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A Comparative Examination of Bodily Injury Compensation in Iranian and Iraqi Law with Emphasis on the Degree of Conformity with the Rules of Imami (Ja'fari) Jurisprudence

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ABSTRACT

The present study aims to conduct a comparative examination of bodily injury compensation within the legal systems of Iran and Iraq and to assess the degree to which each conforms to the rules of Imami (Ja'fari) jurisprudence. Bodily compensation—particularly in the form of diyah (blood money) and arsh—constitutes one of the most significant mechanisms for damage reparation in Imami jurisprudence and in positive law. The research adopts a descriptive–analytical method with a comparative approach, and the data have been derived from jurisprudential texts, national legislation, and legal sources. The findings indicate that the Iranian legal system, through the direct incorporation of Imami jurisprudence into codified laws such as the Islamic Penal Code of 2013 and the Compulsory Insurance for Bodily Injury Damages Act of 2016, has achieved a higher degree of coherence between its theoretical foundations and its executive structure. By contrast, despite sharing common jurisprudential roots, the Iraqi legal system demonstrates less legislative coherence and relies more heavily on custom and judicial discretion. From a substantive perspective, Iran—by recognizing supplementary damages beyond diyah in certain cases—has taken an effective step toward the realization of compensatory justice, whereas in Iraq, compensation generally remains limited to fixed and traditional diyah. The findings underscore the necessity of refining and systematizing bodily injury compensation regulations in Iraq, taking into account the principles of Imami jurisprudence and Iran's legislative experience.

Keywords: *bodily injury compensation, diyah, arsh, Imami jurisprudence, comparative study of Iranian and Iraqi law.*

Introduction

The issue of compensating bodily injury constitutes one of the most fundamental subjects in legal and jurisprudential systems, as it is directly connected to the protection of human life and the realization of compensatory justice in social conflicts. In Islamic jurisprudence, compensation for bodily harm is grounded in the principle of liability (*ḍamān*) and the well-known rule *"whoever causes the loss of another's property is liable for it"*, and in crimes against bodily integrity it is implemented through institutions such as *diyah* (blood money) and *arsh* (unquantified compensation). On the basis of these foundations, any bodily injury—whether intentional or unintentional—creates a pecuniary right for the victim against the offender, which the Lawgiver has determined either in a fixed form (*diyah*) or in an unfixed form (*arsh*). From this perspective, bodily injury compensation is not merely financial and restorative

in nature but also possesses an ethical and divine dimension, since its ultimate aim is the establishment of divine justice and the restoration of moral balance within society (1, 2).

In Iran's positive law, the rules relating to *diyah* and *arsh* are codified in Chapter Ten of the Islamic Penal Code of 2013 and, drawing upon Imami jurisprudence, set out in detail the foundations and types of bodily injuries. This legal structure—particularly through its precise distinction between quantified and unquantified injuries and the determination of forensic medical mechanisms for assessing *arsh*—demonstrates that the Iranian legal system has sought to harmonize traditional jurisprudence with the requirements of contemporary legislation (3). Moreover, the Compulsory Insurance for Bodily Injury Damages Act of 2016, by enabling compensation through insurance mechanisms, has introduced a modern and protective dimension to the concept of bodily compensation that had no direct precedent in classical jurisprudence.

By contrast, in the Iraqi legal system—which, while inspired by Imami jurisprudence, has in recent decades been influenced by the structure of the Egyptian Civil Code and Sunni jurisprudence—the rules governing bodily injury compensation are dispersed across the Civil Code of 1951 and the Penal Code and are comparatively less systematized (4, 5). In this system, the concept of ʿ*aql* (*diyah*) still exists, but the amount of compensation is often left to judicial discretion and prevailing custom. Consequently, despite shared religious and jurisprudential roots between the two countries, the methods for determining compensation amounts, the basis of *arsh*, and the criteria for damages exceeding *diyah* differ, and these differences form the central focus of the present comparative analysis.

The principal challenge in both systems concerns damages exceeding *diyah*; that is, whether the injured party may claim, in addition to the fixed *diyah*, medical expenses, loss of earning capacity, or non-pecuniary damages. Classical Imami jurists have largely emphasized the rejection of compensation beyond *diyah*, whereas modern legal systems require that compensatory justice encompass all material and immaterial harm. In Iranian law, this issue has been controversial in judicial practice, yet in recent years certain court decisions and advisory opinions have shown a tendency toward accepting supplementary damages (6). Accordingly, the main research questions of this study are as follows:

1. What are the similarities and differences between the bodily compensation regimes in Iranian and Iraqi law?
2. Which of the two systems demonstrates greater conformity with the rules of Imami jurisprudence?

