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Comparative Analysis of the Recoverability and Quantum of Disability Damages in the Legal Systems of Iran and England

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ABSTRACT

Following incidents such as traffic accidents or work-related events, individuals may suffer harm. The damages incurred generally encompass both pecuniary (material) and non-pecuniary (moral) aspects. The recoverability and scope of disability damages are complex issues, and different legal systems have established various rules in this regard. The primary objective of this study is a "comparative analysis of the recoverability and quantum of disability damages in the legal systems of Iran and England." In terms of purpose, the research is applied; in terms of nature and method, it is descriptive–analytical; and in terms of content, it is qualitative. Given that data were collected from valid scholarly journals, documents, and scientific studies, the research is of a documentary–library type. The findings indicate that the explicit recognition of compensation for disability damages in statutory law strengthens the view that a broad range of pecuniary and non-pecuniary rights is acknowledged within various legal provisions of the Iranian legal system. Unlike the English legal system, Iranian law tends to accept compensation for all forms of damage. The Iranian legal system, influenced by legislative provisions and shaped by customary and religious perspectives, reflects these principles within the structure of laws applied by courts. In contrast, the English legal system, grounded in a more subjective and psychological approach, seeks to compensate disability damages primarily through judicial decisions and doctrinal developments, supplemented by certain statutes, including insurance laws. Based on the findings, the research hypothesis—namely, the existence of differences in the legal implementation of disability damage claims between the legal systems of Iran and England—is confirmed, and the null hypothesis is rejected.

Keywords: *Damages, Disability, Law, Iran, England*

Introduction

The examination of compensation for damages in the field of bodily injuries has gained increasing importance. The mechanization of modern life has transformed this challenge—namely, injuries and their compensation—into an endemic issue within legal systems. However, the challenge is not limited merely to compensating injuries; rather, the ancillary consequences of such injuries, including medical expenses, disability, and other related

instances, constitute issues that legal systems, depending on the nature of their legal regimes, have addressed and validated through various mechanisms. The concept of “disability” has been defined by legislators in different legal frameworks and refers to “a reduction in the earning capacity of the insured person in such a way that, by engaging in previous or alternative work, only part of their income can be obtained.” This definition encompasses both general and specific instances and is inherently relative, varying according to the type of activity and profession of the injured party (1).

In the legal system of Iran, the necessity of compensating bodily damages has never been in doubt within Islamic jurisprudence or statutory law. Indeed, the prohibition of inflicting such harm and the sanctity of human life serve as foundational principles underlying the obligation to compensate for both pecuniary and non-pecuniary damages. To compensate for inflicted injuries and to establish an enforcement mechanism for safeguarding bodily integrity, Islamic law, based on the severity and type of injury, has determined a specific financial compensation known as *diya*, which must be paid by the offender to the injured party (or, in the event of death, to their heirs). In cases where no fixed *diya* is prescribed, the judge determines compensation (*arsh*) in proportion to the severity of the injury. The importance of compensating bodily harm is such that, if the offender is unknown, compensation is borne by the public treasury; and where the offender lacks financial capacity, responsibility may extend to their relatives, ultimately reverting to the public treasury if compensation cannot otherwise be secured (2).

From a jurisprudential perspective, some scholars have supported the principle of full compensability of damages, relying on the rule of *La Zarar* (no harm), and have regarded it as an established religious principle. Conversely, other jurists have opposed this principle and have not accepted it as a binding rule. Ultimately, although the principle of full compensation for all damages cannot be considered an undisputed religious principle, its acceptance does not encounter any definitive religious prohibition (3).

In the history of Western law, institutions analogous to *diya* existed in ancient Roman law and among early European legal systems. In those systems, a predetermined amount was established for compensation in cases of death or bodily injury, based on the severity and nature of the harm, and the offender or their family was obliged to pay it to the injured party or the victim’s family. However, the acceptance of fixed and predetermined compensation for bodily injury has been abandoned in modern Western legal systems, giving way to case-by-case assessment of damages based on the individual circumstances and characteristics of the injured party. In fact, with the recognition of the principle of full compensation for bodily harm, the determination of a uniform standard or fixed amount has been rejected, and damages are assessed individually, considering the personal, professional, and situational conditions of the victim (4).

Furthermore, contemporary legal developments indicate that none of the current European legal systems reject compensation for all damages arising from unlawful harm in cases of personal injury, although significant differences exist in their conceptual approaches and legal regimes. In England, for instance, legal reforms have addressed both pecuniary and non-pecuniary damages, culminating in legislative developments concerning compensation for unlawful injuries, where disability constitutes one of the recognized heads of damage (5).

In general, the principle of compensating injured individuals is accepted across various legal systems and is rooted in the fundamental function of civil liability law and its deterrent role. However, as social relations have become increasingly complex, the nature of damages and their compensation has also evolved. While in the past, compensation was often resolved in a simple and one-dimensional manner, today, in light of evolving legal frameworks, compensation extends beyond the primary damage to encompass additional dimensions, which may

at times exceed the original harm itself. Given the relativity of law—its adaptability to time and place—it cannot be asserted that a legislator, relying solely on a single rule or traditional legal reasoning, can adequately address all aspects of increasingly complex human relations (6).

