

A glance at the moral damage in the statutes, jurisprudence and judicial precedents in Iran's legal system

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Abstract: The relationship between moral damage and civil responsibility has been accepted in the most of legal systems in the world. In Iran the courts had divergence of opinion in this field, say some courts accepted moral loss and some rejected it. Finally, with the approval of the criminal procedure law in 1392 this divergences of opinion have come to end (have ceased). Because Article 14 of this Act expressly has foreseen that the moral loss is compensable. In this paper we are going to survey a short history of moral loss in the law of Iran, Islamic Jurisprudence and a few other countries. Even in recent law, it has been foreseen that the unlawfully detained persons can demand their moral damage, and the state is responsible to pay it and then refers to guilty persons.

Key words: Moral damage; Civil responsibility; Dignity; Loss

1. Introduction

From the point of view of civil responsibility, when the dignity, affections and family reputation of a person sustains a loss, he has been faced with moral damage. In Fact his intellectual respect has been damaged. According to the rules of the civil responsibility the one who caused this loss must compensate it. Civil responsibility exists when a natural or artificial person suffers a loss. In this case, arises some questions:

- Whether this kind of loss can be compensated (remediable) or not

- Whether this loss is remediable by money or not

- Whether legal doctrine or judicial precedent and the Acts in Iran has accepted this kind of Compensation or not, and how the detained persons obtain his loss From the State. This article tries to Find answer to These questions with regard to the legal rules and the law of civil responsibility and Finally comes to this end that the law, legal doctrine and judicial precedent in Iran has accepted to compensate moral damage with the Common methods.

2. Chapter One

2.1. Definition of loss and its divisions

2.1.1. Definition of loss.

In etymology the word of "Damage" means 'loss' but in legal term it means, "The property which must

be returned to its owner by the person who has incurred the loss". The other definition of "Damage" is: "Every kind of deficiency or loss on one's property, dignity, reputation or body by other person unlawfully or without his consent.

2.1.2. Kinds of damage

The law and lawyers have divided the damage (whose compensation creates civil responsibility) into three groups as Follows:

1. Material damage
2. Moral damage
3. Corporeal injury

2.2. Material loss (damage)

Material loss is the loss which results from destruction of property itself or from the decrease of value of property or intellectual ownership or from the lack of interest or lawful right of persons. Or a lawful rights which should be covered by the person who incurred it. These kinds of damage are simply to be evaluated by money (monitory evaluation of damage). Here; in Fact this loss includes the material rights of persons.

2.3. Moral damage

In legal terminology the moral damage is defined as Follows:

"The act which decreases people or his relatives' honor, dignity and respect."

In other word the moral damage is every deficiency of the intangible or intellectual right.

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Some of the moral damages may result in material loss or some may be absolutely result in moral one. Therefore despite the material damage, the moral damage cannot sometimes be evaluated to money because this kind of damage injures the intellectual personality of a person.

2.4. Corporeal in jury

It is every kind of deficiency and loss on the entirety of the human body and every kind of injury on it, as inflicting an intentional wound or unintentional one to the person's body (corpse).

2.4.1. Definition of the moral damage

Criminal procedure law of 1291 defines moral damage as follows:

"The moral loss is the decrease of dignity, credit of person or persons or the spiritual hurts." There is no reference to moral loss in criminal procedure of the law of the Common or Revolution Courts (1378) and also in civil procedure law of 1379. We see only in civil responsibility law which has been pointed to the moral loss, without suggesting any complete definition of it. But in the Act of Criminal Procedure published in the Formal paper (3/2/1393) the moral loss has been defined. Note 2 of the article 14 has held: "Moral damage is spiritual hurts or rendering the personal, Family and social honor, reputation and credit of one person". This definition is one of the innovations of the Act and it is actually a step to forward.

2.4.2. Kinds of moral damage

From the note (1) of the article 14 of the Act of Criminal procedure can be recognized:

1) The rights related to the Family, Social reputation are some of the rights that connect to his personality. These rights Form the intellectual respect of a person. Hurting these values less or more depends on material damages.

2) Because of the Spiritual hurts, the person may be deprived from his occupational, artistic and scientific interests, also he (she) many miss his beauty and harmony of his body or he (she) confronts with a fictional Failure. These losses may hurt his belief or religious or moral value. This section is called moral Feeling.

2.4.3. The position (place) of moral damage in statutes

Nowadays, the theory of moral damage has been vastly evolved. Most of the courtiers have foreseen it in their statutes for example: Egypt Civil Code in article 222, the obligation and contracts Law of Lebanon in article 47, 49, the France Civil code in article 1381, 1383 have predicted moral damage.

