

A Comparative Study of Compensation for Moral Damages in the Legal System of Iran and England

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Abstract

Introduction: The expansion of moral principles has been one of the necessities of human society throughout history. Also, the most important point that should be addressed in the discussion of moral damages is the definition of moral damages. Moral damage is one of the most challenging legal issues in the legal system of different countries. Therefore, in the present study, the researchers decided to compare the compensation for moral damages in the legal systems of Iran and England.

Materials and Methods: The research was a review method, in order to achieve the goal of the research, in addition to electronic education books and virtual education in this field, articles related to the research keywords from 2004 to 2022 from the databases of Civilica, Magiran, Sid, Researchgate, Science direct, was reviewed.

Conclusion: In the legal system of England, as in Iran, the "theory of fault" is the main basis of civil responsibility. Investigations indicate that in Iran, based on various laws such as the "Constitutional Law", "Criminal Procedure Law", "Civil Liability Law" and some other scattered laws, compensation for moral damages is mentioned, but it has many problems. While in countries like England, issues such as one-sided or two-sidedness of the damage, insurance coverage, social credit, job and financial resources of both parties to the damage, and reduced life expectancy are taken into consideration in issuing moral damages compensation orders. It seems that people's awareness of their rights in this field, the insurance coverage of moral damages and the compilation of the compensation table in frequent cases will help to follow up and issue judgments in these types of cases.

Keywords: *Ethics, Moral damage, Compensation, Legal system.*

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INTRODUCTION

Moral damage is "damage that is caused to someone's reputation and spiritual values, and it is against material damage" (1). In fact, these damages are damages related to mental and emotional damage and suffering; While material damages are damages that are basically caused by damages to property and can be calculated in

monetary form (2). This term is defined in the terminology of rights as follows: "Damage caused to the dignity, honor and respect of a person or his relatives as a result" (1). In general, moral damage is wounding and damaging some values that have a moral aspect (3). "Masson", a famous French jurist, says that "material damage is damage to property, and moral damage is extra-

financial or non-economic damage" (4). The judicial aspects of dealing with this issue are among the most complex and controversial legal issues not only in the laws of our country, but also in other legal systems, including England; However, the complexity and obstacles in this area should never prevent the rights of a person who has suffered spiritual damage. Since no loss (both material and spiritual) should remain uncompensated, today the principle of compensation for moral damages is accepted. In this regard, compensation for moral damages has been recognized by Iran's legislature in several laws.

The importance of intellectual rights is such that it can be said that in many cases of damage to the intellectual capital of individuals, compared to material damages, it will leave far more destructive effects on the injured person and even on the society over time; Therefore, protecting the rights related to personality and mental and psychological aspects and spiritual capitals of human beings and compensating the damages caused to these rights is of undeniable importance and necessity. The importance of addressing this issue comes from the fact that these damages are not noticeable in most cases and determining their amount is associated with problems.

The innovative aspect of the scope of this discussion is that until now, everything that has been considered in the field of the role of fault in the compensation of damages has focused on the compensation of material damages and not the compensation of spiritual damages. Whether or not moral damages are calculable, how to calculate the claim in a claim for moral damages, and also the criteria for determining compensation for moral damages in the courts is one of the most challenging issues under investigation.

Although the emphasis of this article is on the challenges and gaps in Iran's judicial system to deal with moral damages, it seems that examining

the West's exposure to moral damages and determining its compensation will have a significant impact on the knowledge of criteria, considerations and solutions. Therefore, by examining what is happening in the West, we will examine the functioning of Iran's judicial system in the face of moral damages.

MATERIAL AND METHODS

The research was a review method, in order to achieve the goal of the research, in addition to electronic education books and virtual education in this field, articles related to the research keywords from 2004 to 2022 from the databases of Civilica, Magiran, Sid, Researchgate, Science direct, was reviewed.

DISCUSSION

Compensation for moral damages

Morality is tied to people's beliefs, values, and ideals, and custom has a special sanctity for it, and rights, including civil liability rights, which serve people and society, cannot make morality unimportant. Because otherwise, it will not have a sufficient performance guarantee. But without a doubt, the basis of the laws raised in civil liability law is based on ethics, and there are many ethical theories about the origin of liability (5).

