

Review Article

CIVIL RESPONSIBILITY ARISING FROM CRIME (MORAL DAMAGE)

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ABSTRACT

Nowadays, damage, as an important topic in law, holds a special place in the legal system of the developed countries. Thus, not only restitution could be sought for any physical damage, but also claims could be made to be reimbursed for any moral damages suffered. In this paper, it is tried to show that any moral damages suffered as the result of a crime committed, if the necessary conditions of certainty, legitimacy, directness and other criteria are met, claims for compensation and restitution could be made. Compensation for such damages is not only in accordance with the holy laws of Islam, but also justice and social security are guaranteed by its complete implementation. The objective of the religious law makers from enacting laws and rules is protecting religion, wisdom, race, property and self. Protecting self includes two aspects: physical and moral. Trespass against the physical wholeness and the moral reputation of others is considered to be a crime and requires punishment. Trespass to the moral aspect of the self is considered as moral damage. This includes non-monetary damages such as spiritual losses, defamation of character, and profanity against the sacred religious and national values. The necessity of paying attention to moral damages is clearly mentioned in the laws governing civil liability, constitution, Islamic punishment and the press. It is hoped that the judicial trend in Iran start paying more practical attention to this crucial issue, and the regulating agencies remove any forms of ambiguity and pass necessary laws that fill the legal loop holes pertaining to the issue of moral damages

Keywords: *Damage, Moral Damage, Loss, Compensation, Crime*

INTRODUCTION

Industrialized life style, social developments, scientific and technical inventions have forced the lawmakers and the science of law to employ a vaster understanding of the law in order to deal with the losses brought about by these changes. Therefore, loss and damage is not just concerned with property and life. Feelings and emotions hold a very high value, and thus, the civil laws must make attempt to compensate where ever or whenever any trespasses has unjustly taken place against these emotions and feelings. The definition of damage which referred to any physical damages in the past has changed now and includes the moral damages as well. In Iranian Law, the laws governing civil responsibilities has incorporated this in all cases and finds any claim for moral damages suffered just whether an act is of criminal nature or not.

Article 9of the criminal procedure act of 1956 had stated with total clarity that one could not only seek compensation for the physical damages suffered as the result of a crime committed but also do so for the moral damages inflicted and the profits lost.

After the 1978 victorious Islamic Revolution of Iran, establishment of the rule of Islamic Laws, and the consequent enactment of the laws of retaliation, hodud, atonement and taazirat along with the silence of the procedural Law, a misunderstanding was formed in the minds of the judges. They thought that the only compensation which should be paid to the plaintiff for the purpose of restitution for the crime committed against him/her was a certain sum of money the physical damages suffered. Furthermore, they didn't believe that, from the legal standpoint, any compensation was due to the plaintiff for the moral damages suffered as the result of the crime committed against him/her.

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However, on the one hand, the issue of evolvement of the law with regard to the various types of intentional and unintentional responsibilities and development of the concept of loss, considering the changes in the mechanized and industrial world is one issue which requires a serious attention; and on the other hand, considering the fact that a human being has both physical and a moral side to him, how then, the law could serve important goals such as maintaining order, establishing justice, supporting individual and social rights and eliminating hostilities only by paying attention to the physical aspect of damage? One should accept the fact that the law in our country has focused most of, if not all, her attention on the physical damage and has neglected the moral damage. It is only the laws governing civil responsibility that delves more into the moral damage issue, and rather unfortunately, these laws are not used much by the courts and the judges. Therefore, as the law must protect people's property from any trespasses, it should have binding rules to do the same for their reputation, credibility, emotions and feelings and other non-physical belongings from any false accusations and trespasses.

MATERIALS AND METHODS

Definition of damage

In the Amied Dictionary, damage is defined as suffering a loss and loss (Amied, 1982). In doctor Langeroodi's book, "The Legal Terminology" damage is defined as, a) what must be given to a person who has suffered any physical damages by the person who has caused the damages; and b) any suffered losses are also called damages (JaafariLangeroodi, 1994). What is notable is that according to these definitions damage is only used for the purpose of financial compensation for any physical loss suffered and doesn't include any moral losses. Damage may be of civil, criminal or tort origin (Boushehri, 2003). Theoretically, damages are divided into two groups of physical and moral. Some law experts believe that damages have two aspects, physical and moral, such as the losses suffered physically, bodily, health wise and reputation wise. These types of damages include both the damages inflicted upon a person's body as well as those inflicted upon his/her reputation and honor. Thus, to distinguish various types of damages from one another, one must be able to separate the physical losses from the moral ones.

