Interdisciplinary Studies in Society, Law, and Politics 2023; 2(4): 89-100

ISSLP
Interdisciplinary Studies in Society, Law and Politics

Original Research

# State Civil Liability Arising from Regulation

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**Received:** 2023-11-02 **Revised:** 2023-11-14 **Accepted:** 2023-11-28 **Published:** 2023-12-27

In the contemporary era, the structure of governments has undergone fundamental changes. With the emergence of concepts such as the welfare state, social expectations from governments—particularly in the realm of ensuring public welfare and improving citizens' quality of life—have significantly increased. These transformations reflect the shift of governments from an absolute and authoritative sovereign role to that of a service-oriented and welfare-facilitating entity. Within this framework, service-oriented governments are obligated to create and provide favorable conditions for social welfare, including through the formulation and implementation of effective regulations. Consequently, if governmental regulatory actions result in harm to individuals, the principles of civil liability dictate that the government must assume responsibility and compensate for the damages incurred. It should be noted that state civil liability in the domain of regulation encompasses two aspects: first, inappropriate regulation and the ineffective enforcement of existing regulations; and second, the failure to legislate in areas where regulatory intervention is explicitly required. The present article analyzes state civil liability in this field and examines its various legal and practical dimensions.

***Keywords:*** *state, civil liability, inappropriate regulation, regulatory omission*

**How to cite this article:**

Sadeghi, E., Ostvar Sangari, K., Shojaiyan, K., & Farokhi, Z. (2023). State Civil Liability Arising from Regulation. *Interdisciplinary Studies in Society, Law, and Politics, 2*(4), 89-100. https://doi.org/10.61838/kman.isslp.2.4.11

## 1. Introduction

Legislators have long recognized that compensation for damages should never be entirely out of reach and that no individual should be exempt from liability for harm caused to others (Katouzian, 2007). Even legislators themselves are not exempt from this principle. Thus, perceiving civil liability as a tool for governments to wield power is, in fact, a misinterpretation of the concept. The acceptance of compensating victims by the legislature is one of the fundamental pillars of administrative systems in developed countries and serves as an indicator of societal progress, political systems' maturity, and the level of civilization and culture. This principle is now institutionalized in public law and is consistently enforced in many countries' constitutions, whether in the domain of public service provision or in the exercise of sovereignty (Najarzadeh Hanjani, 2011).

All legal systems have firmly established the principle of individual liability in compensating for damages inflicted upon others. According to this principle, each individual is responsible for their own actions and bears no liability for the harmful actions of others, whether contractual or non-contractual. This liability may arise from a contract, quasi-contract, tort, or quasi-tort. However, under specific circumstances and as an exception, an individual may be held liable for the harmful acts of others due to vicarious liability or substitution. In the modern era, the trend of governmental accountability has significantly expanded, to the extent that, in certain situations analyzed in this article, governments consider themselves responsible for damages caused by their citizens' harmful actions, even when these actions are unrelated to governance. Additionally, governments have established independent judicial institutions to assist victims in overcoming obstacles and difficulties they may face in seeking compensation for damages caused by their fellow citizens.

The present article, titled *State Civil Liability in the Enactment and Omission of Regulations*, specifically examines whether the government should compensate for damages resulting from enacting inappropriate regulations or failing to enact necessary regulations. The first section of this article addresses the government's liability in enacting regulations, while the second section examines the liability arising from regulatory omissions. At times, the government faces various forms of liability, one of which is liability in the domain of regulation. The government may cause harm to individuals either by enacting inappropriate laws or by failing to legislate where necessary. This issue arises due to the diversity and complexity of governmental errors in the regulatory field. In some cases, the government enacts legislation that benefits certain groups while simultaneously harming others. In such situations, the government is responsible for compensating the affected individuals who have suffered harm due to the legislation. Naturally, those who have benefited from such legislation should bear the responsibility for compensating the losses incurred by the harmed individuals.

In other instances, the government may pass laws that not only contradict higher-level legal norms but also create disruptions and inconsistencies within the national legal system. Additionally, laws may be enacted that yield irrational or disproportionate practical consequences. In all these cases, the manifestations of governmental liability in legislation are highly diverse.

The theoretical foundations of state civil liability include the fault theory, the risk theory, and hybrid theories. However, an in-depth examination of these foundations is beyond the scope of this article. Instead, this study will focus specifically on state civil liability in the realm of regulation, addressing the effects of both enacting and failing to enact laws.

