

Comparative Analysis of the Foundations of Victim's Moral Damage Compensation in Iranian and American Law

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Moral damage refers to harm inflicted upon non-material assets and is twofold: harm to emotions, which pertains exclusively to natural persons, and harm to reputation, which targets individuals' credibility. In Islamic jurisprudence, there is no distinct discussion of harm and its classifications. However, jurists have made scattered references to moral damage within the context of the "no-harm" rule (*la darar*) in chapters concerning *diyat* (blood money) or other related principles. By relying on three jurisprudential rules—"no harm" (*la darar*), "no injury" (*la jarah*), and the rational conduct of reasonable people (*bina al-uqala*)—the permissibility of claiming moral damages in Islamic jurisprudence is established. Under Iranian statutory law, the possibility of moral harm is recognized, granting the aggrieved party the right to claim moral damages in addition to material damages. This right is primarily based on the Civil Liability Act of 1960 (Iranian calendar: 1339). Furthermore, the Code of Civil Procedure for Public and Revolutionary Courts of 1999 (Iranian calendar: 1378) explicitly acknowledges the right of the injured party to claim moral damages, even providing a definition of moral damage in a specific note. In American law, the basis for compensating moral damages is established through codified regulations and the legal framework governing civil liability for torts.

Keywords: moral damages, jurisprudential and legal foundations, liability principles, compensation methods

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1. Introduction

Among the relatively complex issues in the field of law is the topic of compensating moral damages, which involves the manner and feasibility of claiming such damages, as well as their instances. Islamic jurists have provided definitions of the general concept of harm and have referred to some types of moral damages. Most jurists consider any harm inflicted upon a person's body, reputation, or other aspects of human dignity as damage.

Compensation for moral damages in Islamic jurisprudence is based on acceptable and justified principles. The "no harm" (*la darar*) rule is one of the fundamental tenets of Islamic jurisprudence and serves as the basis for numerous transactional and devotional rulings. The scope of compensating moral damages is extensive, and the "no harm" rule can be invoked to establish civil liability. Various examples of moral damages are mentioned in Quranic verses and narrations.



Additionally, rational individuals (*uqula*) have deemed it necessary to compensate individuals for moral and material damages, as failing to address such harm is considered unjust. In the divine perspective, injustice is a reprehensible and immoral act. Therefore, failing to compensate moral damages would also be viewed as undesirable by God. Despite the absence of a well-defined method for compensating moral damages in Islamic jurisprudence, common methods of compensation, both monetary and non-monetary, recognized in customary and statutory law are accepted in Islamic jurisprudence. In some cases, the silence and lack of prohibition by Islamic law can be interpreted as approval and a religious ruling.

Most legal scholars also acknowledge the legitimacy of compensating moral damages, and specific measures have been devised to address such damages in various legal systems. However, there is no fixed and uniform standard for compensating moral damages in current laws and regulations. This legal gap has resulted in diverse judicial practices. In some instances, due to the legislature's failure to explicitly specify methods for compensating moral damages and the ambiguity surrounding the ruling, courts avoid issuing judgments on this type of damage. Nonetheless, the theoretical framework for moral damage compensation has significantly evolved, and laws concerning it have been established.

The primary research question is: What are the foundations for compensating moral damages in Iranian and American law? Given the focus on a comparative analysis of Iranian and American law, this research demonstrates innovation. Relevant resources include:

1. *"Civil Liability for Moral Damage Compensation in Iranian Law"*, authored by Hassan Afshar in 2022, which analyzes the pillars and causes of moral damage compensation, exemptions from liability, and the procedural rules for claiming moral damages and methods of compensation.
2. *"Compensating Moral Damages with Emphasis on Article 14 of the Criminal Procedure Code"*, published by the Judicial Research Center in 2023, which critically examines and reconsiders the position of Article 14 of the Criminal Procedure Code in light of jurists' and legal scholars' perspectives.
3. *"Feasibility of Financial Compensation for Moral Damages"*, authored by Mohsen Esmaeili in 2023, which asserts that the goal of compensating moral damages lies within the general principles of civil liability. The author concludes that, under these principles, moral damages must be compensated, often through financial means.

