STUDY OF MULTIPLE BODILY HARM IN SHI'I JURISPRUDENCE AND THE IRANIAN LEGAL SYSTEM

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ABSTRACT

When the body of a person in a single accident hits more than one damage, This question arises whether compensation can be claimed for all losses? For example, if both wisdom and eyesight of a person are defected as a result of a strike, in this case, whether these damages must be summed up and condemn the responsible of the damage to compensate all of them, or the injured party is entitled to claim a single compensation only? In Imami Shi'i Jurisprudence, this issue is referred to as blood moneys' overlap. There is no united opinion in this regard. Different hypotheses can be made in this regard. In these hypotheses, different types of damages are dealt with differently: damages with/without the cause-and-Caused relationship, Damage to Organs in the same location, Dependence of Damaged Organs to Each Other and Unity or Multiplicity of Strikes But these hypotheses are not consistent with the principle of full compensation. The finding of this article is that all injuries should be compensated, even though they occurred at the same time and in a single accident. This view can be verified because it is more compatible with the principle of

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full compensation of losses. This article attempts to examine the issue in Shi'i Jurisprudence and the Iranian legal system.

Keywords: *compensation, physical damage, Islam, fiqh*

INTRODUCTION

The human body is the most important thing a human has. Therefore, how to compensate for physical injury has always been important. In practical life, it happens that a person's body gets injured as a result of another's negligence or recklessness. This injury can result from various situations such as automobile accidents, defective products, and medical abuse. Therefore, when one is injured as a result of another's misconduct, he or she has the right to obtain a legal remedy in the form of monetary compensation. Shariah concepts taken from the *Qur'ān* and the Prophet Muhammad's *sunnah*, forbid all actions that might cause injury to anyone else. In practice, however, humans harm one another. Traffic accidents are a common example. In the world, the number of road transport accidents and their mortality is rising. Road transport accidents also caused the loss of life and economic harm throughout Iran. An annual average of 34.6 per hundred thousand people were killed in traffic accidents between 2001 and 2010, and more than 80 percent of the casualties were men. In 2005 the highest number of deaths and injuries was recorded, and in 2001 the lowest was (Ghadirzadeh et al., 2015: 13-22). In other countries, the situation is the same. In Saudi Arabia, car accidents are among the top causes of injury and death for individuals and groups. Studies and researches in 2015 have shown that the number of decedents of car accidents has reached up to 86,000 in the last two decades, which has resulted in monetary losses reached 13 billion riyals (470,090,489.28 USD) (al-Shaybani, 2017: 35).

For this reason, legal systems must seek a solution to compensate for bodily harm. However, the human body is complex. In particular, it is difficult to assess the damage to her body (Munkman, 1973: 12). Indeed, how can one assess the damage to one's eyes? When, for example, an incident has caused the victim to lose an arm or a leg, it is possible to determine the damage arising from the necessary care and incapacity to work but not the loss of appearance or sexual ability (Louis Sage, 1996: 2). As a next step, how can the damage be compensated? How much money does the injured person return to the first day? As a result, compensation for damage to the body has always been difficult (Slensick, 2004: 261). Also, many organs of the human body are side by side. In this case, damage to one organ can cause damage to another organ. There have been various studies of bodily injury (Hosseini et al., 2019: 133), however, when multiple organs are injured at the same time, it is a less-

discussed issue. In this article, in particular, we will discuss such damages. The subject of this study is Multiple bodily harm that's mean When the body of a person at one time hits more than one damage. For example, if both wisdom and eyesight of a person have defected as a result of a strike.

The main question of this article is that in the Multiple bodily harm, these damages must be summed up and condemn the responsible for compensating all of them, or the injured party is entitled to claim a single compensation only? Suppose, for example, that Mr. A would injure Mr. B's waist and that, as a result, Mr. B's waist would be damaged and that his sexual capacity would be impaired. On this assumption, how much should Mr. B pay for Mr. B? It may be said that Mr. A has only inflicted one hit on Mr. B, so he must pay as much damage as Mr. B's back. But if we look at Mr. B's situation, the outcome will be different. Mr. B has suffered two injuries (waist and sexual capacity) So why should he be compensated once?

To answer this question, one can distinguish between different types of injuries, namely between damages with/without the cause-and-Caused relationship or Given the location of the injured organs decided: whether organs are in joint places or disjoint places; Or focus on the dependence of the injured organs to each other, and, The above question can be answered concerning number of strikes. Ultimately, regardless of the nature of the damages and organs, all damages may be recoverable.