## 2. Materials and Methods

This article employs a descriptive-analytical research method using library-based resources to analyze state civil liability in the field of regulation. Initially, the theoretical and legal foundations of state civil liability are examined, followed by an assessment of the legal, social, and economic consequences of regulatory violations. The sources for this study include legal literature, books, academic articles, and judicial rulings from the Administrative Justice Court and other judicial and administrative bodies, collected through library research methods. The research instruments and sources utilized include reputable legal academic databases and judicial rulings from the Administrative Justice Court. Additionally, qualitative analysis methods are employed to explore the various dimensions of state civil liability and its implications.

## 3. Foundations of State Civil Liability

State civil liability refers to a type of liability that arises when harm is inflicted upon others, thereby obligating the liable party to compensate for the damages. In other words, civil liability is the obligation to compensate the injured party for the damages suffered (Jafari Langroudi, 1999). Thus, when an individual is held liable for compensating another party, civil liability arises.

Within the framework of civil liability, a specific relationship is established between the injurer and the injured party, which is the relationship of damage compensation. In this regard, the theoretical foundations of state civil liability are generally categorized into two main theories that merit examination and analysis.

### *3.1. Fault-Based Civil Liability Theory (The Predominant Theory in Iran)*

According to this theory, establishing civil liability requires proof of fault on the part of the injurer, meaning that fault constitutes the essential element of civil liability. Within this framework, in order to establish liability, a causal relationship must be demonstrated between the inflicted harm and the fault committed. In the context of state civil liability, this theory implies that for each case, it must be determined whether the harm was caused by the fault of a government employee or whether it resulted from an overarching administrative fault.

Therefore, a distinction must be made between an employee's personal fault and an administrative fault. In specific cases, an employee's personal fault is clearly evident, such as when a public official commits a harmful act outside the scope of their legal duties and authority or when they pursue personal objectives while performing their official functions.

In Iranian law, the dominant theory regarding state civil liability and that of its employees is the fault-based liability theory, which is primarily recognized in the government's proprietary functions. The fundamental elements of fault-based civil liability include fault, damage, and a causal link between the fault and the damage suffered (Mousazadeh, 2010, p. 258).

According to Article 11 of the Civil Liability Act of 1960, "Government employees, municipal workers, and employees of affiliated institutions who, in the course of their duties, intentionally or due to negligence cause harm to individuals shall be personally responsible for compensating the damages incurred. However, if the damages are not directly attributable to their actions and instead arise from defects in administrative resources and institutions, the liability for compensation shall rest with the respective government agency or institution. In cases where the government's sovereign actions are undertaken to serve public interests in accordance with the law and result in harm to others, the government shall not be obligated to compensate for such damages."

### *3.2. No-Fault Civil Liability Theory*

According to this theory, the establishment of civil liability does not require proof of fault; it is sufficient to demonstrate a causal link between the inflicted harm and the injurious act. No-fault civil liability theory is supported by various justifications, among which the risk theory and the equality in bearing public burdens theory hold particular significance.

**A. Risk Theory**

Under this theory, any individual who creates hazardous conditions to achieve their objectives must bear the responsibility for compensating damages resulting from those hazardous conditions, even if no fault was involved. This theory is closely aligned with the Islamic legal principle of *"Man lahu al-ghunm fa alayhi al-ghurm"* (one who benefits must also bear the loss). Thus, whenever the government creates dangerous conditions in pursuit of its objectives, it must assume responsibility for compensating any resulting harm, even if it was not at fault (Najarzadeh Hanjani, 2011).

**B. Equality in Bearing Public Burdens Theory**

This theory emphasizes that public burdens must be distributed equitably among citizens. If the government, in the course of fulfilling its duties, causes harm to individuals, the principle of equal distribution of public burdens is violated. Consequently, the government is obligated to restore this principle by compensating the affected individuals. Accordingly, compensation for damages serves as a mechanism to reinstate equality in bearing public burdens.

In general, the fundamental elements of no-fault civil liability include:

1. A harmful act, omission, or hazardous condition
2. The occurrence of damage
3. A causal link between the harmful act, omission, or hazardous condition and the resulting damage (Najarzadeh Hanjani, 2011).

In Iranian legal doctrine, the no-fault civil liability theory is exceptionally recognized under specific circumstances. For instance, Article 13 of the 1993 Act on the Use of Firearms by Armed Forces Personnel in Essential Cases stipulates that if armed forces personnel use firearms in compliance with regulations and, as a result, cause harm to innocent individuals, the respective organization shall be responsible for compensating the damages and paying *diyah* (blood money). In such cases, despite the absence of fault, the organization is held liable, potentially justified under the risk theory.

Another example is Article 12 of the Civil Liability Act of 1960, which establishes that when the government is deemed an employer, it is responsible for compensating damages caused by the actions of its workers. Here too, the government is held liable for creating hazardous conditions, even in the absence of fault (Taleb, 2002).