From the point of view of pure causality, everything in the world is determined and fixed, and thus freedom must inevitably be considered excluded. Nothing happens in nature unless it is accompanied by a sufficient cause. Even human actions, like natural phenomena, are necessarily fixed and certain from this point of view. As a result, under this relationship, the judgments that are made about the behavior of individuals are meaningless, but praising people for their actions has no meaning. Because in reality, it is not the person who acts, but nature, which is the main factor, and man is nothing but a simple instrument of natural necessity. But most of the philosophers and scientists of ethics have not

accepted this opinion and believe that human behavior and performance are either praiseworthy or blameworthy in terms of ethics. All our actions, as long as we look at them in the eyes of nature's phenomena, that is, in the material sense, must necessarily happen and are not a frame of blame and evaluation. On the contrary, as we attribute them to the intelligent nature of human beings, the problem of measurement and evaluation becomes meaningful. Based on this, there are two main views regarding the moral responsibility of a person in the philosophy of ethics: from the perspective of the first view, a person is morally responsible when he deserves it according to his behavior, character and personal characteristics. The mentioned point of view is retrospective and considers only beings morally responsible who have the power to make decisions and their character and behavior are voluntary. It is a voluntary action that has two characteristics: firstly, it is done voluntarily, secondly, it is not caused by mistake and ignorance. Such an attitude is known as duty-oriented ethics in moral philosophy.

Therefore, compensation for damages is considered one of the most important tasks of civil liability law, and civil liability, whether in its public face, which is based on fault, or in exceptional cases, which is pure and absolute, aims to compensate damages. It is obvious that if the person causing the damage is intentional in committing his act (6).

The legislator has considered stronger measures and under no condition can the actor with bad faith be freed from responsibility, because acting with bad faith is against acceptable social ethics. In addition, the content of the solutions that the legislator has considered is not in line with the establishment of social justice and customary acceptance of laws. As, in addition to financial compensation, in the law of civil responsibility,

moral ways to compensate for the damage are foreseen (7).

Compensation for moral damages from a legal point of view

As a result of the development of social relations and emerging activities, moral damages and the resulting injuries have also expanded, without a doubt, compensation is considered the most important goal of civil responsibility.

Perhaps the first question in the judicial plan of moral damages is that why should moral damages be considered as compensable damages and basically why should these damages be compensated? In response, it can be said that there are different goals in this direction, the main reason of which is to prevent the type of damages. On the other hand, the right of the injured party is also considered important. "Since the spiritual damages for the victims and victims are quite real, so these damages must be fully compensated" (8).

The truth is that paying attention to protecting intellectual rights and compensation for damages to a person's personality and psychological dimensions are very important issues. Today, the laws of most countries tend to accept the compensation of moral damages as a principle, which according to the diversity and multiplicity of moral damages and the origin of their occurrence, various methods have been proposed to compensate this type of damages.

Considering that there is no room for doubt or problem in the principle of compensation for moral damage, the question arises that how should moral damage be compensated? From a theoretical point of view, the basis of claiming moral damages is the same as material damages (9). which means the theory of guilt, creating danger, guaranteeing the right and abusing the right. In fact, in this field, it refers to the main theories, that is, the theories of fault and danger (10). In order to compensate moral damage, just

like material damage, there must be elements of creating responsibility, i.e. "harmful act", "damage" and "causal relationship between the harmful act and the damage". Also, the loss must be certain and direct and uncompensated. Courts will award moral damages if the above elements are proven in court (9).