Accordingly, this study aims to conduct a “comparative analysis of the recoverability and quantum of disability damages in the legal systems of Iran and England,” while addressing the central research question: “Is there a difference in the implementation of legal rules governing claims for disability damages between the legal systems of Iran and England?” The study seeks to contribute, albeit modestly, to enhancing justice and efficiency within the legal system.

Research Method:

This study, conducted with the objective of a “comparative analysis of the recoverability and quantum of disability damages in the legal systems of Iran and England,” is applied in purpose and adopts a descriptive–analytical methodology in terms of nature and method, while being qualitative in content. Data analysis is based on the content and findings derived from valid scholarly research and documents. Given that the data collection tools consist of scientific studies, theses, academic articles, and reputable periodical sources (including journals, conferences, and publications), the present research is classified as a documentary–library study.

Theoretical Foundations of the Research:

Theories Related to the Concept of Damages

Risk Theory

Risk theory can be regarded as an objective theory. According to this theory, anyone who engages in an activity creates a hazardous environment for others, and the person who benefits from this environment must also compensate for the damages arising from it. The slogan of the proponents of this theory is that “whoever benefits from an activity must also bear its losses.” In this perspective, what matters is not whether the act causing the damage was lawful or unlawful, but rather the attribution of the damage to the defendant’s act. Supporters of the risk theory consider one of its positive consequences to be the promotion of social solidarity and a sense of responsibility among individuals toward others. Based on this theory, the criterion of liability is the causal relationship between the individual’s activity and the damage inflicted on another. Under this system, anyone who causes harm to another through their actions is held liable, regardless of whether their conduct was lawful or unlawful; in other words, everyone is responsible for compensating the risks arising from their actions. Liability for damages caused by objects under one’s control is also a result of this theory.

In this context, it should be noted that risk theory corresponds to strict liability. In its broad sense, strict liability refers to offenses in which none of the psychological elements of the crime are present. In such cases, the perpetrator has neither intent nor negligence, yet due to legislative criminalization of the act for various reasons, they are subject to punishment. In its narrower sense, strict liability refers to offenses where proof of the material element alone suffices, and there is no need to establish the mental element by the prosecuting authority; in other words, criminal responsibility is presumed, and punishment is imposed unless the defendant proves the absence of the mental element. It appears that criminal liability generally relies on offenses with a complete mental element, whereas strict liability applies in cases where no psychological element is required. In some instances, strict liability

may even apply to conduct accompanied by a mental element, which further complicates classification and may lead to confusion, as sometimes an offense categorized under strict liability may overlap with fault-based liability, while in other cases it is purely strict liability (7).

Some scholars have extended the concept of strict liability even further, arguing that in offenses without fault, not only is the principle of blameworthiness disregarded, but even the material principles of criminal causation may be set aside. In such cases, the defendant may neither be blameworthy nor have committed a specific act causing the harm, yet still be held criminally liable (8).

It should be noted that despite the apparent similarity between certain expressions across different legal languages, there are substantive differences. In Islamic law, this principle is reflected in the maxim “al-kharaj bi al-daman,” which refers to the correlation between ownership and the benefits and profits derived from it (9). Moreover, risk theory bears resemblance to the “no harm” (*La Zarar*) principle, which serves as a foundation of civil liability in Islamic law. Some Iranian legal scholars equate the slogan of this theory with the jurisprudential maxim “whoever gains the benefit must bear the burden.”

Nevertheless, this theory has faced considerable criticism. One of the major challenges is proving causation. In cases where multiple factors contribute to the occurrence of damage, identifying the most effective cause is not necessarily easier than proving fault. Furthermore, liability without fault may itself be perceived as a form of injustice. Critics argue that reliance on this theory should be approached cautiously, and that without the presence of fault, the person causing harm should not be held liable for compensation (10).

Theory of Guarantee of Rights

The originator of this theory is Boris Starck. He argues that every individual has the right to live in a safe and secure environment and to enjoy their property, and that all members of society are obliged to respect these rights, while the law must protect them. The guarantee of this protection lies in the principle that if a right is violated, it must be compensated by the person responsible. According to this theory, individuals possess an inherent right, as human beings, to live safely within society, and the law ensures and enforces this right; thus, civil liability is considered the mechanism that guarantees this protection (11).

In addressing conflicts of rights, rights are categorized into different groups. The exercise of some rights does not entail liability; that is, if harm occurs during their exercise, the holder of the right is not liable, such as in cases of commercial competition, labor strikes, or guild protests. According to Starck, civil liability in the exercise of such rights arises only when the right-holder commits fault. However, there are other rights—such as the right to life, bodily integrity, and property—for which causing harm is not permissible even under the pretext of exercising one’s own rights. These rights are guaranteed by the legislator against interference by others, and fault does not play a role in liability arising from their violation. Some scholars believe that the theory of guarantee of rights implies acceptance of no-fault liability for bodily and material damages, while fault-based liability applies to purely economic and non-pecuniary damages.

