

Financial Compensation for Moral Damages in Islamic Jurisprudence and the Judicial Law in the Kingdom of Saudi Arabia

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Abstract:

This research paper explores the intersection of Islamic jurisprudence and contemporary judicial law in Saudi Arabia concerning the provision of financial compensation for moral damages. In Islamic law, moral damages hold a significant place within the framework of justice, emphasising the compensation owed to individuals for harm caused to their person, dignity, or reputation. The central theme of the paper is whether financial compensation for moral damages is acceptable under Sharia Law. The paper begins by examining the foundational principles of Islamic jurisprudence that underpin the concept of financial compensation for moral damages. It explores key Islamic legal sources, such as the Qur'an and Hadith, to elucidate the ethical and moral considerations guiding the determination of appropriate compensation in cases of moral harm. A critical analysis of the evolution of Saudi Arabian judicial law is presented to understand how the principles of Islamic jurisprudence are incorporated into contemporary legal practices. This analysis includes an examination of relevant statutes, court decisions, and precedents that shaped the legal landscape for assessing and awarding financial compensation for moral damages. Two case studies and real-life examples are analysed to illustrate the application of these principles in actual legal proceedings within the Saudi Arabian context. In conclusion, the research highlights the harmonisation of Islamic jurisprudence with judicial law in Saudi Arabia regarding financial compensation for moral damages. It contributes to the ongoing discourse on the intersection of Islamic law and contemporary legal laws, offering valuable insights for policymakers, legal practitioners, and scholars alike.

Keywords: Saudi Judicial Law; Financial Compensation; Moral Damages

I. INTRODUCTION

Islamic law, often referred to as Sharia Law recognises and protects fundamental human rights. While the specific interpretation and application of these rights may vary among different Islamic Legal traditions and scholars, five fundamental human rights are generally considered integral to Islamic Jurisprudence. The right to life is one of the most fundamental human rights in Islam. It is protected, and the taking of innocent life is strictly prohibited. This prohibition extends to acts such as murder, manslaughter, and causing harm or injury to others without just cause. Implicitly, any harmful act that affects the psychological well-being of an individual, such as the consumption of substances like alcohol or hard drugs and so forth is considered an offense that violates the individual's rights to life and well-being. The Qur'an states, "...and do not kill the soul which Allah has forbidden, except by right".²⁹⁶¹ The right to religion and belief (*Hifz al-Din*) ensures that individuals have the right to practice their religion and exercise their beliefs without coercion or discrimination. Freedom of religion is a fundamental principle in Islam, as expressed in the Qur'an, "...there is no compulsion in religion".²⁹⁶² This principle underscores the idea that faith should be a matter of personal conviction. The right to personal dignity and honour (*Hifz al-'Ird*) ensures that every individual has the right to maintain one's personal dignity and honour. This includes protection against defamation, slander, and any actions that may harm one's reputation or integrity. Violations of a person's dignity are prohibited,

²⁹⁶¹ Qur'an, Surat Al-Furqan (The Criterion) 60:25.

²⁹⁶² Qur'an, Surat Al-Baqarah (The Cow) 2:256.

and individuals are entitled to legal redress for such violations. The right to property (*Hifz al-Mal*) ensures the right to own and protect one's property, which is a fundamental human right in Islamic law. This right encompasses the ownership, use, and disposal of property (irrespective of creed, race, gender, and nationality), and protects it from unlawful confiscation or theft. The Qur'an recognises this right, stating that "...and do not consume one another's wealth unjustly".²⁹⁶³ The right to equality and non-discrimination (*al-Musawa*), emphasises the principle of equality among all individuals, regardless of race, ethnicity, gender, or social status. Discrimination on these grounds is strictly prohibited. The Qur'an declares, "O mankind, indeed we have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you"²⁹⁶⁴.

It is important to note that interpretations of these rights may vary, and different Islamic legal schools or countries may implement these rights differently. Additionally, ongoing debates and discussions within the Islamic legal tradition address the balance between individual rights and societal interests. These discussions can influence the practical application of these fundamental human rights. Thus, the essence of preserving and protecting human sanctity is the sole motive of Islamic Law, whose social justice law is governed by the Holy Qur'an, Sunnah, and Consensual Opinions of Islamic Jurists.

However, misconceptions surrounding Islamic Law often arise from the nature of its penalties, including capital punishment, and the rights of non-Muslim settlers living in an Islamic state or a Muslim-dominated society. While this discussion is beyond the scope of this paper, a brief account of this topic aims to rekindle the debate on the claim that Islamic law is effective, dynamic, and just in addressing criminal and civil cases across all contexts. Against this background, it is evident that laws are always determined by the administration of justice in regulating humans' pursuit of these essential needs. These laws are meant to establish norms that guide human behaviours under any circumstances.