Some believe that "spiritual damages are damages that cannot be quantified in money and generally include mental injuries and damages that are caused to people's reputation, dignity, personality, business reputation and employment" (11). Some even consider the non-calculability of moral damages as the main element in defining this type of damage and have said that if the damage is not quantifiable to money, it is moral (12). It is even stated in the definition that the damage caused to the dignity, reputation, personality, body, spirit, freedom and any other legal rights of an individual that does not have a material aspect and cannot be equated with money and material things (9). In fact, the opponents of this type of damages claim that spiritual damages are irreparable from the point of view of theory (not being able to be compensated with money), technical (the difficulty of determining this type of damage for the judge) and moral (the obnoxious nature of demanding money for mental anguish). In fact, the opponents of the ability to calculate spiritual damages believe that due to the immaterial nature of this damage, compensation cannot be realized in the true sense by paying cash (13), because these damages are non-financial and cannot be perceived and felt by the five material senses, and therefore cannot be valued and compensated. In response to this objection, it has been said that issuing a judgment sentencing the defendant to pay cash, although it does not compensate for all the damage, but at least in some cases it can compensate for a part of moral damages, and therefore it is impossible to imagine compensation for moral damages by paying cash.

(14). According to the proponents, compensation for moral damage does not require a special reason; Whenever the pillars of civil responsibility are realized in any case, the existence of guarantee must be assumed without doubt.

Compensation for moral damages and its calendar in the English legal system

In the English legal system, compensations are judged both in material compensations (pecuniary damages) and in spiritual values (non-pecuniary damages). Based on this, crimes are applied to both "contract" and "damage", which include 1) pain and suffering; 2) loss of well-being; 3) physical injury; 4) social discredit; 5) mental distress" (15). In this country, since the 19th century, juries and courts evaluated moral damages, but an important development in the publication of judicial laws for assessing and compensating moral damages took place in this country in 1992, the revised version of which was published in 1994 (16). The two main types of moral damages in English law are "pain and suffering" and "loss of security and comfort". "Pain" means discomfort caused by injury, and "suffering" is mental or emotional discomfort such as anxiety, worry, fear, shame, embarrassment, etc. that a person may feel as a result of injury (16). It seems that prior to 1934, in cases where mental suffering caused by injuries caused a shortening of a person's life, under the Civil Code, this became a factor in increasing the title. Because the shortening of life can be the result of "losing life expectancy". A fixed and conventional amount was also defined for the loss of life expectancy (16). There is no simple formula for monetizing an injured person's pain and suffering, loss of function, loss of amenity, and disability. However, the English courts, the values can be done that look for the values of what the victim has lost (15). Influential factors can be referred to the "level of intensity" and "the length

of time that a person is and will be affected by the pains caused by life" (16).

The important point here is that in relation to financial damages, establishing justice may be an easy task; But the "valuation" of moral damages is a much more complicated matter (15). Numerous judgments issued in English courts show that financial compensation is considered to compensate for moral damages, including damage to credit and honor, causing disappointment, destroying peace and causing mental distress, etc. In fact, in the legal system of England, like many other countries, the dominant method of compensation for defamation (including written and verbal defamation) is to give an amount of money, which is appropriate to the case, in the form of equivalent compensation, symbolic, humiliating damages or punitive damages (17). For example, the high amount of damages considered for the actions against the police indicates that the dignity and personality of the injured person plays a significant role in determining the compensation (15).

In addition, based on the law of the United Kingdom currency system, any financial compensation must be in the national currency of the United Kingdom. Therefore, many courts of England, even if the damage is related to contracts with foreign currencies, order to pay compensation in the national currency of England (15). The evaluation of these damages is done in such a way that the economic situation of the obligee before and after the hypothetical execution of the contract is considered and they pay him the difference as the amount of damages. The purpose of its payment is to put the obligee in the situation that he would have been in if the contract was fully executed.

In other words, the type of moral damage compensation that is ruled in the English legal system is called "compensatory damages" (18). In connection with moral damages, there are several

judicial procedures in the English legal system, including the judgment issued in the case of Triple Point Technology Inc v. PTT Public Co Ltd. This decision focused on the damage caused to the reputation and brand of Triple Point Technology Inc.

