

## **THE SURVEY OF COMPENSATING FOR SPIRITUAL DAMAGE IN THE ISLAMIC JURISPRUDENCE (FIQH) AND LAW**

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### **Abstract**

Spiritual damage is a loss which is incurred on the individual's personal prestige, fame and/or emotions and feelings. It can also be sensed as an abuse to the human beings non-financial rights, even hurting the individual's friendship, familial and religious feelings and emotions and it can incorporate the pain and the suffering which are known to be imposed on an individual as a consequence to an incident or an event. Such losses and sufferings can, nowadays, be allowed to be filed for a plea of compensation. Despite the material aspects, the spiritual dimension and the likely damages imposed thereupon have been taken to consideration in a lesser degree and with a smaller intensity and such negligence have doubled the significance and the necessity to deal with and thoroughly capture the subject of spiritual damages. The present study handles the investigation over the subject of spiritual damages and the compensations thereof which is approached from the perspective of the jurisprudential and legal terms. Although there is not specified a clear-cut and vivid chapter for spiritual damage in the jurisprudence but the jurisprudential rules and regulations signify the necessity to compensate for the spiritual damages in a waxing and waning manner.

**Keyword: Spiritual damage, the jurisprudential basics and loss compensation**

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In the Islamic law system, the social expediencies should be safeguarded in such a way that they seem more facilitating the acquisition of the carnal perfection and the enhancement of the spiritual degrees. In line with this, the legitimacy of compensating for the spiritual losses should be justified from the financial and non-financial ways.

**The lexical conceptualization of the term ‘damage’:**

In the dictionary of “Al-Monjed Al-Abjadi”, the term ‘Al-Zerr’, with the preposition of the letter “Z” as in /ze/ is pluralized in the form of “Azrar” meaning losses and it is defined as the loss or deficiency in something, or hardship and poverty and a state of not feeling well.

Ragheb Isfahani defines the term “Al-Zerr” as not feeling well which is either in the psyche of a person due to the lack of knowledge, bountifulness, and chastity and/or it resides in the individual’s physique as a result of a deficit and sickness in a body organ or as a result of not having an organ or it is an outcome of an apparent state such as the lack of properties and financial deficiencies or the inferiority of one’s position and there is a possibility for a loss or a damage.

Nahaya Ibn Kathir and Mojma’ Al-Bahrayn have come to this realization that loss is a deficiency in the rights. Mesbah Al-Monir consider loss or damage as semantically equivalent to an abominable deed conducted in respect to a person or a deficit in an individual’s inner self.

Naeini believes that the loss of any defects in the property, and honor and life of another, but in the case of loss of life and property of word processing, but about lack of respect and honor the word used is less harmful. For example, someone said it was a bad deal or taken medication that was harmful or harmful to him. But if someone from another indignity, so do not say that to the detriment struck. (Mohaghegh, d, 2014)

Another definition, or the loss of any shortcomings and deficiencies that the property and the right to dignity, reputation or property or object or person is inadmissible and unwanted emotions, from the other side. This is partly defined by defining some jurists that harm to self or absolute deficiencies and gaps in member or property and dignity has been defined, it is similar,

but the major difference is that in the absolute definition of impairment losses not included But the disadvantage is a defect that is involuntary and enforced because traditionally considered a defect loss that is unwanted. And the defects that voluntary donation or items that the person acting as his objection to the lack of expertise from the concept of loss is outside So it seems that the concept of withdrawal to the detriment of shortcomings and deficiencies that are unfair and unwanted imposed on the person And the lack of such voluntary donation etc. and mystics not contain such a loss would not constitute a defect. (Baryklv, 2004) However, in terms of losses and damages our legal traditions and expressions used in a sense, the action of each of them have prescribed interchangeably, but little difference between them is used in two senses. Damage the financial means to be from someone That causes financial loss to another objection be paid to the victim and the second meaning is synonymous losses to say.

So the damage is more common than losses. (Brilliant granddad, 1384) defined the difference in terminology so, in the definition of the apparent damage, the damage is used in two senses:

- 1 .Harm to someone else who will.
2. The financial compensation is subject to non-financial loss, should pay compensation to give him. (Parsley Langroodi, 2009)

### **Foundations jurisprudential**

1 No detriment rule: One of the main arguments used by experts in legal issues in order to prove the legitimacy of the rule is moral compensation. What used to rule the necessity of compensation

Is spiritual. Are examples of moral damage loss.

