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2

Comparative Study of Sources and General Content of Moral Damages in Iranian Civil Liability Law and International Human Rights Instruments

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Abstract:

In the Iranian Law, since many legal rules comply with Shiite jurisprudence, compensation is justified by "principle of no harm". The subject of civil liability is compensation for losses caused by fault or risky activities of a person.

In the present study, we have tried to explain and analyze the place for moral damages, in Iran's rights compared to International Human Rights of Conventions as one of the most important rules in this field. The results suggest the Iranian legal system compared to International Human Rights of Conventions legal systems, despite the fact that, in various rules, moral damage is referred scatter, but no certain legal system can be considered for it.

Therefore, nowadays damage, as an important topic in law, holds a special place in the legal system of the developed countries. Thus, not only restitution could be sought for any physical damage, but also claims could be made to be reimbursed for any moral damages suffered. In this paper, it is tried to show that any moral damages suffered, if the necessary conditions of certainty, legitimacy, directness and other criteria are met, claims for compensation and restitution could be made.

Keyword: Moral damage, Iranian Civil Liability Law, European Union, Compensation, International Conventions of Human Rights

1- INTRODUCTION

The aim of civil liability rule is the compensation of loss. The loss and damage that due to being destructive harms another individual, which may be moral or Material/financial damage and the Material damage is reduction of personal wealth of the individual and preventing its increase and moral/spiritual damage is the damage to moral wealth and not financial thing like the damage to reputation and feelings. After in case all the conditions of civil liability are gathered, the factors of the damage should be compensated and the individual who is affected is the worthy of it. As it is relation creates between the loss bearer and damager who should be assessed for to pay that damage and drop out of the obligor from the responsibility. Matters on compensation of moral damage are one of the most controversial and topical in enforcement practice for today, especially in developing countries, such as Iran. This is because the matters of protection of the individual, his moral rights and benefits are the same priority as the protection of property rights.

Compensation for such damages is not only in accordance with the holy laws of Islam, but also justice and social security are guaranteed by its complete implementation. The objective of the religious law makers from enacting laws and rules is protecting religion, wisdom, race, property and self. Protecting self includes two aspects: physical and moral.

From the Islamic jurisprudence point of view, the main and widely accepted by the law experts source, which seeking compensation for any moral damages could be based on is the principle Islamic law of, 'no harm and no person who harms is allowed in Islam'. This principle is accepted by all the Islamic Law experts. In the holy Quran, gossip, nitpicking, and unreasonable search in others' affairs is condemned in verse 12 of the holy book of Hajarat. Moreover, in verses 19 and 20 of the holy book of Noor false accusation and vilification is strongly prohibited. The rules of waste, Tasbib, Laharaj and Banayeoghala and the rule of almaghrooryarjeoela men ghorreh (one who has misplaced pride could seek restitution from the one who has induced this pride in him, are what could be referred to in the Islamic Jurisprudence when seeking compensation.(Khoeeni, Mahdavi, Koroghli, & Zaher Mohammadi, 2014)

Establishment of Islamic Republic system in Iran provided again an opportunity where Islamic jurisprudence may retrieve its prior role in managing the society and government.

Formation of a system based on guardianship of the Islamic Jurist and emphasis of Constitutional Law on the point that "all civil, criminal, financial, economic, administrative, cultural, military, political, etc. rules must be based on Islamic principles" (Fourth principle of Constitutional Law) make Shiite jurisprudence areas to be engaged in the

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sophisticated political matters and remedy management of this newly established government.(Zakeri, 2015)

Although Imam Khomeini tried in exile and after victory of Islamic revolution to explain theoretical bases of Islamic government thought and response to the challenges of this thought, it must be confessed that abundant problems of the first decade of Islamic republic system sovereignty did not permit him to elaborate all he had in the mind. Albeit Imam continually sought to provide proper mechanisms for managing the society based on Islam until the last years of his life, and his messages and statements during 1987–1989 regarding authorities of Islamic ruler, guardianship of the Islamic Jurist, and formation of Expediency Discernment Council confirm this matter.

However, many researches have been done in moral damages, in the rights of Iran, but so far, no independent research has been done in the field of comparative study between rights in Iran and International Human Rights of Conventions , in the field of moral damage and this research tries to do this important work. The basic question, which is raised in this context, is that, what is the position of moral damages, in Iran and International Human Rights of Conventions and what are the manners to compensate moral damages in the rights of the two cases? Research Hypothesis can also be raised in this way, that in the legal systems of the two cases, moral damage has been accepted, with the exception that in the rights of the International Human Rights of Conventions, it is made clear, while in Iran's rights, in different laws, the moral damage is noted. in Iranian law, no certain way is mentioned explicitly, but we can refer to different ways, such as an apology and rehabilitation. This paper tries, using analytical, descriptive methods and library studies to examine the question and hypotheses. In this regard, first the concept of damages and moral damages is explained, then, the status of moral damages is explained in Iran and International Human Rights of Conventions, and in continuing the way of compensation for moral damages are explained in two legal systems, and eventually, results have been raised.

The legal research was primarily based on literature and documents extracted from studies on the legislation, books on pertinent legal sciences, besides court decisions.

Such contributions were mainly originated from the study of civil rights books, besides the decisions from the Iranian Courts of Law, or jurisprudence.

In the legal field, the literature review is the method of choice available for the researchers, considering that a study approaching legal issues cannot be developed without mentioning the laws which regulate the theme, or the Court decisions that applied such laws to the conflicts of interest existing in society .

2- THE CONCEPT OF LOSS (DAMAGE)

About Hadith of la Zarar, Akhund Khurasani writes in investigating the cause: "Loss is what is against the interests, that is, harm to the life or property or part of the body or reputation or property". (Khorasani, 2004)

Loss is loss of what is owned by the human, including life, reputation or property or limbs and body parts. So if a person's property or body parlor life is lost through the loss or partial loss or if he dies, or his reputation is harmed, whether intentional or unintentionally, then he is called as harmed. However, according to customary law, loss of profit is also loss in case it should be obtained. He explicitly stated that criterion of loss is customary law . (Katouzian, 2008)

According to the Iranians lawyers definition, damage means the property which should pay by a person who causes financial loss to loser.(Jafari Langeroudi, 1999) Others have said that, if a defect, creates in property or a certain benefits loss or if indemnify insert to health, prestige and feeling of a person, in this time, damage has been occurred, reducing of person property and prevention of its excess in any situation, is his/her infliction . (Katouzian, 2008)

According to other definitions, the damage is a detriment for financial or non-financial benefits of loss and the word of damage or loss which is a condition of civil responsibility creation have same meanings.(Jurdan, 2006) Law doesn't define the term of damage, but mentions various examples of damage under this title or other names such as loss, detriment and tort. For example; trial compensation, delayed compensation payment the compensation resulting from lack of commitment, delay in commitment compensation (art.515-522 of civil procedure code 2000). also, legislator doesn't present the precise definition for material and moral damage.

But The Law of Civil Liability Act 1960, Code of Criminal Procedure(1999) has pointed to instances of it. What it is concerned in this research is common meaning of damage which consists incurring of damage that in non-financial damage usually uses the term of loss the damage that can be direct on un-direct. Which divided in 2 general sections: Material damage and moral damage.(Eyvazi, 2013)

3- MORAL (NON-MATERIAL) DAMAGE AND ITS DEFINITION

The notion of 'moral damages' derives from the French concept of 'le préjudice moral', which refers to a wrong to an individual's emotions, honour or reputation.(Jagusch & Sebastian, 2013) Moral damages are thus, in the civil law tradition, compensatory – they are claimed pursuant to the principle of full reparation in the French Civil Code.("French Court of Cassation, Commercial Chamber," 15 May 2012) The right to recover moral damages as compensation is explicitly set out under several civil codes in the Middle East, including most notably the Egyptian, Libyan and Lebanese civil codes.(M; Shahidi, 2003) The assessment of moral damages, including the quantum of such damages, in France is subject to the court's discretion. (Mehmannavazan, 2010)As the conduct of the defaulting party will not, in principle, be relevant to the court's assessment, an award of moral damages cannot, therefore, be characterized as punitive.(Mohtashami , Holland , & El-Hosseny, 18 November 2016)

English law imported this terminology from EU intellectual property law. Moral damages equate to non-pecuniary loss, which English courts can compensate, including

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in contractual and commercial matters. These particularly cover physical inconvenience or discomfort, pain and suffering and loss of amenities, mental distress and social discredit.(Mohtashami et al., 18 November 2016)

Notwithstanding that moral damages are considered as compensatory in both the civil and common law systems (as well as in international law), they stand distinct to monetary damages. Moreover, certain recent investment treaty awards demonstrate that moral damages are beginning to be understood as having a punitive (and therefore non-compensatory) function. We explore this development in the section 'Non-compensatory damages awarded in investment treaty arbitration' below.(Mohtashami et al., 18 November 2016)

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

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

Moral damage is any sort of damage upon one's personality as well as any physical or motional Harm . In other words, Moral damages can be concisely defined as "damages on emotional and non-financial interests" . Moreover, many Islamic texts have mentioned moral damages saying that "loss" includes the destruction of anything that a person has the right to have it whether in a person, honor, mental or a part of body .(Raouf & Angurajtaghavi, 2016)

Non-material damage includes damage to non-financial benefits such as emotional and physical pain and suffering, feelings, loss of reputation and freedom and with respect to paragraph 2 of Article 9 of the Code of Criminal Procedure and the last part of article one civil liability Act, the source of non-material detriment is harm to the rights and freedoms of the individual character and honor, or is the result of trauma. (Katouzian, 2008) Also in this regard, detriment to credits dignity of persons or trauma and in other words, moral damage or loss to prestige and emotions of persons are non-financial rights (non-material) loss, even hurting sense of friendship, family and religious as well as the suffering that occurs as a result of an accident can be claimed today as moral damages .(Safai, 1976)

Another author writes: "The non-financial damage includes physical injury like assault and battery, full and partial disability and losses caused by deprivation of liberty of the individual such as imprisonment, detention, deportation, unlawful deportation and finally non-material damage caused by bearing the suffering that and hurts the feelings of human spirituality" .(Fuyuzi, 1977)

What all these definitions show is definition by example rather than the concept and definition of rules for finding the instances. But all these definitions are an expression of the moral damages, whether to natural or legal person. Moreover, the damage has not a financial aspect unlike financial losses that apply to property with property rights.

