

Examining the Legitimacy of Compensating for Moral Damages from the Perspective of Imāmī Jurisprudence and Iranian Law

Khadijeh Ganjhanloo¹, Ali Ashraf Subhānī²

¹Department of Private Law, Islamic Azad University, Zanjan Branch, Zanjan, Iran

²Assistant Professor, Department of Law, Faculty of Law, Islamic Azad University, Abhar Branch, Zanjan, Iran

Abstract

Moral damages, due to their inherent complexities and the difficulty in accurately measuring them, represent a fundamental challenge in legal systems. In Iranian law, compensation for moral damages can be achieved through various means, such as apologies, monetary compensation, or symbolic actions. Various methods for evaluating moral damages have been proposed, including financial equivalence, the use of legal tariffs, and judicial assessments based on the specific circumstances of each case. Many countries, such as France, have adopted similar methods to those in Iran's legal system for compensating such damages. However, in some instances, Western legal systems also use non-monetary compensation or even criminal penalties to ensure justice. In Islamic law, moral damages, especially those affecting an individual's reputation and dignity, can be compensated through financial penalties (*ta'zīrāt*) and restorative actions such as *diya* (blood money) or *'arsh*. This article examines the various methods of compensating for moral damages in Iranian law and compares them with the legal systems of other countries.

Keywords :moral damages, compensation, Iranian law ,*diya* ,international law, damage assessment.

Extended Abstract:

Moral damages, due to their inherent complexities and the difficulty in accurately measuring them, represent a significant challenge within legal systems. In Iranian law, compensation for moral damages can be achieved through various means such as apologies, monetary compensation, or symbolic actions. This article explores the different methods of compensating moral damages within Iranian legal frameworks, while also comparing these approaches to those adopted in other legal systems, including international practices and the broader context of Islamic law.

In the past, many legal systems rejected the concept of compensating for moral damages due to the difficulty in measuring such damages. However, as societies evolved and the understanding of the impacts of non-material harm increased, there has been a shift towards recognizing the legitimacy of compensating moral damages. In particular, this shift has been evident in countries like Iran, where legal provisions are gradually being amended to allow for moral damage compensation through financial or non-financial means.

Under Islamic law, the compensation for moral damages, especially those affecting an individual's reputation and dignity, is recognized. This is typically achieved through financial penalties (ta'zīrāt), and restorative actions such as *diya* (blood money) or 'arsh (a form of compensatory payment for non-material harm). Islamic jurisprudence supports the idea of compensating for harm done to an individual's dignity and reputation through various restorative measures, though the application of these concepts can differ based on specific circumstances and legal interpretations.

The article compares Iranian law's treatment of moral damages with the practices of other countries, such as France, which have similar approaches to those found in Iran's legal system. However, the comparison also highlights the differences, particularly in how Western legal systems sometimes use criminal penalties or non-monetary compensation to address moral harm.

Furthermore, the paper explores the theoretical underpinnings of moral damage claims in Islamic law, especially in cases where the harm is not immediately quantifiable. It delves into the Islamic legal concepts of *lāqarar* (no harm) and *ta'zīr* (discretionary punishment), showing how these principles can be used to justify compensating for moral harm. The article further examines the practical application of these principles within the Iranian legal system, where moral damages are often addressed through a combination of financial compensation and symbolic gestures, such as apologies or public retractions.

In conclusion, the article asserts that compensating for moral damages is not only feasible within Iranian law but is also supported by both Islamic jurisprudence and international law. The study suggests that Iranian law can continue to evolve to ensure that moral damages are properly assessed and compensated. This includes adopting clearer methodologies for the evaluation of moral damages and refining the legal frameworks to balance financial compensation with non-financial remedies, ensuring that all victims of non-material harm receive appropriate redress.

References

The Holy Qur'an(n.d).

Akhundi, Mahmood. (1997 / 1376 SH) *Criminal Procedure* (2nd ed.). Tehran: Jihād University Press.

Ashouri, Mohammad. (1997 / 1376 SH) *Criminal Procedure* (2nd ed.). Tehran: The Organization for the Study and Compilation of Humanities Books (SAMT).

Idrīs, 'Awadh Ahmad 1372 / 1993) SH *.Diya* (translated by 'Alī Reżā Fayd, 1st ed.). Tehran: Ministry of Culture and Islamic Guidance.

Imāmī, Sayyid Hasan. (1999 / 1378 SH) *Civil Law* (20th ed.). Tehran: Islāmiyah Bookstore.

Bejnūrdī, Hasan. (1410 AH) *Al-Qawā'id al-Fiqhiyyah* 2nd ed.). Qom: Ismā'iiliyyān Publishing.

Parvīn, Farhād. (2001 / 1380 SH) *Moral Damages in Iranian Law* .Tehran: Qoqnūs Publishing.

Ja‘farī Langrūdī, Mohammad Ja‘far. (1989 / 1368 SH) *Legal Terminology* .Tehran: Ganj-e Dānesh Publishing.

Hurr al-‘Āmilī, Muhammad b. al-Hasan. (n.d.) *Wasā'il al-Shī'a ilā Tahṣīl Masā'il al-Sharī‘a* (2nd ed.). Beirut: Dār Ihyā' al-Turāth al-‘Arabī.