To answer these questions, the present research assumes that Iranian law—owing to its more direct reliance on Imami jurisprudential sources, its systematic determination of *diyah* and *arsh*, and the enactment of clearer statutory provisions—enjoys a higher degree of conformity with jurisprudential rules. In contrast, although Islamic principles are theoretically acknowledged in Iraqi law, the interaction of multiple jurisprudential schools and customary practice has resulted in a degree of fragmentation in the application of liability rules (7, 8).

The research method adopted in this article is descriptive–analytical and comparative. First, the jurisprudential foundations of bodily compensation (*diyah*, *arsh*, and supplementary damages) are explained on the basis of Imami sources, after which the statutory provisions and judicial practices of Iran and Iraq are analyzed and compared. The ultimate objective is to clarify the extent to which each system remains faithful to Imami jurisprudential principles and to propose solutions for harmonizing legislation and adjudication with authentic jurisprudential foundations and social justice.

Theoretical and Jurisprudential Foundations of Bodily Injury Compensation

The Concept and Types of Bodily Compensation in Imami Jurisprudence

In Imami jurisprudence, bodily injury compensation is regarded as one of the key institutions of Islamic restorative justice, aimed at restoring material and moral equilibrium between the offender and the victim through compensation for physical and psychological harm resulting from an offense. Imami jurists define compensation as the reparation of harm inflicted upon a person's body or interests as a consequence of another's harmful act. Accordingly, bodily compensation is broader than *diyah*, since *diyah* represents the quantified and divinely prescribed form of compensation, while *arsh* or unquantified compensation also falls within the same conceptual framework (3). Conceptually, *diyah* in Islamic law is a financial obligation imposed as a result of an offense against life or limb, *arsh* refers to pecuniary compensation for an injury whose amount is not specified in the Sharīʿa, and "damage" is a general term encompassing any type of financial or bodily harm. Thus, bodily compensation encompasses all three categories in subject matter, but from a jurisprudential perspective, *diyah* and *arsh* are grounded in binding textual evidence, whereas damage in its general sense relies upon the principle of liability and rational practice (1).

The philosophy underlying compensation for bodily harm in Imami jurisprudence rests on three main foundations: the rule of *lā ḍarar wa lā ḍirār fī al-islām* (no harm and no reciprocating harm in Islam), the principle of liability, and the principle of restoring loss. Under the rule of *lā ḍarar*, any ruling or conduct that causes unjustifiable harm to another is negated; therefore, compensation is obligatory not as a matter of grace but as a requirement of justice and the removal of wrongful harm. The principle of liability obliges the actor to compensate for damage arising from his act or omission and constitutes the jurisprudential basis of civil liability. Finally, the principle of restoring loss—rooted in the maxim *al-ḍarar yuzāl* (harm must be removed)—requires that any material or moral harm be remedied through restoration or financial compensation; this principle is particularly determinative in the realm of *diyah* and *arsh* (2). Consequently, bodily compensation in Imami jurisprudence is not punitive in nature but is directed toward the restoration of rights and social balance between the injured party and the wrongdoer.

In Qurʾānic and narrational sources, the legitimacy of bodily compensation is explicitly established. The noble verse *"and for wounds there is retaliation"* (Qurʾān 5:45) reflects the principle of proportionality and justice in compensating injuries and forms the jurisprudential foundation of all rules concerning *diyah* and *arsh*. Imami jurists have also relied upon the widely transmitted tradition *"whoever causes the loss of another's property is liable for it"*, whose general wording extends to human limbs, since bodily integrity constitutes the most valuable form of property. On this basis, both the Qurʾān and the Sunnah regard bodily compensation as an instrument for securing restorative justice and preserving the sanctity of human life (9, 10).

In Imami jurisprudence, bodily compensation is divided into two principal categories according to whether it is quantified or unquantified: quantified compensation (*diyah*) and unquantified compensation (*arsh*). *Diyah* is a specified financial amount prescribed for certain injuries, such as homicide or the severance of a limb, whereas *arsh* constitutes financial compensation for harm whose type and amount are not fixed by Sharīʿa and are determined on the basis of expert assessment and the extent of impairment to the victim's bodily functions. The jurisprudential distinction between *diyah* and *arsh* lies in the criterion of liability: *diyah* is grounded in explicit textual evidence and consensus, while *arsh* is based on rational estimation of loss of utility. In contemporary jurisprudential analysis, *diyah* is regarded as a divinely prescribed liability, whereas *arsh* is an عرفی (custom-based) liability derived from the rule of causation (3).

