An athlete’s criminal liability towards spectators

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Abstract:

Basically and according to clause of article 158 of the Islamic penal code, approved in 2013 (sporting activities and accidents resulting from it, if the reason of accidents do not violate the rules related to that sport and these regulation are not in conflict with religious rules) there will be no criminal liability for the athlete. As it appears the athlete that will be exempted from any criminal offense when he has not violated the rules, however, if the athletes is offender whether the injured is opponent athlete or one of the spectators, the offending athletes will be liable for the penalty. In other words, what kind of criminal responsibility would be in these cases, if the act committed by him towards the spectator was deliberate (which would warrants retaliation) or a pseudo_deliberate error (which would warrants the payment of atonement and also sanction punishment it means that imprisonment 1 to 3 years in case of victim death by the offending athlete according to article 616 in sanction law) or vasted error (which would warrants prey for a loss by kinsmam) the responsibility of the athlete will be different. But whether the athlete respect to all of the rules he will be completely exempted from the damage that he enters into the spectator or not, is the point of disagreement which this article seeks to ask the question.

Key words: criminal responsibility, athlete, spectator.
Introduction:

From early to now exercise has been considered as one of the physical, mental and essential human needs and it provides people’s vivacity, maturity and health case. That’s why government expend a lot of money to develop and encourage people to exercise and try to separate spots events from incidents happening in the street and allay. However, if these events are same in terms of the result. Anyway, whether we consider criminal liability and punishment in sports events for athletes or solely obligate them to make up the losses is believed that to be contrary to the goals in sport. And in addition, the occurrence of accidents and incidents in sport is inevitable, and it seems that social benefit is to exclude such incidents by mention the special condition from the criminal rules.

In the first period, it is devoted to the time before the constitutional revelations. In this period, religious and customary regulation were used to deal with judicial affairs, including sports events during this period juricprudential sources namely the Quran tradition, anecdotes and jurists opinions, became the standard act of consensus and documented trails.[4]

In the second period, which began in 1972, sport’s activities not considered a crime under article 42 of the general penal code, provided that the events reason do not be the violation of that sport rules the sport rules. Then it began in third period after the victory of the Islamic revolution, first by the legislator in 1360 and in article 32 with the provision that the accidents caused by sports incident, provided that it does not lead to violation of the sport rules and not in conflict with the Islamic law as the only legal document regarding the criminal responsibility of athletes in sporting events.

The Necessity and importance of the subject

Regarding the sensivity and importance of the subject in the judicial process, in legislation, the review of the constitution is considered as the most important legal document of our country and in third principle, the stat is obliged to consider free education and physical education at all levels and facilitated for everyone. And the emphasis on sport in the education context in this principle of the constitution indicates the sport status and importance in the eyes of the legislator. Although, in this principle the government’s duty to support sport is generally said, but this does not mean that all events created in sports activities is supported by the law to the nature and type of sports and considering other effective conditions such as athlete’s personality, athletic attitude, victim or spectator and the type of provocation carried out by the victim.

Meaning of sport regulations

The meaning of regulations in article 52 of the Islamic penal code are set of conditions that are regulated as codified regarding the
sport activities by federations, boards of associations and something like that or there are non-codified regulations which is governed on indigenous sports without being approved by government agencies. In fact, if the sum of movements be acceptable as a sport necessarily, there are rules that govern it also, and according to the explicit letter of the law of the aforementioned article the main condition to justify the event arising from sport will be the observance of the relevant regulations provided that be consist whit the sport high goals.

**Sports legal goals**

The sports rights subject is all the violations that are in realm of sport and in some way harm other’s rights. In legal analysis of these violations to their law and are classified as crime or tort. And finally, a study of the community’s reaction to such violations is raised. These reaction sometimes are imposed as punishments such as cash penalties, flogging, imprisonment, deprivation of social rights and even the offender’s execution and whenever the offense has a tort description, the offender must be compensated for the damage. Although, one of the goals of the punishment is to menace perpetrator and others[7] and this goal is usually achieved by perpetrator’s punishing forcibly. But our goal in providing sport rights is not limited to menace the presented in a way that can ensure the following goals.