Husaynī Shīrāzī, Sayyid Muhammad .(1989 / 1988) *Al-Fiqh: Al-Qawā'id al-Fiqhiyyah* (2nd ed.). Beirut: Dār al-‘Ulūm.

Husaynī Marāghī, Mīr Fath. (1417 AH) *Al-‘Anwān* (1st ed.). Qom: Islamic Publishing Institute.

Hikmat-Nīyā, Mahmood. (2007 / 1386 SH) *Civil Liability in Imāmī Jurisprudence* (1st ed.). Qom: Islamic Sciences and Culture Research Institute.

Khudā-Bakhshī, ‘Abdullāh. (2009 / 1388 SH) *Insurance and Civil Liability Law* (1st ed.). Tehran: Official Newspaper of the Islamic Republic of Iran.

Zamakhsharī, Mahmood b. ‘Umar. (1985 / 1364 AH) *Al-Fā'iqa fī Ghari'b al-Hadīth* .Cairo: Dār Ihyā' al-Kutub al-‘Arabī.

Sākīt, Muḥammad Ḥusayn. (1986 / 1365 SH) *Judicial Institutions in Islam* .Mashhad: Astan Quds Razavi Publishing.

Sultānī-Najād, Hidāyat-Allah. (2001 / 1380 SH) *Civil Liability for Moral Damages* .Tehran: Nūr al-Thaqalayn Publishing.

Sanūrī, ‘Abd al-Rāzīq. (n.d.) *Al-Wasīt fī Sharḥ al-Qānūn al-Madani* .Beirut: Dār Ihyā' al-Turāth al-‘Arabī.

Shahīdī, Sayyid Ja‘far. (1992 / 1371 SH) *Analytical History of Islam* (17th ed.). Tehran: Islamic Publishing Center.

Shahīdī, Mahdī. (2003 / 1382 SH) *Civil Law: Effects of Contracts and Obligations* .Tehran: Majd Publishing.

Ṣafā’ī, Ḥusayn. (1976 / 1355 SH) *New Concepts and Standards in Civil Law* .Tehran: Research Center.

‘Ātif al-Naqīb, Muḥammad. (1412 AH) *Al-Mas’ūliyah al-Nāshi’ah ‘An Fa‘l al-Shakhsī* (3rd ed.). Beirut: ‘Awdāt Publishing.

‘Allāmah Majlisī, Muḥammad Bāqir. (1403 AH) *Bihār al-Anwār* .Beirut: Al-Wafā Institute.

‘Amīd Zanjānī, ‘Abbās-‘Alī. (2003 / 1382 SH) *Causes of Liability* .Tehran: Mīzān Publishing.

‘Awjī, Muṣṭafā .(1995) *Al-Qānūn al-Madani* (1st ed.). Beirut: Bāḥsūn Publishing.

Faqīh Nahjīrī, Ḥasan. (1972 / 1351 SH) *Private Claims in Criminal Courts* .Tehran: n.p.

Fayd, ‘Alī-Reżā. (2005 / 1384 SH) *The Customs of the People* .Tehran: Burhān wa ‘Irfān Publishing, Islamic Azad University of Science and Research.

Qāsim-Zādah, Mortezā. (2009 / 1388 SH) *Liabilities and Civil Responsibility without Contracts* (8th ed.). Tehran: Mīzān Publishing.

Kātūzīān, Nāṣir. (2007 / 1386 SH) *Civil Liability: Non-Contractual Liability* (8th ed.). Tehran: University of Tehran Press.

Lorassa, Michel. (1996 / 1375 SH) *Civil Liability* (translated by Mohammad Shaterī). Tehran: Ḥuqūqdān Publishing.

Madānī, Sayyid Jalāl al-Dīn. (1997 / 1376 SH) *Constitutional Law* .Tehran: Soroush Publishing.

Makārim Shīrāzī, Nāṣir. (2001 / 1380 SH) *Al-Qawā‘id al-Fiqhiyyah* .Qom: Madrasah al-Imām Amīr al-Mu’minīn (a).

Mūsawī Khomeinī, Sayyid Ruhollah. (1415 AH) *Kitāb al-Bay* (4th ed.). Qom: Islamic Publishing Institute.

Nā’īnī, Mīrzā Muḥammad Ḥusayn. (1994 / 1373 SH) *Munyat al-Tālib fī Sharḥ al-Makāsib* (1st ed.). Bijā: Maktabah al-Muhammadīyah.

Najm Jīrān, Yūsuf .(1981) *Al-Qānūn wa al-Jurm wa al-Naẓariyyah al-‘Āmah li-l-Mawjibāt* (2nd ed.). Beirut: ‘Awdāt Publishing.

Narāqī, Aḥmad b. Muḥammad. (1996 / 1375 SH) *‘Awā‘id al-Ayyām fī Bayān Qawā‘id al-Aḥkām* .Qom: Center for Islamic Media Publishing.

Naqībī, Sayyid Abū al-Qāsim. (2003 / 1382 SH). “The Theory of Compensation for Moral Damages of Children” *Islamic Fiqh and Law Quarterly* ,Imam Sadiq University. Tehran: Nādaye Ṣādiq Publishing.

Naqībī, Sayyid Abū al-Qāsim. (2007 / 1386 SH) *Moral Damages in Islamic Law, Iranian Law, and Contemporary Legal Systems* (2nd ed.). Tehran: Amirkabir Publishing Institute.