Therefore, encroaching upon these human rights constitutes the violation of legislated laws, rendering the offender to prosecution under both Islamic and secular legal systems. It is noteworthy that the prosecution of offences varies depending on the nature of the offence within Islamic and secular laws. For instance, similar to secular law, the prosecution of offences under Islamic law could be categorized as either *jinayat* (criminal offence) or *mu'amalat* (civil offence). Civil cases, therefore, in Islamic law pertain to non-criminal matters, addressing a wide array of personal, familial, contractual, and financial disputes. Such cases are resolved through a combination of negotiation, mediation, and formal legal proceedings, guided by Islamic legal principles, with an emphasis on fairness and the protection of individuals' rights.

To delineate the administrations of justice under these two legal systems, this paper focuses on moral damages (injuries) arising from human interactions. Specifically, it examines how such cases related to moral damages (injuries) are addressed in Islamic jurisprudence and adjudicated under the Judicial Law of the Kingdom of Saudi Arabia. In an effort to elucidate the legal procedures for trying cases of moral damages/injuries, the study examines two cases. The first case involves an employer (the offender) who compromised the reputation and entitlements of an employee (the victim). The second case pertains to a breach of contractual responsibility that caused emotional harm to victims (flight passengers) due to the negligence of crew attendants (representatives of the service provider, the airline owner). Both examples are civil cases that provide legal insights into how Islamic law is applied in administering justice for moral damages in Saudi Arabian courts.

However, the rationale of Islamic law (Sharia) can differ from other legal systems, nonetheless, the essence is to ensure the administration of justice for all, irrespective of one's creed, race, or social status in society. Thus, laws serve as instruments for imposing fines, intended to deter offenders, while compensation aims to redress the harm experienced by the victim. It is noteworthy that, unlike prosecution for criminal offenses, cases of

²⁹⁶³ Qur'an, Surat Al-Baqarah (The Cow 2: 188).

²⁹⁶⁴ Qur'an, Surat Al-Hujurat (The Chambers 2: 188).

moral injury attract monetary compensation. With the recognition of the role of money in people's lives, monetary penalties are considered effective in deterring individuals from committing such offenses.

Having understood the objective of Sharia Law, this study focuses on the issues related to the right to personal dignity which falls under human rights in Islamic law, comparable to civil wrongs in secular law. This further explicates the legal rationale for finding offenders in both Islamic law (Sharia) and secular laws, aiming to identify common principles and differences between the two legal systems. Before examining the two cases, it is necessary to define the concept of moral damage/injury, the methodological approach adopted by the study, understand the rationale for compensating victims of moral damages and provide a brief history and structure of Saudi Arabian Judicial law.

I. METHODOLOGICAL APPROACH

Although there are research studies on this topic, this study is unique in its approach. In other words, applied models are drawn from real judicial proceedings in the courts, determining what should be implemented, a discussion of the jurisprudential opinions, and selecting what is most appropriate and authentic. In addition to making the topic more interesting, the study aims to offer invaluable insights to lawyers, legal experts, and decision-makers involved in compensation for moral injury, particularly within the Sharia Law framework under Saudi Arabian judicial law.

The approaches employed in this research study are inductive, analytical, and inferred. The research methods employed in this study are crucial for conducting a comprehensive analysis of compensation for moral injury in Islamic Jurisprudence and its application in Saudi Arabian judicial law. The inductive approach allows the researchers to draw conclusions and formulate general principles based on specific cases and examples. The analytical approach enables a lawatic examination of the relevant legal texts, opinions of scholars, and judicial rulings. The inferred method helps to identify patterns and trends in the interpretation and application of compensation for moral injury. By combining these methods, the study provides a well-rounded analysis that is both grounded in real-world examples and supported by scholarly opinions. These are the techniques by which jurists form their informed opinions on this topic and the tools the judges rely on in issuing judicial rulings in the Saudi Arabian courts. Second, the approach adopted in compiling the literature for the study is the selection of the most trustworthy texts, opinions, and sayings from credible sources. Referring to the noble verses mentioned in *Surahs* (Holy Qur'an's Chapters) using the verse number when referring to Hadiths (the Traditions of the Prophet of Islam) from reliable sources, the study strongly relied on either the two (*Sahihs*) or the one that states the Hadith, if any. In the case of the latter, the study relied only on reliable and authentic Hadiths sourced from the available books of Hadith.

II. DEFINITION OF CONCEPTS

Identifying the distinctions between the literal and terminological meanings of a concept is significant for academic and general discourse. Given this fact, the concept of compensation is derived from the verb "to compensate", which means to replace or make up for something that has been damaged.²⁹⁶⁵ The meaning is re-defined by the definition offered in the Lexico Dictionary, which describes compensation as "...typically money awarded to someone in recognition of loss, suffering, or injury."²⁹⁶⁶ The significance of this definition lies in the legal connotation that the words "award", "loss", suffering," or "injury" imply.