1. Increasing the legal awareness of the sport community in the sport rights area.
2. Using of these awareness in order to prevent the occurrence of sport events.
3. Clarifying the vital role of sport from the Iran’s rights point of view.
4. Describing the duties and powers of the sports managers from a legal point of view.
5. Providing a variety of legal plans that must be taken before and after the occurrence of sports events.

And the most important result of these goals is to protect the physical, mental and honor of the athletes and also to protect the sport managements for legal responsibilities.

Satisfaction of the injured athlete to participation in the sport activity. From the legal point of view the victim’s consent has not an effect on the offenders conversation but, in exceptional cases victim’s consent may cause to decline the yet criminal and nonfulfillment of the crime, mitigation of punishment or stopped suing or reprieve and decisively, the athlete’s consent to participate in sports activity means that accepting the normal risks and evil out comes in sport. Accepting satisfaction as one of the basic justifying the events cause by sport’s activities in order to motivate millions of young people to exercise has been for having the brave, healthy and happy generation. Because the legislator knew well that society’s excellence is not possible except in the light of such humans. Legislator is aware that the incident cannot be separated by sport and even may be harmed despite observance of all the rules and regulations, with courage and great in sight separates the sport account from everything and does not count it’s events as crime. At the same time, he wants to say that sport is a tendency based activity and there is no compulsion and reluctance to do it.

Cardozo one of the American’s largest lawyer has said the same viewpoint in another statement in a proverb (that the coward can stay home)[6] and the opposite concept is that in the event of player’s participation in the sports activity in principle, he will not be able to object to losses come from the regulation case.
This dominate phenomenon and belong to past times was judged in a desirable way by the supreme court of the United states in 1962.\[^7\]

Football is a sport with physical tangle. The reason for this is the continuous and frequent involvement of players with more power.\[^8\] Physical tangle, bruise and fracture are the inevitable events of the football game. Players must be satisfied with the danger, blows, fractures and injuries. The rule of Action against yourself which is one of the jurisprudential rules is also acceptable in this regard.\[^9\] The means of this rule as the name implies is that person who accepts harm or surety with knowledge, intention and consent no one will be his guarantor.

Therefore, the injured in sports activities whether the rival or the spectator or another by participating in the game or entering the spectator’s position has accepted the damages and losses caused by the sports activities in the regulations case and cannot refer to another for compensation.

Decisively one of the legislator’s intended principle to legislate the article 158 of the Islamic penal code has been the insured’s consent.

Therefore, accepting the risk and action and the injurd’s consent and his participation in evil action even in the matter of his life and health retarding the public’s judgment and followed by it the enforcement law. But is not that the deliberately mayhem is an unforgivable crime? So why, when he goes to battlefield deliberately and comeback with broken rib and hand does brag his virility just? Seems to satisfy his pride.

It’s amazing that the court is also looking at humiliation view point to his com plaint and neglect it to do not reward the abjuration.\[^10\]

**Legal analysis of article 158 of the Islamic penal code**

According to article of the Islamic penal code in addition to the abovementioned articles committing a behavior that is considered crime under the law is not punishable in the following cases.

Clause(c) activities and accidents resulting from it if the reason of accidents does not violate the rules related to that sport and these regulations are not in conflict with religious rules.

First of all, according to clause 3 of article 59 of the penal code, the words (accidents caused by sports activities itself are not covered by this article? While in the new law has been used the title of sports activities and its consequences. Clause C of article 158 of the Islamic penal code is devoted to sports activities and its consequences which justify of accidents resulting from sport activities requires regulations observance by the athlete and adopting conventional and predictable risk by injured which are common in sport activities\[^11\] also, the relevant sports regulations should not be in conflict with religious law. For example, an illegal tackle in football implies ignoring the prime condition. Also, in violent and illegitimate sports such as, WWE or park our even if the rules are not violated it is not subject to legislator support.\[^12\]

**The character of perpetrator and victim**

In clause C of article 158 has not explicitly mention to the perpetrator and the person who created the incident and just by mentions the words (sport activities and the events caused by it) has expressed its point implicitly.