Furthermore, in modern jurisprudential discussions, the scope of bodily compensation has expanded to include damages exceeding *diyah*, such as medical expenses, loss of employment, disfigurement, and pain and suffering. Although early jurists exercised caution in accepting such claims, many contemporary Imami jurists, invoking the rule of *lā ḍarar* and rational practice, have recognized the possibility of compensating these losses. This jurisprudential development has also been reflected in modern Iranian law and has served as the basis for judicial recognition of supplementary damages in certain decisions (11). Accordingly, bodily compensation in Imami jurisprudence extends beyond the mere payment of *diyah* and is founded upon principles such as restorative justice, liability, causation, and the prevention of harm.

Jurisprudential Foundations of Damages Exceeding Diyah

In Imami jurisprudence, the issue of damages exceeding *diyah* has long been one of the most controversial and sensitive topics. Classical jurisprudential sources generally assume that *diyah* constitutes the complete and final compensation for bodily injury and that the Sharīʿa has prescribed a specific amount beyond which no additional financial obligation may be imposed. This understanding is rooted in the principle that criminal penalties and *diyāt* are divinely determined and not subject to analogy or supplementation. Jurists such as the author of *Jawāhir al-Kalām* have argued that imposing additional compensation beyond the prescribed *diyah* constitutes an unwarranted extension of textual rulings and leads to an impermissible duplication of liabilities (9).

In contrast, many modern and contemporary jurists, drawing upon a renewed interpretation of general liability principles, have adopted a different position and regard *diyah* not as the ceiling but as the minimum level of compensation. According to this view, principles such as *lā ḍarar*, the rule of causation, and rational practice require full compensation for all forms of harm—material, bodily, medical, or moral—and where *diyah* fails to achieve real reparation, recourse may be had to general jurisprudential rules to supplement it. From this perspective, denying additional compensation would itself amount to unjust harm and would conflict with the objectives of Sharīʿa in realizing justice and restoring rights (1).

These contemporary views emphasize that the texts concerning *diyāt* are intended to establish the principle of liability for bodily harm rather than to restrict the scope of compensation. In particular, the rule of *lā ḍarar*, transmitted in numerous reports from the Prophet, indicates that no ruling that perpetuates harm is valid in Islam. Therefore, if limiting compensation to *diyah* leaves significant harm uncompensated, the exclusivity of *diyah* must be reconsidered. From this standpoint, the acceptance of supplementary damages is not an innovation but a manifestation of restorative justice within the framework of Imami jurisprudential principles.

This development has also been reflected among Imami legal scholars. In civil-law analysis, *diyah* has been characterized as a Sharīʿa-based institution that complements, rather than excludes, general rules of non-contractual liability. On this view, *diyah* operates alongside civil liability norms to form an integrated system of compensation aimed at fully restoring the injured party and re-establishing equilibrium between the parties (3, 6). Taken together, these perspectives indicate that Imami jurisprudence has evolved from treating *diyah* as the sole measure of compensation toward recognizing supplementary damages as permissible—and in some cases necessary—under general jurisprudential principles and contemporary conditions.

Bodily Injury Compensation in Iranian Law

In Iranian law, bodily injury compensation—primarily realized through *diyah* (blood money) and *arsh* (unquantified compensation)—continues to rest on the foundations of Imami (Ja'fari) jurisprudence, and the Islamic Penal Code of 2013, in Articles 448 to 464, provides a precise and relatively comprehensive framework. Under this statute, *diyah* is defined as a specified and quantified property assigned in return for an offense against life or limb; that is, whenever criminal conduct results in bodily harm, the injurer is obliged to pay a sum from his property as *diyah* to the injured person or, in cases of death, to the heirs of the victim. Article 448 explicitly states that *diyah* is "property determined in the sacred law for the commission of an offense against life, limbs, benefits, or injuries." Article 449 is devoted to *arsh* and provides that *arsh* is "unquantified *diyah* whose amount is determined by an expert, taking into account the type and quality of the injury, its impact on the victim's health, and other relevant factors." These two provisions effectively reflect two jurisprudential situations: first, offenses for which there exists specific textual determination, and second, cases where no specific text exists and the amount of compensation must be estimated through rational assessment and legally recognized practice.