Terminologically, this usage is not common among the earlier jurists, but rather the term "guarantee" is included in the meaning of compensation. For earlier jurists, the term "guarantee" referred either to

²⁹⁶⁵ Ibrahim Mustafa and others, (in Arabic) [The *Mediator Dictionary*] (2nd edition, Arabic Language Academy: Cairo 1972) 2:637.

²⁹⁶⁶ Lexico Oxford <<https://www.lexico.com/definition/compensation>> accessed May 26, 2022.

the "guarantee" itself or to "compensation."²⁹⁶⁷ Therefore, the earlier jurists defined the term "guarantee," as compensation, and the concept is understood as "...a duty to return the thing or its exchange for the same thing or value [e.g., to find a liber-monger for inflicting moral injury to an innocent]."²⁹⁶⁸

On the other hand, moral injury literally means the antithesis of benefit, i.e., the opposite of it²⁹⁶⁹, and refers to causing injury to others.²⁹⁷⁰ Technically, it is every injury caused to a person, whether it involves respected property, a respectable body, or a preserved honour.²⁹⁷¹ As for the moral aspect, it is the opposite of the tangible or material. What is meant by "moral injury"? It refers to any injury caused to a person's honour, feelings, or emotions.²⁹⁷² Some refer to it as moral injury in legal terms²⁹⁷³. To sum it up, what happens if a person offends another's reputation or position, or describes them with the worst traits? Such an injury typically does not leave a tangible effect or result in a material benefit. Instead, it often leads to psychological and moral suffering, such as that experienced by a plaintiff when pleading and attending hearings before a judge to assert their rights before others. This is a question the paper will implicitly address.

An interdisciplinary definition of the concept of "Moral damages" or "moral injuries" refers to the emotional or psychological harm suffered by an individual as a result of wrongful actions by another party. These damages typically involve non-economic harm, such as pain, suffering, distress, or harm to one's emotional well-being. The availability and recognition of moral damages can vary across legal jurisdictions, but they are generally recognised in many common law and civil law. The cases presented in this paper exemplify both dignity and economic harm (the employee vs employer case) as well as emotional distress owing to breach of customer service contract (passengers vs Airline Operator case).

III. RATIONALE FOR COMPENSATION

In Islamic Law (Sharia), the concept of fines (also known as "*Ta'zir*" or "*kaffara*") is based on several principles:

1. Deterrence and Prevention: Fines are imposed to deter individuals from committing offenses and to prevent the recurrence of the same or similar crimes. The idea is to provide a disincentive for wrongful behaviour.
2. Restitution: In some cases, fines are used to compensate the victim or their family. For instance, in cases of personal injury, the offender might be required to pay a fine as a form of restitution to the victim.

²⁹⁶⁷ Muhammad bin Abdullah ibn Qudamah, (in Arabic) [*The Be tower of Wealth*], ed. Dr Abdullah Al-Turki and Dr Abdul-Fattah Al-Helou, (3rd edition, Riyadh: Dar Alam Al-Kutub 1996) 7: 71.

²⁹⁶⁸ Alaa Al-Din Abu Bakr Al-Kasani, (in Arabic) [*The Wonders of Crafts in The Arrangement of Laws*] (2nd end, Dar Al-Kutub Al-Ilmiyya 1985) 7: 168.

²⁹⁶⁹ Ahmad bin Faris Al-Razi (in Arabic) [*The Dictionary of Language Measures*], Ed. Abdul Salam Muhammad Haroun, Dar Al-Fikr, 1979, 3:360.

⁶ Ahmed bin Muhammad bin Hajar Al-Haytami (in Arabic) [*The Clear Conquest in Explaining the Forty Hadiths*], Dar Al-Minhaj, Jeddah, 2007, 516.

⁷ Muhammad bin Al-Madani Bousaq, (in Arabic) [*Compensation for Injury in Islamic Jurisprudence*], Dar Ishbilila for Publishing and Distribution, 1998, 28.

⁸ Wahba Al-Zuhaili, (in Arabic) [*The Theory of Warranty or Civil and Criminal Liability Provisions*], Damascus: Dar Al-Fikr, 1998, 54.

⁹ Kuwaiti Fiqh Encyclopaedia, Kuwait: Ministry of Endowments and Islamic Affairs, 2006, 13/40.

Fines in Islamic law can be applied to a variety of cases. The specific fines and their amounts can vary based on the severity of the offense, the circumstances, and the interpretation of Islamic jurisprudence by different schools of thought.