By paying attention to principle of 177 from constitutional law and article 1 civil liability act, Moral damage is: "damage to reputation or credibility and character, body and spirit, and freedom and every legal right that is no material." With consideration of these principles We find that moral damage is the spiritual aspect and is not material. (Eyvazi, 2013)

4- CIVIL LIABILITY CONCEPTION

In law, liable means "responsible or answerable in law; legally obligated."(H. C. Black, Garner, & McDaniel, 2014) Legal liability is following the engagement party with answering to destructive behavior applied to meet the people.

The diagnostic criteria of legal responsibility, external appearance and behavior that it is causing harm to another. Responsibility means being responsible and being obliged to do what is and who is responsible if it does not fulfill the obligation of the obligation, will be held accountable.(Shahroodi, 2015)

Legal liability concerns both civil law and criminal law and can arise from various areas of law, such as contracts, torts, taxes, or fines given by government agencies. The claimant is the one who seeks to establish, or prove, liability. Claimants can prove liability through a myriad of different theories, known as theories of liability. Which theories of liability are available in a given case depends on nature of the law in question. For example, in case involving a contractual dispute, one available theory of liability is breach of contract; or in the tort context, negligence, negligence per se, respondent superior, vicarious liability, strict liability, or intentional conduct are all valid theories of liability.(O'Sullivan & Sheffrin, 2003)

Liability means legal obligations of individuals to compensate another for harm caused by the former, whether caused by negligence of his or due to his/her act. (Jafari Langeroudi, 1999) Within Islamic jurisprudence and Sharia, liability is synonyms with the guarantee and one who is responsible for the obligation is called responsible or guarantor.(Sharifi & Sherafatpeyma, 2016)

The need to compensate for losses suffered by a person is called civil liability. And such liability that is mainly borne by one who inflicts harm and negligence is sometimes used in broad sense where a person is held liable for breaking a law, promise and inflicts losses.

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
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In most cases, the civil liability is used in narrow sense in contrast with liabilities arising from breach of contract or delay in its implementation (contractual liability). (Sharifi & Sherafatpeyma, 2016) The civil liability in specific sense is when an individual is held liable for causing injury suffered by others without any contract being signed between the two. Such responsibilities that is referred to in general rules and the general principles of civil law under the heading of "extra contractual requirements" is also called extra contractual liability. Liability may be moral or legal.

The idea of civil liability is connected with the existence of a wrongful conduct, which is configured whenever imprudence, malpractice or neglect are present.

In order to achieve a comprehension of the civil liability concept, one should refer to the teachings by Pontes de Miranda:"Whenever we do what we do not have the right to do, it is certain that we commit an injurious act, as we reduce, against one's will, the assets represented by one's rights, or increase one's liabilities, which generally means the same".(Oliveira, Fonseca, & Koch, 2011)

Indeed, in most of cases, the legal duty of responsibility arises from a contract, a fact or omission, originating from the agreement between the parties or from the rule of Law. Therefore, civil liability can be simply defined as the obligation to repair the damage caused to someone.

In this sense, the understanding and conceptualization of civil liability from Maria Helena Diniz is very helpful: "Civil liability is the application of measures that oblige a person to repair moral or patrimonial damage caused to third parties, on account of one's actions, or actions by persons one is responsible for, by something that one owns, or simply by the rule of Law".(Oliveira et al., 2011)

There is no identical definition for civil liability in legal texts. Sometimes the phrase has generally utilized as "legal liability" against "criminal responsibility" and "moral responsibility". In this sense, all the following requirements out of contract titles are the subset of "civil liability": confiscation, loss, indirect causation, demand, inappropriate use, managing the other properties and damages resulting from the failure to perform the obligation and the harm caused by crime. But, some individuals also consider the "civil liability" more limited and have proposed independent discussion of some requirements out of contract such as confiscation, demand, inappropriate use, and managing the other's property. There is no definition for "civil liability" in law.(Fanazad & Shafie 2014)

However, it has been proposed in article 1 of the law on civil liability Act 1339. Everyone who does the damages to the life, health, property, freedom, reputation, or commercial reputation deliberately without legal license or as a result of recklessness, or according to any other right which has been provided by law, cause the damages which result in other material or moral harm is responsible for compensation. The definition is so general that include all the requirements alternative of the contract, sub-contract, crime, and tort. But, in the paper more attention has been paid to cases where the government has done damages to natural or legal persons out of require-

ments of contract, regardless of the issues exist in presenting a comprehensive definition for "civil liability".(Fanazad & Shafie 2014)

According to Mabsout, civil liability has two meaning in the terminology of rights:

1. The losses caused by crime which should be asked the court through lawsuit.
2. The responsibility of other action out of criminal cases like father responsibility for his children action.

Generally, when a person is assigned to compensate for the effects and results of damages done to others, he is deemed to be in charge based on civil law. The civil liability is either due to contract or non-contract which the harm is caused due to violation of general duty. In the former, if a person does the damage, he has to compensate for.(Fanazad & Shafie 2014)

5- CONDITIONS OF REALIZATION OF CIVIL RESPONSIBILITY

5-1- Harmful action

The existence of harmful action is of the columns of civil responsibility and when the harmful action is assigned to the agent he should be known as the one who is responsible for compensating the damage. So wherever a person is charged with doing something because of contraction and law and convention and refuse doing that and therefore causes damages to another person, so he will be responsible for it.(Sedaghat & Arefian, 2016)

5-2-Illegal action

In addition to the necessity of doing harmful action from the person, the mentioned action should be done in an illegal and illicit way; it means that the action has made damages should be considered inelegant in the case of discipline and morality so that it is possible to assume civil responsibility for the person. In spite of the fact that this principle is obvious the substance no. 1 of civil responsibility to demystification and necessitate this condition expresses that: "everybody who causes injuries to life or health or property or freedom of reputation or business fame or any other right that is known for the people by law and makes spiritual and financial damages to them is responsible for compensating the damage resulted from his action." (Sedaghat & Arefian, 2016)

5-3- Existence of damage

The first column of claims of civil responsibility whether it is conventional or compulsory, is the damage. Loss means damage to the person or his properties and one of the most important columns of civil responsibility is the loss. Generally, loss is divided into two groups of material and spiritual (virtual). By material or monetary loss it means the loss to the material benefits that are in the domain of the proper-

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
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ties of the person who is having lost and includes deficit, extinct, waste or deformed owning and hurts to the human's health. Spiritual loss is to the virtual rights of the human that has to do with the individual personality of the person such as freedom of speech or freedom of action.(Abbasloo, 2011)

5-4-Undoubtedness of the loss

One of the conditions of compensable loss is that the mentioned loss is certain and definite.(M; Shahidi, 2003) It means that the loss claimant should prove definitely and certainly that he has received a loss. This is a crucial term in compensation of conventional or compulsory damage because basically, compensating the loss is impossible unless with certainty about happening of the damage. So, it is mentioned in the provision 728 of trail custom law legislated in 1318 that, "the court gives the verdict of damage if the claimant proves that he has received a loss." Regarding the verb used here in this phrase it can be said that the loss should be happened (in the past) and on the other hand, the claimant should prove it based on this verdict and what that has happened is lawfully a definite issue .(Mehmannavazan, 2010)

5-5-Directness of the loss

The second term of the compensable loss is that the loss is resulted directly and without mediators from the called person action. In the case that the loss does not have direct causal relationship with the harmful action compensation of such action is not demanding and the agent if the harmful action cannot be sentenced.