If a harmful act results in liability for the perpetrator, the failure to act (omission) may also constitute a form of fault under Article 952 of the Civil Code and give rise to liability for the person who refrained from acting. However, not all types of omissions, including mere inaction, are uniformly considered fault. This contrasts with the views of some social theory proponents, who argue that imposing obligations on individuals contradicts personal freedoms unless the obligation arises from a contract, law, or custom. In other words, liability only arises when an act or omission was feasible and a duty to act was established by contract, law, or custom, and failure to act constitutes negligence as defined in Article 952 of the Civil Code. Some Imamiyyah jurists have referred to this as "Tark Tahaffuz" (failure to take necessary precautions), meaning that when an individual refrains from performing an act that is ordinarily required, they commit negligence and become liable for damages—just as failure to fulfill contractual or legal obligations constitutes fault (Qasemzadeh, 2008).

To clarify, different forms of omission can be classified as follows:

1. Omission during the course of an act
2. Failure to fulfill a specific legal duty
3. Pure inaction without a specific legal obligation

Given the focus of this study, "failure to fulfill a specific legal duty" is most relevant to civil liability. In this case, omission is recognized as an independent form of wrongful conduct. This occurs when the law obligates an individual to perform a particular act, such as a parent's duty to care for their child (custody), as stipulated in Article 1168 of the Civil Code, which mandates that neither parent may refuse to care for their child (Article 1172 of the Civil Code). Additionally, governmental obligations, such as the requirement for railway, traffic, and municipal authorities to install warning signs at intersections and highways, exemplify legal duties. If an official fails to fulfill such obligations, they are unquestionably at fault, as they have failed to perform their legally mandated duty. The source of these obligations includes specific laws, regulations, valid instructions, and, in some cases, customary practices (as inferred from Article 952 of the Civil Code). Therefore, when a legal or customary duty is established, the responsible individual must fulfill it; otherwise, they will be liable for compensation.

### *3.3. The Right Guarantee Theory*

While fault-based and risk-based theories focus on the act of the injurer and its consequences, another theory emphasizes the rights of the injured party and their protection under the law. This "Right Guarantee Theory," introduced by Boris Stark, distinguishes between material and non-material human rights, prioritizing the protection of life and bodily integrity over other rights. This theory asserts that every individual has the right to live in a safe and secure society, and these rights must be guaranteed. No one has the right to endanger another person's health or safety. Thus, whenever a right is violated and harm is inflicted, the injuring party must compensate for it, thereby establishing civil liability.

Ultimately, the basis of civil liability determination depends on social, cultural, ethical, customary, and legally accepted principles, which evolve with societal progress. Insurance mechanisms can help fill many gaps in protecting individuals' rights. Legal scholar Dr. Naser Katouzian has argued that while the Right Guarantee Theory plays a significant role in civil liability, none of these theories alone can comprehensively establish civil liability (Katouzian, 2006).

## 4. Regulation

In the modern world, policies, economics, and law are confronted with complex regulatory processes that span a broad scope. As some scholars have pointed out, defining regulation precisely is particularly challenging due to the interdisciplinary nature of this field and the extensive transformations it has undergone in recent years (Baldwin & Cave, 1999, p. 33). A review of the existing literature on regulation and its evolution indicates that this concept can be analyzed at three different levels.

At the first level, regulation is considered a specific method of governance. In this sense, regulation refers to a set of rules and regulations typically established by administrative organizations to monitor and enforce laws. At this level, regulation primarily refers to the process of lawmaking and rule-setting by government agencies (Ogus, 2004).

At the second level, regulation encompasses the actions taken by governmental institutions to structure and guide the economy. This interpretation extends beyond the initial framework, as it includes activities such as taxation, subsidy allocation, wealth distribution, and price-setting. The emergence of new regulatory foundations and developments begins from this perspective.

At the third level, regulation is viewed as a mechanism for social control. In this approach, regulation includes processes aimed at mandating or influencing the behavior of individuals and businesses (Norton, 2004, p. 785). Thus, in addition to binding rules, regulation also encompasses actions that influence behavior, regardless of their legal nature or intended purpose.

These three levels of regulation provide some insight into the social and economic transformations of this concept. However, to offer a more comprehensive definition, it is essential to consider the semantic differences in how regulation is understood in Europe and the United States. Until the late 1980s, scholars outside the United States generally used the term "regulation" to refer to governmental tools for controlling the economy (the second meaning). In this context, regulation and intervention were considered nearly synonymous (Jordan & Levi-Faur, 2004). However, in the United States, the concept of regulation became more narrowly defined, focusing mainly on the enactment of regulations by independent administrative agencies to regulate markets and create specific regulatory frameworks.