The basic principle in compensation for UK damage is "restitution to the former state" (restitution in integrum) (19). As a result, the basic principle in compensating damages caused by breach of contract in this country is in such a way that the plaintiff can return to the situation he had before the conclusion of the contract (19). It is often thought that compensation related to moral damages should be in line with the commitment to full compensation and payment of the required amount of money. This commitment to full compensation is sometimes abbreviated as the 100% principle. "But it should not be assumed that the 100% principle is the only reasonable compensation system" (15). The expansion of the institution of compensation in the world of law and dealing with all human laws from the beginning until today proves that this principle has been raised as an obvious moral principle and it is done in different ways, the most common of which are: restitution compensation, rehabilitation, satisfaction and guarantees of non-repetition. Of course, the most common method among these mentioned cases is the payment of compensation, in which the violator usually compensates the damage by paying money. This compensation method is practically the most important compensation tool available. Therefore, it has been mentioned as the most important goal of civil liability in relation to the victim (20). Of course, there are exceptions in this field, including the exception of public policy, which is actually the same as "public order". Another basic principle in compensating damages in English law is that compensation should be fair, proportional, reasonable and expected, and accordingly, indirect damages

cannot be claimed in the English legal system (21). In fact, although compensation for damages in English law is very important, only damages in English law can be compensated if they are definite or certain. Definite or certain damage is damage that has definitely occurred or will occur. Therefore, it can refer to the past or the future. For example, when a person dies due to a collision with a car, this definite loss is related to the past. Now, if a person is injured as a result of being hit by a car, how long it will take to recover or how long it will not be possible for him to continue working, is related to the future, but there is no doubt in the principle of loss (22).

In addition to being a legal approach, the UK government's approach to compensation is also a moral approach. Accordingly, in this legal system, compensation is considered one of the most important moral principles, which is generally assigned to civil liability for committing a violation, whether an act or an omission. Of course, the institution of compensation is not only limited to the world of civil rights, but it is brought up in the field of punishment against the commission of crimes against the life, wealth and property of others.

In general, it can be said that in England, in spiritual damages as well as material damages, traditionally, the "value difference" in the claimant's position is the criterion for compensation. However, the value assessment is imprecise and incalculable, and it is usually considered a "fair estimate" instead of a "correct and accurate figure", although there are many judicial powers in this field for judges (23). According to this dominant approach, according to researchers in England, dealing with moral damages in this country is still incomplete in many aspects and there is a lack of transparency in understanding the criteria for identifying compensable moral damages, which causes a gap between theory and practice (23). In order to overcome these challenges, it has been suggested

that a new concept of "loss" should be considered, which is more comprehensive than its current definition, i.e. "decrease in value". Thus, the loss can be considered as any event that is considered a "bad event" by the claimant. This definition of loss seems to be more pragmatic because it allows moral damages to be considered "qualitatively" without reference to value. Thus, challenges such as whether harm has occurred or not, as well as the mutual relationship between harm and effect, are also resolved (23).

Compensation for moral damages and its calendar in Iran's legal system

The instructions related to the compensation of spiritual damages in Iran can be followed in the two realms of "jurisprudence" and "law":

Compensation for moral damages based on jurisprudence

Spiritual damage has received relative attention in Imami jurisprudence; Among other things, it has been discussed in the field of damage to the reputation, life and personality of a person (24). Of course, in many jurisprudence books, despite some doubts, the issue of moral damages has been mentioned. In these books, in addition to providing definitions of damage, moral damage has also been accepted. For example, he calls the owner of the titles of spiritual capital and personality and dignity of a person "extent" and considers its violation as one of the types of harm, and he rejects the doubt regarding the inclusion of the harmless rule about moral damages (24). Also, Khansari writes: "Damage is the death of something that a person needs, whether it is a soul or a gift or property or a body part..." (25). Ayatollah Makarem Shirazi also writes in the definition of harm: "Harm is the loss of anything that we create and benefit from, from the gift of life or soul or wealth or property..." (26). Several jurisprudential bases have been proposed in this regard, which are:

1- No-harm rule: The main goal of this important rule was to provide compensation for the damages caused to individuals, which is a clear example of moral damages.

2- Non-Corporeal Hardships: The non-corporeal hardships have a concept similar to the No-harm rule; This means that any matter that causes hardship or difficulty is rejected in Islam. Therefore, it is clear that if someone causes financial or physical damage to someone and does not take responsibility for the damage, he has put him (the injured party) in a difficult situation and this is forbidden from the point of view of Shari' (27).

