
Conditions to Implement the Admonitory Rule and its Criminal Absolution

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Abstract

Apprehension of removing responsibility from the defendant in cases with warning subjectivity requires full implementing conditions of the rule of warning. By implementing the rule, disclaiming is inevitable, especially criminal responsibility. Despite its many potential applications, it has not maintained its position and actuality and paid less attention, due to lack of information of lawyers on theoretical and practical aspects.

This research suggests that before conducting a legitimate behavior, if there is given effective warning and despite the possibility of escape from danger zone, the warned refuses, the revealing is not responsible in case of financial or life accident and damage to the warned, and shall not be given atonement and liability.

In a narrative from Imam Ali (AS), quoted by Imam Sadegh (AS), it has been stated: "Muhammad ibn Yahya from Ahmad ibn Muhammad ibn Esmaeil ibn Bazi'a from Muhammad ibn Fadil from Abbey Al-Sabah Kanani has narrated that Imam Sadegh (AS) said that in time of Imam Ali (AS), children played with their slings. One of them shoot toward another child with his sling and his tooth was damaged due to shoot by his friend. Then the wounded referred to Imam Ali (AS) and the shooter said that he has said: be aware [i. e. he has warned] and Imam Ali (AS) exempted that person to be retaliated and said a person who warns, he will be excused.

Introduction

Conditions to Implement the Admonitory Rule and Criminal Absolution

There are discussed behavior legitimacy, effective warning and the possibility of risk aversion for the warned as conditions to implement the admonitory rule and criminal absolution.

1. Behavior Legitimacy

Behavior legitimacy means the act legitimacy or omission in permissible place that includes unintentional behavior.

Behavior legitimacy is an important condition and the term of "legitimacy" means legality of behavior that with regard to unlawful of rules in the Islamic Republic of Iran, behavior legality leads to its legitimacy. By considering the Article 167 of the

Constitution, there are filled the law gaps using the Islamic authoritative sources or authentic fatwa so that if there are defects or brevities or conflicts in the developed laws to issue polls, the authoritative Islamic sources and authentic fatwa can be used.

In the case of "behavior", there should be exist triple material, moral and legal items to be criminalized that behavior.

Briefly, the legal element means that the law legislates any behavioral including act or omission as a crime and predicts its punishment. This definition has been predicted in Article 2 of the Penal Code Act ratified in 2013¹. Material element is a behavior, including act or omission, which the law considers it as a crime and it is carried out by offenders in the outside world. Material element consists of behavior, conditions and consequence that the causal relationship between behavior and consequence is necessary to realize the material element. Mental or spiritual element of guilty is criminal intent or fault that offender commits offense and criminal responsibility is realized for him by considering the circumstances. In other words, there should be intent and responsibility to commit a crime for offender or criminal fault and criminal liability to realize psychological or spiritual elements.

About a fault action that is subject of principle of "who he warns is excused", we should know that according to the Penal Code Act, fault includes carelessness, negligence, malpractice, negligence, non-compliance of regulations and systems so that each of these categories could separately cause to fault of perpetrator act that is considered as intention or pseudo-intention.

Clause 3, Article 295 the Penal Code Act, 1991 had decreed: "If there is happened murder, assault or battery due to carelessness, imprudence, lack of skill or lack of compliance with regulations, and that was not happened, if those regulations were considered, murder, assault or battery will be pseudo-intention. In the Penal Code Act, 2013, murder and mayhem are not considered as pseudo-intention and pseudo-intention and intention crimes are both considered as pseudo-intention:

¹For more information, cf Abbas Zera'at, *Overview of the Penal Code Act, Description Article 2*; Mohammad Saleh Walidi, *Describing Necessities*

of the Penal Code Act, Descriptions under Article 2.