2. Foundations of intellectuals: First, wisdom dictates that harm other reason than to fix bad ugly, and secondly it also gives the command. Therefore, elimination of losses and it is only necessary to compensate possible losses.

3. Rule distress Negation and constriction: Rule fault Negation does not have the provisions but also provisions of privation that are caused by constriction of the rule is negated. With fixes and

hardship withdrawals only negate the provisions of privation is possible and imaginable. Obviously,

Constriction of the woman who picked up her husband in a car accident caused by the driver at fault in the crash which has lost only necessary financial compensation or Financial non-material and moral damages and there may therefore be required under hardship arising from the provisions of existence or non-existence of God any fix him.

Legal rules to play the role of a formula that can be understood as the source of problems and more detailed rules than them. The rules, given the general nature and not specific to a particular subject, the issues are distinct legal and in this respect similar to the legal principles of moral damages. In particular, the rule of attention. In the hadiths of the infallible Imams also numerous cases of dignity and human dignity can be seen. Imam Sadegh has been narrated that: "If anyone says a word against the believer wrecking havoc on reputation and the loss of social status and personality that God has made him out under the 'Leadership and is so discredited that he does not accept evil. "He also introduced the persecution of believers to war with God and says: "Allah has said anyone who persecute me be at war with my faithful servant and anyone believing slave honor of my wrath safe.

In most legal writings, a loss equal to the defect, death or lack of knowledge, and sometimes took the sense of the norm have seen. Examples of jurists cited definition is appropriate: Ayatollah Sistani also no harm in his treatise, believes that the loss of three spiritual meaning refers to as Share: Defects and bottlenecks, but the general sense is that all three of the following: lack of an object than they should be. The statement included the following statements:

Low-connected defects, such as Consultations of narrowly location

Low-detached defects, such as defects in reviews

Defects in Kiev, as ill due to illness, etc.

At the same defects, such as defects

Defects in legal status, such as lack of respect for other rights. (Agha, hosseyeni-2010)

Loss or damage in a general division is divided into two kinds of financial and moral:

**A financial losses**

It hurt - it's something that will be the subject of shortcomings or deficiencies - may be ownership of the property. literally refers to what humans Venice is said to belong to anything in human life and property are valuable and usable. In Arabic , Gold and silver property originally was said then that the camel was the most referred to was the major Arab wealth In legal terms, property is something that can be used interchangeably. The resettlement of likes and isotopes

**(B) moral damages**

According to the second type of damage, the moral damage, the main subject of our research will be discussed in more detail outlines.

**Moral damage and its features**

Spiritual words to the material used and modified trait Persian word Minooei. Some of these words are the words of Persian origin know. If divine spiritual word that Minooei derived from Pahlavi language and Mino in Ancient culture means the world is immaterial to the world that the material world is said to be the root of the word Shvd.madhMattek side, and the material is opaque. (TppaEbrahimi, 2009) In talking about culture, about the spiritual meaning of the word is "on the inside and within, related to think, reason and emotion" within the meaning of spirituality also says aspects of intellectual, moral, cultural and emotional or intellectual products She. (Anvari, 2005)

JafariLangroodi doctor, spiritual damage compensation against material damage knows that the dignity and spiritual values into the wrong person on this definition, Not to mention the physical and psychological damage.

Assyrian doctor writes in defining moral damage "loss or damage to reputation, prestige, freedom, religious beliefs, life, beauty, emotions and family ties. (Assyrian, 2007)

BahramAhmadi doctor of moral damages has to offer and have written a short definition of "material detriment, harm to human spiritual feeling, he comes fame or reputation." (BahramAhmadi, 2009)

Doctor intercepted the courier has also defined moral damage "is spiritual losses (such as the type of material) ratable money is not generally traumas and losses that the honor, dignity, character,

Trade credit and job enters entities should be included.