In Iran before occurring the Islamic Revolution the Press Law (1334), and penal code in repeated

article no 212 and the Law of Criminal Procedure (1290) in article 9 had foreseen the moral damage. After establishment of the Islamic Revolution the Constitution Law in the principle No 171 the civil responsibility and the criminal procedure Law have referred to moral damage. Principle No 171 says:

" should someone suffer moral or material loss as a result of interpretation, or mistake of Fact or of Law by a judge or application by him of a rule on a particular case, in the event of default, the defaulting judge shall stand as a guarantor according to the principles of Islam, otherwise the loser indemnified by the state. In any event, the accused person shall be rehabilitated."

In this Law the moral and material losses have been regarded equal and the Law apparently has entitled the loser to receive him (her) moral loss.

The legislator in article 1,2,8,9 and 10 of the Law of Civil responsibility has considered the moral and material damage equal. The Law in article one says:

"The person who puts others, life, safety, property, Freedom, dignity, honor, commercial credit or legal right in danger and cause him (her) either material or moral loss must indemnify for it"

Article 10 says:

"If a person causes loss on one's honor or on his personal or family reputation, the loser can ask for indemnification (remedy). The laws of criminal procedure 1392 in article 14 expressly speak of moral damage. It says the plaintiff can demand the material and moral loss and the attainable profits resulted from the crime."

It is understood from this article that asking for the material and moral loss together is not illegal and paying for material loss does not cover all the losses.

3. Chapter two

3.1. Position of moral loss in Islamic rules

3.1.1. The position of moral loss in figh (jurisprudence)

The God on high in Humazat sureh addresses the man:

"Woe to every slander defamer"

And in verse No 12 of Hujurat sureh addresses the man also and says:

"O, you who believe! Avoid most of suspicion, for surely suspicion in some cases is sin and do not spy nor letsome of you backbite others."

From these holy verses we understand that the almighty God has forbidden to spy of the private subjects of the people because the values of one's life depend on his (her) dignity, honor and special personality and whatever puts them in danger is equal to put one's life in danger and further to this, sometime, to terror one's personality is more important than his life.

In figh (jurisprudence) with regard to some doubts, the sense of loss is not limited only to material subjects and destruction of property.

Mirfattah-e- Maraghi the author of important book - Al Anavin - calls one's intellectual respect and personality and his honour-"ERZ" and calls it's violating a kind of loss. He believes that allocating the rule of rule of prohibition of detriment. - (no loss in Islam) only to material loss is not enough (true).

Ayatollah Khansari and Ayatollah Makareme Shirazi both believe that violation of "Erz" is compensable. Ayatollah Mosavi Bejnoordi also accepts moral loss. So, In Islam incurring loss from every kind (moral or material) should be compensated.

3.1.2. Logical and consistent usage

The holy legislator has accepted responsibility of the principal of the material loss without any doubt, say, when a person causes any material loss to the other, he is responsible to compensate it, either by paying the price (money) or by providing its equivalent.

But in relation to moral loss especially when the loss resulted from crime there was no express order. But on the base of rule of "what reason orders the legislator accepts." and the rule of "no damage in Islam" and also according to the logical and consistent usages we could realize that to compensate mental loss has been impliedly accepted in Islam, too.

4. Chapter tree

The ways and common methods of compensating moral loss in civil and criminal subjects

4.1. The ways of compensating of moral loss

Before approving the article 14 of criminal Procedure (1392), The Council of Guardians had given their opinion about S.1 of article 30 of Press Act.

They had stated that to issue an order about moral loss by material compensation is contrary to sha'r (illegal). This notion had caused doubts about claiming the moral loss among judges.

Omitting the second section of the criminal procedure of 1378 increased this view that the legislator does not care to moral loss and they believe that it is not compensable. Therefore some of the lawyers thought that the law of civil responsibility has been abrogated impliedly in this field.

But, in fact with the existence of principle 171 of Constitution of Law, the omission of section 2 of article 9 of Criminal procedure (1378) could not make any problem about the compensating moral damage.

Nevertheless the opponents believe that if we accept the existence of moral loss, two basic problems remain about it

- The first one is that this kind of loss is not compensable

- And secondly it is not possible to be evaluated precisely.

Now by approving the article 14 of criminal procedure and its note (1392) and the express declaration of the legislator, there is not actual or legal ambiguity about compensating moral loss.

According to the article 14 (1392) and its notes, the court will be able to evaluate the moral loss by legal measures. We should observe this fact that, sometime, evaluation of the material loss is also difficult. But we should actually know this fact that the main aim of legislator of paying Compensation is to remove the effects of the loss to the extent of possibility.

4.2. The common methods of compensating the moral loss.

According to the statute especially with regard to the first note of the article 14 of criminal procedure (1392) the common ways of Compensating moral loss are as Follow:

- a) Making the defendant to apologize orally
- b) Particle or written apology by publishing in a paper.
- c) Restoration of reputation from the loser in appropriate way.
- d) Removing the source of the loss.
- e) To pay money to compensate the loss.