Article 145 and its note of the Penal Code Act, 2013 indicates that implementing unintentional crimes depends on perpetrator negligence and negligence has been considered as carelessness and impudence. Negligence, carelessness, lack of skill and lack of considering governmental systems and like them are cases of carelessness or negligence. In Article 714 of the Penal Code Act approved, 1996 on crimes related to driving violations, there has been stated: if carelessness or negligence or noncompliance with governmental regulations or lack of skill of driver (including ground or water or air vehicles) or operator of engine is leading to manslaughter, the perpetrator is sentenced to six months to three years in prison as well as pay blood money to the victim's family.

Article 296 of the law states: In cases that someone is shooting to a person or object or animal and he shoots at another innocent human being, his act is mere fault. Now, Article 294 of the Penal Code Act, 2013² replace the former Article 296 and therefore, it considers intentional crimes of mistaken identity as intentional crime: If someone commits crime on others because of a mistake in identity, and if both persons are not subject to Article 302 of this law, it is considered as intentional crime.

However, to describe Note 3 of Article 295 of the Penal Code Act, 1991 [Article 145 of the Penal Code Act, 2013] and necessity of causation and causality relationship between behavior and result to realize material element of the crime, there is expressed summary of insistence vote No. 10-8/7/1376 General Board of Criminal Chambers of the Supreme Court:

Given that the accused did not intervene in the drilled hole and died at the crash site and in accordance with Article 318 of the Penal Code Act [Article 506 of the Penal Code Act, 2013], causality is realized by providing waste cause and deserves liability and the provisions of Note 3 of Article 295 of the Penal Code Act [Article 145 of the Penal Code Act and its note from the Penal Code Act, 2013] are also exclusively predictable on the nature of homicides and assaults, so the protest is not effective. Therefore, the verdict No. 183-14/5/1375 issued by the Military Court 1 of Khozestan on acquaintance of the accused from charge of causality in homicide is emphasized

²For more information, cf Abbas Zera'at, *Overview of the Penal Code Act, Description Article 294*; Mohammad Saleh Walidi, *Describing Necessities of the Penal Code Act, Descriptions under Article 294*.

³Studies and Research Office of the Supreme Court, discussions and votes of General Board of the Supreme Court, 139-140

based on the paragraph C of Article 24 of the Penal Code Act.

True narrative is subject of affirmative fault of conductor, but negative fault is associated with principle of "who he warns is excused"³.

Negative fault is a fault that murder does not play affirmative positive role in its realization. Islamic religious scholars have defined this type of fault as wastage and guilt. Affirmative fault arises in a situation that murder adopts a negative position against a certain necessary. This means that when doing his duty, he takes negligence, recklessness, carelessness, negligence and shortness.

Sometimes negative fault is stewardship and sometimes, it is non-stewardship. The negative fault is stewardship when fault occurrence leads to harm immediately, for example, quadruped hurts someone in a way while its owner is riding on it, and it is non-stewardship when harmful result of fault is emerged more or less after emerging the fault such as tilting wall overlooking devastation that its owner has been in default or negligence, while he has been warned and was aware of the danger.

Articles 714-716 of the Penal Code Act, 1996 are examples of negative fault stewardship.

In the principle, about permissible of locations, emphasizing on literally meaning of permissible, namely something that its doing and leaving is allowable will not be beneficial⁴, and permissible location should be defined in terms and conditions on the rule.

It can be said that basically, transition out of the Muslims' way is permissible, but its liberty depends on health condition. Traverse and transition refer to go, go with livestock and vehicles at the present time. In other words, the general rule is traffic permissibility in the way of Muslims, but for avoidable things, it is bound to healthy and lack of considering avoidable things is a failure and any transgression involves blood money. It is a general rule for responsibility in events and losses of public ways and what it means to be comparable.⁵

⁴In terms of jurisprudence, permissible is opposite of indispensable, unlawful, abominable and in civil rights, it is against command and prohibition or necessary laws (cf Mohammad Jafar Jafari Langroodi, *Law Terminology*, No. 4785, p 607)

⁵ Avaz Ahmad Idris, *Blood Money*, translated by Ali Reza Feyz, pp 142-143

Sahib Jawaher points out permissible place with traffic right.⁶

However, it can be concluded that permissible place is a location where although there may be right of traffic for others, but if actions such as shooting and so in a way that its avoidance is possible for others, it will be permissible to do the actions.

