligation.

In this opinion, however, because the drawing plan of the designers of this case was not drawn and in fact, their drawings were not implemented at all. Therefore, the responsibility for structural damage has not been addressed to them. Because if the plan designed by the designers of this case is implemented, they will undoubtedly have to face more severe disciplinary punishments for their negligence. The Disciplinary Council has considered the same amount of guilt resulting from accepting the current situation, ie the situation in which the housing authorities in Mehr have implemented the

same plan related to another place, to be sufficient for their conviction. On the other hand, the fault of the architectural supervisor in not implementing the "Wall Post" is the reason for their responsibility.

### **The result of the vote**

The same amount of disciplinary punishment has the following effects:

1. After the occurrence of any natural disaster, the authorities should be addressed and each of them should be held responsible and punished based on the number of faults.
- 2- The finding of fault by the Disciplinary Council can be the basis of the civil liability of the engineers to issue a verdict of conviction in case of claiming life and financial damages from the victims.
- 3- The Disciplinary Council's references to the responsibility of others who have been at fault for increasing the effects of the incident are a sign that other officials are complaining.

One of the acute culprits is the considerable acceleration for the city of Sarpol Zahab, which is estimated to be 3.6, considering that this city is located on one of the known faults of the Zagros. It is not enough that the earthquake of 2017, although it had more than twice the acceleration, this should not be forgotten or neglected in the engineering calculations considering the construction of this city on a fault whose activation was not unexpected. . In particular, unlike the faults of the Alborz mountain range, which are active at short distances but have less intensity, in the faults in the Zagros mountain range, their activation distance is typically long and, accordingly, the intensity of tremors is higher.

Another issue of the faults of this project is its construction in a place where the bed is not hard soil, but about 2.5 to 4 meters of hand soil has been poured in that place and has a loose base.

whole these shortcomings, which questioned the quality of Mehr housing in the public mind, seems to be the basis for the continuation of this idea and plan to the restoration of rights. This lawsuit was filed after protesting in the Engineering System Council, according to lawsuit No. 124 / 98-19.08.2019.

### **CONCLUSION**

Therefore, we see that according to the above verdict, in the current situation the earthquake is not considered an unpredictable event. While urban planning and municipal officials are constructing or developing cities on faults, it is natural that earthquakes are probable in such areas, so the authorities should be held responsible for the predictable consequences of the resulting damage.

On the other hand, the Disciplinary Council is solely responsible for disciplinary action against engineers and supervisors of structural and architectural designers, so the references of this department somehow direct the supervisory authorities to file civil lawsuits in the courts to impose civil liability on them. Even the prosecutor's office does not pursue the urban,



municipal, and political officials who sacrificed the quality of Mehr housing for hasty implementation due to propaganda work, as the Italian prosecutor of Al Aquila did in 2009.

Restoration of public rights means nothing more than this, until the prosecutor in charge of defending public rights establishes a new procedure by prosecuting the authorities, each in proportion to the degree of guilt, and based on the views that hold the government accountable.

The Disciplinary Council of the Building Engineering System Organization opened a window for the supervisory officials who have so far taken care to prosecute the engineers to seek responsibility for the accidents and in the judicial stage to seek compensation from the designers, supervisors, architects, urban planning and municipal and executive officials while their political domination has deprived them of the power of scientific engineering.

If the rights in Iran reach this stage, the procrastination of the officials will not go unanswered, and if the government is held responsible. They will have to look for the guilty government officials and negligent employees and transfer responsibility to them.

Then, every manager and official who has an executive and supervisory duty in the event of unexpected events will proceed with a sense of responsibility and using the scientific opinions of experts, and the society will pay less attention to unexpected events.

Judicial practice should seek to move beyond traditional interpretations and formats and see responsibility in new models. The foresight of these events should be reconsidered because although it is not predictable in terms of the exact time and exact location in the current situation, its totality and its effects and consequences are predictable and consequently the human factor is responsible and not the natural factor.

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