A fundamental criticism of this theory, which may affect its recognition in legal sources, is the conflation of prescriptive (taklifi) and declaratory (wad‘i) rulings. In other words, the theory assumes that when the exercise of a right necessarily causes harm to another, such exercise is permissible (a prescriptive rule) and does not entail liability for compensation (a declaratory rule). However, the obligation to compensate damages is a declaratory rule and does not necessarily correlate with the permissibility of exercising a right. A clear example of the weakness of

this theory can be observed in cases of necessity (*idtirar*). In such situations, liability is not entirely removed, even though the act may be permissible.

The theory of guarantee of rights criticizes both fault theory and risk theory for focusing on the conduct of the wrongdoer while neglecting the primary objective of civil liability, which is compensation of the injured party. Within the Iranian legal system, traces of this primary objective can also be identified in statutory provisions. However, despite the existence of laws addressing liability in various professional contexts, it is difficult to clearly establish a comprehensive framework for applying civil liability based on this theory within professional guild systems and governmental structures (12).

Theory of Determining the Liable Person

Determining the liable party is not particularly difficult when fault constitutes the basis of liability. When fault is the source of damage, it inherently identifies the responsible person, as the individual whose fault caused the harm is naturally accountable (13).

However, when liability is based on risk and no attention is given to fault, identifying the liable party becomes more complex. Some scholars argue that the liable person is the one who created the risk and benefited from it. Others maintain that the creator of the risk is liable regardless of who benefits from it. Another view considers the liable person to be the one who has power, authority, and control over the risk, such as an employer or supervisor. Each of these perspectives has its proponents. It appears that in determining liability under risk-based systems, considerations of justice, the specific circumstances of each case, and the general principles governing civil liability and damages should guide the selection of the most appropriate and effective basis for achieving compensation and deterrence (13).

This analytical framework can also be applied to the subject matter of the present study. Accordingly, within professional contexts, liability may be assigned based on the nature of the activities of individuals, professional associations, or other responsible entities. In cases where the presumption of fault is applicable, liability can be determined based on functional responsibility and, where appropriate, apportioned among relevant parties.

Foundations of the Possibility of Claiming Compensation for Disability in the Legal Systems of Iran and England

In the Iranian Legal System

At the outset, it should be noted that the possibility of claiming compensation for disability in the Iranian legal system is justified on the basis of damages arising from loss of profit. In other words, as a result of the victim's injuries, the injured person may be unable to work or carry out activities for a short or long period, thereby losing the wages or earnings that, logically and ordinarily, would have been acquired during that period as realizable benefits. The statutory basis in this regard is Note to Article 515 of the Civil Procedure Code of 2000. Although this provision states that damages arising from loss of profit are not recoverable, under the condition expressed in the form of realizable benefits, such damages may be considered, pursuant to Article 10 of the Compulsory Insurance Law, among the losses falling outside the insurance policy. This is because the provision explicitly grants persons who, on account of sex or religion, are not entitled to receive compensation up to the ceiling of full *diya*, payment under personal accident insurance in excess of *diya*. This legislative approach and its acceptance, even in such a specific case, may serve as a guiding rationale for allowing claims in challenging instances, including disability

damages as discussed here. Nevertheless, the permissibility of compensating disability damages is expressly stated in Article 5 of the Civil Liability Act, which explicitly provides that "if the injured person suffers a bodily defect, or the injured person's capacity to work is reduced or destroyed."

In this regard, reference may be made to the judgment issued by Branch 8 of the Court of Appeal of Chaharmahal and Bakhtiari Province, Judgment No. 140032390000652588. The subject of the judgment concerned the claim for medical expenses and disability damages, where the disability had reached the extent that the appellant was unable even to perform office work. In that judgment, the judicial authority expressly relied upon the aforementioned Article 5, overturned the lower court's decision, and ultimately awarded the appellant a monthly pension, to be adjusted annually at the beginning of each year in line with the rate of inflation announced by the government.

Thus, the permissibility of receiving damages pursuant to the above-mentioned laws can be briefly illustrated through the following example: a person owns a motor vehicle and uses it to transport passengers and earn an income. However, as a result of a traffic accident involving another vehicle, the person suffers back pain and temporary weakness in the leg muscles due to the impact, such that standing becomes difficult. In addition, the face and hands are burned. In this accident, the driver of the other vehicle is deemed at fault and, given the unintentional nature of the traffic incident, is sentenced to payment of *diya*. Now, in addition to what may be categorized as pecuniary damage under bodily injury and is clearly covered by *diya*, other bodily and material damages also arise which, although bodily and material in nature, cannot be transparently measured by pecuniary criteria and therefore do not fall within the scope of *diya*; consequently, they must be claimed under other headings. Admittedly, in the law of *diyat*, in respect of certain injuries, the legislator, following Islamic jurisprudence, has also recognized the recoverability of benefits, but such recognition requires that the relevant harm be capable of falling under the scope of *diya*; otherwise, as stated above, it must be claimed as another category of damages or as damages in excess of *diya*. Although the possibility of payment of such damages has been mentioned in certain laws, it still remains a matter of dispute. Accordingly, the statutory foundations in this area may include general laws such as the Civil Code and the Islamic Penal Code, as well as specific laws such as the Civil Liability Act, the Compulsory Insurance Law, and even labor laws, under which expenses exceeding *diya*—including realizable benefits, medical costs, and compensation for downtime for persons and the property used by them, such as vehicles—may be claimed.