In the Iranian legal system, compensating moral damages is also permissible. The possibility of claiming moral damages is recognized under Article 9 of the Criminal Procedure Code and Articles 1, 2, 8, and 10 of the Civil Liability Act. Furthermore, based on Article 171 of the Constitution, the legitimacy of compensating moral damages is established. This is because acknowledging the liability for moral damages caused by judicial rulings, as per the mentioned article, and the absence of any specific provision limiting such liability to particular cases, allow for the inference of moral damage compensation under this principle.

2. The Concept of Moral Damages and Its Types

The author of *Legal Terminology* defines moral damage as: "A harm inflicted upon the honor and dignity of the injured party or one of their relatives. For example, disclosing a patient's secret may harm their reputation. Such damages are claimable under the Civil Liability Act of 1960, Article 9 of the Criminal Procedure Code" (Katouzian, 2024).

Dr. Naser Katouzian acknowledges the difficulty in distinguishing moral damage from material damage, stating: "To capture its concept, moral damage can be described as harm to emotional and non-material interests, such as physical pain, emotional suffering, loss of reputation, dignity, and freedom" (Katouzian, 2016). Damages can be categorized based on various criteria. Regarding their impact, damages may be individual (affecting a specific person) or collective (impacting a group without identifying specific individuals as affected) (Lorassa, 1996, pp. 105-109). In Islamic law, some scholars categorize damages into financial harm (affecting assets), bodily harm, and moral harm (affecting honor and dignity). This categorization also exists in French law. Many legal scholars distinguish damages as material (affecting assets and financial rights) or moral (impacting non-material interests) (Safaei, 2010).

Some jurists, noting the overlap between material and moral damages in certain cases, have divided damages into three types: material, moral, and mixed (Lorassa, 1996, p. 108). Additionally, damages can be classified based on their cause into three categories:

1. Damages arising from breach of contract,
2. Damages caused by non-contractual negligence, and
3. Damages resulting from the commission of a crime (Mirzaei & Tirafkan, 2021).

3. Jurisprudential Foundations of the Obligation to Compensate Moral Damages

Among the jurisprudential principles justifying the claim for moral damages are the rules of *la darar* (no harm) and *la haraj* (no hardship). In addition to rational practices, these principles in natural law hold the party causing moral harm responsible for its compensation (Davoodi, 2011).

If a judge's error or negligence in determining facts or applying a specific ruling causes material or moral damage to an individual, the negligent party will be held liable under Islamic principles. In cases where moral damage, such as harm to one's reputation, results from judicial misconduct, efforts must be made to restore the individual's dignity. Islamic procedural principles, such as the unity of the judge and the finality of judicial rulings, ensure accountability under stringent criteria established for judges.

Although Article 232 of the Criminal Procedure Code of 1999 prescribes the finality of rulings by lower courts, its exceptions are so extensive that the principle is substantially undermined (Asadi, 2002).

"Moral damages cannot be monetarily quantified. Even if compensation is paid for pain, suffering, or disfigurement, it does not eliminate the pain, erase the sorrow, or restore lost beauty" (Hakimnia, 2007).

Baudry and Lacanti argue that while material damages aim to restore the injured party's assets, the same logic does not apply to moral damages, as they do not reduce one's material wealth. When moral harm impacts reputation, compensation may lack meaningful redress. This perspective holds that moral damages and financial compensation are incomparable; monetary awards cannot restore emotional suffering (Naqibi, 2007).

Islamic jurisprudence also supports the necessity of compensating moral harm through principles such as *la*

darar, causation, and other related rules. Among these, the principle of *la darar* holds the highest precedence. This principle has been consistently invoked in Islamic jurisprudence since the Prophet's time and remains central in contemporary discussions (Mir & Jalalian, 2016).

The *la darar* principle explicitly supports the obligation to repair moral harm. Foundational evidence for this principle is derived from numerous Quranic verses and narrations, such as the prophetic tradition regarding Samrah ibn Jundub, which emphasized the importance of preventing moral harm by restricting his unwarranted intrusion into a neighbor's home (Makarem Shirazi, 2001).