Article eight of the law of Civil Responsibility has paid attention to the subject. According to this article everyone who suffers from damage to his reputation and professional credit can prevent its publishing in press if it is contrary to the truth.

The section a, b, c is used where the loss is less important otherwise the great losses to one's prestige, respect, chastity and hurting his affectionate cannot be compensated merely with apology or publishing in newspaper.

Therefore the most effective way of compensating moral loss is to give property (e. g. money) to the loser.

It may be criticized that giving a sum of money to the loser does not compensate all the moral loss.

In the answer to this criticize, it must be said that "compensating" damage does not mean that it will remove all the effects of the damage. This fact is sometime the same in material loss because in many cases in material loss; the remedy does not cover all the loss that the loser has suffered.

The aim of compensation in both kind of loss is to put some equivalent thing forward (at the hand of the loser) so it makes him (her) happy and is replaced to the loss which he (she) has missed and this remedy makes his (her) inner pain more tolerable.

To compensate moral loss by paying money in western legal systems, which have long experience in this field, have vast position because in these systems the legislative power, by enacting several and explicit laws have applied material method for compensating of the moral loss.

The judicial courts, especially the high courts have insisted to the necessity of compensating moral loss by paying money or by other material property.

In Islamic countries, such as Egypt, it has been insisted on compensating moral loss and Ahmed Sanhoury, Egyptian jurist (lawyer) says that all of the jurists in this era believe in the revocability of compensating moral loss.

In Iran's law, one of the ways of compensating of moral loss is paying money which the note one of the article 14 of Criminal Procedure has stated it clearly. Note one has provided:

"Moral loss is spiritual hurts or rending of reputation and social and family respect. Court can issue order to compensate material ways or to remove loss by other ways as asking pardon or publishing courts award in newspaper and so on."

Therefore according to the explicitly of the law, there should not be hesitated about the necessity of compensating of the moral loss. Say, the moral loss is compensable by material methods. Of course, we must not forget that the moral loss must also have had qualifications of the compensable damage such as:

- Being certain,
- Being straight and
- It has not been compensated yet.

4.3. Blood money and moral damage.

The judicial precedent of Supreme Court had tendency (inclination) to recover moral and material damage by blood money. The Civil and criminal courts also have tendency to determine a remedy to moral loss. Mr. Katozeyan believes:

"Blood money is fixed sum of money which is considered that the punishment the perpetrator and blood money is enough to compensate the loser damage and proving incurring loss in this field doesn't need additional proof. But the existence of this consideration does not prevent the victim to demand more remedy if he has suffered much damage."

But nowadays with regard to the explicitly of note 2 of article 14 of criminal procedure to pay moral damage do not include the appointed Islamic law crimes and blood money.

In this Field the legislator has been affected of the notion of Supreme Court

According to note one of the articles two of the criminal procedure law enacted in 1378:

"The lawful Ta'zirat is punishments which The Islamic holy law has held for committing prohibited or omission of obligatory act without determining the kind and quantity of punishment whose details has been foreseen in Islamic Penal Code (Tazirat)".

For recognizing them and determining their punishment we should refer to jurisprudence books. It was logical if the legislator determined and named the appointed Law-full subjects (Ta'zirat) in order to prevent of diversity of judgments in courts.

4.4. Inheritance and moral loss

Do the spiritual damage transfers to heirs like other financial rights when the loser dies or not?

In this case there is divergence of opinion among jurists; some believe that spiritual damage like financial rights is transferable to heirs. These jurists argued that the heirs of a dead person continue, in Fact, the deceased personality. Therefore they will be able to apply his personality and property while the others argue that if the deceased evaluate, claim his loss and before issuing a court order dies; the heirs will be legal representative for him.

France judicial precedent has accepted both of these notions and in the Egypt law the principle is this that moral loss is not inheritable unless according to the article 222 at Egypt Civil Law if the parties has agreed about the amount of damage or the deceased would have brought action in a court for damage before dying it will be inheritable.

In the law of Iran moral loss is not inheritable because inheritance does not continue the personality of the deceased or it is not his (her) deputy. The heirs, in The case of properties and financial rights are the Deputy of the heir - and moral loss is connected to his personality and depends on his spiritual situation. The moral loss has damaged the loser's personality and with his (her) death his personality comes to end and he (she) is not able to claim it back. (Compensation is extinguished) Unless the moral loss followed by financial expenses. In This case the heirs can claim these expenses.

However, it must be considered that where the reputation and dignity of the decease hurts, as this subject is connected to the heirs we must accept the succession of the heirs and accept their right to sue and bring action.