In addition to the aforementioned statutory bases, general principles such as the rule of *La Zarar* may also be invoked. Although the nature of the rule of *La Zarar* and its jurisprudential dimensions cannot be fully interpreted and analyzed here, as this is a matter of Islamic jurisprudence, it can nevertheless be advanced as a basis for the possibility of claiming compensation for disability-related injuries and clearly justifies the demand for and recovery of such damages. According to this rule, "whoever causes harm to another must compensate for it, except where harming another is authorized by law or where the loss suffered by the person is not wrongful or abnormal" (14). The substance of this rule can even be examined in the Constitution, in the sense that no harm or loss should remain uncompensated under Principle 40 of the Constitution. The application of this rule to bodily injury damages, and specifically to disability claims, may be extensive. This is because, in light of the nature of this rule, it may be understood that the harm arising from injury inflicted upon a person by an employer or any third party must be fully compensated. Although the basis of this rule is often traced to the *La Zarar* tradition, modern approaches have adopted a broader and more accurate foundation for it. From this perspective, claiming compensation for disability is entirely logical and rational and may encompass all factors involved in the occurrence of the loss. The doctrinal weight of this rule in explaining and analyzing legal institutions is so profound that even in cases of conflict with

other principles, such as the rule of dominion, it prevails over them and subjects them to its authority. It is possible that not all losses suffered by the injured person throughout the course of the damage may be compensated, and in such a case neither justice can justify or accept it, nor can the rule of *La Zarar*, given the status attributed to it, tolerate it. Note 2 to Article 14 of the Criminal Procedure Code of 2013 has not imposed any limitation on claiming all damages exceeding *diya*, and in cases where *diya* is paid, it merely excludes probable benefits from compensation; therefore, having regard to the general rules of civil liability, the conditions of compensable damage, and the absence of legislative prohibition, other damages beyond *diya*, including medical expenses, burial expenses, and other costs, may be claimed from the wrongdoer (15). Under paragraph 2 of Article 14, the legislator appears to hold that damages resulting from deprivation of the power to work, whether partial or total disability, are subsumed within the institution of *diya*, and that the injured party may not claim disability compensation in addition to *diya* from the wrongdoer (15). This position cannot readily be reconciled with principles such as the rule of *La Zarar*, which looks to the compensation of all damages. For example, if a worker, due to occupational injury, is temporarily or permanently unable to use vital organs such as the hand or eye in their specialized work, or if a musician who earns a living through playing with their hands suffers such injury, how can that person return to a normal and ordinary life merely by receiving *diya*, which compensates only part of the losses that are material and tangible? In the light of the rule of *La Zarar*, and from a rational rather than merely religious perspective, it must be acknowledged that although the principle of full compensation for all damages may not be an undisputed religious principle, its acceptance faces no religious obstacle (16). Thus, through a rational interpretation of the rule of *La Zarar*, the claim for disability compensation may be regarded as permissible. On the other hand, “the identity of a ruling lies in legislation; unlike when removal is understood ontologically, in which case the removal of the ruling follows from the removal of the alleged subject matter, such as in the maxim ‘there is no doubt for one who doubts excessively’” (17). Therefore, any rule established by the Lawgiver that entails harm, or through which harm is inflicted upon the subjects of the law, whether upon the obligated person or another, is negated in Islam (13).

Given this reality, if the wrongdoer, through their harmful conduct, is not liable beyond what is paid as *diya*, then the *diya* itself—which is also treated in part as a form of punishment—becomes a source of harm to the injured party. This is because even *diya*, despite its modern adjusted rate, is often incapable of compensating damages that may not correspond to present-day economic realities, including the reality of monetary inflation. Moreover, under Article 549 of the Islamic Penal Code, full *diya* is that which is prescribed in the Sharia, and its amount is determined and announced at the beginning of each year by the Head of the Judiciary in accordance with the opinion of the Supreme Leader. What is announced pursuant to this provision reflects the apparent wording of the article, which may be interpreted as setting a minimum threshold of compensation. As noted above, disability damage may be understood as *arsh*. This meaning can be examined in Article 449 of the Islamic Penal Code of 2013, which provides that *arsh* is a non-fixed *diya* whose amount is not determined in the Sharia. However, disability damages, or damages exceeding *diya*, are losses that do not fall within the aggregate notion of *diya*. Therefore, a new interpretation and renewed analysis of Article 549 may be proposed to justify disability compensation in excess of *diya*, namely that the concept of *diya* in this article signifies a minimum level of payment—a payment determined in light of the amount prescribed by Sharia, subject to consideration by the Head of the Judiciary, the opinion of the Supreme Leader, inflation, and similar factors. It should further be explained that the opening phrase of Article 549 establishes the principal rule that the rate of *diya* is that reflected in the instances specified by the Sharia. Accordingly, the amount set as *diya* constitutes the floor, or minimum rate, for full human *diya*. In light of this

perspective, the prevailing judicial approach on the one hand and the limited number of judgments recognizing the recoverability of disability damages in excess of *diya* on the other have produced a paradox and inconsistency in judicial practice in relation to this category of damages. This is despite the fact that *diya*, with its objective approach, appears unable to encompass bodily damages and costs which, in contemporary terms, reflect the requirements of the present age and the realities of the lifestyle of this era.