The global expansion of regulation, particularly with the establishment of independent regulatory agencies in various economic sectors such as public services, has led to overlapping meanings and shifts in how the term is understood. These changes have been reinforced by theoretical and practical developments in economics and law, gradually shifting the concept of regulation from a broader meaning to a more limited one. Consequently, "regulation" may refer to various actions undertaken to control and guide, but a proper understanding requires consideration of the context and background in which it is applied.

A distinction is often made between economic regulation and social regulation. Economic regulation is a key instrument in government policies within market economies. This type of regulation is divided into two main categories:

- Structural regulation, which imposes restrictions on market entry and exit or legislates against entities that fail to meet specific conditions.
- Behavioral regulation, which governs market behavior and includes rules such as price controls, advertising regulations, and minimum quality standards.

Economic regulation primarily focuses on natural monopolies and market structures with limited or excessive competition (den Hertog, 1999).

Another form of regulation is social regulation, which pertains to areas such as environmental protection, workplace conditions (health and safety), consumer protection, and labor rights. The tools employed in this domain include environmental regulations, workplace safety standards, product labeling requirements, and anti-discrimination laws in employment practices.

### *4.1. History of Regulation in Iran*

In general, regulation in Iran has been a neglected area, receiving limited, fragmented, uncoordinated, non-specialized, narrow-minded, and insufficient attention. The regulatory model implemented in Iran has been significantly influenced by the World Bank model; however, this model has been incompletely executed, focusing solely on deregulation, despite the World Bank making no such recommendation.

Iran lacks an institution responsible for improving the quality of regulations. Articles 62, 70, and 75–76 of the Fifth Development Plan merely mention the identification and recommendation of amendments or repeal of laws that hinder production and investment, which was later reflected in Article 44 of the Constitution.

In the past, institutions such as the Iranian Radio Regulatory Authority, the Food and Drug Administration, and the Money and Credit Council of the Central Bank carried out regulatory functions in a limited capacity. Additionally, there exists a Government-Private Sector Dialogue Council, with its secretariat based in the Chamber of Commerce, serving a consultative role. However, due to lack of government participation in the past, this council has often failed to convene.

Furthermore, within the Ministry of Economy, there currently exists a Deregulation and Business Licensing Facilitation Commission, which adopts a reductionist approach focused on eliminating business licenses. Out of 1,800 national and provincial business licensing requests, this commission has eliminated approximately 400.

### *4.2. Theoretical Approaches to Regulation*

There are three primary theoretical approaches to understanding why the government intervenes in the regulatory domain:

1. The public interest approach
2. The private interest approach
3. The institutional economics approach

The public interest approach, which is the dominant perspective, encompasses two key areas:

- Market failure or inefficiency
- Wealth redistribution and the promotion of equity

These two domains represent the economic and social aspects of government intervention.

Under this approach, the government establishes regulations to prevent monopolies, ensure the production of public goods, mitigate negative externalities (such as environmental and health risks), and address information asymmetry between producers and consumers.

In the realm of wealth redistribution, regulation is implemented in areas such as tax exemptions, progressive taxation, and other mechanisms to promote social justice and reduce economic disparities.

Additionally, in some countries, the government extends regulatory oversight into moral or temporary private domains, enacting regulations in these areas as well.

## 5. State Civil Liability in Regulation

The government is not always confronted with a single type of liability concerning legislative matters. At times, it faces multiple forms of liability due to the diversity of errors it may commit in the legislative process. In some instances, the government enacts laws that benefit certain groups while harming others. Consequently, the government bears liability toward those who suffer damage as a result of such legislation. In these cases, the beneficiaries of the enacted laws should be responsible for covering the resulting damages. At times, laws may be enacted that are fundamentally in contradiction with superior legal norms. In other cases, legislation may be passed that leads to disproportionate or ineffective outcomes. Thus, the instances of government liability in the domain of legislation are numerous and varied.

Given that this study examines the relationship between state civil liability and both regulation and regulatory omission, the government requires effective and efficient tools to fulfill its role in shaping economic and social relationships. The government's tools serve as mechanisms for its engagement and intervention in collective life. Historically, the government's presence in the economy and society primarily involved the direct provision of goods and services, a model referred to as "direct governance."

Over time, with the consolidation of the state's sovereign functions, the increased independence of the private sector, and the expansion of civil society, the option of indirect governance—or third-party governance—gained prominence. According to the concept of "good governance," governance is shared among three sectors: the state, the private sector, and civil society. From this perspective, the role of the government is to exercise sovereignty and establish an appropriate legal and political framework; the role of the private sector is to produce goods and services, thereby generating employment and income; and the role of civil society is to facilitate public participation and promote cultural development. Consequently, the traditional roles of the government as a producer of goods and services, employer, and property owner have diminished, while new roles such as policymaker, wealth distributor, and particularly regulator have expanded and strengthened. Within this framework, state civil liability in both regulatory enactment and omission can be relevant in various economic, social, and other domains. Thus, this study first briefly examines the civil liability of the government in the enactment and omission of economic regulations, particularly in areas where it does not directly engage in proprietary activities.