Undoubtedly, with regard to this subject that the legislator has not explicitly stated anything about events that may occur during sport activities.

For the other persons such as referees and spectators or staff at the stadium. But due to the silence of the law about such persons we can also generalize this article to victim of this sports events category who are present at the stadium or venue.

Somebody believe that this exemption element will be only for the athlete against
opposite athlete and will not include other people like the referee and spectator. Their argument is that the victim of offense has been pleased with the damage and the rule of action is also confirmed by this view but others believe that this exemption will include all people who are present at sports activities and it’s holding by knowledge. So will include the referee and the spectator and the people sitting on the bench. A recent comment that is based on the principle of accepting risk it’s unlikely for the spectator who is merely ready to watch the game by paying the ticket price and does not consent to being victimized. But for the referees is acceptable to a large extent. Because by getting the referee’s amount will accept the risk.

The act of the offender
The purpose of the sports activities is the group of actions that takes in the case of a sport. Sport in this article is considered in general sense. In other words, not only the set of moves that are considering sport in virtue of international or internal codified regulations will be included by article but also these physical activities which according to the custom are considered sport in the corners of the country. Sport is in the intended concept of legislator. So, football, wrestling, handball, judo, karate on the one side and Giyani wrestling, wrestling with squads, peals in nomads, local wrestling, lafen playing, wood playing and something like that which is lack of executive structure and codified regulations are considered as intended sport of the article 158. Therefore, if the accident is due to any of the sports activities the offender will use the justified reason privilege of the mentioned article.

In terms of the law there is no difference between the practice and the competition, and even sport activities during the warm-up period can be sports activities covered by this article.

Incident caused by sports activities
The legislator has set the exemption reasons not only for the sport’s activities even has set for its event also. But it’s not clear that it’s events generalize to what kind of behavior it seems that any event that it’s source is the athlete’s action will be exemption reason and does not include any event which occurrence at the stadium or around it occasionally, occur an event like grandstand falling roof at the stadium because of lacking proper construction which is not relate to the incident caused by the mentioned sport activities.

In this cases have been set surety and liability that is related to the stadium managers or stadium builders. But this will not the athlete’s surety reason but if the athlete is in the process of doing something that causes the damage for example, in football kick ball to a palisade and the palisade hit the opponent in the event of athlete’s no fault there will be no liability for him.

The result of clause (c) of article 158 of the Islamic penal code
The legislator by using the word incidents all criminal offenses resulting from sports activities that are normally considered a crime has set in the clause C liability of the article 158.

An incident could began from a simple maim and lead into fracture, organ failure, organ stop, benefits loss, permanent illness, defective one of the senses or dementia and ultimately death. Therefore the severity and weakness result of the sports activity in principle, does not have any effect on whether or not it is crime. Using the incidents and refusal to mention the examples in some way represents a legislator view of protecting the athlete in the event of an incident. However, shows the degree of importance in legislator’s view which has considered for sport and its vital role in society’s excellent again.
On the other hand, this issue must be noted that if someone except athlete causes the sports activities whoever is guilty here. The athlete or the victim who can be the same referee or spectator or present law enforcement officers in the stadium which according to principle of permit and the law of action. In principle, it should be understood that a person who is present at the stadium or competions he has attended in that place by his will and therefore he should be aware of possible incidents during the sport’s activities on the other hand, ignorance of this issue cannot resolve the liability for the person himself and attribute the liability to the athlete. Here it should be said that according to the incident has been occurred there can be different assumptions.

**Regulation observance as the main condition for the athlete's non-guarantor**

The first and most important condition that the legislator stipulates for justifying the sports accidents is the regulations observance therefore, stipulates that the incident must not consequent on rules violation. In other words, if the sports activities is achieved contrary to regulations the faulty will be prosecuted like incidents outside of the sport ground it may be discussed that whether issuing such a license would not make that some athletes by abusing of regulations set sport a means for doing bad intentions and anti-sport. But, in general it can be said that in principle the rules are regulated in such a way that observance of them prevents the occurrence of an incident and at the same time it cannot be claimed that the grounds for abuses are completely ruled out.