1. **Secular Law:** In secular laws, the rationale for fining offenders is primarily grounded in different principles:
2. **Punishment and Deterrence:** Fines are used to punish offenders for their wrongful actions and deter them from engaging in criminal behaviour in the future. The imposition of a monetary penalty is intended to make the offender think twice before committing a crime.
3. **Restitution:** In some cases, fines are used to compensate victims for their losses. For example, a court may order an offender to pay restitution to a victim who has suffered financial harm as a result of the crime.

Secular laws cover a wide range of offenses, including but not limited to traffic violations, tax evasion, environmental violations, white-collar crimes, and more. The specific fines and their amounts are usually prescribed by legislation and may vary depending on the jurisdiction and the nature of the offense.

Generally, the concept of "moral injury compensation" is not a widely recognised or established concept in business or commercial law within most laws. The term "moral injury" is indeed more commonly used in the fields of psychology, ethics, and military contexts to describe the psychological and emotional distress resulting from a violation of deeply held moral or ethical beliefs.

In the realm of business and commercial law, compensation typically revolves around more tangible factors such as financial losses, damages, or contractual breaches. While there are legal mechanisms to address issues related to ethics and morality, they are usually approached within the framework of existing legal principles, contract law, and relevant regulations.

In business and commercial law, disputes and claims typically revolve around issues such as breach of contract, intellectual property, employment disputes, product liability, and other areas of commercial activity. Compensation in these cases is typically based on legally recognised concepts such as:

1. **Damages:** When a party breaches a contract or commits a wrongful act in a business context, the injured party may be entitled to damages. These damages could be compensatory (to cover the actual losses suffered) or punitive (to punish the wrongdoer for particularly egregious conduct). Damages are awarded based on the economic and legal consequences of the breach, not on moral injury.
2. **Restitution:** In some cases, a party may be required to restore or return benefits or property wrongfully obtained. This is a remedy designed to prevent unjust enrichment.
3. **Equitable Remedies:** In addition to damages, equitable remedies like specific performance, injunctions, or rescission may be available to address certain types of business disputes.

It is worth noting that there may be ethical considerations in business, but these do not typically result in legal claims for "moral injury compensation." Ethical considerations can be important in business practices, corporate social responsibility, and reputation management, but they are generally distinct from the legal framework of business and commercial law.

Therefore, since moral injury affects the nature of a human being's well-being, which may be more painful than material injury, compensation and reparation for that injury, even in monetary terms, may alleviate some of those pains and suffering. Moral injury refers to the harm to a victim's integrity caused by the utterances of a slanderer or liber-monger. As such, this issue has garnered the attention of jurists, judges, and concerned claimants. However, it requires clarification from a doctrinal perspective, including the opinions of scholars and judges, on what is generally applied and the administration of justice in the Saudi Arabian courts. This has been the motivation for focusing on

and writing about this topic. People interested in this subject, such as judges, legal scholars, researchers, and others, are likely to find the study compelling.

IV. SAUDI ARABIAN JUDICIAL LAW

The judicial law in the Kingdom of Saudi Arabia is founded upon the principles of Islamic law, or Sharia, and has undergone significant developments in recent years to enhance efficiency, transparency, and accessibility. Here is a brief overview of the Saudi judicial law:

1. **Islamic Law (Sharia):** The foundation of Saudi judicial law is rooted in Islamic law. Sharia serves as the primary source of legislation and guidance for legal decisions, emphasising moral and ethical principles derived from the Qur'an and the Hadith (sayings and actions of Prophet Muhammad).
2. **Courts Hierarchy:**
 - a. **General Courts:** These are the primary trial courts in Saudi law, handling a wide range of cases, including civil, criminal, and family matters governed by Islamic law.
 - b. **Administrative Courts:** Address administrative disputes and issues related to government actions and decisions.
 - c. **Supreme Court:** is the highest judicial authority in Saudi Arabia. It is responsible for overseeing the judiciary and ensuring the uniform application of laws across courts in the country.
3. **Judicial Independence:** While the Saudi judiciary operates within the framework of Islamic law, efforts have been made to enhance the independence of the judiciary. The judiciary is expected to exercise its functions without interference from external influences.
4. **Reforms and Modernisation:** In recent years, Saudi Arabia has embarked on a series of legal reforms to modernise its judicial law. These reforms aim to streamline procedures, improve access to justice, and enhance the efficiency of legal processes.
5. **Electronic Services:** The Saudi judiciary has embraced technology to improve service delivery. Online platforms and electronic services have been introduced to facilitate case filing, access court records, and provide information to the public.
6. **Alternative Dispute Resolution (ADR):** Efforts have been made to encourage the use of alternative dispute resolution mechanisms, such as mediation and arbitration, to resolve legal conflicts more expeditiously.
7. **Legal Professionals:** The legal profession in Saudi Arabia includes both Saudi and foreign lawyers. Law graduates can pursue legal careers, and the country has law schools that contribute to the development of a qualified legal workforce.