For the legitimacy of act or omission to act and then permissible place, there will be provided examples: Suppose that a pharmaceutical plant to convert or manufacture of drugs produces or supplies phenyl acetic acid or acetic anhydride or acetyl chloride or other material contained in Tables I and II annexed to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in Article 12, 1988 and its next reforms and annexations in the form of packing with effective warning on the package about stupor features of the substance and its complications. In this case, it is not possible to cite avoidance rule because of illegality of the committed act.

A person hurls stone in a busy street from one hand to the other side, in order to targeting and before to do this, he effectively warns; however, his act leads to causing financial damage to others. In this case, despite considering other conditions, his action is not compliance with the principle of “who he warns is excused” due to non-permissibility of the place and in each case, it is necessary to pay blood money and financial compensation.

Another example is that according to the law of education centers in the country, approved on February 23, 2005, driving school instructors should avoid to take driving lessons on busy streets and places that have been banned by the Traffic Office, in other words, the prohibited places for driving training are not legal and permissible places. If a driver training instructor takes to train driving in the banned places in accordance with the mentioned regulations and comply with other conditions by installing warning signs in forbidden places, in the event of accident and injury or damage to persons or properties, the instructor is responsible.⁷

Of course, as non-permissibility leads to lack of legitimacy of the act, lack of legitimacy of the behavior can be considered as illegitimacy and illegality of such behavior and lack of and lawful behavior, lack of place permissibility.

It is not exorbitant if we say that legitimacy condition of behavior is the basic condition for warning because there should firstly be legal and lawful permission to conclude disclaimer when we achieve other conditions.

In this narrative, some of children played shooting games or similar ones, which there is no doubt in unintentional and legitimacy of the action and commentators have emphasized the necessity permissible for the place⁸. Of course, if “Sababian” means the underage children, as cause of criminal responsibility resolver, the feature of childhood age leads to lack of necessity of legitimacy condition.

The legislator may predict behavior legitimacy such as Article 4 of Safety Act of Roads and Railways, adopted on September 25, 1970 with amendments and extensions, or have been recognized on numerous occasions such as the written ten articles contained in Article 3 of using weapons by the armed forces in urgent cases approved on January 7, 1995, or not predicted in the law such as articles 9 and 10 of roads and railways safety Act with amendments and additions and Article 8 of investigating offenses and obtain traffic offenses Act approved on June 19, 1971.

Obviously, in all the legal texts that somehow are related with the principle of “who he warns is excused”, the considered actions by legislators in the laws and regulations are legitimate, although it is not mentioned explicitly because it is axiomatic that the legislator does not cancel the action.

Effective Warning

To interpret the narrative, almost all jurists have pointed out the need hearing warning by the warned.⁹ But they have not paid attention warning types and how to apply them. Only one of the jurists explicitly has issued permit using all kinds of warning with “quoted or written or action” words.¹⁰ Therefore, warning types are:

Audio Warning

The research topic narrative has stated audio warning using the word of “Hazzar” means be careful or aware or getaway.

Other than criteria such as traffic regulations and procedures approved on June 7, 2005 and traffic regulations and procedures of free commercial-industrial zones approved on September 30, 1994

⁶ Seyyed Mohammad Hossein Najafi, *Jvaher al-Klam fi sharh shara al-Islam*, Vol. 43, p 68

⁷There will be provided more explanations about the case and the doubt that the trainee may be responsible

⁸Seyyed Mohammad Hosseini Shirazi, *Al-Feqh*, Vol. 90, p 109; Seyyed Mohammad Hassan Najafi, *Jawaher al-Kalam*, Vol. 43, p 68

⁹References have been cited in the topic beginning

¹⁰Seyyed Abd-al-Ali Mousavi Sabzevari, *Mahzab Al-Ahkam fi Bayan Al-Halal wa Al-Haram*, Vol. 29, p 137

and mining safety regulations ... the audio warning is the most widely used in rule of using weapons by officers of the armed forces in urgent cases approved on October 9, 1994 and executive procedure of paragraph 5 of Article 3 of this Act approved on July 20, 2002.

