

## A NOTE ON CRIMINAL LIABILITY OF LEGAL ENTITIES IN IRANIAN LAW

*Seyed Ibrahim Ghodsi,*

Associate Professor,  
University of Mazandaran, Iran

*Mohamad Sadegh Farajpoor,*

Postgraduate Student,  
Criminal Law and Criminology,  
University of Mazandaran, Iran

### ABSTRACT

*One of the legislative developments in the field of criminal responsibility in the IPC acted 2013 is acceptability of criminal responsibility of legal persons. However, enforceable guarantee considered in the different rules for legal entities before adoption of new Penal Code, so that the first serious law in the field of recognition of criminal liability of legal entities mentioned in the cybercrime law but the existence of such laws and guarantee are not applicable to all crimes of legal entities. Fortunately, legislator accepted the criminal liability of legal persons not as a principle but as an exception in Article 143 of Penal Code acted in 2013. Although the legislator has taken a positive step in the field of criminal responsibility, but acts of criminal liability of legal persons in some areas, such as abetting and start crimes of legal entities faced serious challenges. Unfortunately, legislator did not act in this field perfectly, and we believe that lawmakers should review the criminal liability of legal entities.*

**Keywords:** Criminal responsibility, Legal entity, Assisting and taking part in crime.

## INTRODUCTION:

Nowadays, it accepted that the offender could be a real person or legal entity. It is clear that the real person is human and the offense committed by him is not far-fetched. Legal entity is the group of people with common interests or a portion of the property that allocated for special purpose and they have right and independent character according to law (Safai, 32, 2014). The crime committed by them was far-fetched in the distant past but today, these doubts aside according to the role of legal entities in the life and they can also commit crimes because of existing such people in life. There was discussion about the criminal liability of legal entities in legal systems especially in Iranian law but the problem was that they knew committed crime subject to having deliberately in intentional crime or fault in unintentional crime. Therefore, it is not possible to commit a crime by legal entities when committing these acts are subject to awareness and will which are specifications of human (Mohseni, 2014). Historically, the criminal liability of legal entities did not exist as form of today in ancient times but we found different form of it, for example, the temple has a legal personality in the Sassanid era (Norbaha, 2012). The first type of identification of the liability of legal entities was medieval times and dates before the French Revolution, so that the first law on liability of legal entities was in Code of France Criminal Procedure during XVI's Louis. However, liability of legal entities forgot after the French Revolution because French revolutionaries advocate freedom and personality and found these specifications in individuals not in legal entities. In the mid-nineteenth century, ideas of scientists about individual autonomy somewhat moderated, so that the nineteenth century is the century of flourishing of communities and association and other social institutions (Mohseni, 2014). From this period, independent characters assumed for legal entities and responsibility accepted for them and the majority of lawyers believe that justice and criminology fact of these entities should consider. (Norbaha, 2012). Legal entities are legal reality and we cannot ignore their existence in criminal law. They have criminology fact so that they are dangerous to society and have dangerous state. The criminal liability of legal entities unprecedented in Iranian rights under the Penal Code before and after the revolution and our legislators did not accept criminal liability of legal entities in public law and in the penal code. Iranian constitution accepted the existence of legal entities in Article 26 (Mohammadi, 2016) but considered enforceable guarantees for legal entities in various laws included in Article 11 of the Probate Law act in 1930 and legislation related to the regulation of medical, pharmaceutical and food and beverage products approved in 1955 . Nevertheless, the most serious of criminal liability of legal entities after the revolution identified in the field of cybercrime law in 2009. However, this articles and guarantees were not enough. Fortunately, legislator accepted criminal responsibility of legal entities in Article 143 of the Penal Code and tried positively in terms of legislative developments but there are questions about persons, which help us better understanding the criminal liability of legal entities and include:

1. Which principles and the nature of criminal liability of legal entities accepted by the Islamic Penal Code?
2. If someone committing in the crime of Legal entity, does it interpret as criminal responsibility?
3. Is the participation of legal entity imaginable?
4. Is starting crime by legal entities imaginable?
5. Do the criminal liability of legal entities apply in absolute crime of omission?

In this article, we answer the mentioned questions and check that the legislators did not consider the criminal liability of legal entities and it is necessary to review the field of criminal liability of legal entities.