In the subsequent provisions—especially Articles 450 to 461—the legislator, following Imami jurisprudence, differentiates the types of *diyah* according to the nature of the offense (life, limbs, wounds, and benefits) while preserving *arsh* as a complementary instrument of restorative justice. A notable point is that, compared to the former statute of 1991, the 2013 Penal Code employs clearer language and structure and, unlike the earlier approach that largely relied on prevailing juristic opinions, it more explicitly incorporates expert evaluation and proportionality in determining compensation. Although *diyah* retains its Sharīʿa-based nature, in practice many determinations relating to *arsh* have acquired an expert-driven, quasi-civil character, such that the judge, in establishing the real extent of harm, is effectively compelled to refer the matter to forensic medicine or an official expert (2).

Alongside the Penal Code, the Compulsory Insurance for Bodily Injury Damages to Third Parties Arising from Motor Vehicle Accidents Act of 2016 has given a new position to the concepts of *diyah* and bodily compensation. This statute was enacted to protect victims and to align Sharīʿa-based rules with contemporary economic and social realities. Article 1 expressly provides that any motor vehicle covered by third-party insurance must compensate personal damages suffered by natural persons, including death, disability, injury, and medical expenses. In this manner, the scope of reparation expands beyond the traditional jurisprudential conception and departs from a purely quantified model. Article 8 obliges the insurer to compensate all bodily losses of the injured person "within the framework of the relevant provisions concerning *diyah* for women and men and *arsh*"; however, the note to the same article states that if the actual loss exceeds the amount of *diyah* or *arsh*, the insurer must pay it "within the limits of the obligations set out in the insurance policy," which may be understood as a form of recognition of damages exceeding *diyah* through the contractual mechanism of insurance (3). This development clearly evidences the movement of Iran's legislative system away from an exclusively jurisprudential, quantified approach and toward a mixed regime informed by civil-justice principles and the full reparation of harm.

The position of the Supreme Court of Iran is also notable in analyzing this trajectory. In a number of decisions—and particularly in the Supreme Court's unification ruling No. 783 dated 23 October 2019—the Court explicitly stated that payment of *diyah* does not bar compensation for other material and non-material losses arising from the offense, unless there is a specific legal text prohibiting such recovery. This ruling was issued following divergent approaches in trial courts, some of which rejected compensation beyond *diyah* on the ground of its exclusivity under

Sharīʿa texts. The Supreme Court, relying on general principles of civil liability, reasoned that depriving the injured party of actual compensation is inconsistent with the spirit of Islamic justice and the jurisprudential objectives underlying *diyah* (6). A closely related development in the current system is the extensive involvement of insurance institutions in bodily injury compensation, which has contributed to a transition from the traditional *diyah/arsh*-based model toward a system of "collective coverage" and "aggregated compensation." Prior to the enactment of the new compulsory insurance statute, payment of *diyah* was largely limited to the offender or his family, and where insolvency occurred the injured party often lacked an effective means of recovery. Today, however, insurance, by performing a guarantor function, has in practice transformed *diyah* from a primarily penal institution into a form of social compensation. In addition, the Social Security Organization and other support funds also bear part of the financial burden of bodily harm and disability. In Safai's analysis, *diyah* has thus moved from a "Sharīʿa-based pecuniary punishment" toward "modern restorative compensation," whose aim is to restore the injured person, as far as possible, to the position prior to the incident (3).

Despite these developments, the core question of whether these regulations remain fully consistent with the rules of Imami jurisprudence continues to be the subject of extensive scholarly debate. The dominant view among classical Imami jurists—reflected in foundational works—holds that *diyah* is a quantified and final Sharīʿa compensation, and that claiming any damages beyond it lacks jurisprudential authorization, because the relevant narrations treat the amounts as fixed and non-extendable. From this standpoint, imposing compensation above *diyah* is treated as an excess liability beyond the Sharīʿa limit. In contrast, a number of contemporary jurists, by distinguishing between the Sharīʿa title of *diyah* and the general concept of civil liability, have argued for the permissibility of claiming losses exceeding *diyah* where real harm exists, relying on general principles such as *lā ḍarar* and the rule of causation. The Iranian legislator, in light of these debates, has pursued a subtle movement between these two orientations: on the one hand, Articles 448 to 464 of the Islamic Penal Code are structured wholly upon jurisprudential texts and, in appearance, do not accept compensation above *diyah*; on the other hand, in special statutes such as the compulsory insurance law, it affirms the principle of full compensation and social protection and, implicitly, reinterprets broad jurisprudential rules of "no harm" and causation within a modern legal framework (11).