### *5.1. Theories of Civil Liability in Regulation*

**A. Enactment of Regulations Contrary to Superior Legal Norms**

In discussions concerning government intervention in economic and social affairs, as well as its civil liability, two prominent theories hold significant importance: the welfare state theory and the rule of law theory. These two theories play a fundamental role in defining the limits and scope of government liability concerning damages inflicted upon individuals.

**1. Welfare State Theory**

The concept of the welfare state, which initially emerged as a social security system, is based on egalitarian and protectionist ideals (Taleq, 2002, p. 42). This theory views government intervention as a means of achieving social welfare (Fitzpatrick, 2002, p. 15). Such interventions are directly related to the extent of damages suffered by individuals, as certain losses remain uncompensated due to technical difficulties in proving them or the financial incapacity of the victims. This issue contradicts the protectionist and egalitarian principles of the welfare state theory, particularly since the objective of this theory is to ensure wealth redistribution and support vulnerable populations.

The earliest efforts to apply the no-fault liability principle to state civil liability emerged in cases where government employees were identified as liable parties (Zargoush, 2009).

The historical roots of the welfare state theory stem from two key motivations: support for the disadvantaged and protection of the economic interests of impoverished working groups. This influence highlights the protectionist foundation of state civil liability, which has evolved in contemporary legal discourse under the banner of the welfare state (Zargoush, 2010).

**2. Rule of Law Theory**

The principles underlying the establishment of civil liability played an essential role throughout the 19th century, yet they failed to institutionalize civil liability as a general legal principle with broad applicability. This transformation was achieved through the rule of law theory, which significantly contributed to the recognition of civil liability as one of the fundamental principles of public law.

Most legal scholars argue that there is a direct relationship between the rule of law and civil liability, as liability—including civil liability—only gains significance within a legal framework. In this regard, without an enforcement mechanism such as liability, the rule of law lacks practical meaning. This idea became widely accepted in public law discourse from the 19th century onward and gained further emphasis with the emergence of the good governance theory.

Essentially, if the rule of law is a fundamental principle, then its violation must entail civil liability. In other words, if the government breaches the law, liability becomes an essential element of public law, except in exceptional circumstances such as states of emergency, where an exemption from liability may apply (Zargoush, 2009).

### 5.2. *State Civil Liability in Legislative Matters*

The government may commit errors in the legislative domain, resulting in harm to individuals. These errors can be classified into two major categories: first, the enactment of regulations that contradict superior legal norms, and second, the enactment of inappropriate regulations. Each category requires separate examination.

One of the circumstances in which the government may be held liable in the legislative domain is when it enacts regulations that conflict with superior laws. In legal systems, laws are typically structured in a hierarchical manner, and according to legal logic, subordinate regulations must comply with superior laws. The government, as a unified entity, consists of various components and members that collectively form its structure. Within this framework, it is possible for regulations that contradict superior laws to be enacted by the government as a whole or by its individual components, such as ministries or governmental organizations.

When the government enacts regulations, statutes passed by the legislature hold a higher legal status, and the government is obligated to align its regulations accordingly. Likewise, when governmental agencies issue regulations, the regulations enacted by the central government (such as the Council of Ministers) take precedence. Various reasons may lead to the enactment of contradictory regulations, including hasty decision-making without expert consultation. The government and its agencies, by virtue of their special legal powers, are authorized to enact regulations within the legal framework. However, in certain cases, the enactment of a regulation that contradicts the law may result in civil liability claims by affected individuals.

A critical question in this regard is on what legal foundations and principles can a civil liability claim against the government, arising from the enactment of an unlawful regulation, be examined? Additionally, should such claims be subject to the general rules of civil liability in private law, or should they, due to the unique nature of public law, be governed by distinct rules and considerations?

To address these questions, it must be noted that the absence of clear and sufficient legal foundations regarding the state's civil liability for enacting unlawful regulations has led to inefficiencies in the legal system's ability to regulate this liability. In this context, the Administrative Justice Court, particularly its General Assembly, serves as a key institution for ensuring the correct implementation of laws and regulations. By incorporating modern legal concepts, it can play an effective role in enforcing justice and strengthening individuals' rights. The lack of a clear distinction between private and public law aspects of state civil liability has also resulted in the absence of a comprehensive and precise legal framework in this area. Furthermore, the failure to develop specific legal concepts for liability arising from the enactment of unlawful regulations, the disregard for previous rulings, judicial inaction in addressing this issue, and inconsistencies in judicial precedents are among the major factors contributing to this legal crisis.