Legal scholars broadly agree on the necessity of compensating moral harm based on the *la darar* principle. However, jurisprudential debates arise regarding whether the principle establishes liability directly or merely prohibits harm. This principle forms the basis for judicial decisions requiring the rectification of moral harm (Amiri, 2015).

The obligation to compensate moral damages under the *la darar* principle has garnered significant support, indicating that individuals responsible for causing harm must be held accountable. These interpretations necessitate further analysis of the principle's legal and jurisprudential implications (Babaei, 2005).

4. Legal Foundations for Compensating Moral Damages Arising from Crimes in Iran's Legal System

This section examines the stance of various legal frameworks regarding the redress of moral damages, with each law discussed separately.

4.1. The Constitution of the Islamic Republic of Iran

Several articles of the Constitution emphasize the importance of protecting moral rights and mandate compensation for moral damages inflicted on individuals. According to Mohammadi et al. (2018), Articles 22, 23, 24, 25, 32, 38, and 39 specifically address these issues.

- **Article 22** states: "The dignity, life, property, rights, residence, and occupation of individuals are protected from infringement, except as permitted by law."

- **Article 23** stipulates: "Inquisition into beliefs is prohibited, and no one may be persecuted or interrogated solely on the basis of their beliefs."
- **Articles 24 and 25** address freedom of expression and the privacy of correspondence, telephone conversations, telegraphic communications, and other forms of communication, prohibiting surveillance and investigation.
- **Article 32** prohibits unlawful arrests, while **Article 38** forbids all forms of torture for extracting confessions or information. Additionally, **Article 39** prohibits any form of insult or harm to the dignity of individuals detained or exiled under legal orders, deeming such acts punishable.
- **Article 171** explicitly mentions moral damages and the necessity of compensation, stating: "Whenever a judge's fault or mistake in fact-finding, adjudication, or application of a specific ruling causes material or moral damage to someone, the judge is liable for compensation under Islamic standards in cases of fault. Otherwise, the government is responsible for compensation. In all cases, the dignity of the accused must be restored" (Mehrpour, 2009).

4.1.1. Iranian Criminal Procedure Code

The Criminal Procedure Code of 2013 explicitly addresses moral damages resulting from crimes. Chapter Two is dedicated to public and private claims, with Articles 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, and 20 detailing the characteristics of complainants and private plaintiffs and the procedures for handling claims related to moral damages (Khodabakhshi, 2014).

- **Article 14** states: "The complainant may demand compensation for all material and moral damages, as well as any possible gains lost due to the crime."
 - **Note 1** defines moral damages as emotional distress or harm to personal, familial, or social reputation and dignity. Courts may order remedies beyond financial compensation, such as requiring apologies or publishing verdicts in the press.

- **Note 2** specifies that "possible gains lost" apply only to cases that qualify as actual deprivation. These provisions, including those related to moral damage compensation, do not apply to certain crimes defined under Sharia law or cases involving *diya* (blood money).

Moral damages under this law include emotional distress and harm to individual, familial, and social reputation. Remedies may include requiring apologies or publishing judgments. The interpretation of "possible gains lost" requires further analysis, particularly in relation to civil procedure.

- **Article 515 of the Civil Procedure Code** declares that "compensation for damages resulting from 'possible gains lost' is non-claimable." Scholars argue this is not because such losses are irreparable but because they are not considered damage under the law (Shahidi, 2023).

4.1.2. Iranian Penal Code

4.1.2.1 Islamic Penal Code of 1991

The 1991 Penal Code lacks explicit provisions allowing claims for moral damages but allows interpretation in certain instances. For example, discussions surrounding *arsh al-bikāra* (compensation for loss of virginity) could be considered moral damages as they pertain to harm to reputation and dignity (Katouzian, 2024).

Under **Article 441**, "The destruction of a girl's virginity using a finger, leading to her inability to retain urine, requires full *diya* for a woman in addition to *mahr al-mithl* (a dowry equivalent)." Other provisions in this law also implicitly recognize moral harm, such as **Article 58**, which mandates restoration of dignity in cases where judicial errors or negligence result in reputational harm.