Accordingly, it may be concluded that Iran's current rules on bodily injury compensation reflect a combination of two logics: a Sharīʿa-based logic grounded in quantified *diyah* amounts, and a civil-law logic grounded in the real reparation of loss. The synthesis of these two logics has produced an indigenized model of restorative justice within the framework of Imami jurisprudence, in which the penal dimension of *diyah* is preserved while the economic and social consequences of injury are, to a significant extent, compensated through the intervention of insurance and support institutions. Under contemporary analyses, this condition may be characterized as an "institutional, comparative adaptation to Imami jurisprudence": an adaptation that, while outwardly maintaining the fixed nature of *diyah*, inwardly mobilizes general principles of justice and the removal of harm in pursuit of full compensation.

Bodily Injury Compensation in Iraqi Law

The system of bodily injury compensation in Iraqi law has deep roots in the traditions of Islamic jurisprudence and in mixed Arab–European legal systems. Iraq, as a country whose constitution and judicial system have been shaped by a combination of two fundamental sources—Islamic jurisprudence and European civil law, particularly Egyptian and French law—has developed a complex structure for bodily and financial compensation arising from

criminal acts. The principal legal foundations of bodily injury compensation in Iraq may be found mainly in the Civil Code of 1951 and the Iraqi Penal Code of 1969. In the Civil Code, the general rules of civil liability and non-contractual obligation are set out in Articles 196 to 207 and—similar to Article 328 of the Iranian Civil Code—are grounded in the maxim that "whoever causes harm to another is obliged to provide compensation." These provisions, influenced by the Egyptian Civil Code of 1948, establish the principle of full reparation and provide that any person who causes material or non-material harm to another must pay proportionate compensation. By contrast, the Iraqi Penal Code, in a manner comparable to the jurisprudential structure of Iran, distinguishes crimes by reference to divine rights and private rights and recognizes the payment of *diyah* (*al-ʿaql*) only in offenses against life and limb (4, 12).

With respect to bodily compensation, the Iraqi Civil Code—unlike the Penal Code—emphasizes a more customary and socially oriented approach grounded in restorative justice. In the liability provisions, "harm" is defined in both material and non-material terms, and courts are empowered to determine the amount of compensation with due regard to the circumstances. Nevertheless, the amounts of *diyah* and compensation analogous to *arsh* are often determined within the framework of tribal custom and local jurisprudential practice. This is because Iraqi Islamic jurisprudence, which reflects an amalgam of Ja'fari, Hanafi, and Shafi'i doctrines, does not operate with a single fixed standard for *diyah* in practice; in many tribal or urban contexts, the amount is set through agreement between the parties (tribal reconciliation). In Ja'fari jurisprudence—the doctrinal basis of Shi'a personal status matters in Iraq—*diyah* is treated as a fixed, text-based obligation, whereas in Sunni jurisprudence, particularly in Hanafi doctrine, *diyah* is more strongly influenced by custom and is treated as variable with time and context (5, 13). For this reason, even in contemporary Iraq, tribal custom continues to play an important role in determining bodily compensation for homicide and injury, especially in southern and western regions where tribal structures remain robust and tribal arbitration councils sometimes function as practical alternatives to civil courts in resolving compensation disputes.

The payment of *diyah* in Iraq is carried out through a combination of traditional concepts and modern banking arrangements. The notion of *ʿaql* in Iraqi customary and jurisprudential practice denotes property paid by the offender's family to the victim's heirs as compensation. Under prevalent custom, payment may be made in cash, in installments, or through collective contributions by members of the tribe—an arrangement resembling the *ʿāqilah* mechanism known in Imami jurisprudence. At the same time, Iraqi civil courts have gradually brought such practices under judicial supervision and, in their judgments, have increasingly imposed formal obligations on offenders to pay a specified monetary equivalent calculated in dinars, with attention to inflation and the country's economic conditions. Field observations and research assessments after 2003 indicate that Iraqi courts, when determining the compensation amount, have sometimes relied not only on jurisprudential considerations but also on medical expert reports, treatment costs, and disability-related losses—reflecting a degree of openness toward real-loss compensation (5, 7).

Developments following the fall of the Ba'ath regime in 2003 have had a profound impact on Iraqi judicial practice regarding bodily harms. The new judicial order—shaped in part by transitional justice and international criminal-law mechanisms—has sought to strike a balance between traditional jurisprudential rules and customary and international standards of reparation. In this period, Iraqi courts have shown an increased tendency to accept "additional damages" alongside *diyah*. For example, in cases relating to bombings or terrorist killings, courts have, in addition to *diyah*, ordered the payment of medical expenses, disability-related losses, and even non-pecuniary

damages to survivors. Although these rulings are typically issued under the Civil Code rather than the Penal Code, they indicate a conceptual shift in the understanding of compensation—described in some analyses as a "transition from fixed *diyah* to full civil reparation" (12, 13).