Loss in the criminal law is not limited to the cases where a person suffers physical or financial losses. A person is also prone to spiritual losses as well. These losses are not visible to the naked eyes, but they harm a person never the less. Emotional losses could not be measured in terms of money, because what is lost could not be regained by money. Thus, some find it irreplaceable and totally separate from any materialistic association. They say, "How can one compensate for a child lost or how one could replace a Good Samaritan's lost reputation?" It is important to remember that compensating for damages suffered does, by no means, mean wiping all the effects of damage. Similarly, by compensating for the physical damages suffered by a person, one could not return to that person all the losses suffered.

Definition of moral damage

The book of Legal Terminology defines moral damage as follows: any reputation or dignity loss on the part of a person or his/her relatives is considered moral damage (JaafariLangeroudi, 1994). Doctor Shahidi defines moral damage as follows: moral damage refers to any non-financial damages inflicted upon a person's psyche, reputation and body. Moreover, those moral damages for which a person could seek compensation are the damages inflicted upon a person's reputation, character, body, soul, freedom, and, as the article one of the laws governing civil responsibility states, any other rights a person holds (Shahidi, 1988). on the contrary to what some believe that non-financial and moral rights are the same, these two differ from one another. Moral right is a type of financial rights, but non-financial rights, according to its definition in the book of Legal Terminology, is a right which doesn't have any economic value, such as spousal right, rights which a father and son have with respect to one another (Parvin, 2000).

Moral rights are sometimes associated with the non-financial rights and not only the financial effects of the non-financial rights bring these two together, but also with respect to some rights, they are mixed, such as the right of an author (Katozian, 1996).

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Civil Law hasn't addressed the issue of moral damage, and in general, the articles of the Civil Law, as the Islamic Jurists talk about waste, act as the overseer of the financial losses. However, set aside the civil law, moral damage is an accepted issue in Iranian Laws. This is an indication of completeness of the Iranian Law, as moral damage is an accepted concept in all the developed countries of the world, nowadays (Safaie, 1977). Therefore, moral damage is used to refer to the non-physical losses inflicted upon a person's non-financial and financial belongings.

Various types of moral damages resulting from a crime

Overall, moral damage resulting from a crime is divided into two groups:

A: Damages to a person's dignity, credibility and reputation due to a crime committed;

B: Spiritual damages suffered due to a crime committed.

Damages to one's dignity and credibility

Damage to one's dignity and credibility which results from defamation, false accusation, profanity, insult, spreading lies through media and press, publishing unethical photos via telephone and Internet, illegal interference in others' business, immoral crimes, disturbance, insulting sacred religious and national values and damaging others' credibility through defamation of character (claiming a businessman is bankrupt) all belong to the group A.

Spiritual damages

It refers to the claims originating from spiritual pains suffered as the result of a relative's death, damaging a friendship, family relationship, a religious relationship and any pain which comes about as the result of an incident or a crime committed. A person who has suffered the above mentioned damages could seek compensation.

Since a human being is a two faceted creature, physical and moral, how is it possible for the Law not to think of a member of a family's lost reputation when that member has been raped, and find it sufficient just to punish the culprit after a lengthy and costly trial? According to the rule of 'no harm is allowed in Islam', inflicting harm and loss via the above mentioned crimes has no legal foothold in Islam, and the losses must be compensated. Furthermore, a ruling for making compensation for the moral damages suffered could accompany a punishment sentence.

Legal basis of seeking compensation for the damages suffered as the result of a crime committed

The same theories which are considered the legal basis for seeking restitution for physical damages suffered could act as the legal foundation based on which compensation could be sought for any moral damages. A few of the major theories are as follows: theory of fault, assumed fault, danger, objective responsibility, safety responsibility and the theory of misusing the law (Rahpayk, 2008).

The contents of the above mentioned theories are used to act as the basis for lawmaking in different legal systems. The judge is obligated to use one of these theories along with the existing related laws to issue a ruling. The rule which is accepted in our legal system is the theory of fault and the others are exceptions which are based on the existing legal texts.