3- Assumptions of the wise: In case of moral damage, the wise consider it necessary to compensate the person who caused the damage. The street has also confirmed this wise building. Based on the rule "All of us judge by reason, judge by Sharia" it can be said that because reason judges' people to compensate for the moral damage, therefore Sharia has also accepted it. In addition, the wise consider non-payment of damages (both material and moral damages) as oppression, and oppression is also an ugly thing in the eyes of God. Therefore, ruling on non-compensation of moral damage on the part of the court is an ugly thing.

Compensation for moral damages according to laws

In Iran, according to various laws, including the "Constitutional Law", "Criminal Procedure Law", "Civil Liability Law" and some other scattered laws, compensation for moral damages is mentioned:

In the Constitution of the Islamic Republic of Iran, moral damage is considered next to material damage and is considered by the legislator. This law has clearly made the person who caused the moral damage responsible for the compensation of the damage and the guarantor of the loan, and naturally the injured party is entitled to claim the damage caused by the moral damage (28). In

principle 171 of this law, it is as follows: "Whenever due to the fault or mistake of the judge in the matter or in the judgment or in the application of the judgment on a particular case, material or moral damage is caused to someone, the culprit is the guarantor according to Islamic standards." Otherwise, the damage will be compensated by the government, and in any case, the accused will be returned as a prisoner." This principle of the constitution has clearly and generally accepted the necessity of compensation for moral damage. Although this principle is in the field of responsibility arising from material and moral damage by the judge, but it can be generalized to all cases of material and moral damage. In this principle, moral damage is considered as an independent damage, and the restoration of the injured person's dignity is considered necessary in any case. Therefore, according to principle 171, moral damage objection by the judge should be compensated like material damage, by means of money payment or any other way that leads to the restoration of the damaged person's dignity. Therefore, this result is obtained that the material and moral damage caused to people should be compensated.

According to the Code of Criminal Procedure (Article 14), "the plaintiff can claim compensation for all material and moral losses and possible benefits resulting from the crime. According to note 1 of this law, moral damage is mental damage or damage to personal, family or social dignity and reputation. In addition to issuing an order to compensate for financial damage, the court can order to remove the loss in other ways, such as the obligation to apologize and enter the order in the newspapers and the like. According to the note 2 of this law, the possible benefits are only reserved for those cases where truth is wasted. Also, the regulations related to the possible benefits and the payment of moral damages do not include crimes that

cause punishments prescribed by Sharia and dowry. It is worth mentioning that this article also mentioned examples of moral damage, but did not explain its meaning comprehensively.

In other laws, there are many cases regarding moral damage. For example:

- According to Article 30 of the Press Law approved in 1364, "Publishing any kind of content including slander, slander, obscenity, obscenity, or insulting and similar attitudes towards individuals is prohibited." The responsible manager will be introduced to the courts for punishment, and the prosecution of the aforementioned crimes is subject to a private complaint, and if the complaint is returned, the prosecution will be stopped at any stage.
- Comment 1: In the above cases, the plaintiff (whether real or legal) can file a complaint with the competent court to claim the damages he suffered from the publication of the aforementioned content, and the court is also obliged to issue an appropriate ruling. "According to the interpretation of this article, which applies the right to request damages absolutely, and the damage is both material and moral, it should be said that in case of moral damage, the injured party can refer to the courts for the compensation of the moral damage. The previous approval of this article also validates this matter.
- Article 27 of the Law on the Protection of the Rights of Authors, Writers, and Artists states: "A private plaintiff can request the court issuing the final judgment that the content of the judgment be published in one of the newspapers of his choice and at his expense." Paying attention to this article shows that the aggrieved person can request the court to publish a judgment confirming his right in one of the publications, so that the moral damage caused will be compensated.

- In the law "Obliging the government to pursue compensation for damages caused by America's actions and crimes against Iran and Iranian nationals" approved in 2015, there is also a discussion of claiming moral damages.