Despite these advances, the central difficulty in Iraqi law concerning bodily compensation lies in the absence of coherence between its jurisprudential and legislative foundations. On the one hand, the Iraqi Penal Code remains tied to classical jurisprudence and traditional Sunni textual formulations that define *diyah* as a specified amount (traditionally expressed in camels or its monetary equivalent) and link its consequences to traditional penal and retaliatory concepts; on the other hand, the Iraqi Civil Code—drawing on French and Egyptian doctrine—embraces the principle of real, full reparation. This duality has resulted in divergent court outcomes in similar cases and, at times, serious disagreement regarding the legal nature of *diyah*—namely, whether it should be understood as a punishment or as a civil obligation. A number of scholars have characterized this situation as a form of "identity discontinuity between jurisprudence and statute," which has impeded the development of a unified restorative regime in Iraq (4, 13).

Overall, bodily injury compensation in the Iraqi legal system has emerged within a tension between two sources: a jurisprudential source that tends to limit obligation to Sharīʿa-based *diyah*, and a customary–civil source that demands full compensation for harm. Post-2003 judicial practice suggests that Iraqi judges and legal institutions have increasingly moved toward integrating these two orientations. Nonetheless, one of the foundational challenges remains the lack of a clear framework for distinguishing religious–criminal liability from civil liability in bodily injury cases—a challenge rooted in the divergence between Shi'a and Sunni jurisprudential premises and in the multi-source heritage of Iraqi law. Iraq's experience in this field indicates that compensatory justice in Islamic societies requires deep comparative reassessment between traditional jurisprudential rules and the demands of modern legal systems in order to develop a comprehensive model of humane and socially grounded compensation.

Comparative Analysis (Similarities and Differences)

Similarities

Despite apparent differences between the legislative and judicial structures of Iran and Iraq, comparative examination shows that the theoretical and jurisprudential foundations of bodily injury compensation in both systems rest on a shared substratum, because the origins of both regimes lie in Imami jurisprudential principles, the rules of non-contractual liability, and common concepts of criminal jurisprudence. The first major point of convergence is the acceptance of the principle of strict liability grounded in the rule of causation (*itlāf*) as the general basis of civil and criminal responsibility. In Imami jurisprudence, the maxim *"whoever causes the loss of another's property is liable for it"* is treated as the overarching criterion of non-contractual liability, and both Iranian and Iraqi legislators have incorporated this logic into their civil codes. Article 328 of the Iranian Civil Code and Article 196 of the Iraqi Civil Code are structured on this same basis and provide that anyone who destroys another's property is liable, whether the act is intentional or negligent. Although Iraqi codification was influenced by the Egyptian Civil Code of 1948, its theoretical foundation remains Islamic jurisprudence—particularly Ja'fari doctrine—which affirms absolute liability for harmful causation (3, 13).

The second similarity is the recognition of *diyah* as the minimum mandatory compensation under Sharīʿa and statute. In Imami jurisprudence, and consequently in the laws of Iran and Iraq, *diyah* has not only a penal aspect

but also a compensatory function, aimed at restoring the injured party, insofar as possible, to the status quo ante. Both the Islamic Penal Code of Iran of 2013 and the Iraqi Penal Code of 1969 establish *diyah* as a compulsory financial obligation in cases of bodily injury and homicide. In Imami jurisprudence, *diyah* is treated as a fixed Sharīʿa obligation grounded in transmitted texts and functions as a "minimum legitimate reparation." In Iranian law, this concept is reflected in Articles 448 to 460 of the Islamic Penal Code, while in Iraq it is implemented under the title *al-ʿaql* in judicial practice and local norms (1, 5). In both countries, the payment of *diyah* is also closely linked to the principle of preventing unjust harm, in the sense that its purpose is to avert wrongful injury to the victim or heirs rather than to impose a duplicative punishment (1).

The third similarity is the recognition of *arsh* or unquantified compensation for harms that are not assigned fixed values in the Sharīʿa texts. In Imami jurisprudence, *arsh* is determined on the basis of rational valuation and expert assessment. Article 449 of Iran's Islamic Penal Code, as well as Iraqi judicial approaches to compensation for injuries without a fixed *diyah* value, both rely on expert-driven justice in estimating compensation for minor or non-enumerated harms. In Iran, *arsh* is typically calculated through forensic medicine, and in Iraq courts likewise use expert opinion to estimate the appropriate amount. This mechanism—unlike purely Western regimes—aligns with the jurisprudential principle of proportionality between harm and compensation, which has also been emphasized in contemporary jurisprudential writings (14).