Importantly, in the mentioned law and procedure, the "stop" notification and shoot shouting are used as part of an effective warning and finally, if the audience does not pay attention to the notices, in accordance with Note 3 of Article 3 and Articles 4 and 7 of the Act and paragraph D of Article 2 paragraph 5 of Article 3, the officer can shoot the person from the waist down. Secondly, according to Clause 1 of Article 6 of the law, there should be used from obstacles, switchgear and rotating lights in the checkpoint stations and if a person does not pay attention to them and non-stop warnings, audio warning will be announced and then shoot his waist down.

Thus, although in Article 6, there are applied all audio, visual and practical warning types for using weapons by officers of the Armed Forces in emergency cases, as well as in provisions such as Article 51 of the traffic bylaws in free trade-industrial zones of the Islamic Republic of Iran, but in all cases, the important and central role of the audio warning is undeniable. Some of approvals and decisions, which include audio warning and are related with the effective warning as one of conditions of implementing the rule include Article 153 of workshop building safety bylaw approved on February 21, 2012 and Articles 3 and 4 of using weapons by officers of the armed forces in emergency cases approved January 7, 1995.

The audio warning has been predicted in the Traffic bylaw approved on June 7, 2005 and Safety bylaw approved on February 28, 2000. There has also predicted audio warning in the bylaws as well as traffic bylaws in free industrial-trade zones approved on September 30, 1994. For example, mine safety bylaw adopted on February 28, 2000 states that:

...
Article 62: before starting to operate any machine, the operator must notify others to boot device.
....

Article 166: battery should take the following actions during blasting operations:

a:
e: few minutes before the explosion, he should warn others loudly or any other means. After ending the explosion, he should also announce

others on ending the operation using the same mean.

Visual Warning

This warning is conducted using showing and exposing a warning sign or writing. It may be done by inserting special symbols like some passing traffic signs and symbols, for example forbidden overtaking or it may have been expressed on paper or board in certain areas or on certain manufactured goods or their package.

The produced commodity can be edible, medicinal, health, clothing and sporting goods, industrial machinery and so on.

One of professors in a law university, the USA, believes in the claims liability arising from supplying various goods, the defended can cite different defenses such as disclaim, warning, risk acceptance and so on. For example, in the claim of Paul against Victor G High School, a student is injured when somersault on a mini-trampoline in the gymnastics classroom and he has complained against the manufacturer.

Finally, the research court by confirming the issued sentence of appeal court, stipulates that based on relative fault in liability survival does not mean when its subject matter is the risk of incorrect use. However, in Paul case, the court's reasoning was that the manufacturer failed to prove guilt of the student in misuse of the toy and there has not been provided any reason suggesting that the student has used the mini-Trampoline in an opposite and unpredictable direction.

Furthermore, despite awareness of manufacturer, the warnings have been inadequate for understanding that using them without safety equipments and proper supervision will lead to permanent damage. With regard to this issue, the court argues that as the student was not warned that somersault on the mini-trampoline could lead to serious injuries, the entire responsibility lies with the manufacturer.¹¹

Manufacturers can resort their warnings to avoid their responsibility. Although there is no problem to design and produce each product, it can be considered faulty, and that is when a product is supplied for consumer or athlete without enough warnings about how to use the product properly without risk. However, as failing to warn on a commodity can introduce it as a dangerous one unusually, it should be noted that whenever

¹¹Walter T Jumpion Jr, *the law principles of sports: civil liability in sports*, Translated by Hossein Aghaeinia, pp 146-147

equipments have no problem in design and construction and the possibility of their injury is obvious by the public, warning is not necessary. In short, no one does not need to warn about obvious risks or risks that are easily recognizable by ordinary people.¹²

Another point is that for visual warning in some cases, it is better that visual warning is done using specific symbols and statements for effective warning of audiences, for example, there are used symbols near the high-voltage electrical towers that the phrase of electrocution hazard is mentioned on them, in addition to insert human face and skeletons with cross bones. When warning symbols are used without specific symbols or phrases, it is necessary to write writing expressions with interesting colors like red color. For example, there is written on label of some drugs: “warning: this medication is causing sedation” or “note: since taking this medication causes drowsiness, avoid driving or operating with devices that require alertness”.