## CRIMINAL LIABILITY OF LEGAL ENTITIES IN THE ISLAMIC PENAL CODE:

Article 143 of the Penal Code proposed," The principle in criminal responsibility is individual responsibility and legal entities have criminal responsibility when their legal representative in the name or for their benefit commit crimes." Article 143 states a principle and an exception; the principle is individual responsibility and the exception is criminal responsibility of legal entities. In other words, the principle is lack of criminal liability of legal entities and the fulfillment this requiring a term and that is, their legal representative in the name or for their benefit commit crimes. These interests can be whether material or spiritual, directly or indirectly benefits (Rouholamini, 2008). So legal representative may commit a crime, while it is not in the interests of company or for interests of company but it is not in the name of company. Therefore, one of two things should do by the legal representative that the legal entity have criminal responsibility. However, the condition for the appointment of cybercrimes to legal entity is that the crime committed in the name of a legal entity and for its interests and according to Article 19<sup>1</sup> of the cybercrime Law become "or" in Article 143 that seems more appropriate. (Mir Mohammad Sadeghi, 2013). The other issue is that legislator did not specify in Article 143,

<sup>1</sup> Article 19 "If the cybercrimes committed in the name of a legal entity and for its interests, then the legal entity has a criminal responsibility."

who is legal representative? Some believe that we can use the provisions of Article 19 to understand the legal representative. It means that legal representative is manager who delegates, decision-make or supervise the legal entities. It seems that if this view accepted, the employees of a company commit a crime due to lack of supervision of the director. Nevertheless, this kind of responsibility is not acceptable according to Article 143, as we shall see; the legislator accepted mastermind theory in Article 143 and did not accept the theory of substitution or proxy. Therefore, the legal representative is person who granted him powers and duties according to law or contract like board and director. We cannot justify any offense of a legal entity according to Article 143 because offense by a legal representative have the responsibility according to this article. The behavior of representative is conceivable in two ways. First, the legal representative did not implement the will of all members of the company and committed crimes for interest of company or forging the name of company. Second, committing the crime is based on the request of members and decision makers of the legal entity. It seems that, only this state should subject to article 143 according to interpretative principles accepted by criminal laws (Elham, Borhani, 2016). However, it should note that the legislators accepted criminal responsibility of legal entities as an exception and there is exception within this exception. This means that criminal responsibility of legal entities is an exception and not all of them have criminal responsibility. Legal entities divided to public and private entities. Legislator note in Article 20 that public governmental or non-governmental legal entities who do the rule do not have criminal responsibility. Therefore, those offices and agencies that do rule such as the prisons office are lacking criminal responsibility. It means that impose criminal liability to public legal entities is contrary to personal principle of punishment and violate it because in fact, public power punished by punishment of these entities (Janatmakan, 2013). However, criminal liability from persons to legal entities in all public crime subject of the articles of 14, 20, 143, 21, and 22 are with respect to all legal entities. Extending criminal liability of legal entities for all crimes is innovations of penal code (Goldoziyan, 2016). Article 143 considered the crime absolutely and knew them as all crimes committed by individuals. The legislator followed the general principle of criminal liability of legal entities (Habib Zadeh et al., 1392). Holding legal entities in some crime has drawbacks, so crime check with separation:

#### **Criminal liability of legal entities in prison crimes:**

The issue is; do legal entities have criminal liability if they commit prison crimes? For example, a representative of a legal entity commits crime in the name or for the benefit of the company. There is no doubt that the legal entities have liability in prison crimes and legal entities are punishable based on Article 20<sup>2</sup>. Each penalty stipulated in Article 20 is in eight penalties of Article 19. Therefore, penalties stipulated in Article 20 are naturally prison penalty because Article 19 provided rank of the prison penalties. Innocence of legal entities is applicable in case of realization of the crime according to Article 143. If a legal entity commits a prison crime, the judge can sentence in accordance with Article 20.

#### **Criminal liability of legal entities in crimes involving payment of blood money:**

Physical damage caused by legal entity as blood money required to compensate (Goldoziyan, 2013). The legislator also mentioned crimes, which require the payment of blood money by legal entities in Article 14 and if relationship between behavior of legal entity and damage determined, blood money and damages will be claimable. Therefore, as some lawyers described, the behavior of legal entity is decision of all member and not behavior of each person (Ardabili, 2013). For example, municipalities dig a hole in the street to install cables. Municipal worker do not install warning signs around the excavated pit and a person fall in the pit and damaged. Both workers and municipalities are responsible, if relationship between employee's behavior and crime determined. It seems that, the basis and nature of criminal liability of legal entities in criminal law based on two theories. It means legislator accepted theory of succession or correspondence according to the Note of Article 14. In this theory, managers of company are representatives of legal entities. As a result, both legal entities and their representatives will have criminal responsibility (Ranjbar, 2014). So according to this theory, all elements ranging from staff to managers create responsibility for legal entity in case of committing crime.