Thus, Saudi judicial law is evolving to balance the traditional principles of Islamic law with contemporary needs for efficiency and transparency. Ongoing reforms reflect a commitment to enhancing the rule of law and providing accessible and fair justice for all citizens and residents.

However, from the point of view of Islamic Jurisprudence, it exemplifies Saudi Arabian judicial law and its application in its (Saudi Arabian) courts. Islamic law is the source of the law that courts use to make decisions in all cases. This study is of great importance as it sheds light on a topic that has not been extensively explored within the field of Islamic Jurisprudence. Understanding the principles and procedures of compensation for

moral injury is crucial for ensuring the administration of justice in Saudi Arabian judicial law. By examining real-life cases and analysing the opinions of scholars and judges, this study provides practical insights that can guide legal professionals in making informed decisions. Furthermore, the findings of this study can contribute to the ongoing discourse on the interpretation and application of Islamic Sharia in contemporary laws.

V. CONTEMPORARY TRIED CASES FOR MORAL INJURY

In this section, the paper attempts to examine two lawsuits filed in Saudi Arabian courts. Many compensation lawsuits are frequently filed in the courts of the Kingdom of Saudi Arabia. These lawsuits are initiated by the injured party seeking compensation for the material or moral damage caused to them due to the actions of another person, whether intentional or unintentional. These lawsuits are brought forth by formulating a compensation claim document in the court relevant to the type of damage incurred. Before examining the two identified lawsuits, there is the need to comprehend the classifications of moral injury, the court's jurisdiction to hear such cases, and the conditions required for filing a compensation claim for moral injury.

VI. COMPENSATION CLAIMS CASES

There are many cases in which the injured party can claim compensation for damage suffered as a result of a crime or violation. Especially since the law in the Kingdom of Saudi Arabia allows the possibility of claiming compensation for damage in any situation and under any circumstances where an individual causes harm to another, resulting in material and moral losses.

Here are the prominent common cases in which the injured party can file a compensation lawsuit in the Kingdom:

1. **Compensation for Criminal Cases:** Filing a compensation lawsuit for damage caused by an error or action committed against the plaintiff, resulting in harm in criminal acts. This includes acts of assault causing physical and psychological damage, making it one form of compensation claim.
2. **Compensation for Civil Cases:** filing a compensation lawsuit for damage caused by an error or action committed against the plaintiff, resulting in material losses. For instance, if a person's device is damaged due to a technical error in a company's law or poor manufacturing covered by the company, the company is obliged to compensate for the specific damages caused by this error. This is another form of compensation claim for actions.
3. **Compensation for Labour Cases:** filing a compensation lawsuit for damage caused by an intentional or unintentional act or error committed by the employer or occurring during work, resulting in physical or moral harm to the employee. This can include injuries sustained during work, either temporary or permanent, or the employer infringing upon the financial rights of the employee, leading the employee to claim compensation. Other scenarios include unjust termination before the contract period expires.
4. **Compensations Related to Accidents:** such as damages resulting from traffic accidents, injuries due to electrical shocks resulting from a malfunction in power poles, or injuries due to construction activities for non-workers.
5. **Real Estate Compensations:** involving material losses due to damage to properties owned by the plaintiff. This includes compensation for properties acquired by the government for the construction of public facilities serving the public interest.
6. **Commercial Compensations:** Involving significant material losses due to breaches of contract terms and agreements and non-compliance with them. Other cases include compensations related to social insurance and pensions, and compensations for medical errors.

VII. ELEMENTS OF A COMPENSATION LAWSUIT

Several conditions, known as the elements of a compensation lawsuit, must be met for the plaintiff to deserve compensation for the damage suffered. These elements include:

1. **The Element of Fault:** A compensation lawsuit must be based on the presence of a wrongful act committed by the defendant against the rights of the plaintiff. This act should be either contrary to the law or in violation of a contract between the parties, and the defendant cannot absolve themselves of legal responsibility in this case, whether the assault was intentional or unintentional.
2. **The Element of Damage:** If there is an error but it does not result in any damage, a claim for compensation for non-existent damage cannot be made.
3. **The Element of Causation:** There must be a direct and causal link between the error that occurred and the resulting damage. The harm suffered by the plaintiff must occur as a direct result of the error committed by the defendant, meaning that the damage is an inevitable consequence of this wrongful act. Thus, the causation element is fulfilled, and the injured party is entitled to appropriate compensation.