Therefore, where damages exceed this minimum compensatory floor represented by *diya*, recourse must be had to other mechanisms such as insurance, one example of which—already reflected in legislative discourse—is Article 66 of the Social Security Act. This provision expressly requires the payment of medical expenses and disability pensions to workers who have suffered injury and disability as a result of the employer's fault. The tenor of the legislator's statement in this article establishes, in mandatory form, that the Social Security Organization must claim and recover medical services, treatment costs, compensation, pensions, and similar payments from the employer in accordance with Article 50 of that Act. The provisions of this article reflect the principle that losses in the form of treatment-related expenses or pensions possess a non-criminal and quasi-delictual nature and are based on an administrative and intra-organizational foundation, the criteria of which are justice and work ethics. The scope of this article extends so far that its implementing regulation has extended compensation for such losses, in addition to the employer, to other culpable persons where fault is proven. Clause 38 of this regulation provides that "where, based on the labor inspector's report and judgments issued by judicial authorities, in addition to the direct employer, the degree of fault of other individuals or factors involved in the occurrence of the accident, including the assigning employer or contractor, due to failure to observe safety regulations, is separately specified, and this matter has been established and proven before the competent authorities, recourse may be made against the said persons for the implementation of Article 66 and recovery of the incurred losses." Although a complaint was brought seeking annulment of this regulation, the General Board of the Administrative Justice Court, in Judgment Nos. 89-90-91 dated 7 April 2021, File Nos. 9804127, 9803337, and 9803211, ultimately upheld the validity of this regulation and the aforementioned clause. The significance of this judgment lies in the Court's express statement that the insurance organization's decision concerning the fault of the employer and other culpable parties has the status of a claim founded upon enforceable documents and may be collected by the organization's enforcement officers (18).

From this perspective, even after receiving *diya*, the injured party remains harmed. Here, the rule of *La Zarar* must be interpreted and analyzed as requiring compensation in excess of *diya*. As follows from the concept of *La Zarar*, with its basis in transmitted tradition, the essence of this rule is the negation of harmful rulings; in Islam, no injurious rule has been enacted. In other words, any rule the implementation of which causes harm to people has not been established in Islam. Preserving this meaning, it cannot be imagined that, by legislating *diya*, the Lawgiver intended rigidity or interpreted payment through *diya* as equivalent to compensation for all losses, thereby closing the way to further compensation through other mechanisms.

In the English Legal System

In English law, there is no specific statute in the manner customary to the Romano-Germanic legal system, which our legal system follows; consequently, these rights must necessarily be derived from the numerous judicial decisions issued in different cases. With respect to compensation for disability as well, what is of primary relevance is judicial practice as reflected in the decisions of the courts and tribunals.

Nevertheless, within the English legal system, the subject of disability and the damages arising from it must, in a more specific sense, also be sought within a statutory framework. As some scholars have argued, in order to avoid the paradox of two major contemporary factors—namely, increased life expectancy due to improved health conditions and daily risk management, on the one hand, and the shortening of an individual's normal working life, on the other—states have increasingly moved toward regulating this paradox and resolving it through legislation and rules. Britain provides a useful example of this interaction. Due to relatively strict approaches toward unemployment and the limited number of early retirement schemes, disability benefits have over time represented an important route to retirement. At the same time, the primary legislative basis of disability-related regulation is found in the Social Security Act 1998, which addresses social security payments for individuals, as well as in the Social Security Benefits Act 1992 and the Social Security Administration Act 1992. These provisions provide the framework for the detailed rules contained in orders issued by the competent authorities under English law regarding disability. Likewise, industrial injuries disablement benefits, the features and nature of which—including the categories of illnesses or types of accidents covered by the scheme—were updated in December 2019, also form part of this framework. This scheme further covers persons working in approved employment training programs. The benefits payable under this scheme are known as industrial injuries scheme benefits (1).

In addition to the foregoing, the foundations of the possibility of claiming disability compensation may also be sought in the rules of civil liability. In this legal system, the objective of civil liability is not to compensate every kind of loss or every person. On the other hand, in England, compensable losses are divided into damage to property, personal injury, and pure economic loss (19). Within these categories of loss, claims for disability compensation fall under personal injury and may be pecuniary or non-pecuniary in nature. Furthermore, in the English legal system, state compensation constitutes one of the foundations for the payment and claim of disability damages. This framework is systematically implemented through reliance on the Criminal Injuries Compensation Act of 1995 and, subsequently, the 2001 scheme and other related schemes, and victims of crimes may, through these laws as well, claim disability compensation (19).

Compensation for Disability: Paid by Diya or as Compensation in Excess Thereof in the Legal Approaches of Iran and England

Below, the nature of disability damages and their legal status are examined and analyzed in light of various rules within, on the one hand, the legal-jurisprudential system of Iran and, on the other, the legal system of England.