<sup>2</sup> Article 20" If a legal entity is liable under Article 143 , according to the severity of the committed offense and its harmful consequences sentenced to one to two of the following:

- A-Disorganization of legal entity
- B- Confiscation of whole property
- C-Prohibition of one or more social or occupational activities, permanently or for a maximum five years
- D-Prohibition of invites the public to raise capital permanently or up to five years
- E- Prohibition of drawing some business documents for up to five years
- F- Cash fine
- G-Public disclosure of conviction by media

Legislator accepted theory of succession or correspondence in the Note of Article 14. Objection to this theory is the expansion of criminal liability of legal persons. Each of its members commit a crime in the line of duty without authorization and making legal entity responsible (Hossienjany, Mazaheri, 2010). However, lawmakers accepted theory of identify or mastermind in Article 143. It means that representatives of legal entity are elements of company and committed crimes by them considered as the crime of legal entity (Ranjbar, 2014). So according to this theory, behavior and thinking of legal representative is behavior and thinking of company. In other words, legal representative implement the will of company. One of the objection of this theory is that they cannot recognize special person who committed the crime (Mojab, Rafi Zadeh, 2015) or the representative can prosecute during his managerial duties. Therefore, if the director of a company crash with someone when driving, the company is not responsible because driving is not the task of managers or stealing an ashtray by representative on a business trip will not cause liability of company (Abdollahi, 2014). This dual approach of legal entities are also in cybercrimes. Some of its provisions are consistent with the theory of master brain and some is consistent with the theory of substitution (Rafi Zadeh, 2013). However, the acceptance of criminal responsibility in Iran's rights is under two different bases.

### **Criminal liability of legal entities in retaliation punishment:**

Important issues and questions that arises here is whether the retribution crime by legal entities imaginable? It seems imaginable, for example, a company established for making dress but changed its activities or the legal representative sell drug for interests of companies with the knowledge of being lethal. It seems that, criminal liability of legal entities is imaginable in this case. In addition, article 143 confirmed this idea because the legislator did not confine it to prison crime. Nevertheless, the challenge is how to impose penalties. It means Article 20 of the Penal Code cannot apply in the case of committing retaliation crime by legal entity. These offenders should sentence to penalties described in the law and jurisprudence and other penalties, such as those mentioned in Article 20 cannot force to apply (Mojab, Rafi Zadeh, 1394) because they are prison penalty and legal entities cannot sentence with these penalties. Every crime that committed and expressed by legal entity is the crime of legal entity and they should accountable for their behavior (Ardabili, 2013). We believe that, the criminal liability of legal entities should consider according to Article 143 and 20. According to article 143, criminal liability is an exception and based on Article 20 legal entities punished for prison crimes. The exceptions applicable to other crimes such as retribution unless the legislator to stipulate it. Unfortunately, legislator has no attention to this issue.

### **ASSISTING AND TAKING PART OF LEGAL ENTITIES IN CRIME:**

Participation in crime realized when some people involved in crime and crime operation related to them. It seems that taking part in crime is possible by legal entities whether with several entities or with legal entity and persons. Therefore, if representative using fraudulent means for interests of company and by the name of it and and other obtained property, both of them will sentence in participating of fraud. The important point is that we do not need intent unity of partners committing crime. Therefore, behavior's entity may be intentional and other be unintentional. Although the criminal liability of legal entity is not unambiguous in unintentional crime whether crimes committed by the representative through carelessness or recklessness of him is his notice even if the legal entity obtained interests by his fault. However, whereas many crimes of legal entities happen because of negligence or recklessness, the purpose of legislation is unlikely the exception of the liability of legal entities for unintentional crimes (Habib Zadeh et al., 2013). However, we believe that participation in the crime imaginable for legal entities and punishment for this crime considered according to Article 125. Assisting in crime means assistant help others in committing a criminal act in different ways without participating in criminal operations (Norbaha, 2012). There are two conditions for this issue. First, action of assistant is before action of steward or during it. Second, assistant and steward have unity plan. In our opinion, assisting in crime is imaginable for legal entities. For example, the representative of company producing laptops gives a person a laptop and printer in the interests of the company to forge some documents. The person using the laptop and printer forging documents in the interests of the company. In our opinion, legal entity assisting in crime by providing the means of crime. Therefore, assisting in crime is imaginable for legal entities but it is very hard to prove the unity of intention of assistant and steward. However, penalties for legal entities faced challenge in the case of assisting legal entities in crime because it appears that the general Article 127 of the IPC should use. The problem is that paragraph (a), (b), and (c) of Article 127 is not applicable for legal entities. Because if the penalty were imprisonment, deprivation of life or flogging, imprisonment must consider for assistant and it is not possible for legal entities. Prison penalties of legal entities based on article 20 of IPC but paragraph (d) of