Due to the importance of this issue in traffic signs that show warning signs, there are used reflective and clothing colors.

The location of visual warning is important so that there should be considered the best place for quick and convenient observation of the symbols or warning phrases. For example, using symbol of electric shock at the top of the tower high voltage power lines causes lack of awareness of audience. This type of warning is frequently used in laws and regulations, including:

- ✓ Protection of paths of optic fiber cable network privacy Act, telecommunications network of the country, approved on June 7, 2009;
- ✓ Bylaw of safety signs in workshops, approved on June 28, 2008;
- ✓ Bylaw of work safety at height, approved on February 8, 2011;
- ✓ Law of dealing with traffic violations, approved on February 26, 2012;
- ✓ Bylaw of workshop building safety, approved on October 9, 2011 by Technical Protection Council;
- ✓ Traffic bylaw approved on June 7, 2005;
- ✓ Bylaw of passing vehicles and persons in internal area of airports, approved on October 23, 1970;
- ✓ Law of how to handle traffic violations and getting traffic offenses, approved on June 19, 1971;
- ✓ Plan to how reduce smoking, approved on August 20, 1974;
- ✓ Bylaw of prohibiting use and supply cigarettes and other tobacco products in

public places, approved on October 28, 1997;

- ✓ Traffic bylaws in free industrial-trade zones of the Islamic Republic of Iran, approved September 30, 1994;
- ✓ Law of Islamic accessing the Islamic Republic of Iran to the Convention of Psychotropic Substances, approved on September 30, 1994;
- ✓ Executive bylaw of health supervision and control over pesticides and chemicals, approved on September 4, 1999;
- ✓ Executive bylaw of transporting hazardous materials, approved on March 12, 2002;
- ✓ Executive bylaw of Article 6 of preventing air pollution Act, approved on June 11, 202;
- ✓ Mine Safety bylaw, approved on February 28, 1991

Practical Warning

There are two versions of practical warning:

One is the direct deterrence action by the warned that there is directly prevented an act or omission such as prevent entering children under five years in artificial lake by guards or a subject that has been stated in Article 145 of workshop building safety bylaw approved on October 8, 2011 by Technical Protection Council as follows: “If gauge cover is removed for any reason, it should be taken on control by person ...”

Article 126 of bylaw of safety work at height approved on October 31, 2010 by Technical Protection Council explicitly states: “the operator of mobile lifting should prevent passing other persons in privacy of the machine”.

However, it seems that actions that cause preventing by direct involvement of individuals, even those determined by the government cannot be considered as warning, unless in cases where they contain other types of warning such as audio or visual warnings.

The second perception of practical warning that is more logical and appropriate, is to perform preventive warning with warning signs and objects, but not directly deterrence by person(s).

For example, in drilling operations or repair of roads, streets, roads and highways people who notify changing path and put away from the danger zone by inhibitor objects, waving red or white or yellow flags or warning sign in the day and light reflection in the night use practical warning and may even use auditory warnings.