But, regarding the unavoidable nature of the event in sport even by full observing the rules since the sport field it is a place for raising brave and capable humans can not sacrifice the basic interests and goals to exceptional cases.

The legislator knew well that one are not going to be no injured or killed and at the same time, athlete’s a wariness of the predictable events and voluntary participation in that also has been a confirmation by the athlete in the event of regulation observance for justifying the event resulting from sport activities. In other social activities the assumption is that rules observance will prevent the incident occurrence and the harmful consequence has been because of nonobservant of the relevant rules. While, such this view is not true in sport. For example, the boxer are allowed to hit the opponent with their all power. Or as the same way in some of the material arts or has been given the license to the football player according to the rules can use all his power to kick the ball. If, occur an incident in such cases can not consider the aforementioned athletes as an offender just to occur a harmful result. It is obvious that the legislator give such great privilege to an activity that has a unique role for human’s maturity power. First of all, we must know that regarding the sport is an institutionalized activity which requires the use of intense physical strength or the use of physical skills by participants who are stimulated by internal and external factors.

So, it is clear that the accident and injury are something that cannot be separated from sport and even despite observing all the regulations and rules may cause damage still. Therefore, it is deliberately covered damages but justified now, whether the athlete’s mistake is acceptable. It seems that regarding the regulations observance is require, disobedience it cause surety and disrespect to regulation is considered as a kind of fault then the legislator does not accept the fault and the athlete is responsible for the guilty. With this interpretation the following definition is not acceptable. Sport events are events that the athlete committed as a result of negligence or ignorance or carelessness by doing
something contrary to law. Of course, the performer of the action doesn't have the result intention of that intentional performer.[13]

Therefore, an athlete is exempted from the criminal liability who has not intentional or guilt.

**Athlete at fault and athlete in error**

Sometimes the athlete as an intentional criminal or unintentional committing an action or omission which here due to the psychic element that existed in the athlete on that time can interpret his crime as a deliberate or pseudo intentional crime or pure mistake or guilt or the athlete during the sports activities due to the observance of legal standards causes an accident that here we say that the athlete is not criminal and did not have intentional and fault in occurring the event and sports activities against the victim.

Then must refer to this issue that if the athlete be offender then he will not be possessed from the privilege of clause C of the article 158 and will be punished due to the crime has committed and has criminal liability whether against another athlete or against another athlete or against the spectator or referees or another present people at the stadium. Also, if the athlete is guilty and the crime that he is committing is caused by doing or omission and causes another death, here the crime is pseudo intentional but, according to clause P of article 291 is convicted to atonement and according to the article 616 of Islamic penal code is convicted to sanction punishment if the event leads to anything except murder will be excluded from article 616 and perhaps it will be possible to consider the article 69. The occurred sport events by the athlete toward nonathletic depending on the type of offender's psychic element or the injury d’s interference could be changeable and in this case will be mentioned to its various kinds of conditions and performances warranty subsequently.

**Different kinds of athlete's mental element (offender) and spectator (victim) and their warranty type**

Various kinds that could be imagined for the psychic element between the athlete and the spectator and consequently warranting them, are as follows.

1**The athlete who does thing intentionally+ the spectator who does a thing intentionally**

Sometimes occur a struggle due to the unpleasant behavior of one of them (the athlete or spectator) in this situation despite the intentional psychic element or struggle between them the type of warranty will be set toward each other based on the intentional injury type like mayhem and murder and both will have criminal and civil liability in return each other (atonement in case of no retribution) articles behavior 290 will be applicable in terms of being retributive of their behavior and in terms of being sanctions for their actions and in terms of abuse the article 608 will be applicable with this difference that the respondent (the athlete or spectator) can have exciting excuses and merely could benefited from the article 37,38 commutes of Islamic penal code.