One of the primary challenges in establishing state liability for the enactment of unlawful regulations is the interpretation of Article 11 of the Civil Liability Act. A precise analysis of existing legal provisions and judicial innovation by the Administrative Justice Court in clarifying the legal status of this article could help resolve ambiguities and uncertainties. Additionally, defining the scope and extent of governmental liability and leveraging existing legal frameworks to create a balanced legal system between public and individual rights is essential. Ultimately, the Administrative Justice Court and its General Assembly must focus on addressing fundamental legal questions rather than minor details, such as the causal relationship between a regulation and the alleged damage. This approach would contribute to judicial development and enhance the court's role in this domain.

At times, legislation may cause harm not due to contradictions with superior laws, but because of its unsuitability for the given context. Such disproportionate regulations may arise in different ways. For instance, a law may be inconsistent with the circumstances of its enactment, the authority enacting the law may be inappropriate, or the law's scope may not align with societal needs. In any case, the question arises: Can the enactment of unsuitable laws lead to liability for the legislature?

In legal theory, there is a prevailing assumption that the legislature acts with wisdom, and therefore, all enacted laws are presumed to be reasonable and well-founded. However, this assumption does not align with reality, as there are numerous instances where the legislature enacts laws that are ill-suited to prevailing conditions. Under such circumstances, the key question is how liability can be attributed to the legislature for enacting unsuitable laws.

Traditionally, the legislature is viewed as representing the national will, acting as the people's representative in enacting laws. Therefore, it is presumed that the legislature acts wisely and enacts appropriate laws, making claims for damages against the legislature seemingly implausible. Accordingly, some legal scholars argue that "under the fault-based theory, the legislature cannot be held liable" (Mehmannavazan, 2009).

Under this perception of the legislator and legislative function, holding the legislature accountable appears unjustified. However, to establish legislative liability, a shift in perspective toward the legislator's role is necessary, followed by an examination of the legal basis for such liability. In this regard, Verse 53 of Surah Yusuf in the Quran provides a compelling foundation for legislative liability. The verse states: "I do not absolve myself, for the human soul is inclined to evil, except for those upon whom my Lord has mercy." This verse suggests that humans, including legislators, are susceptible to error and temptation. Thus, legislators, as human beings, are not immune to mistakes and may commit errors in the legislative process.

Contrary to the assumption of legislative infallibility, humans are prone to error, and mistakes in legislation are possible. In this regard, some legal scholars argue that "only laws authored by God are free from error, whereas laws drafted by humans are subject to mistakes" (Yazdanian, 2016, p. 604).

Given these perspectives, it appears that the legislator, as a human entity, may make errors and must bear legal responsibility in such cases. Legislative liability in this context may include compensation for damages resulting from inappropriate laws. Some scholars contend that the loss of legitimate opportunities due to inappropriate legislation can be considered an economic loss (Mehmannavazan, 2009).

As previously noted, various factors contribute to the enactment of inappropriate laws, including bad faith. In cases where bad faith is involved in the legislative process, both criminal and civil liability may arise. In such situations, both the individual responsible for the flawed decision and the legislative body itself may be held accountable. This is particularly true when an individual enacts a law or regulation with malicious intent, resulting in benefits for certain groups while harming others. In such cases, the individual may face criminal liability, while the legislative body may be held liable for its failure to provide adequate oversight.

A notable example of such legislative failures can be observed in universities affiliated with governmental organizations. For instance, Imam Khomeini University, which was affiliated with the Foundation of Martyrs and Veterans Affairs, lacked academic and educational standards aligned with national or international benchmarks. Despite this, at one point, officials of the foundation decided to establish the university primarily to issue degrees for individuals requiring credentials for managerial positions. During its operation, the university granted academic degrees to individuals associated with the foundation. However, a later regulation barred executive agencies from overseeing applied science universities, leading to the institution's closure. Clearly, this situation benefited a select group of individuals while depriving those with genuine academic qualifications of managerial opportunities.

Such actions not only violate individuals' natural rights but also degrade national academic standards, ultimately inflicting harm upon the scientific community. Consequently, in addition to individual accountability for these decisions in both civil and criminal contexts, governmental institutions should also bear responsibility. This is because it is the duty of executive agencies to oversee delegated responsibilities and prevent potential abuses. Some legal scholars argue that "senior officials sometimes make statements without proper consultation or expertise, causing severe social and economic fluctuations. As a result, certain groups exploit these fluctuations, while others suffer financial or psychological harm" (Roshan, 2012).