There is no verdict about this term in the law of civil responsibility and civil law of Iran. But as it is mentioned in the start of provision 728 in the law of previous trial custom, the loss should be without mediator. (Sedaghat & Arefian, 2016)

5-6-The loss should not be compensated

Another term of the compensable loss is that the loss is not compensated at the time of demand and request in any way. This condition in necessary because the issue of civil responsibility is to compensate the damage and if the loss and damage is compensated in any way, so the issue of civil responsibility that includes the necessity of compensation of the damage to the damaged person will be eliminated and therefore the verdict to compensate the loss will not be valuable anymore .(Barikloo, 2008)

6- JURISPRUDENTIAL FOUNDATIONS OF CIVIL LIABILITY

1400-year history of relation of law and Islamic jurisprudential justifies inevitable relation of law and jurisprudence in Islamic states; however, new law doesn't accept many discussions of jurisprudential books, many issues discussed in jurisprudence are inspired by customs and can fertilize the new law and enrich it .(Sharifi & Sherafatpeyma, 2016)

Each theory of liability has certain conditions, or elements, that must be proven by the claimant before liability will be established. For example, the theory of negligence requires the claimant to prove that (1) the defendant had a duty; (2) the defendant breached that duty; (3) the defendant's breach caused the injury; and (4) that injury resulted in recoverable damages. Theories of liability can also be created by legislation. For example, under English law, with the passing of the Theft Act 1978, it is an offense to evade a liability dishonestly. Payment of damages usually resolves the liability. A given liability may be covered by insurance. In general, however, insurance providers only cover liabilities arising from negligent torts rather than intentional wrongs or breach of contract.

In commercial law, limited liability is a business form that shields its owners from certain types of liability and that amount a given owner will be liable for. A limited liability form separates the owner(s) from the business. This means that when a business is found liable in case, the owners are not themselves liable; rather, the business is. Thus, only the funds or property the owner(s) have invested into the business are subject to that liability. If, for example, a limited liability business goes bankrupt, then the owner(s) will not lose unrelated assets such as a personal residence (assuming they do not give personal guarantees). This is the standard model for larger businesses, in which a shareholder will only lose the amount invested (in the form of stock value decreasing). There is an exception to this rule that allows a claimant to go after the owners of a limited liability business where the owners have engaged in conduct that justifies the claimant's recovery from the owners. This is known as "piercing the veil."

Manufacturer's liability (product liability), a legal concept in most countries, reflects the fact that producers have a responsibility not to sell a defective product.

Economists use the term "legal liability" to describe the legal-bound obligation to pay debts.

6-1- The rule of causality

This is a legislative rule of Islamic jurisprudence, and is unquestionable, stating that everybody who causes loss is liable even if he doesn't know it is harmful and shall compensate for it, and civil liability is borne by the cause, for example one who constructs foundation of a several-story building and damages the neighboring house is liable and shall pay damages even if such damage is causes negligently. Causality is not subject to abetting while rule of loss is subject to it, causality has conditions and grounds, it has four grounds in Islamic jurisprudence including reasoning, consensus, Qur'an and hadith . (Jafari Langeroudi, 1999)

Holy Quran verses have numerous references to the rule of causality and responsibility such as Sura An'am (verses 164 and 104) and Surah Saba (verses 24 and 41) and Az-Zumar (verse 9) Ma'idan (verse 104) and Israel (16, 106 and 77) and (verses 51, 52, 53), referring to liability and liability of the cause, but the Hadiths also have the numerous references to this, which are beyond the scope of this paper.

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
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Conditions of causality in jurisprudence: In jurisprudence, terms of causality are the same as stipulated in the Civil Code and are summarized as follows:

1. Emergence of loss from positive or negative action of the cause
2. Capacity of the cause
3. Loss must be caused by fault of the cause (the relationship between loss and action)
4. The cause must not have mens rea.
5. Cause must not be perpetration in creating the loss.

The fifth term of causality is non-perpetration because if the cause perpetrates the harm then the cause doesn't match causality but matches the rule of loss, which is the case in which positive act of a person causes loss to another directly, for example, a driver hits his car to a shop recklessly and breaks the window of the shop, while in causality, positive or negative act causes loss to another with mediation. The act of the cause may be positive or negative: positive act is for example when someone put in the passage melon skin and passersby who carries his china and crystal with slides over it and breaks his china and crystal. The cause of negative act is for example when the guardian withholds from leasing property of his ward and withholds from the trading with the extra money of the minor. (Jafari Langeroudi, 1999)

6-2- Negligence

Known lawyers so far have offered various definitions of negligence; some have considered it as a violation of previous commitments. Infringement of cautious behavior or usual behavior, failing an assignment, violation of behavior whose observance is required for protection of others, violation of reasonable behavior are among famous definition. In all cases brought based on negligence, the burden of proof is on plaintiff. (Sharifi & Sherafatpeyma, 2016)

6-3- The causal relationship and negligence

Iranian Civil Code Article 334 states: "The owner or possessor of the animal is not responsible for damages caused by that animal unless he is negligent in keeping the animal, but in any case if the animal causes loss by any man's act, the source of losses will be responsible for damages .(Mohaqeq Damad, 2008)

Existence of negligence is necessary for establishing causal relationship, and without that, harmful act will not be capable of attribution to the cause. In other words, without infringing (fault), there is no causal relationship between the damage and the act committed.

No responsibility for the transmission can be established for person not involved in such transmission. But it should be noted that there is distinction and differentiation

between causal relationship and negligence. The causal relationship means the relationship between language and act of the subject, whether this relationship is distant or close. Mere establishment of causal relationship, especially a distant relation, for example, the causal relationship of carries of blood with the Blood Center cannot be accurate basis and unique basis of liability, but common practice recognize and assign the responsibility of compensation to the cause. In the examples of jurisprudence, all efforts are made to create a causal relationship and attribute losses the cause, while this causal relationship, in other cases, doesn't lead to responsibility without element of negligence.(Mohaqeq Damad, 2008)

On the other hand, it should be noted that choice of negligent cause and holding the latter liable doesn't result in disconnection of other cause with loss, but they are related to loss, as track carrying contaminated blood of hospital or veterinarians secretary who turned on sterilizing device for surgical instruments, etc. all are transmission-related, but only relationship that doesn't seem to create responsibility and liability.

Thus, contrary to the above, some jurists believe negligence is not the causal relationship, but there is a separate element whose existence at least in some cases is necessary to establish responsibility. So when several causes cause damage, the negligence element by being attached to one of them determines responsible cause. Yes, we may say that the customary law only consider causal relationship between the negligence and the loss as established and ignores the other causes, but this doesn't mean that element of negligence and the causality are one and same in causal relationship. (Mohaqeq Damad, 2008)

7- THE CIVIL LIABILITY THEORIES

The various theories and standpoints have been introduced about civil liability and its principle by scholars. Each of the theories has had some proponents at a period time of the history and has been accomplished. The main ideas are as follows:

7-1-Fault theory

The first question comes to the mind after a harmful event—especially if it is widespread and done numerous damages—is that who is at fault and responsible for? In case the accident is happened by a particular person and the damages have been done to a given individual/individuals, the subject is not so much ambiguous.

However, in case the accident is not imputed to a given factor and the maximum thing can be said is that the accident has happened due to legal person indifference, a legal person of public law—like the government and the institute related to it. In the case, the investigation is more intricate. As the point is proposed in various cases including bridge collapse, not having installed the guard and safety signs on the roadside and bridge, continuous malfunction lights, drilling the street without installing warning signs and cutting off the power continuously and frequently which all cause

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the abundant losses and damages. The point is proposed in factories explosion and fire, oil and gas refineries, educational and fun centers, etc. thus, according to fault theory the only reason can justify the responsibility of a person for compensation the damages is the causality relation between the fault and the loss. In other words, the first thing comes to the mind of a person seeking for the responsible for a harmful event is who the damages is done due to his/her fault. Accordingly, the lost person should prove the loss factor fault as a claimant. (Fanazad & Shafie 2014)

The question is being raised is that if it is necessary to seek for the main person who is at fault or it suffices to prove the responsibility and accountability of a legal or natural person. In such cases, if finding the guilty and proving his/her guilt is not impossible, there will exist a great hardship and consequently according to the view the right of claimant to compensation for the damages done unintentionally would be wasted and insisting to prove the guilt and finding the guilty doesn't permit us to achieve our main goal which is proving the civil liability of the cause of loss. Therefore, it seems it suffices the person to be accountable for and it is not necessary to find the guilty of an accident. On the other hand, the easy way to achieve the goal is to expand the concept of guilty and guilt is attributed to the legal person who is supporting the main reason instead of the direct and main reason.

As we observe, the votes manifest the fact that purpose and fault are not only the reasons of conscience guarantee, but also is its main and basic reason. So it can be said: wasting the others property is primarily the effect and purpose of the loss's causes and if the scholars don't explain the absence of difference between purpose cases and fault cases, the conception which express that civil liability is followed by the fault theory based on juridical, it was right and proper.

According to the fault theory, the only reason can justify a person's responsibility for compensation is the existence of causality relation between the fault and the damage has been done. The civil liability in the Europe and the other parts of the world was based on the fault up to 18 century, except for the article 1382 of French civil liability which had accepted the absolute and unlimited responsibility and the responsibility was radically based on the person's fault. (Fanazad & Shafie 2014)

7-2- Endangering theory

According to the theory, it suffices the causality relation to be in existence between the loss and action in order to the loss cause's responsibility determined. In other words, the action and activity of each natural or legal person endanger without existing the guilt or crime and should undergo its results. It means because the employers benefit from the job, the losses should be undertaken by him as well. For instance, if a company or factory takes an action to produce various products or a bureau is in charge of some social and economical affairs which benefit them, they should be responsible for the damages are done to individuals by their actions and their activities.