In drilling operations or maintenance of roads in roads and streets within jurisdiction of city and passages that vehicles move slow and often

¹²Ibid, p 150

normally or in other accident places such as pools, dams, open tunnels, etc, in terms of the case, it can be used railing, rope, barbed wire etc. as a barrier and fence that effectively prevent entering to danger zone that in most cases, there must be an early warning sign. Some of these laws and regulations with the features are stated in the following:

- Bylaw of workshop building safety, approved on October 9, 2011;
- Bylaw of wood industry safety, approved on August 2, 2011;
- Bylaw of work safety at height, approved on February 8, 2011;
- Bylaw of protection of electrical installations in workshops, approved on March 12, 2008;
- Bylaw of passing vehicles and persons in internal area of airports, approved on October 23, 1970;
- Bylaw and safety regulations in drilling manual wells, approved on September 11, 2005;
- Bylaw of protecting construction sites, approved on August 3, 2011;
- Mine safety bylaw, approved on February 28, 1991

Notes

To examine the effect of warnings, the important notes are:

Warning types vary in different situations, time and places.

In some cases, using a warning will be sufficient. In other cases, using one or two or all warnings is necessary.

In cases where two or all warning types are required, its effectiveness will be gained by completing the last stage of warning and if any part or stage is not applicable, the principle of “who he warns is excused” is not true. It exactly likes as fraud crime that is a mixed crime and necessarily all steps and elements of the crime have to be done, then fraud will be achieved.

Criterion of warning effectiveness is different, depending on time and place situation, but with a general formula, the legal criterion -as the case- is preferred. This means that in each particular case, warning effectiveness will be detected by referring to specific laws.

The law does often not address this issue in detail, but personal criteria and attention of expert opinion are preferred. According to provisions of relevant laws and regulations and opinions in this research, it is important to study shooting of the armed forces and traffic accidents.

A common criterion is important in some cases. In cases where customs and traditions are common,

legal and personal standards comply their performance with custom.

The mentioned criteria can be used simultaneously and it is possible to detect warning effectiveness and judicial authority is the final determinant using the criteria. In other words, to issue sentence, the lawyer knowledge must be obtained through conventional methods.

As a warning that causes knowledge of the warned is recognized as an effective action, opinions of some contemporary jurists on separating effective warning from warning receipt of the damaged as two conditions for disclaimer are meaningless¹³ because in fact, effective warning includes receipt of warning to the damaged and does not need to mention it separately.

The possibility of risk aversion (for the warned)

For disclaim, many jurists necessitate of the possibility of danger escape for the warned with hearing warning for him or effectiveness of the warning. They have emphasized necessity of escape from danger by the warned¹⁴.

One of jurists believes that considering the following notes and items is necessary for this condition:

Audience has enough time to escape from danger scene;

Audience has the required ability and physical strength to escape from danger scene;

Conditions and circumstances of danger area give audience permission to move away from the danger.¹⁵

In the first case, suppose that an automobile moves with 100 km/h in highway and installing proper warning signs is necessary 100 m before place of repairing and construction site. In this way, the driver has enough time to prevent accident. If this distance is reduced, the driver cannot redirect and escape from the risk and the warned is responsible, if there is occurred an accident.

For the second case that the audience has no proper ability and physical strength to escape from risk place, suppose in intersection, an old man is passing very slowly from pedestrian place in the end of the allowed time for crossing pedestrian. The light is yellow and then red. The old man cannot move to the other side quickly, although he knows the status quo and he has to move slowly. In this case, drivers who see the green light of crossroad can move, but they cannot do this because of the pedestrian, otherwise they are responsible to guarantee by pedestrian collision.

¹³Seyyed Mostafa Mohaghegh Damad, *The rules of Jurisprudence: Part 2*, p 242

¹⁴References of the topics have been expressed in the beginning of chapter 3

¹⁵Seyyed Mostafa Mohaghegh Damad, *ibid*, p 243

For the third case, we can say during hunt, if shooter fires after warning, but the audience cannot escape the danger zone despite hearing warning because around him is an abyss or deep river, in the event of collision beams randomly, the shooter or his mature is guarantor of the case.

Necessity of maturity and wisdom of the warned is one of conditions for his danger escape possibility, because an audience who does not recognize warning due to immaturity or madness, escape from danger zone has no meaning for him and practically it is not possible for him. Maybe for this reason, Kashf Al-Lesam has mentioned such cases.¹⁶

In mature condition of the warned, other Fazel Hindi, some scholars such as Sahib Jawaheer have described the issue and believe if a child comes shooting place himself, the shooter will be retaliation and otherwise, he should pay blood money, even if he has warned because the child does not understand warning.