Article 127 has limited functionality because the penalties prescribed in this paragraph consists of one or two degrees lower than the crime. Therefore, if we assume that the penalty of main crime is fine, he sentenced to one or two degrees lower. If a person assisting in crime of legal entity, for example, someone bring berries for beer manufacturer and the company make it wine. Two conditions is imaginable, first, the person knows that the manufacturer make wine so assisting in crime happen. Second, person does not know that the manufacturer make wine so assisting in crime does not happen because there is no unity of purpose. We faced a challenge in the penalty of entities because it must be according to article 20 of IPC. So if the penalty of legal person was confiscation of property or disbanding the company, the penalty of assistant did not determine. Unfortunately, the legislature did not pay attention to these cases. If the penalty of legal entity was fine, penalty of assistant determined according to article 127. As seen, the legislator made a double deal with this issue because of lack of attention to these issues. It means that assisting in crimes, which caused disbanding the company, has no penalty but if the penalty is fine, complicity in it is punishable.

### **STARTING CRIME OF LEGAL ENTITIES:**

The question that arises here is whether start of a crime by legal entities conceivable and can legal entity to explain the charges. We cannot explain the charge according to Article 689 of the Criminal Procedure Code and explain the charge used for representative based on law for legal entities (Khaleghi, 2015). Starting crime need three conditions according to article 122 of IPC. First, Intent of committing a crime, second, Login to stage of operations, and third, no voluntarily withdrawal. Some believe about fulfillment or non-fulfillment of starting crime by legal entities that starting a crime by legal entities is not conceivable because no voluntarily withdrawal is not conceivable. Therefore, fulfillment of starting crime by legal entities is not possible (Ranjbar, Hejazi, 2016). We believe that starting crime by legal entities is possible. For example, representative of a legal entity for interests of the company or in the name of it pay bribes to the clerk to get loans from bank but arrested by Security Bank during the process. It seems that starting bribery by a legal representative who is part of the company happened. Therefore, if know legal entity for criminal responsibility, penalties for legal entity faced challenge because the punishment for starting crime of legal entities does not follow certain articles and rules and we have to use Article 122 . Paragraph (a) and (b) of article 122 is not applicable to legal entities because imprisonment predicted for starting crime by legal entities and it is impossible for them but paragraph (c) is limited applicable . That is, if the legal entities committed a crime grade five, they can sentence to fine grade six according to paragraph (c) of Article 122. This lack of proportionality between crime and punishment is unacceptable (Shams Nateri et al., 2016). Another example, protein and meat distribution company distribute meat to prevent its loss and know that such meat leads to harm of individual consumers but despite the consumption of meat, consumers do not see any harm. Can we sentence legal entity to starting crime? It seems that it is examples of the impossible crime. Legislator know impossible crime as starting crime and it is impossible to sentence it. However, problems raised in this matter in all of these issues, it assumed that legal representative run the will of the company and if it is outside will of the company, it is not lead to responsibility of legal entity. The point which seems useful to mention is that the possibility of crime by legal entities is possible either binding or absolute terms. The example of binding crime is fraud and example of absolute crime is bribing. As well as crime by legal entities for both action and inaction is possible. The example of inaction crime is the producing Mineral water or Food Company refusing to send mineral water or food to quality control laboratory and it causes harm for consumer. In other words, inaction crime should lead to that result. Absolute crime of inaction is not possible in Iranian law. Even if we assume that, the represent of company do illegal drilling for failing to monitor their employees or falsified documents. It is not justifiable based on article 143, and the company is not responsible because legislator in Article 143 rejected substitutionary or vicarious theory and accepted master brain theory. Legislator know responsible only the action of legal representative for interests or in the name of company.