2. **The offender athlete the spectator who does a thing intentionally**

Here the offender athlete causes a violation for not observing the rules and regulations of sport without intention and will That the spectator may do an action or omission deliberately due to the anger of the athlete's behavior that cause an sport event during the sports activities now if, both are victim each one will be the injury surety rather another according to psychic element. But, if the victim be spectator in this condition since the athlete has been offender and the spectator did the action intentionally and both in result (had interference in damage to victim due to the article 125 regarding the type and amount of participation in the crime and regarding
the psychic element are surety. The article 125 anyone who participates in executive operations of crime with person or persons and the crime is documented to all their behavior whether each behavior is enough to occur an crime or not or whether their act effect be equal or different is considered as a partner crime and his punishment is a punishment for an independent performer of the crime in the case of unintentional crimes. If the crime is documented to two or more persons, the offenders is considered as a partner crime and the punishment of each of them is the punishment of an independent performer of that crime Note applying punishment around execution and atonements about participate in crime is achieved by observing the articles of second, third and fourth books of this law.

3. The guilty athlete + the guilty spectator
According to the article 533 of the Islamic penal code when, two or more persons cause occur the crime or damage to another if that crime or damage is documented to both of them or to all they are surety equally. These two partner can be both criminal and victim. Of course, the victim just can demand atonement about half the damage entered to him. The sanctions guaranty have not been predicted in criminal regulations for this matter also.

4. The offender athlete + faultless spectator.
If the athlete is guilty and does not observe the rules and regulations due to carelessness or lack of respect to the state system and the spectator also does not have any intent or guilt or mistake to occur.
Sport event here according to the article 129 of the Islamic penal code in the all cases which guilt cause civil or criminal surety the court is obligate to get the citation result to the guilty guilt then, if according to this article the court get the athlete's guilt rather the spectator according to the civil liability will be surety for the damage entered to the spectator.

5. The inerrant athlete + the spectator who does a thing intentionally
In this assumption too if the victim is spectator like a state that a victim attack to the athlete by attribution insulting words and intent to hurt but in practice the object strikes at himself. In this case due to the article 537 that if the crime relevant to solely deliberate victim........ There will not be any surety because the committing act is considered self-harm and in self-harm or suicide will not be realized surety to another. The article 290 knows the deliberately crimes that another person be stand victim while in the present matter the criminal and victim are not one more.

6. The inerrant athlete +the guilty spectator
According to above article here, because of the athlete does not committee a mistake and has observe the rules and regulations and had not witting in occur the event and on the other hand, the spectator due to the guilt means carelessness in the sport environments or lack of respect or nonobservance of the state system has done an action that cause occur the sport incident regard the above article here the athlete according to permit principle is not surety and the spectator according to law of action is responsible for the created incident. Sometimes the spectator’s guilt is also dangerous and the created damage is attributed to his guilt more than anything: for example, the exited spectator who goes to the football field and I a hurt by players hit or balls hit cannot impute his guilt to players. There is also a spectator who is approaching to the ready horse for competition and is struck by his kick.
7. The inerrant athlete + faultless spectator + third guilty person

In this kind of sports event that occur during the sports activities and neither the athlete has committed a guilt and mistake nor the spectator has committed a carelessness and a guilt here a third person like stadium managers or sports federation are as third surety which have not done necessary actions to prevent occur an incident. For example, if the players play in a special place of sport and observing that’s game rules does not have any liability against the spectators at risk because they cannot be expected except conventional sports behavior besides, there is typically no legal relationship between players and spectators in order to be able to set the safety commitment of the spectators group to the players. The courts see conventional right and does not count guilt and consider emergency situation and the excitement from behavior. If the spectator's seating be unsuitable and are damaged due to ball hit or players throwing or cars accident or horse bolt, must consider as responsible the promoter of competition.