Apparently the theory has been emerged in response to the fault theory and indeed it accepts the responsibility without fault and it deems every harmful action to be guaranteed and it consider any activity which is generating interest to create the responsibility. Thus, in addition to the many criticisms, it is an optimal approach toward civil liability according to some scholars. There are some cases of acceptance this theory in religious texts:

If a person has been invited to another's house and he/she enters with the permission of host and in the meanwhile the dog of host hurts him/her, the host is responsible.

A person who is riding a horse or is dragging it, is responsible for the damages done to the properties by the animal.

A person who put the animal on the way of people is responsible for the damages done to individuals by the animal.

If a person dig a well on his/her land and cover it, but do not inform the others and somebody or something fall in it and lost, that person is responsible.

If a person drop the water on his property and another person's property is drowned due to that or fire in his property and is informed or suspicious of the harm, is responsible.

If a person's wall collapse due to the exhaustion and cause the human or animal to die or cause the financial loss, the owner of the wall is responsible in case he is aware of exhaustion.

As it is observed, according to jurisprudence the existence of causal relation between action and loss result in responsibility and it means that endangering theory is also has been accepted in jurisprudence.

7-3-The middle theory

According to the theory, the activity which is exotic and unusual results in responsibility. This view emphasizes on individual liberty and doesn't consider dangerous all their actions and activities but it only considers responsibility for those actions which are exotic and irregular.

While this theory supports the agent of loss and devise of harm, it is a criterion to achieve civil liability which is an abstract and subjective concept and it seems it is difficult to achieve and finally it will be relative.

Yet, it is evident in both religious texts and narrative sources. The cases such as digging wall in other's property or on the road travelling center, irrigation or opening the fire in one's own property to excessive necessity, riding the rental animal in an unusual way, and so on emphasize that performing the exotic and unusual action result in responsibility, because these actions are highly due to the fault of the agent or at least the role of fault is more prominent than the other factors. (Fanazad & Shafie 2014)

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

7-4-Loss separation theory

Based on this theory, the physical and financial damages and moral and economical damages have been separated and it has been predicted the responsibility without fault for the first time and the responsibility based on fault for the second type, because according to this conception financial and physical damages mean the loss insertion but moral and economical damages is to foreclose the interest. Therefore, if the damages are done to a person due to the other one's actions, the principle of liability is without the governor fault, but where one activity leads to interest insertion, the basic condition of responsibility is to take the blame.

What expressed about the theoretical principle of civil liability result us in coming to the conclusion that none of the theories can be accepted as the mere principle of civil liability and establish a justly system based on. On the other hand, the reality which is in existence within them cannot be denied. What is significant is to do the justice to the society and this logical goal is the only way to achieve the goal. It probably can be said: it's because of this consideration that no definite theory has been presented in jurisprudence regarding the civil liability. Sometimes it has been emphasized on the cause of fault, sometimes on the risk factor, and sometimes on violation the conventional and in some cases all the factors have been considered.

Therefore, the fundamental strategies on civil liability are to provide the justice and defend the rights of those who have been hurt by the actions and activities of natural and legal persons. In fact, what is important in this regard is the presence of the direct causality relationship between the loss and the doer of the action so that we can say: typically, in terms of feature the loss is necessary and judgment is the best criterion to distinguish between the overseer and those who have caused the damages. None of the triple titles, stewardship, causation, and creating the context has been presented in narrative texts. Apply the law as a loss title—intentionally or unintentionally—has the pivotal role and the particular texts apparently doesn't implicate beyond the conventional verity. (Fanazad & Shafie 2014)

8- CAUSATION RELATION BETWEEN THE HARMFUL ACT AND THE LOSS ENTRY

To fulfill responsibility should be established that there is a causation relationship between Loss and the harmful act i.e. the loss was caused by the action. Of course, if to cause an accident, the event must be one of the necessary conditions to realize loss, it was proven that the loss is not made actually. In this case, this is a loser who should prove that causality relationship exists between the harmful act and the harm, and until causality cannot be established, it cannot say that it is a harmful act.

To establish the causation relationship between the fault and a loss led to make the complex issues that cannot be found the solution for them except by the talent sense and evidences in every case. In the cases that, responsibility is due to the Per-

sonal action, it must confirmed causation relationship between the defendant fault and Loss entry. On the contrary, in an assumption, there is responsibility due to others action, thus, it is not necessary to establish. However, it must be proved that between the act and fault of the person who his acts responsibility is on defendant and loss entry, there is causality. For example, it is claimed that worker has damaged to another when working and the employer must compensate that. In this case, causation relationship between the fault of the employer and the Loss entry does not need to prove. But it must be established that the loss is resulting from the action of labor. It is also correct about the responsibility of the guardian of minors and the insane on his actions and so .(Katoozian, 2012)

9- THE HISTORY OF MORAL DAMAGE IN CIVIL LIABILITY LAW OF IRAN

The legal state of moral damages as mentioned above, among fund mental principles accepted by jurists and legal systems is the fact that moral damages are compensable, this is also accepted in the Islamic jurisprudence according to some Islamic rules .(Raouf & Angurajtaghavi, 2016)

Moral damages have been raised in the current Iranian laws and one of the most important laws in this regard is Civil Liability Law.

The history of moral damage in Iranian legal system can be traced back to 90 years ago in the former Criminal Code. Later the Criminal Procedure Code and the Civil Liability Code affirmed the statement of the Criminal Code on recognition of moral damage in the Iranian legal system.

Specifically, the provisions that are based on the compensation of damages is enacted Civil Liability Act 1950. Article 1 of this law provides that:

"Anyone who intentionally or as a result of recklessness without legal authorization to life or health or property or freedom or dignity or business reputation or to any other right that is established by law for persons, material or moral prejudice that causes harm to another, is liable to compensate for damage caused by their actions. " The theme of the material taken from Germanic law and the text of the first paragraph of Article 823 of the German Civil Code is very close. Another object of the law of civil liability for material damage is reparable article 6 of the cost of treatment and the patient's disability, in the event of the death and burial expenses paid pension necessary alimony people died during or afterwards; articles 8, 9 and 10 on the material and moral damage caused by the deficit of credibility, reputation and credibility. (Shahroodi, 2015)

As is seen, the law of civil liability recognized compensate for the loss in the range of losses and the compensation of damages to dramatically compared to the social development, but the main question the civil liability provisions of the plan: first, despite the extent of the damage is repairable-the need to compensate for all losses this is recognized in law? Secondly, if principally in our legal regime appli-

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

cable provisions of the act are and reflect the real situation of human rights in Iran? (Shahroodi, 2015)

The answer is yes to both questions is the difficulty and uncertainty. Civil liability act no way against all losses there. When damage Iranian lawyers have frequently been the subject of discussion, but the law does not mention the ability to repay them; including a range of moral damage suffered as a result of losing yakhsart severe physical and Johnny's soul, and mental shock, do not operate and enjoy a healthy environment and environmental degradation There are also some financial losses however, the disadvantage is that the common law, but the law does not mention the responsibility and ability to repay them; including the loss of financial position that actually exists, but not on the right, and lack of benefit chances. (Shahroodi, 2015)

Perhaps may be assumed that the damage is mentioned in the law of civil liability not imitative aspects, especially the last part of the rule, due to the popularity of all the damage has been compensated, but the letter of the law and accept the terms and-drop development compensation for damages due to the need to the reason for this has been provided. Also refer to the principle of the rule of law are taken (as specified by law in Germany and Switzerland) prove the opposite impression. As we shall see, the German law - the source of one of our civic responsibility to seems - not recognized compensation for all losses Lawyers and the courts of this country very carefully implemented article 823 of the civil code stipulates in article with the concept of opposition, much of the damage is not clear, it considered irrecoverable. In conclusion, it can be said that even the civil liability act 1950 and the compensation all damages not recognize the reference to the law in this regard, it is a misunderstanding. (Mazaheri Tehrani, 05.07.2013)

But the more fundamental question of law, civil liability, Iran's position in the current law and the validity and necessity of implementing it. This rule is derived from the German and Swiss law and many the exact translation of the items in the laws of the two countries. Many of the provisions of this law and the principles recognized in particular civil liability are totally alien to the Iranian law, the fundamental differences between civil law and legal history of Iran these conflicts and Islamic jurisprudence so that some lawyers after the enactment of this act, according to the prescriptions of the law about civic responsibility were civil.(Ghaemmaghami 1968)

Furthermore, the liability under this Act, the said Article is a fault and error, while Iran's rights, unlike typical western countries, never blame as the responsibility is unknown, but what is a civil rights law, landlord responsibilities, damage to the harmful act is only causality relation and in case of damage due to fault only used to establish causality. Another fundamental difference in how physical and human damage is calculated. Islamic jurisprudence and the laws of the revolution, with regard to the payment of a certain sum as compensation for physical damage and soul irrespective of social status and economic injured or responsible for the accident are determined and paid, while the civil liability act physical damage and life is determined accord-

ing to the above considerations it can be quite different from one person to another. There are also concepts and considerations in civil liability law that is totally alien to our principles and legal views and the new facility is about obvious ones this sentence articles 4, 5, 6, and 7 of the terms of fairness, the social and moral responsibility for the incident, how responsible and the injured party, and the consequences of physical and social cognition liability for damage assessment is responsible for the accident. (Shahroodi, 2015)

A system established by this law, even before the result of fundamental changes result of the Islamic Revolution in 1978, has been a major problem for transplant the body of our law, which was watered during the centuries of Islamic jurisprudence-in is included.