### *5.3. State Civil Liability in the Executive Domain*

One of the primary functions of the government, in addition to legislative actions, is its executive role, which, compared to other responsibilities, poses significant legal complexities and challenges. In this regard, the government is obligated to fulfill its duties across various fields, and any failure to do so may result in serious legal consequences. The government's liabilities in this domain include civil, criminal, and disciplinary liability, which manifest in two primary ways: first, through the failure to enact necessary regulations, and second, through the failure to properly implement existing regulations. Each of these aspects will be examined in detail below.

**A. Failure to Enact Regulations**

As previously discussed in the section on the foundations of state civil liability, one of the significant theoretical perspectives in this area is the "right guarantee theory." According to this theory, liability is not limited to assessing harmful actions but also extends to omissions that result in harm. In this regard, the Islamic Penal Code of 2013 recognizes omission as a criminal act, particularly when such an omission results in damage or loss. Within the framework of the right guarantee theory, if the government neglects to enact necessary regulations, it may be held liable, as such negligence could lead to the violation of individuals' rights and harm their social and economic security.

The need for appropriate legislation is especially evident in emerging fields that require specialized regulations, such as cyberspace. With the expansion of the internet and social media networks, new legal and social challenges have arisen, highlighting the urgent necessity for effective legislation that aligns with contemporary conditions. The government's failure to legislate in areas related to cyberspace, and the resulting liabilities, could lead to violations of individuals' rights and an increase in social harm. In such cases, affected individuals may file claims against the government based on the right guarantee theory.

**B. The Approach of Iran's Administrative Justice System to the Failure to Enact Regulations**

Regarding state liability for failing to enact regulations, one of the key institutions in Iran's administrative justice system is the Administrative Justice Court. According to Article 12 of the Administrative Justice Court Act of 2013, the court is responsible for handling complaints related to government regulations. This provision specifically addresses violations resulting from the government's failure to fulfill its legal obligations or to enact necessary regulations, leading to the infringement of individuals' rights.

In older legal frameworks, the responsibility for addressing such cases was assigned to the individual branches of the Administrative Justice Court. However, recent reforms have transferred this responsibility to the General Assembly of the Administrative Justice Court, which has created ambiguities regarding the scope of its jurisdiction.

Overall, Iran's administrative justice system lacks sufficient mechanisms to prevent violations resulting from the failure to enact essential regulations. Ideally, the system should not only prevent abuses arising from incorrect executive decisions and actions but also ensure the protection of citizens' rights when the government fails to enact necessary regulations. However, in practice, the Administrative Justice Court lacks adequate tools to oversee and address issues related to regulatory omissions.

**C. State Liability Arising from the Failure to Implement Existing Laws**

State civil liability for failing to implement existing laws and neglecting to enact necessary regulations is a complex and challenging legal issue due to its various legal and regulatory dimensions. In reality, state liability in both cases—whether failing to implement laws or failing to enact regulations—appears similar, as in both instances, the government, as the institution responsible for enforcing rights and laws, must be held accountable to citizens.

In particular, government liability for failing to implement existing laws is more tangible and clear-cut than its failure to enact new regulations, making such claims easier to establish.

In analyzing the foundations of state liability in this regard, two fundamental legal principles are noteworthy:

First, the "right guarantee theory", which emphasizes the necessity of protecting individuals' rights against violations or failures to enforce laws. Under this theory, the government must take the necessary measures to ensure the realization of individuals' rights, and if it fails to implement existing laws, it will be liable for compensating affected individuals.

Second, Article 113 of the Constitution of the Islamic Republic of Iran, which establishes the responsibility of the President and the government in enforcing laws. Under this provision, failing to implement laws constitutes a violation of the Constitution, requiring the government to compensate for any resulting damages.

Another important principle in this field is the concept of "legitimate expectation," which refers to citizens' right to expect reasonable government action in implementing laws and decisions. When the government fails to enforce its decisions or implements them inadequately, citizens may demand compensation for damages based on this principle.

A prominent example of this issue is the "Law on Facilitating Marriage for Young People," which the government has failed to implement for an extended period. In such cases, the principle of legitimate expectation can serve as the legal basis for claims against the government.

Additionally, Article 92 of the Public Accounting Act and a ruling by the General Assembly of the Administrative Justice Court clearly illustrate the application of the "legitimate expectation doctrine" in Iran's legal system. The Administrative Justice Court must recognize the government's liability for failing to implement laws or failing to meet citizens' legitimate expectations and take effective measures in this regard.

Unfortunately, the judicial practice of the Administrative Justice Court has often been passive when dealing with cases involving the government's failure to fulfill its legal obligations. The court must take more decisive and effective actions to protect citizens' rights and ensure the proper implementation of laws.