The methodology of this article is to study the source of the Islamic legal system. The issue in the Islamic Penal Code will also be addressed. This code was approved by the Iranian parliament on 21 April 2013 and is in force. This code is based on the views of Shiite jurists. Therefore, in order to interpret this code, it is necessary to examine the views of Shiite jurists. Thus, the main area of research is the Islamic law about Shi'i jurisprudence as well as the Iranian legal system.

Given these possible hypotheses, as stated above, the structure of the present paper is formed. As such, each of these hypotheses will be reviewed, evaluated as correct or incorrect. Finally, a hypothesis that is more consistent with the goal of civil liability law will be selected.

THE FIRST HYPOTHESIS: DAMAGES WITH/WITHOUT THE CAUSE-AND-CAUSED RELATIONSHIP

Based on this hypothesis, the relationship between losses should be considered. Is there a cause-and-caused relationship between losses? Sometimes two organs of the body damage but the damage to an organ is not caused by the

damage to the other organ (Rūḥanī, 1967: 317). For example, with the impact of Mr.A on Mr. B's head, both his eyesight and his hearing power have been lost. In this example, there is no causal relationship between damage to the eye and damage to the ear. It is clear that there is no obstacle in the summation of these two kinds of damages; each one has a separate and independent cause. As a result, both damage to the eye and damage to the ear can be recovered. Some Islamic jurisprudents have confirmed this hypothesis (al-Bahūtī, 1998: 62; al-Bayḥaqī, 2003: 86).

The Criminal Code has addressed these types of losses. According to Article 696 of this Code, if the sense of taste is lost through another crime (other than cutting off the tongue), the person who has suffered loss will be compensated for both (sense of taste and another harm).

The main problem is raised with regard to damages with the cause-and-Caused relationship. Sometimes damage to an organ is the effect of another organ's injury. For example, one's spinal column is broken and, as a result of this fracture, his/her legs are paralyzed. At first glance, It can be said that a person who has suffered damage twice can only receive compensation once And just for the damage to her back (Rūḥanī, 1967: 317). To justify this belief, it can be said that the second loss is an indirect loss.

In rejecting this hypothesis, it can be said that from a customary perspective there is a causal relationship between the act of damage cause and the second damage; in fact, the damage to the second organ is attributable to the cause of the first damage. If by Mr. A's act, both Mr. B's waist is broken, and he loses his sexual ability, Mr. B's inability, though not directly due to Mr. A's stroke, but in common, ordinary people blame Mr. A. for being B's disability, and they hold him responsible. Article 432 of the Criminal Code also chose the same customary view. According to this article, If the fracture of the spine column causes paralysis of both legs, a person who has suffered loss will receive two blood moneys.

THE SECOND HYPOTHESIS: DAMAGE TO ORGANS IN THE SAME LOCATION

Occasionally, the injured organs are not in the same place. For example, damage occurs to a person's hearing and sense of taste. In this case, there will be no problem with the summation of the damages (al-Sarakhsī, 1993: 99). So, *diyah* for both (ear and the taste sense) must be paid. Another instance can be seen in fracturing the spine column. The spine and legs of the human are not in the one place in terms of space and have two different positions. Therefore, If the fracture of the spine causes paralysis of both legs, the person who has been

harmed can receive two compensations, Once for the fracture of the spine and Once for paralysis of both legs. Article 432 of the Criminal Code has chosen this belief.

If damaged organs have the same place, a person who has been injured can receive only one blood money. In justifying this, we can say that damage to organs of the same place, is commonly considered as single damage. So if both the eye and eyesight of a person are damaged, then the person deserves only a single blood money (Amilī, Zayn al-Dīn Ibn ʿAlī Ibn Aḥmad, 1544: 204).

Additionally, Article 374 of the Criminal Code considers one blood money for hair destruction if it occurred alone, not by destroying the organ or by removing the skin and things like this. Because in these cases, only the blood money of the cut organ, or the like, is paid. Therefore, if the eyelash is cut off with eyes, this will only deserve one blood money (Aḥmad Ibn al-Muḥammad Ardabilī Najafī, 1570: 362; Ḥasan Ibn Yūsuf Ibn ʿAlī Ibn Muṭahhar, 1420: 237). Article 543 of the Criminal Code also accepts this criterion; according to the clause (b) of this article, if all the injuries are in one organ, the person who has been harmed can only receive one blood money. According to The clause (c) of this article, in the case of "injuries are connected to each other or nearby such that commonly be considered as one damage," The person who has been harmed, can only receive one blood money.