After the adoption of the constitution and the emphasis on Islamic Republic the implementation of Islamic law, particularly the legal rights of Iran, relies on the legal system, which in many cases in conflict with the principles of civil law jurisprudence and Islamic tradition and Iranian legal culture, it seems very difficult. Although the provisions of the civil liability act explicitly are not abrogated by the new rules, however, many of the provisions of this act and referred to the courts is not being practically abandoned.

Including the rules and regulations of the abandoned much of the damage is that the law has been introduced as compensation for damages. Insurances law and the penal provisions of the law that is also capable of compensating for physical damage and life is very difficult, or is unknown.

However, this insurance observation does not mean that the civil liability act 1970 is quite outdated and is not applicable in any part. (Shahroodi, 2015)

Article 9 of the criminal procedure act of 1956 had stated with total clarity that one could not only seek compensation for the physical damages suffered as the result of a crime committed but also do so for the moral damages inflicted and the profits lost. (Khoeeni et al., 2014)

In 1960, the criminal procedure clearly stated the fact that moral damages could be compensated for, and section 2 of the article 9 defined moral losses as harming one's dignity, credibility and any spiritual damage. However, despite all this clarity there still existed a major doubt on whether moral damage is open to compensation only when it is the result of a criminal act or compensation could be sought for damages suffered through acts which are not of criminal nature? (Khoeeni et al., 2014)

With enactment of the laws of civil responsibility, the rules in this area became more comprehensive and any type of moral damage became claimable in the common law of the Iranian courts, and even, article 8 of the laws governing the civil responsibility is solely about false publications which harm anyone's dignity, position and credibility. (Khoeeni et al., 2014)

Civil Liability Law had been enacted in May 6, 1960 was mainly derived from Swiss Obligations Law and German Civil Law and included 16 articles. When the bill

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

related to this Law was passing through the enactment process, deputy Minister of Justice declared in a speech in the auditoriums of this Ministry that, the main reason of preparing this bill was that the laws were not adequate for compensation based on current economic and social circumstances. So it can be stated that legislators of Civil Liability Law sought to complete Civil Law 1928 as regards "automatic liability" (Articles 307-337 of Civil Law). Civil Liability Law 1960 is the most important legal reference regarding compensation in a broad sense and moral damages. Article 1 of the mentioned Law provided that, Anyone who causes damages for life, health, property, freedom, dignity, business reputation or any other right of recognized for persons by law, without legal authority, intentionally or due to imprudence and bring about material or moral losses for another person will be responsible for compensation.

Article 2 has provided that claims for moral damages, whether associated with material damages or independently, may be investigated.So, one can state that according to "Civil Liability Law", anyone who causes material and moral losses is bound to compensate them.

According to Article 5, if physical injuries or damages to health of a person cause civil deficiency, the causer is responsible for all compensation of all damages. However it must be noted that compensation of moral damages will be based on conditions and features of claims for damages. That is, damages must be obvious, direct, uncompensated, and predictable and mere claim of a person cannot be heard. It is concluded that moral damages have an important position in Islamic legal issues and Civil Law, particularly in civil liability and have various examples. They are not confined to damages to dignity and personal and social reputation; rather they include physical injuries, disability of working, mental health, and beauty.

According to Articles 1, 2, 5, and 6 of Civil Liability Law, any of below losses could be requested in body injuries. Treatment costs, Disability compensation, Increase in living expenses, Moral damages.

In article 9 of this law, the possibility of seeking restitution by a girl who is forced to have an adulterous affair with another either through force, threat or just being a subordinate and fear of losing her job is mentioned. Moreover, article 10 of the same law gives the right to a person whose individual or family's dignity and credibility has suffered to seek restitution.

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

undue. Furthermore, it should include both an act or an inaction, because inaction could equally cause moral damages. (Khoeeni et al., 2014)

If the injury led to death of the injured person, "all costs particularly cost of burial" must be paid, and if death was not immediate, "treatment costs and losses arising from inability to work in the illness period are regarded as among damages".

Moreover, there are some forms of compensations, though very weak, for moral damages in other laws such as the business law with regard to inappropriate use of trademarks, …, or in laws protecting the rights of the authors, poets and artists and the laws governing the right of the press. The legal office of the justice department in a unified opinion, no. 136/10/30-7/5947, states as follows: The rules associated with seeking compensation for physical and moral damages, including the article 9 of the criminal procedure of 1960 still is in effect.

After the revolution 1979, the Constitution Act stipulated moral damage in principle 171.Article 171 of the constitution has also clearly talked about such claims, thus, seeking compensation for any damages is considered legal. According to the article 171, whenever, as the result of a mistake or a fault on the judge's part, a person suffers a physical or a moral loss, the guilty party is obligated; otherwise, the government must take the necessary steps to compensate the harmed and no matter what and how the restitution must be made.

For the first time, in the article 212 of the general penal law has predicted restitution for moral damages. According to this article, anyone who has committed one of the crimes mentioned in articles 2077, 208, and 209, beside the punishment assigned for the crime he/she must make payment of not less than 500 Rials to the plaintiff.

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

According to clarification 3 of the article 24 of 1979 law of the press, a plaintiff could seek compensation for physical and moral damages suffered as the result of a crime committed, but since this law is nullified by the press law of 1985, and in article 30 of his law, which has replaced the article 24 of the previous law, the clarification 1 is omitted, one could not to this law when seeking restitution for any moral damages.

In their interpretation of article 30 (1) of the press Act (1364), the Islamic jurisprudents of the Guardian Council declared that, the mentioned article- under which moral damage was recognized- is contrary to Sharia. Thus, the legislature in the amendment

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

of the Criminal Procedure Code eliminated moral damage from section 2 of article 9 of the criminal procedure code (1378).

By the elimination of moral damage from the Criminal Procedure Code (1378), some judges changed their approach and are reluctant to consider moral damage as a compensable damage; whereas, the existence of article 171 of the Constitution and the applicability of the Civil Liability Code leave no doubt over the recognition of moral damage under Iranian law. The criticism of some judges about the lack of any criterion for measuring moral damages is rejected by reference to article 3 and 5 of the Civil Liability Code. According to the stated articles, the amount of moral damages depends on the circumstances and should be decided by judges on a case by case basis.

Apart from criminal law, moral damage is not mentioned in civil law, but in some instances, the existence of intellectual damage is observed while its compensation is not discussed. For example article 1130 of the civil law (amendment,1991) states: "If the continuity of marriage causes a disability for a wife, she can refer to the judge for divorce; if the disability is proved in the court, the court can have the husband divorce, and if the husband disobeys, the religious judge will divorce his wife". (Raouf & Angurajtaghavi, 2016)The note to this article (approved in 2000) states the condition which continuously of a conjugal life inflicts an intellectual damage on a wife. In addition, articles 130, 132, 133, 1035, 1037, 1041, 1043, 1056, 1103, 1115, 1117, 1173 and 1191 of the civil law also states instances of obligation in the civil law concerning intellectual damages.(Afshar, 2015) The civil procedure code dominating civil proceedings and procedure, includes all the legal proceedings and procedures (articles 47-66), and defines damage and its instances in article 515 and 519. Although the above articles do not directly mention the concept "intellectual damage", they can guarantee the accomplishment of articles 3, 40, 169 and 171 of the constitution to follow legal fairness and justice. The law of the inspecting the behavior of judges was ratified in 2001 .(Walidi, 1996)

10- COMPENSATION OF LOSSES AND OTHER WAYS OF PROPERTY DAMAGE REIMBURSEMENT

A person, who has incurred the losses as a result of the violation of his (her) civil rights, is entitled to their compensation. Damages are: - losses, which are incurred by a person due to the destruction or impairment of the something, as well as expenses that person made or have to make to restore his violated right (actual damages); - income that person would really get under the normal circumstances, if his (her) rights had not been violated (lost profits). Damages are compensated in full, unless the contract or the law provides reimbursement in a smaller or larger size.

If the person, who has violated law, received because of this the revenue, the amount of lost profit, which must be reimbursed to the person whose rights were violated, can not be less than the income that is received by a person who has violated the law. At the request of the person who has suffered, and according to the circum-

stances of the case, the property damages could be compensated in other ways, the nuisance of property may be compensated in kind (transfer of the same kind thing and of the same quality or correction of damaged thing etc.).

The most important legal topics are considered compensation for moral damage. In Article 8 of the Universal Declaration of Human Rights in 1948 declared that:" Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." And with due regard to the rights enumerated in the Declaration of most spiritual and financial compensation for this loss has been emphasized.(H. Black, 2004)Theoretical Foundations of the claim moral damage is theories that discussed on material damage, such as the fault theory, Direct responsibility is based on the theory of risk and benefit or guaranteed the right. However, considering the above theories of damage should be compensated, through the appropriate method of compensation and non-cash compensation is primarily. But, there is difference of opinion on the issue of compensation for moral damages and the possibility of financial compensation is faced with doubt. Because these losses are immaterial. And there may be pricing of some suffering unacceptable and an insult to the realm of emotions is a person. Brief reasons for opposition include:

- Inability to assess moral losses
- Impossibility of making Equivalent of moral damage to money
- Unable to return to the former position with payment of money
- Impossibility of eliminating the harmful effects of the practice and the lack of congruity between the harm inflicted and the similarity of its financial And the other reasons for such. (Eyvazi, 2013)

One major issue in this regard is whether compensation includes a financial damage, or an intellectual one, too?

