

**THE ABILITY TO CLAIM THE MORAL LOSS IN PHYSICAL
AND PSYCHOLOGICAL DAMAGES WITH AN EMPHASIS
ON THE NEW CRIMINAL PROCEDURE CODE**

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Abstract

In legal system of IRAN, the moral damage issue and its claimable is one of the challenging issues which its legitimacy is the origin of dispute between jurists and lawyers. Since the damage is not limited to corporeal damage and human is vulnerable to mental injury too. Thus such injury must be compensated as physical injuries. Though some times compensation for incurred damage on human's mind and soul is more important than physical damage incurred, and legal basis and juridical text such as: no loss rule, waste and etc. Accepted compensation for such damage .despite of this issue, the majority of tribunals refuse to sentencing or rarely issue it .regarding to guardian council theory dated on 1364/09/05 that considered it illegal. The author while study such dispute between jurists and lawyers and eventually proving legitimacy damage claim, also study new criminal procedure code approved in 1392 .which seems some what answer to this dispute. And damage in many cases is claimable except moral damage in compensations which is the faults of new rule and shows that the legislator is in agree with guardian council.

Key words : moral damage, mental injuries, no loss rule, claimable

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Introduction

In ISLAM view the smallest injury to personal property is not condonable.

So how might don't considered damage to reputation, prestige, and fame ascompensable?

How might god appointed prophets to servant's advancing ethical accomplishments and much emphasis on human's reputation, reverence and dignity preservation?and beside this, claims that compensation such damages is incompatible with legal and religious principles.

As we know the corporeal Compensation is defined but in moral damage there is uncertainty that moral damage claim with money is impossible moral damage claim due to difficulty in measuring damage and estimated to money or sometimes impossibility such measuring .

Thus, in this article the author intended to express the legitimacy these damage in juristic rule such as: no loss, causation ,waste ,etc and legal text which the most important of that is article 171 constitution , article 10civil liability code and other laws which authenticated it's Compensation and issuance vote inregard to it by court of justices. Thenin this article the author with more emphasis on

New criminal procedure code which is eyesight, revisedthe moral damage Compensation and assigned it claimable through corporeal.

In note 1,article14 said code Compensation has been accepted by legislator but in note 2 it isn't subject to compensations. That is faults of new rules.

By the way we hope to at least thejustice courts judges with approval new rule have more respect to damage which not entitledtocompensation. And in former

rule its compensation have uncertainty and with confidently sentence to compensation such damages.

Moral damage definition :

Indeed there is no moral damage definition in our legal text . and only in former criminal procedure code article 9 is limited to citation figurative example.

Unfortunately there is no comprehensive definition about moral damage in note 1 article 14 approved in 1392. And like former rule have been mentioned to examples such as: violating reputation, mental damage, and personal credit. We read in note 1 article 14 criminal procedure code:

“ Moral damage included mental damage, violating reputation and personal familial and social credit...”

In moral damage definition the legal scholars applied different definitions which we refer to a sample:

One of the lawyers provided a clear definition :

“the moral damage is deduction of reputation or individuals credit or mental damage, in other word moral damage is damage which imposed to individual's heartstrings or emotion . nowadays human's moral abuses even damage to friendship, family, religious and suffering resulting from accident can be a permissions for compensations claim.”

Moral damage types

Many lawyers, about moral damage types, divided in to 2 main groups:

1-losses incurred to reputation, fame and briefly what in custom law is personal capital or property.

2-damage to individual's heartstrings and impose mental impression and agony due to loss of own beloved or observing their suffering.

Division of moral damages which is more related to 2nd group and mental damage till can evaluate and compensation the damage to money.

In IRAN constitution cods before approval new criminal procedure code approved 1392 only note 2, article 9 criminal procedure code, divided 2 main moral damage group quite briefly:

1-deduction individual's reputation

2-mental damage

1- deduction reputation such as: calumniate, revile by open letter, printouts, republication immoral photographer. false accusations to competent people, deduction of credit such as bankruptcy to merchant.