4.1.2.2 Islamic Penal Code of 1996 (Ta'zirat and Preventive Punishments)

The 1996 Penal Code criminalizes certain morally harmful actions, such as insulting religious sanctities and defaming individuals (**Article 608**). These crimes are punishable alongside civil liability, allowing for both penal and civil remedies for material and moral damages (Abbaszadeh, 2014).

- **Article 648** imposes penalties on professionals (e.g., doctors, pharmacists, midwives) who disclose confidential information, prescribing imprisonment or fines for unauthorized disclosure of secrets.

4.1.2.3 Islamic Penal Code of 2013

The 2013 Penal Code continues to address moral damages within its sections on *diya* and *ta'zirat*. For instance, **Article 658** under *diya* and **Article 648** under *ta'zirat* address moral harm.

A notable change in the 2013 Penal Code was the removal of preventive punishments as a separate category, consolidating penalties into three categories: *hudud* (prescribed punishments), *qisas* (retaliation), and *diya*. However, the approach to restoring dignity (a form of moral harm) remained unchanged, as it is governed under *ta'zirat* provisions (Nik Farjam, 2013).

4.1.2.4 The Civil Liability Act

Although earlier laws did not explicitly address the claimability of moral damages, under the **Civil Liability Act of 1960 (1339)**, victims of crimes can request the criminal court to hold offenders liable for compensating the moral damages they have caused. Below are the relevant articles of this act that address moral damages (Civil Liability Act, 1960):

- **Article 1:** "Anyone who unlawfully, whether intentionally or negligently, causes harm to the life, health, property, freedom, dignity, reputation, commercial standing, or any other legally recognized right of another, thereby causing material or moral damage, is liable for compensating the harm caused by their actions."
- **Article 2:** "If the injurious act results in material or moral damage to the victim, the court shall, after investigation and confirmation, order the perpetrator to compensate for the damage. If the act results in only one type of harm, the court will issue an order for compensation of that specific type of harm."
- **Article 8:** "Anyone who causes harm to another's dignity, reputation, or standing through false statements or publications is responsible for compensating the damage. If such statements or publications harm the

goodwill or patronage of customers, the affected party may request the cessation of such actions and, upon proving negligence, claim compensation for the damages."

- **Article 9:** "A girl who, due to deceit, threats, or abuse of authority, consents to an illicit sexual relationship may claim compensation for both material and moral damages from the perpetrator."
- **Article 10:** "Anyone whose dignity or personal or familial reputation is harmed may demand compensation for both material and moral damages from the perpetrator. If the significance of the harm and the nature of the perpetrator's negligence warrant it, the court may, in addition to ordering financial compensation, issue orders for non-financial remedies, such as requiring apologies or publishing the judgment in newspapers."

5. The U.S. Legal System

In the United States, compensation for moral damages is recognized and supported by two legal frameworks: one based on codified rules and regulations and the other on tort law principles. These systems collectively underpin both civil and criminal liability for moral damages (Posner & Sunstein, 2004).

5.1. System Based on Codified Rules and Regulations

The codified system for compensating moral damages has a 30-year history. One of its key features is addressing the lack of standardized metrics for measuring moral damages. Courts have been tasked with assigning compensation for physical and moral harm, leading to variability across judicial rulings. This inconsistency has created significant challenges, with juries often awarding exorbitant damages (Stewart, 1995).

Although compensation amounts were standardized for victims, resembling Iran's *diya* (blood money), the American system tailors compensation to societal needs. Public and sociological surveys are often used to determine compensation amounts, introducing innovation and adaptability into the codified system. For example, the compensation for the death of an adult differs from that of a child, as harm to dependents is

weighed more heavily for adults (Posner & Sunstein, 2004).

This system raises critical questions, such as whether standardized compensation for all individuals is fair and what drives the differences in compensatory approaches between legal systems. Codified systems aim for uniformity by focusing on pre-incident rules, whereas tort law emphasizes post-incident remedies. Notably, U.S. states may adopt either or both methods based on cultural and historical contexts (Dobbs, 1993).