Some legal theorists believe compensation should be financial, but this theory is questionable because first, as the time goes on, the same mulct does not fit the pattern.

Second, moral damage has historically included physical damage along with financial loss instead of bloody revenges while financial compensation cannot rebuild every loss. Moreover, an intellectual compensation is the only solution when a judge neglects financial compensation for it.(S; Hedayatollah, 2001) Although this issue has not been clearly considered, these kinds of studies can help it forward. Moreover, reasons such as chapter Nesa (Verse 58): "When judging between people, be fair", fig rules considering loss, disability, and rules including civil liability code infer that any loss - intellectual, or financial - has to be compensated. (Raouf & Angurajtaghavi, 2016)

Those who believe in restitution for moral damages, despite the fact that they have pointed out to problems when trying to measure the damage in terms of money, overall find it just to seek compensation for moral damages.

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

They reason that the causal relationship between the action and the damage exists. Moreover, it is not possible to ignore the suffered damages and a form of restitution must be made. Therefore, a judge must base the extent of the moral damage, in terms of money, based on his judgment, the evidence and the expert's recommendation .(Katozian, 1985) The law experts do not hold different opinions on the principle of compensation for moral damages. What they differ in is possibility of monetary compensation for these moral damages. The main reasoning of those opposing financial restitution for moral damages is the difference in nature of physical damage with moral damage, ethical aspect of it, immeasurability of moral damage and disproportionality of compensation with respect to the damage.

Those who favor monetary compensation, do accept the problems and the fact that the judge must not issue a ruling on making financial compensation for certain moral damages, but claim that the justification for their belief is the monetary compensation is for partial carriage of justice and restitution for the moral damage which somewhat pleases the harmed. Furthermore, they believe that the disproportionality exists when dealing with crimes which harm the entire body, such as murder .(Mahdavi, 2006) In such cases, first of all, paying certain sum of money to the harmed isn't the only way of making restitution considered by the lawmakers. Most often, the lawmakers have considered other measures as well. Second of all, the goal of restitution is not returning the conditions to their original states. It is only a way to sooth the pain and suffering of the harmed, and undoubtedly, paying certain sum of money will make it easier for the plaintiff to deal with the losses. To this end, those who favor monetary compensation, point to the laws of the Islamic Jurisprudence. Iering, German lawyer, states that not compensating for moral damages and not holding the criminal responsible for the moral damages is far worse and inhumane than monetary compensation.(Akhundi, 2006)

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

Ways of compensating for moral damages suffered as the result of a crime committed Methods of compensation for moral damages are not limitative, because in compensation for such damages the important factor is restitutions not the method, which is just a mean. In some cases, money may do the trick, and in some others, a simple apology may be more effective than any amount of money.

Thus, even though the civil responsibility law in article 2 obligates the courts to pass ruling in favor of compensating for the moral damages suffered, in article 3, it states that the court shall decide on the degree of harm and the method of restitution on a case by case basis.

The prosecution will assign and expert to estimate the damage financially and convict the offender. The court has the power to convict the offender to pay a certain sum of money, restore the damaged property, pay its profit or accept the plaintiff's victory .(S; Hedayatollah, 1997)

The restoration made must be the same as what is damaged i.e. there has to be a conventional relation between what is damaged and is given in return .(Hamid, 2011) The purpose is not to rebuild the thing damaged, but to compensate it as much as possible.(Fattah N, 2004) In fact, since the offender's conviction reduces the victim's pain, and castigates the offender, social logic accepts it . (Hasan, 1977)

Therefore, the method of restitution is divided into two groups, financial and non-financial. In the financial method, judge orders for a sum of money to be paid to the plaintiff.

Generally, money payment is the most common way to redress and today judicial bias is based on money payment for damage the judge by referring to article 3 of civil liability and available option, can determine the way of redress, but there are some rules that must be regarded such as:

The amount of money that pay for redress is equal to the amount of loss not the degree and manner of fault and it is possible a simple fault leads to heavy loss and was forced guilty to redress. Sometimes it is possible there isn't any error but because of special reason, law recognize the responsible (loss doer) as a sponsor. (Eyvazi, 2013)

In the non-financial method, different means such as making an apology, terminating the harmful act, publishing the crime in the press and/or a promise to stop an act or to do something. .(Parvin, 2000)

The recreation of a reputation is the non-financial method for compensating a damage stated in the Islamic criminal law, article 1 of the civil liability code, and article 171 of the Iranian constitution. It can be accomplished in different ways including apology, announcement in mass media, etc. According to article 1 of the civil liability code, a victim can claim financial and intellectual compensation against the party inflicting the damage. The court can sentence the offender to announcement in mass media or an apology. There is no limitation in this article, and the decision is on the court. For example, if a person is brought to a court on the basis of a false report regard illegitimate adultery, and his innocence is proved, he can claim for compensation against the court. The court will sentence the reporter to announce the victim's innocence in public. Article 19 of computer crimes also includes this.

The ruling to compensate for moral damages is complementary to the punishment sentence, and even in a ruling for Hadd to be carried out, the defendant could be ordered to make monetary or non-monetary compensation for the moral damages suffered. In case of Dieh, since it is not a punishment but a form of restitution for any physical and moral damages, further monetary compensation could not be sought. In such cases, non-monetary compensation is allowed. In cases where the amount of

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

Dieh is not known, the courts must take the moral damages in consideration. Restitution for moral damages is not allowed in retaliation cases .(Parvin, 2000)

One kind of intellectual damage clearly mentioned in the Iranian criminal proceeding law (Art. 9, par.2) is mental damage .(S; Hedayatollah, 2014) One case is the detention of an innocent person who has to request compensation within 6 month after the final decision of the court.

The provincial commission including 3 members will confirm the compensation based on the conditions in the law. The person can announce his protest against it to the commission within 20 days after the decision on the basis of article 258.

The six-month term for protest is allocated because most decisions are protested in the first instance, but in the appeal the final decisions are made. It is worth to note that a 20 day or 2 month term is set for the decisions made in the first stance, and not protested within 6 months (article 431) . In conjugal relations, the case may include misbehavior, yet, it is an offence, and penal liability relating to assault and battery, but other cases lead to compensation in the way to prove the offence. There is another instance in which the victim is not the offence's spouse but indirectly affected by the offence including the spouse's addiction to drugs, or his detention .(Homa, 2011)

Among instances of conjugal intellectual damages is violating certain agreements including a negative social relation .The rights and responsibilities between spouses need a positive relation between them, and the violation of the relation is an instance of negative relation . Another instance is violating the marriage preconditions. Trickery, avoiding sexual intercourse, and apostasy are the instances.

Another kind of conjugal damage is made by the husband confining his wife at home, having her take care of his parents, and violating the legal number of wives [38]. To compensate a conjugal damage considering the spouse's negative relation' the case should be considered different with intellectual damages outside conjugal relation. The civil liability code (article 3) suggests that that kind of damage, family condition, and the couple's decision is effective in allocating compensation. The damage may be compensating by a sum of money, or redempting some responsibilities from the wife, etc., but it might not work for a couple from a high social class and need compensations including an apology, attending training classes etc. (Mazaheri, 2013)

Another instance of compensation is legal divorce if the methods above do not work. According to the civil law (Art.1130), if any problem from the husband's side enables the wife's conjugal life troublesome, and impossible, she can request divorce, and if the case is approved by the court, the husband is bound to divorce her . Sometimes living together with the wife makes intellectual damages for the husband; the civil law does not consider the case. The quality of the couple's rights enables the husband request the court for a decision on temporary separation of the domiciles . (Raouf & Angurajtaghavi, 2016)

Another method of compensating husband's intellectual damages according to the civil law (art.1108) is depriving the wife of her expenditure if she avoids living in the same domicile with her husband. Besides the above methods, the prosecution can have either of the spouses compensate damages according to the civil liability code (art.10) in a nominal or non-financial method such as an apology. (Raouf & Angurajtaghavi, 2016)

11- INTERNATIONAL LAW: AUTHORITY AND INSTRUMENTS

The fundamental norms of international law are contained in customary international law, and reflect widely accepted basic ideas about the nature of law, its elation to legal wrongs, and the duty to provide recompense. The Permanent Court of Justice, set up after World War I, gave the most authoritative renderings of his foundation for the legal obligation to provide reparations. This most general international law imperative was set forth most authoritatively, although without any equally general prospect of implementation, in the Chorzow Factory (Jurisdictions) Case: 'It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form.'(Du Plessis, 2003)

The Advisory Opinion by the International Court of Justice involving the Israeli Security Wall reaffirmed this cardinal principle in ruling that Israel was under an obligation to provide reparations to the Palestinians for damages sustained due to the illegal wall built on their territory.(Scobbie, 2005)

A second equally important idea embodied in customary international law had to do with the nationality of claims associated with wrongs done to individuals. In essence, this norm expressed the prevailing understanding that only states were subjects within the international legal order, and that wrongs done to foreign individuals were in actuality inflicted upon their state of nationality. Accordingly, if the individual was stateless, a national of the wrongdoing state, or a national of a state unwilling to support the claim for reparations, there was no basis on which to proceed. This limiting notion was expressed succinctly by the Permanent Court of International Justice in the Mavrommatis Palestine Case: '[b]y taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a state is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law.'(Brownlie, 1990) It is important to appreciate that these formulations were made before there existed any pretense of internationally protected human rights.