However, some jurists have objected to this criterion (Khā'ī, Sayyid Abū al-Qaṣīm, 2007: 475; Rūḥanī, 1998: 98). The Criminal Code in the case of bones did not follow this view. For example, if there are several fractures in the bone of an organ, based on this criterion since they are in one place, the injured person will only be entitled to a single blood money, but it seems, according to Article 442 of the Criminal Code, regardless of the place of bones, a person is entitled to blood money for any injury.[1]

THE THIRD HYPOTHESIS: DEPENDENCE OF DAMAGED ORGANS TO EACH OTHER

Based on this hypothesis, the outcome will vary depending on whether two or more affected organs are interdependent. For example, sometimes a benefit is based on its place, such as the vision that is based on the eye (Hillī Yaḥyā

[1] The General Board of the Country Supreme Court, in its uniform practice vote on issue No. 691, dated 3-10-2006, takes the following comment: "In accordance with article 442 of the Islamic Penal Code… Therefore, if two bones from one organ are broken, separate blood money for each bone must be determined in accordance with the foregoing article".

Ibn Sa‘īd, 1974: 137), or a taste (Ḥasan Ibn Yūsuf Ibn ‘Alī Ibn Muṭahhar, 1420: 575) that is based on the tongue. In this case, someone who has been harmed, he only deserves one blood money. But if the benefit is not based on its place, as the relationship between hearing and article, the person deserves two *diyah*s. The auricle is effective only in the orientation of the sound and hearing is not based on it (Ḥasan Ibn Yūsuf Ibn ‘Alī Ibn Muṭahhar, 1413: 686; Ḥasan Ibn Yūsuf Ibn ‘Alī Ibn Muṭahhar, 1420: 706; Zayn al-Dīn Ibn ‘Alī Ibn ‘Amilī, 1413: 261; Reza Hejazi, 1999: 169).[2]

In this way, if the benefit is not based on its place, it will take two blood moneys for destroying the organ and the benefit therein. In jurisprudence, this view About the sense of smell is seen. The reason is that the olfactory does not lie in its place (nose), so through the loss of both, it will be desirable to have two blood moneys (Zayn al-Dīn Ibn ‘Alī Ibn ‘Amilī, 1413: 261; Ḥasan Ibn Yūsuf Ibn ‘Alī Ibn Muṭahhar, 1413: 688; Abū al-Qaṣīm Ja‘far Ibn Ḥasan Ibn Yaḥyā Ibn Sa‘īd Ḥillī, 1402: 1041).

In jurisprudence, some have rejected this hypothesis: for example, in the case of destroying the eyes in such a way as to cause removing eyelashes, Jurists believe that a person is entitled to two *diyah*s (Hillī Ḥasan Ibn Yūṣuf Ibn ‘Alī Ibn Muṭahhar Asadi, 1326: 687).

In addition, if someone injures another person’s head in such a way that he first suffers from the damage to head itself and then suffers from the same strike and injury, his/her brain is damaged and the person loses his mental ability, then whether Is it possible for two *diyah*s to be claimed: the blood money of damage to the head plus wisdom’s blood money? On the above criterion, because the wisdom is based on its own place, only one blood money must be claimed. However, according to more famous view in jurisprudence, in such a case, a blood money is set for each harm, and the blood moneys of harms do not overlap with each other (Amilī, Zayn al-Dīn Ibn ‘Alī Ibn Aḥmad, 1544: 254; Muḥammad Ibn Aḥmad Ibn Idris, 1989: 414; Ṭūsī, Abū Ja‘far Muḥammad Ibn Ḥasan Ibn ‘Alī Ibn Ḥasan, 1998: 234-235).[3] In fact, while the wisdom is considered to have direct benefit based on its own place (head), the Jurists have ruled out to summation of damage to the head with damage to the wisdom. Therefore, the differentiation between the kind of benefit dependence to the organ does not seem to be precise and, of course, comprehensive.

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2 This view is confirmed by today’s clinical science.

3 In this case, there is no difference whether blood money is determined or be arsh, and if any, there is no difference whether the arsh is less than wisdom blood money or more than it.