Both systems also converge in their characterization of the nature of *diyah* and *arsh* as a form of financial liability arising from wrongdoing rather than a punishment in the strict sense. Accordingly, in both countries, *diyah* sits at the intersection of criminal and civil law, representing a hybrid of penal accountability and civil reparation. For this reason, courts in both jurisdictions, alongside issuing criminal judgments, also have competence to determine compensation. In Imami jurisprudence, the notion that *diyah* is the property/right of the injured party underscores that the institution is primarily oriented toward financial reparation for human harm rather than punishment, and this understanding is reflected in both legal regimes (3, 6).

In addition, both systems incorporate shared ethical and jurisprudential elements—such as intent, negligence, and quasi-intentional conduct—in determining the type of responsibility and the level of compensation. Classical Imami jurisprudential texts provide the foundation for categorizing wrongdoing into intentional, quasi-intentional, and accidental forms, and both Iranian and Iraqi laws—albeit with differences in drafting—recognize comparable distinctions in their penal provisions. Consequently, shared principles such as proportionality between harm and compensation, the dependence of liability on causation, and the obligation to protect inviolable life are accepted in both systems as general governing rules of bodily injury compensation (2, 5).

Overall, the foundational similarities between Iranian and Iraqi law in the sphere of bodily compensation derive from a common intellectual framework grounded in Imami jurisprudence and general liability rules. Both countries, notwithstanding differences in political and legislative structure, have relied on Sharīʿa-based foundations in the domain of restorative justice and have, in parallel fashion, localized the concepts of *diyah*, *arsh*, and liability principles within their contemporary legal orders. For this reason, the points of convergence between the two regimes are not merely historical echoes but rather reflect the continued logical operation of Imami jurisprudence within modern Arab–Islamic lawmaking.

Differences

A comparative examination of bodily injury compensation in the legal systems of Iran and Iraq, alongside their shared jurisprudential and theoretical foundations, shows that the divergences between the two systems manifest primarily in the legislative and operational dimensions and in the degree to which concepts of Imami jurisprudence have been institutionalized. The first—and perhaps most fundamental—difference concerns Iran's systematic codification and legislative precision as opposed to Iraq's more customary, less codified approach. In Iran, *diyah* enjoys a fully statutory status: Articles 448 to 464 of the Islamic Penal Code of 2013 specify the amounts, methods of payment, types of injuries, and even the rules applicable to *diyah* by gender and by religious affiliation. In addition, the legislator, through notes to relevant statutes such as the Compulsory Insurance for Bodily Injury Damages to Third Parties Act of 2016, has explicitly provided for how insurance companies are to pay compensation; as a result, *diyah* in Iran has acquired a tripartite character—jurisprudential, civil, and insurance-based (2, 3). By contrast, in Iraq's legal system, the amount of *diyah* is not expressly stipulated in penal legislation, and its regulation is largely left to custom, judicial discretion, and general principles of Islamic jurisprudence. Although Iraq's Civil Code of 1951 sets out general liability principles in Articles 196 to 207, it does not codify either *diyah* amounts or *arsh* in a legislatively determinate manner; consequently, courts are often compelled to decide on the basis of local custom and the views of Sharīʿa and tribal experts (4, 5). This has produced marked regional variation in judicial outcomes, such that two similar cases in Basra and Najaf may lead to very different compensation amounts—an outcome that is largely avoided in Iran due to official valuation mechanisms and the relative stabilizing effect of unified judicial practice.

The second difference relates to the status of damages exceeding *diyah*. In Iran, since the early 2000s, the question of compensating losses beyond *diyah* has become a serious subject of jurisprudential and legal debate. Traditional jurisprudence typically treated *diyah* as complete compensation and regarded any excess as lacking Sharīʿa basis; however, reform-oriented jurists, relying on the rule of *lā ḍarar* and the principle of real-loss reparation, have argued that *diyah* constitutes a minimum threshold and that, where additional losses—such as medical expenses, disability, or pain and suffering—are proven, recovery beyond *diyah* is permissible (1). This approach was subsequently reinforced in Iranian judicial practice, and courts have increasingly been positioned to award damages beyond *diyah* within the framework of general civil-liability rules. By contrast, in Iraq, the dominant position among many courts and jurists still treats supplementary damages as inconsistent with the fixed allocation of *diyah*, and compensation is typically limited to quantified *diyah* (or, at most, narrowly framed financial penalties). This divergence is rooted in a differing conceptual relationship between *diyah* and harm: in Iraq, *diyah* is more commonly understood as a fixed punishment, whereas in Iran it has gradually assumed a more civil and compensatory character (12, 13).