A third important idea in customary international law, that has persisted, forbids a state to invoke national law as a legal defense in an international dispute involving allegations of wrongdoing by the injured state. Such a principle pertains to the setting of international disputes, which is where the main precedents and doctrines of international law relative to reparations are fashioned.

Somewhat surprisingly, the International Law Commission (ILC) Articles on State Responsibility, despite years of work, clarified to some extent this earlier teaching,

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

refining and codifying it conceptually more than changing it substantively.(Crawford, 2002; Shelton, 2002) The ILC approach to remedial or corrective justice was based on distinguishing between restitution, compensation, and satisfaction. Restitution is defined in Article 35 as the effort 'to re-establish the situation which existed before the wrongful act was committed'. Such a remedy is rather exceptional. It is usually illustrated by reference to the Temple case before the International Court of Justice (ICJ) in which Thailand was ordered to return religious relics taken from a Buddhist temple located in Cambodia.(Oliver, 1962) This primary reliance on restitution where practicable has been recently reaffirmed by the ICJ in its ruling on Israel's security wall, an important restatement of international law although contained in an advisory opinion, because it was endorsed by fourteen of the fifteen judges. The language of the Advisory Opinion expresses this viewpoint with clarity in paragraph 153: 'Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.' (Oliver, 1962)

Article 35(a) and (b) of the ILC Draft Articles indicates that restitution is not the appropriate form of reparations in circumstances where it is 'materially impossible' or would 'involve a burden out of all proportion to the benefit deriving from restitution instead of compensation'.

Compensation, resting on the fungibility of money, is more widely used to overcome the adverse consequences caused by illegal acts. In the Chorzow case it was declared that where restitution cannot be provided to the wronged state, then the wrongdoer should be required to compensate up to the level of the value attributed to whatever was lost, including loss of profits. Articles 36 and 37 go along with this approach of full reimbursement, without qualifications based on capacity to pay.

Satisfaction is the third, and lesser known, manner of providing reparations. The ILC Articles make it a residual category in relation to restitution and compensation. As explained by du Plessis, '[s]atisfaction provides reparation in particular for moral damage such as emotional injury, mental suffering, injury to reputation and similar damage suffered by nationals of the injured state'.(Oliver, 1962)

Customary international law, as well as the ILC Draft Articles of State Responsibility, impose an undifferentiated burden, as stated in Article 37, on the wrong-doing state 'to make full reparation for the injury caused by the internationally wrongful act'. As such, it gives very little guidance in specific situations where a variety of considerations may make the grant of full reparation undesirable for various reasons, although commentary by the ILC on each article does go well beyond the statement of the abstract rule.

International treaty law does no more than to restate these very general legal ideas in a variety of instruments, and without the benefit of commentary attached to the ILC articles. Because property rights are of paramount concern, the language of reparation is not used, and the more common formulations emphasize compensation for the wrongs suffered. The basic direction of these treaty norms also derives from international customary law, especially legal doctrine associated with the confiscation of foreign-owned property. The legal formula for overcoming the legal wrong accepted in international law involved 'prompt, adequate, and effective compensation'. Discussion of 'restitution' and 'satisfaction' is abandoned as the wrongdoing states are acknowledged by the United Nations to possess 'permanent sovereignty' over natural resources.(UN General Assembly, 2014b)

The United Nations Charter does not define the term 'human rights', although it contains a clear prohibition of discrimination based on race, sex, language, or religion. The absence of a human rights catalogue in the Charter led to a continuing effort to define and codify human rights, beginning with the adoption, on 10 December 1948, of the Universal Declaration of Human Rights.(Shelton, 2015)

The codification effort in the United Nations and its specialized agencies has resulted in a vast body of international human rights law including on the right to a remedy.(Shelton, 2015)

The Universal Declaration of Human Rights shifts the locus of relief to national arenas and away from international disputes between sovereign states.

Individuals are endowed with competence, and the notion of wrongdoing is generalized to encompass the entirety of human rights. Article 8 reads: 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental human rights granted him by the constitution or by the law.' Of course, such a right tends to be unavailable where it is needed most, although the existence of the right does provide a legal foundation for reparation in future circumstances when political conditions have changed.(Shelton, 2015)

The Universal Declaration was followed, in 1965, by the United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Schwelb, 1966) and, in 1966, by the International Covenant on Civil and Political Rights (CCPR)(Hoag, 2011) and the International Covenant on Economic, Social and Cultural Rights (CESCR).(Craven, 1995)

The International Covenant on Civil and Political Rights contains three separate articles on remedies. According to Article 2(3):

Each State Party to the . . . Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as . . . recognized [in the Covenant] are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have the right thereto determined by competent judicial, administrative or legislative authorities,

or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.(Craven, 1995)

Articles 9(5) and 14(6) add specific guarantees that anyone unlawfully arrested, detained, or convicted shall have an enforceable right to compensation or be compensated according to law.(Craven, 1995)

The Convention on the Elimination of Racial Discrimination, Article 6, also contains broad guarantees of an effective remedy including 'protection' by national tribunals and other state institutions, against any acts of racial discrimination, as well as the right to seek from such tribunals 'just and adequate reparation or satisfaction' for any damage suffered as a result of such discrimination.(Page, 2006)

The treaty leaves open the question of what forms of reparation or satisfaction are required, as well as the question of how broadly the term 'victim' should be interpreted and who is liable for reparation or satisfaction.(Lerner, 1980)

Upon signing ICERD, six states made declarations regarding Article 6, including the UK, which said it interpreted the requirement in Article 6 concerning 'reparation or satisfaction' as being fulfilled if either of these forms of redress is made available. It further interpreted 'satisfaction' as 'including any form of redress effective to bring the discriminatory conduct to an end'.

The reference to 'protection' in CERD Article 6 seems to anticipate the use of injunctive or other preventive measures against discrimination, as well as compensation or other remedies for consequential damages. A similar provision is found in the Convention on the Elimination of All Forms of Discrimination against Women, whereby the states parties undertake to establish 'legal protection of the rights of women on an equal basis with men' and to ensure through competent national tribunals and other public institutions 'the effective protection of women against any act of discrimination'.(UN General Assembly, 1979)

Article 10 of the American Convention on Human Rights (1978) particularizes a 'Right of Compensation' in a limited and overly specific manner: 'Every person has the right to be compensated in accordance with the law in the event that he has been sentenced by a final judgment through a miscarriage of justice.' It seems to refer exclusively to improper behavior of the state associated with criminal prosecution and punishment within the judicial system. It is available only on the basis of an individual initiative.

Article 14 of the Convention Against Torture and Other Cruel Inhuman and Other Degrading Treatment or Punishment (1984) imposes on parties the obligation to 'ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'. Again, the emphasis is on the legal duty of the state to provide

individuals who are victims with a remedy within the domestic system of laws. That is, victims are not dependent on governments of their nationality pursuing claims on their behalf, nor are nationals barred from relief by the obstacle of sovereign immunity.

Unusually, the provision also explicitly guarantees remedies to 'dependents' of those who die from torture.

A combination of criminal prosecution and civil redress appears in the International Convention for the Protection of All Persons from Enforced Disappearance,(Faso, 2014) as well as the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.(Dennis, 2000)

The remedies of Article 24 of the Disappearances Convention extend for the benefit of anyone forcibly disappeared and 'any individual who has suffered harm as the direct result of an enforced disappearance' (Art. 24(1). Each such victim has the right to know the truth, the progress and results of the investigation into the disappearance and the fate of the missing person. Article 24(3) requires each state party to 'take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains'. The legal system of each state party is to ensure that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. Article 24 goes on to specify that reparations include 'material and moral damages and, where appropriate, other forms of reparation, such as: restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition'.(Faso, 2014)

Article 39 of the Convention on the Rights of the Child (CRC) refers to specific forms of reparations for children that should aim to promote their physical and psychological recovery and social reintegration. 'Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.(UN General Assembly, 2014a)

The CRC Protocol adds that states parties must ensure that the acts referred to in the Convention are made criminal offences punishable by 'appropriate penalties that take into account their grave nature' and take measures of forfeiture against proceeds and assets involved in such offences. It also provides a lengthy list of measures on behalf of the victims, detailed in Articles 8 and 9, that include informing children of their rights, providing support services to them, protecting their privacy and identity during criminal proceedings, protecting the victims and their families, avoiding unnecessary delay in prosecutions and awards of compensation to child victims, and taking 'all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery'. States parties are to ensure that there are adequate procedures in place for child victims to seek, without discrimination, compensation for damages from those legally responsible.