Naghbi doctor in a relatively detailed definition: "The moral damage is harm to the freedom and dignity of individuals and credit or emotions, family, religious, national or non created after thought, Artistic, scientific and industrial effluents or aches and pains that result in the loss of physical health or mental discomfort comes the quotation is seen to become unsightly losses her face from an accident or loss or significant pain and discomfort when he comes. In other words, the criterion is that the provider of intellectual damage of non-financial damage on the soul, body, feelings and emotions, and thought and art of a person or damage to the person and rights relating to the personality and individual freedom and dignity and honor and credibility It can be concluded that the moral damage are: damage or any damage on the individual person and his character that does not directly financial aspect, Ranging from soul, body, reputation, feelings and emotions, or any damage on the credibility and professional reputation, and the health of the aggrieved family. In simple terms, to any non-pecuniary damage himself and his belongings moral damage Called.

According to the above definitions, the definition and recognition of moral damages should always keep in mind two fundamental points:

- A) The issue of such damage, the natural person or legal person.
- B) the financial aspects of the spiritual nature of the damage is not normally finance and trade will not be evaluated.

Properties can demands moral damages

compensation in the wake of a significant demand for the execution or imprisonment of Nemesisor to load, in accordance with the law and the Convention would not be applicable and

common sense demand. for example, the person cannot use the whip for his public execution of sentence enforcement, spiritual damages claim or a child of a person who has, or execution of Nemesis Demand moral damages caused by the trauma caused by the loss of his father to use. On the other There is disagreement among experts properties but can be used with the following features for moral damages be charged. All comments are:

**A- moral damages must be Muslim**

Article 728 of the contractual liability is, however, the disadvantage in contractual liability there is nothing special and the basis emendation The unity of the criterion it can be the responsibility of the supervision is also given exposure and the same sentence of supervision and responsibility because it is in receipt of a contract to spend the possibility of entering the losses could not be ruled in compensation.

**(B) moral damage must be direct**

The purpose of this is not that there are no direct disadvantage of being a middleman between the verb person damages. If the object is, the question of the overall will be ruled out. What is this Bob is always of humans or animals or something intermediate between the verb and the subject is the only cause for damages and losses of the objection is therefore responsible for the injury that many Gnostics. attributable to the person of Bob and cause damage to the required order of habran is direct or losses. immediately it is between it and the person read the relationship between customary. (Safai and Rahimi, 2012)

**Financial compensation for moral damage**

Today precedent in many countries, by paying a sum of money accepted moral compensation. For example, in Egypt's rights under article 171 of the Civil Code stipulates the principle of compensation, paid in cash. In Iran's case law, the most common method of compensation for moral damages, payment is that these payments are sometimes made in the form of whole or part of the blood money.

**Non-financial compensation for moral damage**

For compensation, except for the compensation through other means, such as paying, apology, press and publications and the publication of votes to work. This is not always necessary to compensate that by paying money to the losses can be seen, what is lost to the seller, but the goal

of compensation is to be given to the possibility of losses seen the equivalent of what they have achieved is not lost. so, in spite of being part of relief payment amount money, other methods Also because the obligation to apologize, compensate the symbolic and insert the far in newspapers as well as on the spiritual damages compensating and paying compensation is not the only way.

### **Discussion and conclusion**

Spiritual damage after damage which is non-human, and actually damages the balance of mental, social and physical health and dignity of persons with character. Natural and legal persons, as can be the importer of your spiritual losses can also be a victim of the. In the meantime, the spiritual, the origin of the damage can also be caused by the breach of contract and of committing a crime or tort spiritual damage, physical damage. And damages including the kinds of damage are considered intellectual property that has a different extension. Iran has a legal and moral compensation in the legal system is legal. Legal rules "no injury loss per Islam" and "denial of hardship" as well as the principle of the sanctity of human dignity are fundamental principles of jurisprudence moral damages in Iranian law. With regard to the payment of blood money and also check out the related substances Diego, it becomes clear that one of the causes of predictable and legislation institution of atonement, spiritual compensation. Payment of blood money as compensation for moral damage caused by the crime and the victim will not be able excess of the compensation. However, as we argued the possibility of compensation for moral damage caused by non-financial crime with blood money, does not contradict the present rules. By examining the case-law came to the conclusion that over time, courts have less hesitation about accepting claims moral damages and new legislation, judgescomment on the possibility of compensation for moral damages. The court decisions have changed the remedies, including an apology, in the press release rate and resorted symbolic compensation. Also, in some cases, the court expert opinion, to compensate for moral damage through payment has been sentence.



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