Claiming Disability Compensation and the Nature of Such Payment in Iran

The importance of the principle of full compensation for damages, alongside the jurisprudential institution of *diya* as a fixed amount of compensation, necessitates a separate discussion in this regard. The appearance of terms such as compensatory pension in special statutes such as the Social Security Act reflects the emergence of an idea which, beyond the traditional jurisprudential discourse, not only regards *diya* alone as insufficient for compensating all losses, but also interprets it merely as part of the compensation for bodily injury and harm to the person. When a worker loses the ability to perform the specialized activities of his or her occupation, that person consequently loses future income as well. In the legal systems under study, different responses have been given to the payment of disability compensation to the injured person. For example, in Iran, although compensation for disability is recognized in statutes such as the Civil Liability Act and laws relating to insurance and social security, in criminal

law, and specifically in the law of *diyat*, this right has in practice been interpreted as compensation in excess of *diya* and, to some extent, denied (10).

The jurisprudential institution of *diya* is considered to have a dual nature, namely punishment and compensation. The general approach among jurists, and one that is not seriously disputed, is that disability compensation has no independent place in jurisprudential discourse where *diya* exists. To clarify the issue, it is useful to refer to the legal opinions of some contemporary jurists as follows. The question has been raised whether, in addition to *diya*, other expenses and treatment costs arising from the offense that exceed the prescribed *diya* may be claimed. In response, three religious authorities answered as follows: Ayatollah Araki stated that, beyond *diya*, the victim has no right to claim treatment expenses and costs; Ayatollah Golpayegani stated that where *diya* has been fixed, the wrongdoer is not religiously liable for any amount beyond the prescribed *diya*; and Ayatollah Ardebili stated that where no fixed amount is determined, that is, in cases of *arsh al-hukuma*, the competent authority may take such matters into account and determine a reasonable *diya*, whereas in specified and expressly provided cases it is problematic to demand anything additional (13).

Accordingly, as may be understood from these opinions, jurists generally do not accept expenses beyond *diya* in bodily injuries and regard them as religiously problematic. This is despite the fact that, in response to an inquiry directed to the Supreme Leader on this issue, he explicitly stated the non-compensability of such losses, allowing payment under this heading only if deemed appropriate by the ruler and by way of discretionary punishment. In Legal Opinion No. 9431 of the Office of the Supreme Leader, it is stated that although the wrongdoer is not religiously liable for the victim's treatment costs and disability losses, the religious ruler may, if considered necessary and appropriate, sentence him by way of discretionary punishment to pay amounts under this heading to the victim (20). What may be inferred from this view is the recognition of a distinction between intentional and unintentional crimes with regard to the claim for such damages, a distinction whose traces may also be found in legal opinions (20). As a religious standard, *diya* reflects an objective criterion for determining damages. This has led jurists to accept *diya* as a benchmark which, by virtue of Sharia and consequently the law, encompasses all damages, and therefore to regard discussion of other losses as lacking a valid basis. Yet a dynamic jurisprudence requires that temporal and spatial conditions be taken into account in legal rulings (21).

Even if one puts aside the theoretical discussion, judicial practice and judges' responses also reveal a fragmented and inconsistent approach. For example, in some judgments concerning claims for treatment costs and disability damages in addition to *diya* arising from bodily injury, the court has considered damages beyond *diya*, including treatment costs and disability, to be recoverable. In another judgment concerning the claim for treatment expenses and disability, the court held that ordinary treatment costs and disability losses in excess of *diya* were not instances of non-recoverable loss of profit, but rather realizable benefits to which the claimant was entitled. At the same time, some judgments, contrary to the foregoing, have considered compensation beyond *diya* to be unlawful; in yet another judgment, the court ruled that claiming amounts under the headings of treatment costs and disability in addition to *diya*, where the claimed damages were less than the amount of *diya* determined, lacked legal and religious validity, because payment of *diya* had already compensated the relevant losses. As may be inferred from the tenor of these judgments, where the courts have supported the recoverability of disability damages, or issued judgments on that basis, they have generally had temporary disability and the treatment period in mind. Otherwise, accepting that the person responsible for the accident should, in addition to payment of *diya*, remain liable for the

profits and earnings that the victim might have obtained throughout the course of life appears difficult. With this in mind, disability damages are not correctly regarded as an entirely novel issue (22).

At the same time, it must also be borne in mind that accepting disability damages may open the door to compensating benefits that the injured party would have obtained from the proper performance of contracts but lost because of the accident, and may thereby extend liability to remote consequences that are unforeseeable for individuals, imposing a heavy burden on those who, through fault, a minor lapse, or even without fault, have caused harm (22). Nevertheless, it seems that this concern can be addressed by regulating disability damages within a clear framework. Once the amount, examples, and scope of disability compensation are specified and addressed by law, such problems need not arise. The most logical and rational means of compensation in this area is insurance. In reality, each person, having regard to occupational position, employment opportunities, and earning capacity, may in advance obtain suitable insurance coverage and pay the corresponding premiums, so that in the event of an accident and disability, disability compensation may be paid to that person. This approach may have two positive effects. First, it resolves the problem of payment beyond *diya* and, while respecting jurisprudential foundations, also takes ordinary social conditions into account. Second, without imposing an additional burden on the wrongdoer through an expansion of permanent or temporary disability damages, the injured person may, to some extent, have fewer concerns arising from disability (22).

Claiming Disability Compensation and the Nature of Such Payment in England

In England, the institutions responsible for payment in respect of damages arising from bodily injuries provide compensation through approaches that are, in some cases, criminal and, in others, civil, which are referred to and analyzed below.