The UN Convention on Migrant Workers has several specific provisions on remedies, guaranteeing the right to fair and adequate compensation for expropriated

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

property (Art. 15), an enforceable right to compensation for unlawful arrest and detention or miscarriage of justice (Arts. 16(9), 18(6)), equality of treatment before courts and tribunals and the right to a fair and public hearing before a competent, independent, and impartial tribunal (Art. 18), the right to seek compensation for an expulsion order carried out before all appeals are exhausted (if the decision is subsequently annulled), and the right to consular or diplomatic assistance to assist with remedies. In addition, Article 83 generally provides that each state party undertakes to ensure effective remedies to anyone whose rights or freedoms guaranteed by the treaty are violated, a fair hearing on claimed violations, and enforcement of any remedies granted.

Several International treaties refer to the right to legal protection for attacks on privacy, family, home or correspondence, or attacks on honour and reputation.(UN General Assembly, 1948; Unicef, 1989; United Nations, 1988; Wojcik, 1994)

Other specific remedies are explicitly guaranteed in the law on indigenous rights, which has developed significantly in the last three decades.(Wiessner, 2011)

ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries(Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989) refers to 'fair compensation for damages' (Art. 15(2)), 'compensation in money' (Art. 16(4)) and full compensation for 'any loss or injury' (Art. 16(5)). Article 15 refers to the common situation of states owning or claiming mineral or sub-surface resources or rights to other resources on indigenous lands.(Pasqualucci, 2009)

Before exploring or extracting such resources, states 'shall consult these peoples';(Rodríguez-Piñero, 2005) the communities concerned also 'shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages'.(Rodríguez-Piñero, 2005)

Article 16 concerns another frequent scenario: when indigenous peoples have been evicted or displaced from their lands. It guarantees a right to return to their traditional lands, as soon as the grounds for relocation cease to exist. In the event such return is not possible '… these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development'. (Rodríguez-Piñero, 2005)

If communities prefer 'compensation in money or in kind', they may exercise that option. (Rodríguez-Piñero, 2005)

In sum, International instruments generally include provisions requiring domestic remedies and often specify preventive measures as well as types of remedies that must be provided.

Certain treaties, like the Convention against Torture and the Convention on Forced Disappearances, also require investigation, prosecution and punishment of perpetrators.

11-1- Regional treaties

Regional human rights systems differ from the International ones in establishing courts and other tribunals to hear complaints from those claiming to be victims of human rights violations committed by a member state.(Shelton & Carozza, 2013)

However, the systems emphasize the duty of states to provide domestic remedies. International procedures are subsidiary and only available if domestic remedies fail or are exhausted.

Article 9 of the Inter-American Convention to Prevent and Punish Torture (1985) similarly obligates parties to 'undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture'. In the absence of case law it is difficult to know what this standard might mean in practice, and whether it is purely aspirational or represents a genuine effort to acknowledge the full spectrum of injury that often results from torture and severe abuse. Beyond this duty of the state, Article 8 allows persons alleging torture to internationalize their claims for relief '[a]fter all the domestic legal procedures of the respective State . . . have been exhausted' by submitting their case 'to the international fora whose competence has been recognized by that State'. (Kaplan, 1989)

11-2- The European Convention on Human Rights

Within the European regional system there is a right of an individual in Article 50 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) to seek 'just satisfaction' in the event that national law provides 'partial reparation' due to injury sustained as a result of a violation of the Convention. A proceeding of this nature would fall within the authority of the European Court of Human Rights. Here, too, the idea is to provide individuals with a remedy at the regional level beyond what is available within the national legal system.

The Statute of the Council of Europe, adopted by Western European nations in 1949, provides that every member must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.

Its system for the protection of human rights is based on the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its protocols, plus the European Social Charter. Council membership is de facto conditioned upon adherence to the European Convention.

The ECHR, signed 4 November 1950, entered into force on 3 September 1953.249

As originally adopted, it guaranteed a limited number of civil and political rights, considerably expanded by the adoption of later Additional Protocols to the Convention. The European Convention was the first treaty to create an international court for the protection of human rights and to create a procedure for individual denuncia-

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

tions of human rights violations in addition to inter-state complaints. The European Court of Human Rights (European Court) issues judgments in which it may afford 'just satisfaction' to the injured party, including compensation for both pecuniary and non-pecuniary damages.(Coblentz & Warshaw, 1956)

The ECHR declares that 'the High Contracting Parties undertake to abide by the decisions of the Court in any case to which they are parties' (Convention, Art. 46(1)). The Committee of Ministers supervises compliance with the judgments.

The ECHR contains several provisions on national remedies. The first provision, Article 6, guarantees access to justice and the right to a fair hearing.(Buergenthal, 1977)

Article 13 provides 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity'. In addition to these general provisions, Article 5(4) guarantees a right of habeas corpus and Article 5(5) requires compensation be afforded for unlawful arrest.

Article 13 has been referred to as 'the most obscure' provision in the Convention(Arai, 1998) because of its seeming suggestion that access to a remedy is required only after a violation has been demonstrated—proof of which would require access to a remedial authority.

This circularity was noted in early decisions of the European Court. In Klass and others v. Germany(Mowbray, 2004) the Court noted that Article 13, read literally, seems to say that a person is entitled to a national remedy only if a 'violation' has occurred; but a person cannot establish a violation before a national authority unless he or she is first able to lodge with such an authority a complaint to that effect. Thus, according to the Court, Article 13 guarantees an effective remedy 'to everyone who claims that his rights and freedoms under the Convention have been violated',(Mowbray, 2004) a ruling that the Court repeated in Silver v. United Kingdom, one of the few early cases where the Court found a violation of Article 13.(Gomien & Eide, 1993)

The Court said that '[a] n individual who has an arguable claim to be the victim of a violation of one of the rights in the Convention is entitled to a national remedy in order to have his claim decided and if appropriate to obtain redress'.(Janis, Kay, & Bradley, 2008)

The Committee of Ministers sought to reinforce Article 13 and uphold the system with a recommendation adopted in 1984 that calls on all Council of Europe member states to provide remedies for governmental wrongs.(Green & Barav, 1986)

Principle I of the recommendation says:

Reparation should be ensured for damage caused by an act due to a failure of a public authority to conduct itself in a way which can be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule.

Principle V adds that reparation under Principle I should be made in full. The Commentary indicates that the victim must be compensated for all the damage resulting from the wrongful act that can be assessed in terms of money.

12- CONCLUSION

Trespass against the physical wholeness and the moral reputation of others is considered to be a crime and requires punishment. Trespass to the moral aspect of the self is considered as moral damage. This includes non-monetary damages such as spiritual losses, defamation of character, and profanity against the sacred religious and national values.

Moral harm is compensated with cash, other property or by other ways. The size of monetary compensation for moral damage is defined by court decision, which depend on the nature of the offense, the depth of physical and mental suffering, deterioration of the victim skills or his (her) deprivation of feasibility for their use. Also the size of compensation depends on the degree of guilt of the person which caused the moral damages, if guilt is the basis for reimbursement, as well as on other circumstances which are significant. In determining the amount of reimbursement, court take into account the requirements of reasonableness and fairness. Moral harm is compensated regardless of the property damage, which is refundable, and is not associated with the size of this reimbursement. Moral harm is compensated only once, unless otherwise is stipulated by contract or law.

The necessity of paying attention to moral damages is clearly mentioned in the laws governing civil liability, constitution, Islamic punishment and the press. It is hoped that the judicial trend in Iran start paying more practical attention to this crucial issue, and the regulating agencies remove any forms of ambiguity and pass necessary laws that fill the legal loop holes pertaining to the issue of moral damages.

Based on what was said, both in Iran and in Human Rights Conventions, moral damages have been accepted. The obligation to provide effective remedies is an essential component of international human rights law. A state that fails to fully protect individuals against human rights violations or that denies remedial rights commits an independent, further breach of law. International instruments do not clarify, however, what are considered to be 'effective' remedies. Nor do they indicate what remedies should be made available through international procedures in the event a state fails to afford the necessary redress. It is thus necessary to look at the theory and practice of national and international tribunals to determine what constitutes an effective remedy.

In the past, international tribunals seemed unwilling to recognize the importance of their decisions, not only in providing a remedy for past abuse, but in persuading those in power to comply with human rights norms in the future. Now they seem more convinced that effective enforcement of norms can influence the incidence of violations.

Civil Procedure Review, v.8, n.3: 41-78, sept-dec., 2017
ISSN 2191-1339 – www.civilprocedurereview.com

Municipal legal concepts and the law of state responsibility influence remedies for international law violations and there has been considerable expansion of the scope of redress afforded during the past decade. Consistency and principled decision-making can help avoid forum shopping, provide remedies for victims, incite national action to bring wrongdoers to justice, and enhance the legitimacy of international tribunals.

It seems, common methods of compensation for moral damages, according to legal texts in Iranian law are stopping or eliminating the source of losses, oral apologizing from the injured party, practical or written apologizing, or printing apology in the press, rehabilitation of the injured in any other way, paying property or money for the injured. In whole, it seems moral damages, in Iran laws and especially in Iranian courts are very obsolete.

According to the above explanation, it is suggested to the Parliament that in legal texts related to special review and approval of the Civil procedure bill, which is the original position of moral damages principles, it should predict illustrated and comprehensive Articles, and fill the vacuum available and establish an important law in the Principle 171 of the constitution, develop it and present the issue, clearly. The judiciary and the courts of the country are considered the second valid source of the laws of the country.

By establishing firm and strong approaches, they should welcome demands about moral damages and try to provide the rights of good people, in this territory.

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