VIII. CASE I - EMPLOYER VS EMPLOYEE²⁹⁷⁴

The plaintiff filed a claim for moral damage he suffered for imprisoning him for fourteen days. The decision to imprison him was considered under the Disciplinary Decision No. 1282 issued on 18/01/1429 (27/01/2008), which includes the deduction of his salary. The plaintiff has previously filed an appeal against the ruling, a decision that he disputed its conformity with the Sharia (Islamic law) and the laid down legal procedures in force. The plaintiff based his claims on the disciplinary decision taken against him because the defendant did not comply with the principles of the laboratory tests. Therefore, the plaintiff refuses to provide the required sample for examination to the defendant. As a result, the defendant suspended the plaintiff from the work and issued an administrative decision to deduct his salary. Based on the accounts of each party and after examining the case evidence, the judge considered the mistake of the plaintiff (the refusal to provide the sample) as an immaterial fact once the responsibility of the perpetrator (the defendant), which is to comply with the laboratory practices, was realised. On the face of the matter, the evidence provided before the judge convinced the judge that the plaintiff suffered damage. Therefore, the judge ordered compensation of the plaintiff for the harm caused by an error in the disciplinary decision the defendant had taken. The judge opined that had the defendant complied with the principles of the practice, which is his sole responsibility, the plaintiff would not have refused to provide the sample to the former. Thus, the judge found the defendant guilty of issuing a disciplinary decision when there was an injunction that revoked the decision against the plaintiff. Based on the above and after examining the case documents, since the error is considered an incident in itself when it occurs, it imposes liability on its perpetrator to compensate for the resulting damage. Therefore, the court is convinced of the necessity to compensate the plaintiff for his damage. Since this error caused damage to the plaintiff, namely, detaining him for fourteen days, which affected his reputation, the judge, in assessing the compensation, took into account the plaintiff's position and salary. As a result, the judge determined that the defendant was obliged to pay the plaintiff twenty-nine thousand, sixty-six hundred, and forty Riyals for the period of detention and the damage caused. The Court of Appeal upheld the verdict.

IX. CASE II - AIRLINE OPERATOR VS PASSENGERS²⁹⁷⁵

The plaintiff has filed a lawsuit against the defendant (Saudi Arabian Airlines) seeking compensation for the moral damage he and his family suffered while travelling on one of the flights of the defendant. The claim of the plaintiff was one of the seats reserved for them as group travellers were dirty. One of the daughters of the plaintiff while fastening her seat belt, stained her hands and clothes. As a result, she was psychologically and emotionally disturbed owing to the untidiness of the seat and belt. Second, the flight attendant moved her to another seat, which separated her from the family. This incident caused the plaintiff distress, while the daughter suffered psychological and moral damage throughout the journey. In addition to the prolonged stay at the airport, there was the stress of monitoring the separated teenager, the anxiety of sitting beside strangers on the plane, and the long-

²⁹⁷⁴) Case No. 3293/3 Date. 03/06/2016

²⁹⁷⁵) Case No. 2048 Date. 19/ 08/ 2014.

distance travelled to reach their destination. Taking into account the panic, embarrassment, fear of loneliness, and anxiety that gripped the daughter, the family, and the plaintiff throughout the journey, the full extent of the emotional and psychological toll was considered. The judge has admitted the fact that the plaintiff and his family have suffered moral damage basing his decision on the principle of the dictum, "There should be no harm or reciprocating harm". A doctrine that Islamic jurists had a consensual opinion on mitigating the damage deduced from this is well-attested Hadith. The Jurists have unanimously agreed on this meaning in the legal maxim (Harm should be removed). Since the emotional damage suffered by the plaintiff and his family has been proven, as admitted by the defendant and not denied, the court has assessed fair compensation for the harm caused. Thus, the judge ruled that each member of the family of the plaintiff shall be compensated four thousand riyals (4,000 riyals) each for their flight fare and other expenses for the moral and emotional damages the family suffered throughout their journey. The court of appeals has affirmed the ruling.

X. THE RULING ON COMPENSATION FOR MORAL INJURY

Any of the previous jurists may not address compensation for moral or non-material injury. Kuwaiti Fiqh Encyclopaedia stated: "...we didn't find any of the jurists spoke about moral or non-material compensation; rather, it is a contemporary expression [reality/phenomenon], and we did not find that any of the jurists spoke about compensation for any moral injuries in the Fiqh books."²⁹⁷⁶ As for the contemporaries, they disagreed regarding the ruling on compensation for moral injury. However, it is necessary to determine the subject matter of the dispute. As disclosed, the jurists decide that compensation is required for material and moral injuries that result in material injuries, whether financial or physical, and that Sharia has imposed non-financial penalties in the event of an attack on honour or passion, such as the prescribed penalty for slander or the discretionary penalty for swearing or insults.