Punitive and Restorative Approaches as Mechanisms for the Compensation of Bodily Injury

“Punitive damages” are a recognized institution in the common law and, as a form of non-compensatory damages, their primary purpose is to punish the wrongdoer. From the perspective of judges and jurists within this legal system, such damages are classified among “non-compensatory damages” (23).

The laws and judicial decisions concerning compensation for bodily injury in England make relatively limited use of mechanisms such as punitive damages. This is because, as stated above, the nature and character of punitive damages fall within the category of methods known as “non-compensatory damages.” Therefore, in relation to their implementation and application, the most basic philosophy underlying them is their punitive character. This type of damages is rarely encountered in commercial disputes in which the amount of damages is calculated on a compensatory basis. Accordingly, non-compensatory damages are awarded where, in principle, the claim is decided in favor of the claimant, but in practice the defendant cannot be ordered to pay compensatory damages (23). Nevertheless, as a legal principle, punitive damages are considered applicable to all wrongs in which the element of will on the part of the wrongdoer has been effective in bringing about the harmful conduct. Thus, victims of commercial fraud may recover more than the loss they have suffered, provided that the requirements for punitive or penal compensation are satisfied. By non-compensatory damages is meant damages the purpose of which, contrary to what is customary in civil liability, is not compensation of the injured party and restoration to the position prior to the harm. Such damages are awarded when the claimant’s legal right has been infringed without substantial damage necessarily having been suffered (24). Therefore, the purpose of awarding punitive damages is, more than

compensating the injury suffered by the victim, to punish the wrongdoer or to provide greater protection to the injured party (24).

The restorative nature and character of damages may be observed in compensatory or restorative damages. Thus, the purpose of compensatory or restorative damages is to make good the loss suffered by the injured party as a result of breach of contract. For this reason, compensatory damages constitute the most important and the most common form of damages awards. Accordingly, restorative damages are regarded as the general rule and fundamental basis of compensation in English law. One consequence of the restorative character of damages is that the basis for recovery is the loss suffered by the claimant, not the gain obtained by the defendant. This rule, however, has many exceptions. Apart from damages that pursue objectives other than restoration—such as nominal, punitive, and restitutionary damages—English legal writers have also identified other cases in which the basis of payment is not the claimant's loss, for example, breach of an employment contract where the employee may in fact suffer no loss because of finding better employment elsewhere, while the employer may likewise derive no actual benefit from the breach. In such circumstances, the damages that may be awarded do not fall neatly within any of the previously mentioned categories. For the assessment of restorative damages in English law, two criteria are generally discussed: expectation loss and reliance loss. Alongside these two criteria, the special position of non-pecuniary damages must also be examined from the standpoint of the evaluation of restorative compensation. Accordingly, these damages, as their name indicates, are intended to compensate for losses resulting from the other party's wrongful conduct. Such losses may be pecuniary—for example, costs associated with the harmful conduct, lost profits, and indirect costs arising from the harmful act—or non-pecuniary, such as pain and suffering, loss of bodily functions, or disability. Restorative damages may therefore be understood as the sum paid by the wrongdoer, being that amount which would not have been payable had the injured party not been placed in that harmful position in the first place (25).

Compensation for Disability Losses and Practical Mechanisms in the English Legal System

One of the most important objectives of civil liability laws is to compensate for the losses suffered by persons who have sustained bodily injury and endure physical pain. Under the current English legal system, the losses suffered by the claimant are recoverable from the defendant, provided that it is established that the defendant committed fault. In recent years, this system has been subject to increasing criticism because it is considered an inefficient method of compensating losses resulting from accidents. In relation to disability damages, their threefold character is recognized in the English legal system and applied to accident victims: civil liability law, public insurance or social security, and private insurance together constitute the framework for compensating bodily injury, within which disability damages are also taken into account. It must first be acknowledged that the greater part of compensation is provided through public insurance. A person injured in an accident may be entitled to receive payments from the state under the heading of sickness benefit. Civil liability compensation is distinct from state payments in the sense that damages under civil liability are payable only where it is proven that the person causing the harm was at fault, whereas assistance payments made by the state are made upon the occurrence of an accident and according to the degree of need. Compensation through private insurance appears to play a smaller but growing role. In the face of illness or incapacity, personal accident insurance or permanent health insurance may be obtained. In British law, such insurance remains relatively expensive, but employers often provide it for their key employees (26).

In any event, all people in England have access to the National Health Service, which is funded through general taxation and national insurance contributed by all employed residents of England. Residents of England have no option to opt out of participation in this public insurance system, and it should be said that this insurance scheme is sufficiently comprehensive to cover bodily injuries effectively, including disability-related losses. Private health insurance therefore plays a supplementary role, usually to guarantee faster access to healthcare, especially specialists, and in some cases better facilities in healthcare centers. In England, private health insurance covers short-term or curable illness or injury. However, it does not cover general practitioner services, chronic conditions, or conditions that the individual had before obtaining insurance (27).