The sources of moral damages suffered as the result of a crime committed

A) :Legal sources: from the legal standpoint, the basis for seeking compensation for any moral damages suffered as the result of a crime is the article 171 of the constitution and the articles 698 and 58 of the Islamic Criminal Law and the articles 1, 2, 8, 9 and 10 of the Civil responsibility Law and section 2 of article 9 of the criminal procedure of 1960. Moreover, there are some forms of compensations, though very weak, for moral damages in other laws such as the business law with regard to inappropriate use of trademarks, ..., or in laws protecting the rights of the authors, poets and artists and the laws governing the right of the press. The legal office of the justice department in a unified opinion, no. 136/10/30-7/5947, states as follows: The rules associated with seeking compensation for physical and moral damages, including the article 9 of the criminal procedure of 1960 still is in effect. Moreover, article 171 of the constitution has also clearly talked about such claims, thus, seeking compensation for any damages is

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considered legal. For the first time, in the article 212 of the general penal law has predicted restitution for moral damages. According to this article, anyone who has committed one of the crimes mentioned in articles 207, 208, and 209, beside the punishment assigned for the crime he/she must make payment of not less than 500 Rials to the plaintiff.

In 1960, the criminal procedure clearly stated the fact that moral damages could be compensated for, and section 2 of the article 9 defined moral losses as harming one's dignity, credibility and any spiritual damage. However, despite all this clarity there still existed a major doubt on whether moral damage is open to compensation only when it is the result of a criminal act or compensation could be sought for damages suffered through acts which are not of criminal nature? With enactment of the laws of civil responsibility, the rules in this area became more comprehensive and any type of moral damage became claimable in the common law of the Iranian courts, and even, article 8 of the laws governing the civil responsibility is solely about false publications which harm anyone's dignity, position and credibility. In article 9 of this law, the possibility of seeking restitution by a girl who is forced to have an adulterous affair with another either through force, threat or just being a subordinate and fear of losing her job is mentioned. Moreover, article 10 of the same law gives the right to a person whose individual or family's dignity and credibility has suffered to seek restitution. According to clarification 3 of the article 24 of 1979 law of the press, a plaintiff could seek compensation for physical and moral damages suffered as the result of a crime committed, but since this law is nullified by the press law of 1985, and in article 30 of his law, which has replaced the article 24 of the previous law, the clarification 1 is omitted, one could not to this law when seeking restitution for any moral damages. According to the article 171 of the constitution of the Islamic Republic of Iran, whenever, as the result of a mistake or a fault on the judge's part, a person suffers a physical or a moral loss, the guilty party is obligated; otherwise, the government must take the necessary steps to compensate the harmed and no matter what and how the restitution must be made.

B) : Sources of Islamic jurisprudence: from the Islamic jurisprudence point of view, the main and widely accepted by the law experts source, which seeking compensation for any moral damages could be based on is the principle Islamic law of, 'no harm and no person who harms is allowed in Islam'. This principle is accepted by all the Islamic Law experts. In the holy Quran, gossip, nitpicking, and unreasonable search in others' affairs is condemned in verse 12 of the holy book of Hajarat. Moreover, in verses 19 and 20 of the holy book of Noor false accusation and vilification is strongly prohibited. The rules of waste, Tasbib, Laharaj and Banayeoghala and the rule of almaghrooryarjeoela men ghorreh (one who has misplaced pride could seek restitution from the one who has induced this pride in him, are what could be referred to in the Islamic Jurisprudence when seeking compensation.

Pillars of responsibility in moral damage suffered as the result of a crime committed

Naturally, here, as with the physical damage, presence of a harmful illegal act, and as interpreted in the article 1 of the civil responsibility laws, without a legal permit, the causal relationship between the harmful act and the damage, existence of loss and damage, certainty of harm, violation one's legal rights and legality of the claim are necessary to seek compensation. Furthermore, any form of justifiable acts such as self-defense nullifies this responsibility. It is because of the fact that the mere reason of harming another by an act committed does not makes the acting party responsible. The act must have been found illegal by the law and ethics must find it undue. Furthermore, it should include both an act or an inaction, because inaction could equally cause moral damages.

Can moral damages be compensated?