As for the subject of the dispute, it is financial compensation for a purely moral injury that does not apply to material injury, and Sharia does not impose a specific penalty in this regard. The contending opinions held by contemporary jurists are:

The first opinion: the inadmissibility of financial compensation for moral injuries, and it is the opinion of a group of contemporary scholars such as Sheikh Ali Al-Khateef, Mustafa Al-Zarqa, and others.²⁹⁷⁷

This opinion influenced the decision of the Islamic Fiqh Academy No. 109 regarding the penalty, stating that: (... Fifth: the injury for which it is permissible to compensate includes actual financial injury; however, it does not include moral or non-material injury).²⁹⁷⁸

The second opinion: the admissibility of financial compensation for moral injury, as it is considered by some contemporaries, such as Mahmoud Shaltout²⁹⁷⁹, Wahba Al-Zuhaili²⁹⁸⁰, and Muhammad

²⁹⁷⁶) Kuwaiti Fiqh Encyclopaedia, ibid, 13/ 14

²⁹⁷⁷) Abdulaziz Al-Salama, "Compensation for moral injury", *Journal of Justice*, 48, 2010, 193.

²⁹⁷⁸) *Islamic Fiqh Academy Journal*, Issue 12: 306/2.

²⁹⁷⁹) Mahmoud Shaltout, (in Arabic) [*Islam is Doctrine and Sharia*], (18th Edition), Dar Al-Shorouk, 2001, 415.

²⁹⁸⁰) Al-Zuhaili, ibid, 54.

Fawzi Faydallah²⁹⁸¹. This is applied in the human-made laws as indicated by Dr. Abdul Razzaq Al-Sanhoury.²⁹⁸²

XI. EVIDENCE AND DISCUSSION OF THE FIRST OPINION

The proponents of the first opinion used authenticated sources to support their propositions with established evidence. First, from the Holy Qur'an, as the Almighty said, "...and eat up not one another's property unjustly" (Qur'an 2:188). Moral injury is not money. As long as it is not money, it is not acceptable to be compensated with money. Taking monetary compensation for suffering moral injury means accruing one another's wealth unjustly²⁹⁸³. Stressing the significance of compensation in the primary source of Islamic law (the Holy Qur'an), the purpose of compensation is not a preference between financial loss caused by injury and replacing such incidents with monetary support. Rather, the purpose is to erase the effects of the injury on the injured person and reduce the pain. The rationale is the same in moral injury as in a material injury²⁹⁸⁴, with digression or manoeuvring such legal instruments to extort others' wealth unjustly.

False claims for moral injury are one typical example of extorting another person's wealth unjustly.

XII. PROOFS OF MEANING AND REASONING

Moral injury cannot be compensated monetarily because the degree of the injury suffered cannot be assessed or measured. In other words, moral injury has no standard or criteria for assessment of the suffering but rather judgement deduced through speculations and assumptions that are considered invalid.²⁹⁸⁵ For example, jurists treat moral injury in most cases as an intangible case in the category of injuries like wounds, which have no retribution or certain blood money, "Diya," because such injuries are determined through estimated compensation. ²⁹⁸⁶

Monetary compensation lacks the equity required to remedy the injured person's safety being lost due to the effects of the injury that afflicted one's honour or feelings. In other words, compensation is not reparation, as compensation only means reparation. Compensation is only for the sake of reparation for the pain it causes, and monetary compensation serves the purpose of reparation, as in the case of blood money "Diya," which is reparation for what befalls the family of the dead or injured.²⁹⁸⁷

In contrast, the guarantee of moral injury with money cannot be commensurate with remedying damaging one's dignity, as nobility cannot be compensated with monetary reward.²⁹⁸⁸ The guarantee for moral injury attracts a physical penalty (*Hadd*) if the offence is slander, or a financial guarantee if the crime is bribery, as such offences are determined at the judges' discretion.

It can be argued that the stated punishment is for material or physical injury. However, compensation is paid to compensate for the pain, malice, and hatred that might otherwise develop. Historically, there

²⁹⁸¹) Muhammad Fawzi Faydallah, (in Arabic) [*The Theory of Guarantee in Islamic Jurisprudence*], Dar Al-Turath Library, 1985, 92.

²⁹⁸²) Abdul Razzaq Al-Sanhoury (in Arabic) [*The Mediator in Explaining the Civil Law*], House of Revival of Arab Heritage, 1: 865.

²⁹⁸³) Ali Al-Khateef, (in Arabic) [*The Guarantee in Islamic Jurisprudence*], Cairo: Dar Al-Fikr Al-Arabi, 2000, 56.

²⁹⁸⁴) Abdullah Al-Najjar , (in Arabic) [*Moral Injury and Its Guarantee in Islamic Jurisprudence and Law*], (1st Edition), Cairo: Dar Al-Nahda Al-Arabiya, 376.

²⁹⁸⁵) Al-Chaff, *ibid*, 57.

²⁹⁸⁶) Muhammad Sinan Al-Jalal, Material Compensation for Moral or Indirect Material Injury Resulting from a Felony or Malicious Claim, the Islamic Fiqh Academy of the Muslim World League , retrieved on 25/9/2109, 55

²⁹⁸⁷) *ibid* 54.