Another compensation system in England that is, in a sense, universal and covers all residents is, as noted above, the National Health Service. The NHS is the healthcare system publicly funded in England and is one of the four national health service systems in the United Kingdom. It is the second single-payer healthcare system in the world after the public services system in Brazil. Its primary funding is provided by the government through general taxation, together with a small amount from national insurance contributions, and under the supervision of the Department of Health and Social Care it provides healthcare services to all lawful residents of England and residents of other parts of the United Kingdom, most of whom receive these services free at the point of delivery. Some services, such as emergency treatment and treatment of infectious diseases, are free for most persons, including visitors and tourists. Therefore, free healthcare at all times has been one of the fundamental principles of the National Health Service. This public insurance system was founded upon three basic principles: first, that it should meet the healthcare needs of all segments of society; second, that it should be free at the time of delivery; and third, that the rules governing it should be based on clinical need, not on the ability of the injured party, the visitor, or the insured person to pay. These three principles have guided and endured throughout more than half a century of development of the National Health Service. However, in July 2000, a full-scale modernization program was launched, and new principles, incorporating broader and more varied services, were added to it (28).

Conclusion

In explaining the manner in which disability compensation is payable in the two legal systems of Iran and England, what must be taken into consideration are the underlying grounds for the recognition of such rights. In both legal systems under discussion, disability loss has been accepted within the framework of civil liability in the course of recognizing and compensating non-pecuniary damages. Nevertheless, the Iranian legal system, in line with the principle of full compensation for all damages, has attempted through various laws to make the basis for the payment of non-pecuniary damages and disability compensation—rooted in this category of rights—recoverable by reference to principles such as the rule of no harm. The express recognition in statutory law of compensation for disability, with an objective approach, reinforces the view that the range of pecuniary and non-pecuniary rights in various rules of the Iranian legal system, unlike the English legal system, tends toward accepting the principle of full compensation for all damages. On the other hand, within the discourse of the Iranian legal system, particularly in the field of civil liability, the law has been shaped by legislative rules influenced by customary and religious perspectives, and these are reflected in the legal structure applied by the courts. By contrast, in the English legal system, compensation for disability is pursued through a more subjective and psychological approach, developed in the light of judicial decisions and legal doctrine, with the support of certain statutes, including insurance legislation.

It should be said that, in the Iranian legal system, the most prominent mechanism for payment may be understood within the insurance framework, and given governmental policies relating to the principle of one-time compensation for loss, the cumulation of benefits cannot be regarded as the governing principle of payment. This is while, in England, the legal system of cumulative benefits in some cases, together with the insurance structure, serves to expand the principle of recoverability of all damages in relation to disability loss. The legal basis in the Iranian legal system indicates the payment of disability compensation, but in its interaction with *diya* and the law of *diyat* as an institution for compensation, the personal criterion has, in a sense, been placed under the umbrella of an objective and legislatively shaped religious and customary standard, and these two together have sought to extend compensation in the field of civil liability. On the other hand, in English law, there is fundamentally no specific statute in the manner customary to the Romano-Germanic system, which our law follows, and these rights must therefore be extracted from the various decisions issued in different cases. In the field of disability compensation as well, judicial practice is of primary relevance. In the English legal system, the basis adopted for this issue is the product of standards that may be interpreted in relation to the aims of civil liability. A person who makes their utmost effort to act properly, yet fails to satisfy the court's standard and thereby causes injury, will still be liable. The standard applied is an objective one: the court takes as its measure what an ordinary person in the defendant's position would have done, and, for example, the individual limitations of particular persons are disregarded. The content of the standard depends on the purpose of defining negligence and carelessness. If the aim is to maximize compensation for injured persons, then clearly the claimant's interests require the standard of negligence and carelessness to be set at a high level. But if the aim is to deter defendants from harmful conduct, it would be futile to raise the standard so high that it becomes unattainable. In English law, the employer may be vicariously liable in the course of work for the carelessness and negligence of employees, even where no fault on the part of the employer itself is assumed, as a practical response to a particular problem. In matters of industrial safety, Parliament has enacted rules imposing strict civil liability on employers, in addition to liability arising from their own fault. Therefore, the standard and criterion required under the concept of strict liability, which serves as one basis of civil liability, differs from one form of civil responsibility to another. In any event, in the English legal system, the basis of disability compensation derives not only from legislative approaches in the field of insurance, but also from judicial decisions.

In these two legal systems, Iran and England—one being a clear example of the common law tradition and the other being influenced by the Romano-Germanic system—there is a difference in the compensation of disability losses, and the reason for this difference lies in the existence of *diya* in Iranian law. In the English legal system, and even in countries following the Romano-Germanic model, the principle of full recoverability of damages leads to compensation for all injuries on the basis of a personal criterion. In Iran, however, due to the governing role of *diyat* in this area and the persistent doubt over recovery beyond *diya*, an objective and general standard can be observed. Therefore, in light of the foregoing discussion and findings, it may be concluded that the principle of recoverability of damages in the Iranian legal system has been accepted in the field of disability subject to limitations, such as the distinction between intentional and unintentional harm, by way of exception. In English law, by contrast, compensation in the field of disability can be justified through liability principles in relation to the various dimensions of loss. On the basis of this conclusion, it may be stated that the research hypothesis—namely, that there is a difference in the process of implementing legal rules governing compensation for disability losses in the civil liability systems and laws of Iran and England—is confirmed and accepted, while the null hypothesis of the study is rejected.

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All authors equally contributed to this study.

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