In general, in the legal system of Iran, the judicial procedure is different and there is no single procedure for the way of calendaring the demand for moral damages from the plaintiff and also determining the amount and type of compensation for moral damages from the court; Therefore, it seems that the best criterion for determining this type of damages is to give the judge authority - of course, in a regulated manner - to determine the amount of damages in this range according to a set of variables and influential factors. Of course, it should be noted that in order to claim moral damages, it is necessary to prove the triple conditions of responsibility, i.e. "harmful act", "damage" and "causation between the two". It should also be kept in mind that the purpose of compensation for moral damage is not the complete repair of the damage, but the healing, relief and satisfaction of the victim; Because it is difficult to fully compensate the moral damage; For this reason, there is no standard for its precise measurement, so it is necessary to provide satisfaction and comfort to the victim in every way. According to the opinions of the courts, it can be said that there are two ways to compensate for moral damage. The most important and controversial method of compensation for moral damage is the method of "financial compensation". Another method of compensation for moral damage is the method of "non-financial compensation". Often, in cases where there is a possibility of healing the injured person, compensation for moral damage is done through financial payment, which has not been provided with a specific criterion for calculating and matching it with the amount of damages. This issue has been taken into consideration in the legal system of Iran. In the subject law system

of Iran, the legislator, whether in the field of compensation for material damage or in the field of compensation for moral damage, has placed the principle on the necessity of the existence and proof of the element of fault. Among others, we can refer to Article 171 of the Constitution of the Islamic Republic of Iran, Article 58 of the Islamic Penal Code approved in 1991, and Article 132 of the Civil Code. Exceptionally, in Articles 328 to 330 of the Civil Code, the legislator has accepted the application of the risk theory regarding compensation, which includes both compensation for material damage and compensation for moral damage. Rules such as the rule of negation of harm, negation of difficulty and embarrassment, the rule of wastage, glorification, pride, building of reason, etc. are among the jurisprudential rules that are used in the field of proving the role of fault in the field of compensation for moral damage.

CONCLUSION

According to the applicable legal articles and jurisprudential documents and the moral and rational reasons regarding the compensation of moral damage, the necessity of compensation of moral damage and its compensability seems to be a Muslim and definite thing. It can be said that compensation for moral damage is generally possible with two financial and non-financial methods. However, in the process of issuing a sentence to compensate for moral damage, it faces problems, and the biggest problem is the type and amount of the sentence (sentence for what and how much).

Since moral damages are multiplicity and diversity, each or every group of them requires its own proportional compensation method. From the point of view of identifying the amount of moral damage and evaluating and it, it is a difficult and accurate thing, because the ability to be inspired in people is different, such as their appearance, taste and moral personality. Some

people have high mental and spiritual power, and their psyche is affected by important incidents. In contrast to other people, there are people who are deeply affected by the smallest incidents. Therefore, by establishing a law and determining a specific compensation method, it cannot be claimed that compensation has been done to all the victims.

Giving the authority and discretion to the judge to determine the method of compensation for damages according to the circumstances of each case and the position of the parties and... has a "positive effect", that is, facilitating litigation and facilitating the compensation of damages, and a "negative effect". It means that it is difficult to justify the issued rulings; Considering that compensating such damages is aimed at satisfying the victim and restoring his mental state to the previous state, if the principle of compensation for moral damage and then the possibility of calculus is accepted, the best way to achieve this goal is to issue a verdict according to the circumstances of the case. Something that cannot be fully foreseen in the law. Of course, this should not lead to ignoring other factors and principles related to compensation, such as the proportionality of compensation with the damage.

Therefore, based on the mentioned cases, it can be seen that in the legal system of England, as in Iran, the "theory of fault" is the main basis of civil responsibility. Investigations indicate that in Iran, based on various laws such as the "Constitutional Law", "Criminal Procedure Law", "Civil Liability Law" and some other scattered laws, compensation for moral damages is mentioned, but it has many problems. While in countries like England, issues such as one-sided or two-sidedness of the damage, insurance coverage, social credit, job and financial resources of both parties to the damage, and reduced life expectancy are taken into consideration in issuing moral damages

compensation orders. It seems that people's awareness of their rights in this field, the insurance coverage of moral damages and the compilation of the compensation table in frequent cases will help to follow up and issue judgments in these types of cases.

ETHICAL CONSIDERATIONS

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy and etc.) have been fully considered by the writers.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interests.

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