2-mental damages such as: many claims that added in this case in European countries related to large mental disaster of kinfolk.

But with approval the criminal procedure code in 1392, moral damage a little

Widening and in addition to mental damages and , violating reputation and individual's credit ,stipulated the familial and social credit.

Legal basis of moral damage Compensation in statute rights of IRAN

Despite of existence clear and stable legal text about moral damage ,unfortunately now the courts of justice of IRAN avoid from considering and sentencing in this matter due to no compensable the moral damage in religious.

For example in important article 171 constitution of Islamic republic of IRAN said:

Whenever due to judge's fault or mistake in matter or sentence or sentence correctness in specific case imposed corporeal or moral damage to person, if provided fault, the faulty according Islamic standards is guarantee otherwise damage to be compensate by the government. however rehabilitate from accused.

Also in civil liability code approved in 1392 assigned that moral damage compensation in different cases is compensable and in its article 10 read "a person who damaged to his personal reputation and credit can demand moral or corporeal compensation from who affected. When importance of damage and fault type necessitated, if providing proof fault, in addition to sentencing corporeal damage. court can sentencing to eliminate damage in other way such as obligation to apologize insertion sentence in press and so on..."

It should be noted that with approval criminal procedure code in 1392 in its article 14, legislator has approved article content and accepted moral damage compensation.

In criminal procedure code approved in 1378 before approving new code in 1392 such demands were unrecognized and somehow its compensation had ambiguity. But by approval article 14 above code in 1392 claim for moral damage both in corporeal and non-corporeal definitely accepted. On top of this article read:

"petitioner could claim for compensation all of moral and corporeal damage and obtainable benefits result from crim. "

In ISLAMIC criminal law in article 648 approved in 1375 read:” doctors,surgeons, midwives, druggists, and all those being confidant due to their job or career, when reveal people’s secret apart from legal case”

In this article due to revealing the secret by above individuals,people endure mental and psychology agonies and moral damage should be compensate.

Moral damage claimable resulting from mental damage in lawyers sight:

According to different moral damage definition from lawyers in pervious section refuse to say them and reconsider to provided legislator definition of moral damage in criminal procedure code approved in1392.

Note 1 article12 criminal procedure code: moral damage is mental damage or violation reputation ,and personal, familial or social credit .in addition to sentence court can sentence to corporeal damage compensation, elimination of losses in other way such as obligation to apologizing and insertion sentence in press .

Thus moral damage don’t damage on individual’s property even target his moral asset . Reputation, credit is individual’s moral matters and Constitutemoralcharacter.

Thus when abuse to this matters occurred inevitably defendant’s moral identity endangered .and is undergoing the moral damage.

in article 14 criminal procedure code approved in 1392 an in articles 8,9, 10 civil liability code. the Legislator damage to this matters precisely considered as damage cases and it’s agent have responsible to moral damagecompensation for lost.

According to article 14 criminal procedure code mental damage which is moral damage included physical pains and the agent of it have responsible for compensation.

As some lawyers have write: physical injuries is judgment in both moral and corporeal aspects. Sometimes due to physical injuries imposed mental pain too. For example a person due to injury affected to physical disability or losing one limb of body in addition to disablement which involved in physical pains, this person also suffer from mental disease. Because sorrowing for lose of limb or ability to move or envy of other who are health continuously suffered lost person and caused mental injury. Such mental disease is outstanding example of moral damage. That theoretically on agreed jurisprudents sight ,civil liability and other respective rules must be compensable and claimable. But by approval criminal procedure code in 1392 being compensable in depended on no-compensation . i.e if for limp lose receive compensation the lost couldn't receive extra compensation.

But lawyers believe that Although money couldn't have effective role in moral damage compensate and return his losing reputation but payments partly reduces sorrow soul and mental agony.

In criminal procedure code approved in 1378,eliminate the note 2 from article9, moral damage compensation faced with ambiguity.