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It may be claimed that spectators have implicitly accepted this action by participating in dangerous sports fields but this argument may only have a form of credit in cases of free spectator’s participation. However, in this argument can also say a person who invites others with an interesting game to a dangerous place must be responsible for damage resulting from this action and being free competition does not diminish a thing from this responsibility.

Especially in that case which the promoter invite others to a dangerous place in order to advertise player’s skill and set the free entry to encourage them to be present in that place is responsible for in action and neglect of their safety equipment.

In summary, predicating tools of avoiding the danger is a general commitment of each promoter whether get money from spectators or accept them for free. Unless, in the latter case the promoter's responsibility not arising from a contract and arising from creating danger. In the prevailing argument of ticket sales to see competition undoubtedly there is an implied condition that their safety will be maintained during watching games. The safety commitment should be counted from the customary equipment of main agreement because with a little think, this customary building can be established.

Doubts and discussions are about the commitment obligations of the promoter and the ticket seller. The French courts have considered safety guarantees (tools) Thus, the losers are obliged to prove their fault but some writers have criticized this interpretation that the ticket seller’s commitment against the money he takes is the buyer's health protection against the risk of watching the competition. In other words the contract of the two sides is about the outcome. No predation tools and care to avoiding danger. Then, the contractor is responsible for any damage enter to spectator unless it proves
to be due to the power of cario or observer's error and the violation of the regime.

8. The inerrant athlete + faultless spectator + third faultless person

In this very rare case if an event occurs during sports activities that the athlete has not committed an error and on the other hand, third person also (stadium managers) has observed all the regulations and have done all preventive actions and the spectator be during watching sports competition and has not committed a guilt and intent and during this occurs an sports event for example, in volleyball competition the athlete hit the ball heavily and this ball is out of ground and hit one of the spectator's head and face it should be said that here is a pure error and the athlete's kinsman is responsible.

9. Inerrant athlete +faultless spectator+ faultless third person+ forces reasons

Sometimes without that someone be offender at the stadium, the entered crime to the spectator be documentary to the natural and coercive factor like lightning and unintentional fire no one is surety in this case. According to article 500 of the Islamic penal code (in case which crime or any other damage is not documented to anyone behavior like, the surety is canceled, like that is occurred because of forces causes).

Conclusion

According to words have been said in this research that investigated clause C of the article 158 of Iran Islamic penal code we thought that whether this legal article merely observing the athlete's lack of liability criminal against another athlete according to the principle of permit and the victim's consent in sports events during the sports activities that are according to sharia or can draw from this article logics that the athlete against another present people at the stadium whether during the exercise or at the competition time according to the same principle of permit has not any liability! First of all, should consider to this point that the athlete's consent against another athlete must be deliberate, actual, and free and without any compulsion, disinclination, deception or mistake. Of course, this Dr. Golduzian's subject was related to the old law that can be valid about clause C of article 158[14] also. [15]And the other is that, as we know the penal rules are from the related rules of the society general order. So, the victim's consent will not cause to divest the offender's liability and consent of crime against the lives and people physical integrity is not effective.[16] This subject is also valid about sports events and whenever one of the participants in the sport violates the sport rules and causing damage has a criminal liability and will be punished. [17] The opposite concept of this sentence is that in the event of regulations non_violation and occur an event and damage to the athlete the person who entered damage does not have criminal liability but an important point to be noted here is that according to accomplished investigations’ and studies can say that athlete against another spectator. Who has participated in the sports competition science by his willing should not have any criminal responsibility according to action rule but, may can impute civil responsibility to him.

But, if the athlete violates the sports rules against spectator, referee act or committing a fault such as, imprudence or disrespecting to government system. Here, it's no longer possible that consider the......................... righteous for him and the athlete according to psychic element that has been had in committing a crime whether in intentional or pseudo intentional or pure false which leads in to victim's murder or damage according to the legal provisions of the Islamic penal code will have criminal liability and because the legislator like past take the path of silence about the athlete liability
toward another people like spectators it is possible to provide an explanation of this issue in order to clarify the court's duty to deal with these cases with logics of article 158, 616 and 69 of the Islamic penal code.

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