### **ADDITIONAL OR CONSEQUENTIAL PUNISHMENT FOR LEGAL ENTITIES:**

Consequential penalty is punishment addition to punishment of main crime and without mentioning in the court judgment (Baheri, 2015). Additional punishment added to main penalty, moreover, it stated in the verdict, and never mentioned in the sentence of court (Ardabili, 2013). Some expert said that legislator use person in article 23 and its real person not legal entity (Borhani, 2016). Although the instructions contained in the additional punishment can implement for legal entities but interpreted that, this type of penalty is not applicable to them because of uncertainty, whether additional penalties can impose on legal entities or not. However, some experts

criticized non-imposition of additional penalties on legal entities because they believe that penalties for legal entities on the basis of Article 20 does not exclude the dangerous state of the legal entities and it is necessary that legislator predict special additional penalties for them ( Shams Nateri, et al., 2016). Also believed lack of implementation of such punishment for consequential penalties because the loss of civil rights according to Article 25 and Article 26 is not applicable for legal entities (Saki, 2013). The principle is that penalties should not have consequential effects and consequential penalties do not have exceptions and are applicable only in penalties mentioned in article 25 and because of these, they are not possible for legal entities. In addition, imprisonment substitutive penalties are not applicable to legal entities because these penalties are for person who sentenced to imprisonment (Saki, 2013).

### **COMMUTATION AND INTENSIFY THE PUNISHMENT OF LEGAL ENTITIES:**

An important question that arises here is whether the punishment of legal entities intensify in case of repeating or concurrence of offenses or commutation is applicable according to article 37? Assume that representative committed several crimes in the name or for interests of the company without sentencing for pervious crimes. Before explaining this, it must be said that the penalties mentioned in Article 20 for legal entities are grades one, five, six, and fine that is compatible for all grades. Penalties for legal entities are according to idea of judge unless grade one which apply in special conditions. However, if the legal entity committed three crimes, judge may choose for the first offense prohibiting issuing commercial documents, for the second offense prohibition of one or more jobs, and permanent ban for third offense. They should sentence maximum punishment for each offense according to Article 134 and finally apply the most severe punishment. Therefore, prohibiting issuing commercial documents should sentence for 5 years and sentence 15 years for prohibition of job. Permanent ban has no maximum and minimum and itself is enough. Two of these three penalties are in accordance with the grade six and one of them is in accordance with a grade five. We believe that the grade five means permanent ban implement. However, if the legal entity committed more than four crimes the issue complicated because the court must sentence based on Article 134. For example, if legal entity commit four crimes, judge sentence respectively confiscation of property, disorganization of the legal entity, permanent ban of job, permanent ban of increasing capital, and disclosure of conviction. The judge must sentence more than the maximum. Apparently, our legislators do not consider this case and we will face problem. The solution is executing the most severe punishment that are confiscation of property and disorganization of legal entity. We believe that sentencing more than the maximum is not possible if judge sentence fine instead of disclosure of conviction. However, the problem is that executing this punishment is not possible because confiscation of property and disorganization of legal entity should apply<sup>3</sup>. The court may choose punishment in different way, fine grade 3, the prohibition of issuing commercial documents for 5 years, the ban on the job for 15 years, prohibition of increasing capital for 15 years. However, we faced double condition. Legislators should impose certain rules to applying severe penalties for legal entities. There is also the problem for recidivism. Legislator determine punishment for legal entities in cybercrimes in case of recidivism but it is specific sentence and understand the general type among public rules of criminal law (Habib Zadeh et al., 2013). We believe that there is no prohibition about commutation of legal entities according to article 37 of IPC. Therefore, the court can reduce or change the punishment of legal entities. The scope of commutation must be according to paragraph (b) and (c) of article 37 because paragraph (a) and (c) of article 38 are not applicable for legal entities.

### **CONCLUSION:**

Accepting criminal responsibility doubted for many years because crime is a human phenomenon and commit by the man who have wisdom and will. In other words, committing crime by legal entities is not possible. Enforceable guarantees considered in our different laws before and after our revolution for legal entities but imposition of criminal liability of legal entities still faced with uncertainty. Even this ambiguity did not disappear with the reformulation of criminal liability of legal entities in cybercrime because it is not applicable to all crimes. Fortunately, legislator accepted criminal liability of legal entities as an exception in the new Penal Code acted in 2013. Although the legislator has taken a positive step in the field of criminal responsibility, but acts of criminal liability of legal persons in some areas, such as abetting and start crimes of legal entities faced serious challenges. We faced serious challenge in law for applying penalties in the case of assisting legal entities in crime, assisting real persons in committing crime by legal entities and starting crime by them and

<sup>3</sup> Article 22: disorganization of legal entity and confiscation of property apply when there is deviation from first legitimate purpose and change activities in order to commit a crime.

unfortunately, legislator did not attention to them. Therefore, we believe that lawmakers should review the criminal liability of legal entities for being able to apply penalties. Even believe that they should consider the fact and accept the criminal liability of legal entities as a principle not as an exception such as UK law systems.

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