Another jurist says that if the child comes to the shooter's property and the shooter does not find it, if shot hit the child, he will not be responsible. Otherwise, the warning does not mean relieve his liability; and if he does not know that a child has been exposed by his shooting and give warning, he will not be responsible.¹⁷

Sahib Jawaheer believes that the term of child has been mentioned in Ghawaed as-Ahkam and al-Mabsoot because of the obvious people and an adult human who exposes himself against shooting, gives the verdict as a child and maybe that's why this case has been mentioned in Tahrir al-Ahkam that if a human exposes himself against shooting.¹⁸

Although some commentators are quiet about wise conditions the warned, but Mr. Hosseini Shirazi has concluded from religious books of Fazel Hindi that if a mad exposes himself against shooting, he will be like a child and give such judgment and responsibility of shooter will be in force, whether he warns or not.¹⁹

¹⁶Fazel al-Hindi, *Kashf Al-Lesam*. Vol. 2, p 484

¹⁷Seyyed Mohammad Hassan Najafi, *Jawaheer al-Kalam*, Vol. 43, pp 69-70

¹⁸Seyyed Mohammad Hassan Najafi, *ibid*

¹⁹Seyyed Mohammad Hosseini Shirazi, *ibid*, 112

²⁰Sheikh Toosi, *Almabsoot*, Vil. 7, p 189;

Mohaghegh Helli, *Shara al-Islam*, Vol. 4, p 10222

²¹Fakhr al-Mohaqqin, *Izah al-Fawaed*, Vol. 4, p 659; Allameh Helli, *Ghawaed al-Ahkam*, Vol. 3, p 652; Hamoo, *Tahrir al-Ahkam*, Vil. 2, p 263

²²Shahid Sani, *Masalek al-Afham*, Vol. 15, p 342

²³For example, cf Allama Helli, *Tahrir al-Ahkam*, Vol. 2, p 263; Seyyed Mohammad Hassan Najafi, *ibid*

Importantly, jurists believe that if a child or an adult who passes the firing, brings another child with himself, and the firing shoots the child, that pedestrian -the author of refers him as small bearer- is guarantor.²⁰

Some jurists consider different results for different scenarios and shooter's knowledge or ignorance as follows:

If the shooter is ignorant on the subject and the bearer child knows it, the second is responsible, with the explanation that he should be retaliated or rather, pays blood money; retaliation for deliberate action and blood money due to uncertainty in the issue.²¹

In this case, Shahid Sani cautioned that Allama Helli doubts about opinion of jurists who consider the shooter as an ignorant and the child bearer, who is frugal, as slaughter.²²

Many jurists have chosen the term of Hafer or well driller for shooter and repellent and cause for child bearer.²³

If the shooter knows and child bearer is ignorant, the shooter will be responsible, with the explanation that by knowledge of the shooter and other conditions of retaliation, the retribution certainly will be done and it is not possible to pay blood money instead of retribution.²⁴

If both are learned, some jurists believe that just the shooter is responsible²⁵ and others share liability of shooter and child bearer.²⁶

If both are ignorant, some jurists believe that just the shooter is responsible²⁷ and others share liability of shooter and child bearer.²⁸

Liability share for the shooter and child bearer or their matures that mentioned in paragraphs 2 and 3 by jurists like Hosseini Shirazi and Mousavi Khoei was expressed in Meftah Al-Karama, quoting

²⁴Fazel al-Hindi, *Kashf Al-Lesam*. Vol. 2, p 484; Seyyed Mohammad Hassan Najafi, *ibid*; Ahmad Moghadas Ardebili, *Majma al-Fayedeh*, Vol. 14, p 244; Seyyed Mohammad Hosseini Shirazi, *Al-Feqh*, Vol. 90, p 111