5.2. Tort-Based Civil Liability System

Recognition of moral damage compensation under tort law in the U.S. began in the 19th century. Over time, specific rules and laws were developed, allowing victims and their families to seek compensation for civil wrongs. Each state applies its own principles and regulations, creating jurisdictional variability (Dobbs, 1993).

Despite these differences, most courts recognize non-economic damages under tort law, including:

- Compensation for pain and suffering experienced by the victim before death due to a civil wrong.
- Compensation for grief and loss of companionship endured by the victim's family or heirs.

Currently, all U.S. states allow claims for material damages. States that apply the "harm to relatives" standard aim to cover all damages caused, including the loss of financial and emotional support provided by the deceased (Micu, 2013).

Many American courts consider non-economic damages in their decisions, as juries are less influenced by rigid legal arguments and more responsive to emotional appeals. This approach often leads to awards for intangible damages that might otherwise be excluded (Dobbs, 1993). While such damages may appear arbitrary, proponents argue that they reflect "collective wisdom."

Currently, five states explicitly recognize moral damage compensation: Hawaii, New Hampshire, Connecticut, New Mexico, and Arkansas (Lahe & Kull, 2016).

6. Conclusion

In the current legal framework of Iran, moral damages are significantly acknowledged. The legislature, in the

Constitution, civil laws, and particularly criminal laws, regards moral damages as inherent to liability and necessitating compensation.

First, the Constitution, under Article 171, states:

"Whenever material or moral harm is caused to someone due to a judge's error or negligence in determining facts, applying rulings, or adapting rulings to specific cases, the judge is liable for compensation under Islamic standards in cases of fault. Otherwise, the state is responsible for compensation."

This article places moral damages on an equal footing with material damages, explicitly identifying the perpetrator as responsible and recognizing the injured party's right to claim damages for moral harm.

Second, the Civil Liability Act of 1960, a key piece of legislation for addressing material and moral damages, elaborates on the concept of moral harm. Article 1 of the act declares:

"Anyone who unlawfully harms another's life, health, property, freedom, dignity, reputation, commercial standing, or any other legally recognized right, causing material or moral harm, is responsible for compensating the damage caused by their actions."

Like the Constitution, this article equates moral and material harm and explicitly identifies the perpetrator as responsible. Articles 2, 8, 9, and 10 of the same act further address moral damages. Articles 9 and 10 explicitly reference moral harm, while Article 8 uses terms like "damage to dignity, reputation, or familial and individual standing."

Additionally, Article 141 of the Penal Code of 1983 recognizes moral damages alongside material damages. Earlier criminal laws, some still valid, also emphasize this matter more explicitly than current laws. For instance, Article 212 (revised) of the former Public Penal Code and Article 20 (Note 1) of the previous Press Law provide explicit provisions for financial compensation for moral harm.

Furthermore, Islamic sources, including the Qur'an and hadiths, emphasize the prohibition of inflicting harm, whether material or moral. Notable examples include:

1. The narration from Ibn Abi Umayr, citing Imam Sadiq (A.S.), regarding a camel-driver's liability for harm caused by startling a camel, which includes both material and moral damages. The narration states:

2. "Anything that causes harm to the path of Muslims renders its perpetrator liable for resulting damages."
3. The narration from Zurarah, citing Imam Baqir (A.S.), regarding the famous "no harm" (*la darar*) principle, related to the case of Samrah ibn Jundub, where it was ruled:
4. "Remove the tree and throw it to him, for there is no harm or reciprocated harm in Islam."
5. The narration from Abu Sabah Kanani, citing Imam Sadiq (A.S.), which reinforces the principle of liability for causing harm to Muslims.

These narrations and principles have been discussed extensively in Islamic jurisprudence and underline the responsibility for compensating moral damages.

In the United States, tort law explicitly recognizes moral damages, demonstrating the legal foundation for such compensation. U.S. law considers both pre-incident and post-incident circumstances and awards compensation for moral harm under civil liability principles. Furthermore, damages for grief, including harm suffered by heirs and family members, are defensible under U.S. law, emphasizing the importance of addressing moral harm comprehensively.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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