There is difference of opinion on the issue of compensation for moral damages. Those who believe in restitution for moral damages, despite the fact that they have pointed out to problems when trying to measure the damage in terms of money, overall find it just to seek compensation for moral damages. They reason that the causal relationship between the action and the damage exists. Moreover, it is not possible to ignore the suffered damages and a form of restitution must be made. Therefore, a judge must

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base the extent of the moral damage, in terms of money, based on his judgment, the evidence and the expert's recommendation (Katozian, 1985). The law experts do not hold different opinions on the principle of compensation for moral damages. What they differ in is possibility of monetary compensation for these moral damages. The main reasoning of those opposing financial restitution for moral damages is the difference in nature of physical damage with moral damage, ethical aspect of it, immeasurability of moral damage and disproportionality of compensation with respect to the damage. Those who favor monetary compensation, do accept the problems and the fact that the judge must not issue a ruling on making financial compensation for certain moral damages, but claim that the justification for their belief is the monetary compensation is for partial carriage of justice and restitution for the moral damage which somewhat pleases the harmed. Furthermore, they believe that the disproportionality exists when dealing with crimes which harm the entire body, such as murder (Mahdavi, 2006). In such cases, first of all, payin certain sum of money to the harmed isn't the only way of making restitution considered by the lawmakers. Most often, the lawmakers have considered other measures as well. Second of all, the goal of restitution is not returning the conditions to their original states. It is only a way to sooth the pain and suffering of the harmed, and undoubtedly, paying certain sum of money will make it easier for the plaintiff to deal with the losses. To this end, those who favor monetary compensation, point to the laws of the Islamic Jurisprudence. Iering, German lawyer, states that not compensating for moral damages and not holding the criminal responsible for the moral damages is far worse and inhumane than monetary compensation. (Akhundi, 2006).

The criminal courts, even after the Islamic Revolution, have accepted compensation claims for moral damages. Petition number 1984/4/30-251-252 in the criminal court number 2, branch 181 could be used as an example. This petition was about a husband who falsely accused his wife of not being a virgin at the time of marriage. The court ordered compensation of 300,000 Rials to be paid to the wife by the husband to compensate for the moral damage suffered by the wife (Ashouri, 1985).

Ways of compensating for moral damages suffered as the result of a crime committed

Methods of compensation for moral damages are not limitative, because in compensation for such damages the important factor is restitutions not the method, which is just a mean. In some cases money may do the trick, and in some others, a simple apology may be more effective than any amount of money. Thus, even though the civil responsibility law in article 2 obligates the courts to pass ruling in favor of compensating for the moral damages suffered, in article 3, it states that the court shall decide on the degree of harm and the method of restitution on a case by case basis.

The method of restitution is divided into two groups, financial and non-financial. In the financial method, judge orders for a sum of money to be paid to the plaintiff. In the non-financial method, different means such as making an apology, terminating the harmful act, publishing the crime in the press and/or a promise to stop an act or to do something. (Parvin, 2000).

The ruling to compensate for moral damages is complementary to the punishment sentence, and even in a ruling for Hadd to be carried out, the defendant could be ordered to make monetary or non-monetary compensation for the moral damages suffered. In case of Diah, since it is not a punishment but a form of restitution for any physical and moral damages, further monetary compensation could not be sought. In such cases, non-monetary compensation is allowed. In cases where the amount of Diah is not known, the courts must take the moral damages in consideration. Restitution for moral damages is not allowed in retaliation cases (Parvin, 2000).

RESULTS AND DISCUSSION

Results

Private law isn't, solely, concerned with the property and financial law. It is responsible for protecting the rights related to character. It is the responsibility of the courts and the lawmakers to pay attention to the moral and spiritual aspect of the human being and issue ruling on compensation for moral damages.

Despite the fact that the possibility of seeking compensation for moral damages is predicted in the legal texts, issuing a ruling for making compensation for moral damages still faces problems. This problem is

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usually evident in the determination of the degree of damage suffered, and lack of a reliable scale for the judges to gauge the amount of damage. Therefore, in both cases the judge must assess the degree of the damage and decide on the best way that the defendant could make restitution. Compensation for moral damages is of utmost importance and it should be done in any way possible, even financially.

The goal of restitution for moral damages is pleasing the plaintiff, thus, the suggested ways, such as apology, monetary compensation, publishing the crime in the press are merely the ways and not the main issue.

The lawmakers of the Islamic Republic of Iran must try to eliminate the obstacles in this matter and keep in mind the doctrines, the opinions of the Islamic Laws' experts, the laws when making new laws, so that the rights of the harmed is not ignored and lost. They should try to pass laws which have no problems.

Nullification of the procedural law could not be assumed from the article 9 of the criminal procedure law of regular and revolutionary courts on criminal matters which was enacted in 1999. This law, unlike the article 9, has not mentioned anything with respect to the possibility of seeking restitution for moral damages. The lawmaker may have meant that with the existence of the civil responsibility law, there is no need to mention it in the criminal procedure

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