²⁵Fazel al-Hendi, *ibid*; Seyyed Mohammad Hassan Najafi, *ibid*; Ahmad Moghadas Ardebili, *ibid*

²⁶Seyyed Mohammad Hosseini Shirazi, *ibid*; Seyyed Abolghasem Mousavi Khoei, *Foundations of Taklama al-Menhaj*, Vol. 2, p 232

²⁷Fazel al-Hendi, *ibid*; Seyyed Mohammad Hassan Najafi, *ibid*; Ahmad Moghadas Ardebili, *ibid*

²⁸Seyyed Mohammad Hosseini, *ibid*; Seyyed Abolghasem Mousavi Khoei, *ibid*

Majma'a Al-Borhan²⁹ has been likely verified as possibility³⁰.

About conditions of being wise of the warned, except Fazel Hindi who has referred to this condition, few jurists like Hosseini Shirazi described and confirmed this condition and many jurists have not mentioned situation of the crazy person on the rule like a child. He even considers the brought sick person to firing field as a crazy or baby. However, it seems that the idea of Fazel Hendi and Seyyed Mohammad Hosseini Shirazi is more accurate and more comprehensive³¹.

It is important to know that those jurists who have not mentioned their idea in these cases are not opposite with the conditions and they accept requirements of the mentioned matters; perhaps they have avoided to express the matter because of its obvious and matching a lot of contents with general rules.

As a note, we need to know to adapt the principle of "who he warns is excused" with any matter, it is better to know opinion of legislator, before referring commentator jurists; so that if there is a special law on the principle of "who he warns is excused", we should act by considering general rules of criminal law and provisions of resolutions of the generalities in the Islamic Penal Code because the legislator has already adopted these decisions with the law, but if there is any particular conflict between law and jurists' opinion it can be doubtful.

In rare cases, the legislator have implicitly mentioned the possibility of danger escape for the warned, but lack of his attention or less attention to this issue does not mean lack of its necessity.

For example, in Articles 26 and 28 of bylaw of safety signs in workplace, approved on February 3, 2008 and Articles 208, 217 and 256 of bylaw of protective construction sites, approved on August 30, 2002 and Articles 14, 37, 51, 153 and 192 of bylaw of mine safety, approved on April 15, 2002 have mentioned the condition of danger escape for the warned.

Conclusion

The principle of excuse is related and interacted with a variety of criminal, civil and disciplinary responsibilities that its implementation means disclaim of warning, especially criminal responsibility.

Basic and general conditions to realize the principle and disclaim include behavior legitimacy

of the warned, effectiveness of warning and possibility of danger escape for the warned.

With effective warning before legitimate risky behaviors and lack of attention to warnings and entering the danger zone, in the event of an accident leading to financial and life damage and casualties, the warning is not responsible.

The principle has been included in some special laws and has been previously given in Article 45 of the Law of blood money, but legislator in 1991 in Article 341 of the Islamic Penal Code, which replaces Article 45 of the law of blood money, eliminated the related phrase to the rule, but in the Islamic Penal Code approved in 2013, it was predicted again in Notes 1 and 2 of Article 508 as well as Articles 509 and 510 as the explicit wording of a law that reflects the principle, although in absence legal explicit wording, there would be the origin to eliminate legal liability resulting from warning and derived from Article 167 of the Islamic Penal Code and other principles could invoke the rule of law in dispute resolution before approving the Islamic Penal Code (2013), but most judges, lawyers and court experts were not familiar with the research topic and therefore, they did not use it to make judicial decision or defend rights of parties.

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²⁹In all studied jurisprudence resources, there was no a book titled Majma al-Borhan, but the mentioned matters from Majma al-Borhan are similar Majma al-Fayedeh written by Ahmad Moghadas Ardebili

³⁰Seyyed Mohammad Hosseini Javadi Ameli, *Meftah Al-Karama*, Vol. 10, p 283

³¹For more information, cf Seyyed Mohammad Hosseini Shirazi, *ibid*, pp 111-112; Fazel al-Hendi, *ibid*;

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