It seems ,legislator answer this ambiguity in article 12with approved procedure code in 1392. And recognized moral damage compensation and considered it as compensable. But cause some fault in note 2 from above article. We studying it in following:

In article 15 above rule than mentioned former and refrain to mention there. The legislator considered the moral damage as compensable. The remarkable point is that although legislator accepted to compensate the moral damage in corporeal way . it might be thought that legislator is inobservant to jurisprudent's sight which believe that moral damage is not compensation in corporeal form.

But in answering mentioned to note 2 of above article which don't enumerated the compensates and legal authoritative crime in moral damage .i.e some what jurisprudents insist on that and say:" compensate is covering moral and corporeal damage" for example, according to note 2 fore cited in person injured destined compensate set .person haven't right to moral damage compensation.

Thus in author's view could say: " intention of legislator from moral damage compensation in this article and note is damages which compensate don't awarded them. i.e damages directly target individual's spirit and he have been sorrowful.

For example accuse! that according to criminal procedure code approved in 1378

Victim of crime,except demand for punishment of offender which was implementation 80 lashes ,couldn't demand for corporeal compensation.

But according to article14 new code and it's note 1 ,crimes such as:accuse,and considered examples in former such as damage to reputation, honoring , and destroying beauty while compensation don't award to it is claimable for moral damage.

Because, individual don't lose any property and also according to note 2 above article in such cases individual's body don't damage till compensate award to him and excluded him in moral damage thus we can say:the individual's spiritual

emotion have been marred and compensable. also in throwing acid followed by both corporeal damage (cost of treatment) and moral damage (loss of beauty). relying on top of the above article which considered all moral damage compensable and opposite concept of note 2 that don't accept just moral damage addition to compensation, can realized that corporeal damage addition to compensate and consequently cost of treatment is claimable and in moral damage dimension with relying on above article, if moral damage included compensate so it is claimable and otherwise is no-claimable.

If the lost receive property as compensation in compensate and claim for physical damages, can't claim for moral damage compensation. in other cases due to public order and keeping privacy rights whether corporeal or moral, we must interpreted exist law in which allow corporeal compensation.

In moral damage compensation not only we shouldn't exaggerated till ignorance current specification of legal system of IRAN but the certain and moral rights shouldn't remain Uncompensated.

Claimable moral damage caused by mental injuries in jurist's sight

The moral damage term not familiar in jurisprudence and with the jurists, attracted less attention. unlike other issues. almost some greats, previous and current jurists mentioned to it and said it's example. Some one predicate mental and moral injuries clearly.

No loss rule is one of the most famous juridical rules which the necessity of moral and corporeal compensation inferred from it. This rule have a wide range in Islamic juristic. Some verses is documents and justificatory for this rule. For example we mentioned to verse 231 surah al-baqarah: "when you divorce women

and then reach their prescribed time .then either retain them in good fellowship or set them free with liberality, and do not retain them for injury and who ever dose this he indeed is unjust to his own soul. “

IBN-ABBAS in interpretation of this verse said:” at ignorance time man divorce his wife, and before expiration of prescribed time revert to her and again divorced her and injured by this mean. “

Apparently intent of injury is moral damage and revert might be moral for corporeal damage(dowry forgiveness) . and in SAMARAH–IBN-JONDAB case (who was stubborn man and had a tree in ANSARII man’s house and regularly with excuse of inspection to tree bothered his neighbors and his family)this case is compromising the necessity of resolving moral damage. Because the ANSARII man’s complain is that SAMARAH entered to his house without permission and bothered his and his own family. And prophet said: “there is no loss in ISLAM “ and ordered to cutting the tree. According to this rule nobody could cause moral or corporeal damage to other . because there is no loss sentence in ISLAM.

Opponents theory:

Former jurisprudents .nobody frankly referring to moral damage. But as we said previously expressed their examples and considered it as damage. But some current greats frankly considered it compensable and in legal permit believe that we can’t compensate moral matter with corporeal matter.