²⁹⁸⁸) Al-Khafif, *ibid*, " 56. Mustafa Al-Zarqa (in Arabic) [*The Harmful Action and its Guarantee*], Damascus: Dar Al-Qalam, 126.

was no reported case of monetary compensation for moral injuries during the dawn of Islam, in the era of the Prophet of Islam. This does not mean that moral injuries related to the encroachment on people's dignity did not occur at that time, but rather that they were simply not reported to the judge.²⁹⁸⁹ Once a moral injury case is claimed, the law must take its natural course to compensate the offended in order to deter the offender and others from committing such acts.

XIII. THE EVIDENCE SUPPORTING THE SECOND OPINION

One piece of evidence supporting the second opinion is a narration from Ibn Abbas, ascribed to the Prophet of Islam, which reads, "...there should be neither injury nor malice..."²⁹⁹⁰ The point of inference is that the Hadith indicates the prohibition of all kinds of injury, and since moral injury is one of the types of injury that is forbidden, it falls within the scope of the prohibition outlined in the Hadith. If it is forbidden, it should be compensated like other prohibited material injuries that are possible to compensate according to the guidelines of Sharia on the permissibility of compensation. Hence, the Hadith indicated the permissibility of compensation for moral injury.²⁹⁹¹ It was argued that the Hadith indicates the prohibition of injury. The core issue of the dispute is whether there is an injunction spelling out the financial compensation for moral injury.²⁹⁹² The answer was that the Hadith is general, so limiting it to material injury, not moral injury, is a classification under the wrong class.²⁹⁹³

The other evidence is the analogy between the entitlement of a divorced woman before consummation of half the dowry, and her entitlement after consummation to the *Mut'ah* of divorce, which is intended to redress the injury she suffered due to the breakdown of the marriage. This injury is a moral injury, which is to be compensated with money. Ibn Taymiyyah, may Allah have mercy on him, says: "As a result of annulling the marriage contract by divorce, it should not be halved; however, the legislator compensated her with half the dowry". However, the legislator compensated her with half the dowry due to the breakdown of the marriage, and the same applies to the *Mut'ah* of divorce. She is compensated for the emotional and moral injury resulting from the divorce through the *Mut'ah*²⁹⁹⁴, and it is mentioned in Al-Jami' li Ahkam al-Qur'an that "*Mut'ah* is a compensation for the grief of divorce".²⁹⁹⁵

XIV. CONCLUSION

The study concludes that "compensation for moral injury" refers to monetary restitution for harm inflicted upon an individual's honour, emotions, feelings, or psyche. However, upon a critical examination of the two moral injury cases presented, the judges' opinions align more closely with the second viewpoint.

This stance contrasts with the initial juristic opinion, which confines monetary compensation solely to cases involving financial losses. While both cases emphasised the emotional toll on the victims, there were also evident financial repercussions. In the first case, the victim suffered not only reputational damage but also financial loss due to being denied his salary during imprisonment. Similarly, in the second case, the family

²⁹⁸⁹) Abdullah bin Khenin, "Guarantee of moral injury with money", Research of the Twenty-Second Session of the Islamic Fiqh Academy of the Muslim World League, retrieved on 18/5/2019.

²⁹⁹⁰) Muhammad ibn Abdullah Al-Hakim, (in Arabic) [*Al-Mustadrak ala Al-Sahihyan*], Dar Al Kutab Alelmiyyah, 2002 2/66.

²⁹⁹¹) Al-Zarqa, ibid "125.

²⁹⁹²) Ibn Khenin, ibid," 21

²⁹⁹³) Al-Zarqa, ibid.

²⁹⁹⁴) Ibn Taymiyyah, compiled by Abd al-Rahman ibn Qasim, (in Arabic)"*Majmoo 'al-Fatwas*," Medina: King Fahd Complex for the Printing of the Noble Qur'an, 1996, 32: 26, 28.

²⁹⁹⁵) Muhammad bin Ahmed Al-Qurtubi, (in Arabic) [*The Compendium of the Provisions of Qur'an*] Riyadh: Dar Alam Al-Kutub 2003, 3/201.

incurred financial losses by purchasing tickets without receiving the expected value, along with experiencing stress and embarrassment.

Despite these financial elements emphasised in the first opinion, the compensation awarded in the two cases was primarily for emotional distress. Generally, this underscores the importance of meeting specific criteria to substantiate a compensation claim, whether in line with the first or second opinion. These criteria include evidence of damage, a causal link, and identification of the offender. In instances where these conditions are not met, precedence lies with the initial juristic opinion. It is also notable that the Kingdom of Saudi Arabia, recently issued the civil transaction law, which affirmed the right to moral compensation.

XV. REFERENCES

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