A third point of divergence concerns the institutional architecture and the insurance regime related to compensation payments. Over the past three decades, the Islamic Republic of Iran has embedded insurance as a guarantor of *diyah* payments and accident-related bodily compensation within specialized legislation. Under the 2016 compulsory third-party insurance framework, all motor vehicles must carry valid insurance so that, in the event of an accident, the insurer pays bodily compensation up to the level of a full *diyah*. This arrangement both secures victims' rights and reduces procedural delay by limiting the need for individualized recovery litigation. In contrast, Iraq lacks a coherent compulsory insurance regime, and compensation payments remain dependent on the

offender, the offender's family, or the tribe. As a result, in many cases victims are unable to recover full compensation where the responsible party lacks financial capacity, and this has encouraged greater reliance on customary reconciliation mechanisms. Empirical research has also reported that only a limited portion of traffic-accident bodily losses have been compensated through insurance, contributing to weakened restorative justice and expanded resort to customary settlement (5, 7).

Another difference lies in the operational structure and the legal mechanisms that secure payment. In Iran, institutions such as the Bodily Injury Compensation Fund (operating under insurance-sector supervision) have been established to support victims in cases involving uninsured vehicles or unidentified offenders. Iraq has no comparable fund, and adjudicating bodily injury cases is often accompanied by operational and financial obstacles. Moreover, in Iran, even in cases of pure mistake or accidental traffic incidents resulting in death or injury, payment is typically secured through insurance mechanisms or public funds within the relevant legal framework; whereas in Iraq, in the absence of established fault, courts may be less inclined to issue compensation orders, operating more strictly on presumptions of non-liability in contested settings (3, 13).

At the jurisprudential level, differences in both formal and substantive conformity with Imami jurisprudence are also evident. Iran's legal system is directly derived from Imami jurisprudence; in the Islamic Penal Code and in juristic reasoning, foundational works and Imami liability doctrines have served as key sources for codification. Consequently, both in legislative form (e.g., the structured categorization of criminal law into *ḥudūd*, *qiṣāṣ*, *diyah*, and *taʿzīrāt*) and in substantive jurisprudential content (including reliance on doctrines of causation and no-harm principles), Iran demonstrates a clearer alignment. By contrast, while Iraq recognizes Imami jurisprudence in Shi'a personal status matters, its general criminal and civil law reflects a blended adoption of Sunni jurisprudence and modern legal doctrine (especially Egyptian and French influences), producing a less coherent and less systematically Imami-aligned codified structure (4, 5).

In sum, Iran's system is largely state-centered, centralized, and rule-based, and—supported by an insurance architecture, more unified judicial practice, and the explicit presence of Imami jurisprudential norms—pursues restorative justice through a more institutionalized framework. Iraq, by contrast, operates a more custom-oriented, regionally variable, and less centralized model in which bodily compensation is shaped more by customary practice and judicial discretion than by detailed statutory text. These differences have resulted in a noticeably higher level of stability and social coverage in Iran's compensation regime compared with Iraq and, in many respects, with a number of other legal systems in the region.

Conclusion

A comparative examination of bodily injury compensation in Iranian and Iraqi law indicates that the Iranian legal system, owing to its legislative foundations derived from Imami jurisprudence and its deliberate effort to regulate institutions such as *diyah* and *arsh* through clearly articulated provisions of the Islamic Penal Code, has succeeded in establishing a relative harmony between jurisprudential theoretical principles and the operational structure of the law. The existence of a compulsory insurance system, the determination of fixed *diyah* amounts, the provision of expert-based mechanisms for assessing *arsh*, and the possibility of claiming damages beyond *diyah* within the framework of general civil liability rules have together created a coherent and efficient structure for the realization of restorative justice in Iran. By contrast, despite sharing common jurisprudential and religious roots, Iraq lacks

sufficient coherence at the practical and legislative levels, and the linkage between Imami jurisprudence and its civil-law framework in the field of bodily compensation has not yet been systematically organized.

On this basis, it is recommended that the Iraqi legal system, by drawing upon the capacities of Imami jurisprudence and the Iranian legal experience in developing modern compensation structures, undertake a process of integration and refinement of its bodily compensation laws in order to prevent customary fragmentation and disparities in judicial practice among different courts. Alongside such reforms, both countries should, in line with the principles of jurisprudential restorative justice, recognize supplementary damages—such as medical expenses, loss of earning capacity, and psychological harm—as complements to *diyah* and *arsh*. Such a development would not only enhance the protection of victims and the efficiency of the judicial system, but would also strengthen the practical alignment of law with the spirit of the objectives of the Sharīʿa and the principle of non-harm in Imami jurisprudence.

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