Agreed theory:

a lawyer write as an expression in some jurisprudent’s sight :” mohammad abu zahrah speaks in moral duress or in his own term “literary no duress “in

jurisprudence principles book and say: ISLAM don't neglect the moral duress. If a person threaten to imprison mother or sister .such threat don't damage to body but injured his spirit and feeling. And if it is corporeal to his family ...is moral to his own.

As ayatollah MAKAREM.SH in answer to ISTIFT'AA which asked :” do ISLAM predicated to compensated the moral damage for such as ,beauty, reputation, mental calm, and such cases ?

He response: for damage to beauty the appearance ISLAM reasons is compensation. But if victim force to give costs for removed the defects which essential in custom rule and it is more than compensation can claim to give additional cost s from convict. Further if beauty defect is sever the caution is give compensation. And in compensate in other cases if possible requested pardon from rightful and if impossible do good work to be satisfied. “

Moral damage compensate style:

Since moral damage, distinct amount damage, evaluate and it's estimate is difficult and accurate affair we can't offered a general and stable criterion which applicable for everybody . basically there is no stable rule to set a stable policy for courts of justice and in very rules and policies judge considered as very wide competence in moral damage assessment and estimate . thus incorporeal manner is the most important way to compensate. Oral or written apologize. insertion apologize in press or insertion the acquittal in press , are considered as incorporeal manner.

Jurisprudence

For example this is use full to look at the oldest Iranian patient 's case (tainted blood)among investigators judges some judge vote to moral damage compensation .the brief case and sentences are as follow:

“about 1 decade ago Iranian blood transfusion organization contract with a French company to importing blood products using for domestic refineries . after initial use of blood products of this company .because of contaminated blood products, some hemophilia were affected with HIV and hepatitis .affected have complain from Iranian blood transfusion organization. In this case what is consideration in addition to corporeal damage compensation .sentences to moral damage compensation.

On follow the sixthinvestigator judge to hemophilia case with his initial sentence to give moral damage compensationfor 4 plaintiff of this case in first division of Tehran juridical court in SHAHID BEHESHTI juridical complex in 1392/2/22,has been state :

“ undoubtedly imposed mental injuries to plaintiff is not less than physical compensate.”. and respondents have been condemned to pay 25% of full compensation of MUSLIM man equally.

Conclusion

We couldn't indifferent to moral damage issue. And could say from legal text at top of them constitution in article 171 and notes 1,2, 3, 10 and civil liability code and other rules and also no loss juridical rule, causiation, waste and etc. in our rule and also in

Islamic jurisprudence especially predicated no loss rule and it's documentary which is SAMARAH IBN JONDAB case ,we don't see indifference.

Also moral damage such as: damage imposed to individual's feelings : depression. mental suffer due to loss of beloved .injured to beauty, mental agony and etc.

Such damage have inner aspect and isn't visible or tangible are compensable both corporeal and incorporeal, relying on 14 new rules criminal procedure code approved in 1392 but provided that destined compensation not specified to it. Because in this case it isn't compensable corporeally. And legislator considered it enough which is one of the defects of new rules.

Also according to above rule freedom deprivation is one example of moral damage and it is compensable both in corporeal and incorporeal. this is the advantage of new rule so as to in IRAN rule compensate of innocence defendant not considered to the legislator before and after revolution . but legislator frankly predicated in new rule to compensate innocence arresting which sentence to absolution or acquitted .

Although in above rule predicate corporeal moral damage compensation.

According to difficulty in measuring moral damage ,it is necessary that judge have power in frame work.

Also moral damage due to physical injuries is not compensable according to new rule. Because usually in physical injuries destined compensation is set. In this case excess compensate is not claimable. If by damage compensation accrued to lost it seems can receive amount as compensation.

As Compensation payments to a young girl in throwing acid don't restore her beauty but money payment somewhat solace him . according to above rule if destined compensation not determined she could claim for moral compensation.

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