Thus, an effective administrative justice system is expected to hold the government accountable for all legal violations and, when individuals' rights are infringed, to defend their rights and ensure that the government is held responsible for compensating damages.

## 6. Consequences and Implications of State Civil Liability in Regulation

### *6.1. Legal Consequences of State Liability in Regulation*

State civil liability in the domain of regulation has wide-ranging legal, social, and economic implications. When the government fails in its duty to enact, oversee, or enforce regulations, violations of individual and social rights become inevitable. Government liability in this regard includes failure to enforce regulations in a timely manner or enacting regulations that contradict superior laws, which results in the infringement of citizens' rights and the creation of unstable conditions.

In general, the legal consequences of government negligence in regulatory matters may lead to financial, social, and legal damages for individuals and society. The legal foundations of government liability in regulation are supported by principles such as the rule of law and the right to access justice, which mandate that the government must ensure a proper legal framework and guarantee the enforcement of regulations.

In this context, several legal doctrines regulate government liability for deficiencies in legislation and regulation. For instance, the rule of law theory asserts that the government must adhere to superior legal norms and fundamental legal principles throughout the regulatory process, preventing any violations (Moradkhani & Esfandiari). The Administrative Justice Court serves as a judicial body for reviewing government liability in regulatory violations and, when necessary, can compel the government to compensate for damages.

### *6.2. Social and Economic Implications of Government Liability in Regulation*

Government negligence in regulation not only has legal consequences but also results in serious social and economic repercussions. The primary social consequence is the erosion of public trust, which arises when regulations are not properly or promptly enforced. When citizens lose confidence in the government's ability to uphold and enforce laws, this distrust can lead to public unrest and social protests.

From an economic perspective, the absence of effective regulations may trigger economic crises. For example, if appropriate financial and economic regulations are not implemented, it could lead to an increase in corruption, rising inflation, and a decline in investment. These economic repercussions directly undermine public welfare and social justice.

Thus, government responsibility for regulation must be considered not only from a legal standpoint but also from economic and social perspectives as a fundamental principle. Economic theories emphasize that governments are obligated to establish regulations that promote economic development and public welfare. Consequently, government negligence in this area contributes to a decline in public welfare and an increase in inequality (Badripour, 2010).

To address these challenges, it is essential to establish an efficient legal and executive system that both protects individual and social rights and lays the foundation for a stable and healthy economy.

## 7. Conclusion

Based on the conducted studies, state civil liability in legislative matters can be categorized into two main types, each with distinct consequences.

The first category pertains to liability arising from the enactment of inappropriate laws. In this case, the government enacts ineffective or flawed laws, resulting in harm to individuals or specific groups within society. In other words, if government-enacted laws infringe upon citizens' rights or create difficulties for them, the government will be responsible for compensating the damages incurred.

The second category involves liability arising from the failure to enact regulations. As the executive and managerial body of society, the government is obligated to enact the necessary regulations for governance. When the government fails or delays in enacting essential regulations, this inaction may result in harm to certain individuals. For example, in situations where legislation is required but the government fails to act, such inaction may cause harm to citizens. In such cases, the government should not only be held liable but must also enact appropriate regulations and compensate affected citizens.

However, in Iran's legal system, government liability for enacting inappropriate laws is limited to a few specific cases. Generally, the government is only required to compensate for damages in particular circumstances. Regarding failure to enact regulations, even in cases where significant delays have occurred, government accountability is rarely pursued. The Iranian administrative justice system has largely exempted the government from liability in this regard. Reports from the Supervisory Department of the Islamic Consultative Assembly frequently highlight numerous instances of government negligence in enacting regulations, yet the Administrative Justice Court and Iran's judicial system have failed to take effective action in this area. This legal vacuum has resulted in the absence of government accountability for failing to regulate crucial matters, thereby depriving citizens of their legal rights.

A key recommendation for improving state civil liability in regulatory matters is to strengthen oversight over legislative and executive processes. Given that Iran's legal system has significant shortcomings in holding the government accountable for enacting inadequate regulations or failing to enact necessary ones, it is crucial for the Administrative Justice Court and other judicial bodies to take more effective action. Establishing more precise oversight mechanisms and expediting the review of citizen complaints and requests can help address these deficiencies.

Additionally, the government must give special attention to citizens' rights in drafting and amending laws and regulations, ensuring that ineffective or flawed laws are avoided. Particularly in cases where new regulations may infringe upon citizens' rights, a thorough consultation and review process is necessary to prevent harm caused by legal ambiguities or deficiencies.

## Authors' Contributions

Authors contributed equally to this article.

## Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

## Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

## Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

## Declaration of Interest

The authors report no conflict of interest.

## Funding

According to the authors, this article has no financial support.

## Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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