4.5. Detention and moral loss

In Iran legal system, until the approval of the criminal procedure (1392), the persons who during investigation or preceding, For any reason, were detained and then they were known innocent, the law had not Foreseen any remedy for their material or moral loss and the judicial precedent did not accept this kind of claim and their compensation.

But the procedure code (1392) has foreseen it Article 255 has held:

"The persons who during preliminary investigation, hearing (trial), for any reason, obtain an innocence order or an order of non-suit can, with regard to the terms in the Article, claim the damage of the detained period from the state."

This loss includes both material and moral losses.

And the detained person during 6 months from the f date of receiving the definitive judgments can demand the loss

According article 257 of criminal procedure: The loser should give his objection to the procedure commission, which consists of 3 judges from the appeal court appointed by the head of judicial power.

If the Commission accepts the protest objection it will issue an order of compensation.

If the objection rejected, the loser within 20 days from receiving the judgment can give his objection to the national compensation commission which consist of the head of Supreme Court or one of his deputies and two judges of Supreme Court or one of their deputies and two judges of Supreme Court appointed by the head of judicial power. This judgment is definitive. The compensation according to law is upon the State and according to article 259 of the law if the detention would be in the result of biased proclamation of crime, or perjury or the guilt of the judicial authorities the State after compensating the loss can sue the main responsible person.

It is no longer necessary that the detained person refers to guiltiest and goes through the long process of trial, and this subject is the strong point of this law.

According to article 26 of the Criminal Procedure law a fund is established in the Ministry of Justice to credit the damages sum from the annual budget of the country. This is one of the innovations of the Law and is a step forward to judicial justice.

It should be noted that if the detained person himself provides his detention he, in fact, is guilty and is not entitle to receive any remedy.

In civil responsibility the intentional guilt of the loser exempt the other party from responsibility because such an intention interrupted the relationship between the losses and the act of the defendant and in these cases the intender is responsible to the losses.

According to article 256 criminal procedure Law (1392) in the following aspects the detained person is not entitle to be compensated

a) His detention arising from refusal of the documents of his innocence

b) He himself causes the reasons of his detention unlawfully. Finally if one is detained for other reasons cannot demand any damage

5. Chapter four

5.1. Moral loss in judicial precedent and its evaluation

5.1.1. Moral loss in judicial precedent.

Before approval of the criminal procedure law (1392) there were diversity in accepting moral loss in judicial precedent of Iran, some courts pass judgment to compensate the moral loss and some of the supreme court have confirmed them and some rejected it.

The Legal Office of the Judicial in its advisory notion no 7/5947 dated 30/10/1369 has stated that to pass judgment about moral loss is lawful.

Because of practical difficulties and increasing the average of damage in country and accumulation of action and cases and delicacy of the subject (moral loss) the courts are no interested to engage

themselves with to kind of complicated and difficult matters.

Consider the following cases which show the mentioned diversity:

1) In 1384 in Branch No 21 (civil court) in Karaj the moral loss has been judged but was breached in the court of appeal in Tehran in file No 25/83-1026, with this argument that the moral loss is not claimable.

2) In another file No 84/1-1765 Branch one in Supreme Court a moral loss claim has been accepted. (Approved)

Now with regard to the Criminal Procedure Law (1392) these diversities have been settled.

5.1.2. How moral loss evaluated

The legislator has not given any measure to evaluate the moral loss.

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In the case of material loss there is no difficulty because this kind of loss is compensable by its equivalent or by paying its price and in the case of disagreement the court solves it by obtaining the notion of experts.

In the case of moral loss there is not any clear or certain criterion. It seems that the best method here is to observe the circumstances which have been mentioned in article 3 and 5 of the Act of civil responsibility. One of them is referring to custom or custom understanding.

The court, considering the situation of the parties from the point of view of financial and social aspect, decides on the amount of damage and issue order for compensation.

Though the court does not need to obtain the view of experts in this field but it can take advantage of the expert's view if it deems advisable or proper for evaluating the moral loss. To refer to judicial precedent is recommended.

6. Conclusion

To receive moral loss and rendering of judgment about it has been accepted in the most legal systems in the world. In Iran it also has been accepted in order to respect to the greatness and honor of human being and observing the higher border of humanity and also jurisprudence precedent, the role of prohibition of detriment, logical and consistent usages and the acts of parliament.

The constitution Law, the Law of civil responsibility and the criminal procedure code approved in 1392 expressly refers to it. Even the state is obliged to pay the moral loss of those who had been detained and then known innocent, if they claim it.

It is logical if the judicial precedents takes positive steps in these cases and try to give judgment to compensate the moral loss with regard to the circumstances and to the financial and social situation of the parties. Because the effect of moral

loss is not less than material one, and therefore the judicial precedent must not hesitate in using of the financial remedy in this field.

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