THE FOURTH HYPOTHESIS: UNITY OR MULTIPLICITY OF STRIKES

According to the hypothesis, if two injuries are due to a single Strike, one can only receive one blood money. Some jurists accept the following view (Hillī Yaḥyā Ibn Sa'īd, 1974: 595; Muḥammad Ibn Aḥmad Ibn Idris, 1989: 396). The only reason for them is the *ḥadīth* from Imam. According to this *ḥadīth*, if someone strikes twice to another person, with the first strike, the head and by the second strike, the wisdom of the person is damaged, then The injured person can receive two blood moneys (Ḥasan Ibn Yūsuf Ibn 'Alī Ibn Muṭahhar, 1420: 246; 'Alī Tabatabei, 1418: 299; Khansarī, 1984: 253-254; Ibn Fahd Ḥillī, 1413: 354, Muḥammad Isḥāq Fayaz, 1411: 425; Rūḥanī, 1967: 317). Famous Shi'i scholars support this idea (Aḥmad Ibn al-Muḥammad Ardabilī Najafī, 1570: 473-474; Hur Al-Amilī, Muḥammad Ibn al-Ḥasan, 1984: 365). Sheikh Tusi states: "This is the base of our religion" (Ṭūsī, Abū Ja'far Muḥammad Ibn Ḥasan Ibn 'Alī Ibn Ḥasan, 2008: 34). However, some jurists disagree (Muḥammad Ḥasn Najafī, 1999: 23; Aḥmad Ibn al-Muḥammad Ardabilī Najafī, 1570: 473-474). Some believe that the *ḥadīth* that underlies this view is not valid ('Alī Tabatabei, 1418: 299; Madanī, Kāshānī, Rezā, 2000: 265; Khā'ī, Sayyid Abū al-Qaṣīm, 2007: 437). In addition, in civil liability law, the primary purpose is to compensate for damage. If a person suffers multiple injuries, all of his or her damage must be compensated, even if all the damage is caused by a single strike. This is more consistent with the goal of civil liability law.

DISCUSSION

In the case of Multiple bodily harm and the possibility of summation of organs' blood moneys, four hypotheses can be presented:

Damages with/without the cause-and-caused relationship, Damage to Organs in the same location, Dependence of Damaged Organs To Each Other and Unity or Multiplicity of Strikes.

In jurisprudence and in The Criminal Code, none of the above hypothesis has been provided as a rule. The most important finding of this research is to prove that in the aforementioned hypothesis, the coincidence of losses is not the main issue, but the main concern of the jurists from the design of different criteria is one of these two questions: Is there really a causal relationship between the harmful act and all the losses incurred? Also, have there really been a single loss or a lot of losses?

In response to the first question, some distinguish between damages with/ without the cause-and-caused relationship. Against the second question, common standards have been introduced to establish unity or multiplicity of losses. The fact that the jurists emphasize Damage to Organs in the same location, Dependence of Damaged Organs to Each Other, Unity or Multiplicity of Strikes indicates that They are seeking unity or multiplicity of losses. For example, the fact that multiple losses occur in one place or in interdependent organs indicates that despite the apparent multiplicity of losses, in fact, a single loss has occurred, and on the contrary, causing various losses in different places of the body and or in non-affiliated organs, there is a sign of multiple losses.

Accordingly, these criteria are indicative of causality and loss. However, these signs were so important that they were forgotten that they were the only sign. The jurists tried to consider the above criteria as constants and applicable to all organs, while considering the diversity of organs, using a single criterion is not correct. Therefore, in this paper, it is attempted to recall the function of these criteria by revising the function of these criteria in terms of returning to the general rules of civil liability. (i.e. the need for the existence of a causal relationship and the need for unity or multiplicity of losses).

With this approach, one must look for a principle regarding the issue of this article. This principle seems to be the principle of the necessity of full compensation. This principle is important in civil liability law. This principle can be a good guide to answering above problem.

According to this principle, all damages of a person must be compensated (Dawson et al., 1962: 727). Tort law aims to put the victim in the position he was in before the harm in keeping with the principle of full compensation. This status is generally considered a situation where there is no damage whatsoever to the victim. The principle of full compensation is sometimes seen as one of the key elements of modern tort law (Wijck, 2001: 332). However, the truth is that, for a long time, in Islamic law, this principle has been accepted according to the LAZARAR RULE (Badini, Hassan, 2013: 19). Under this rule, individuals are prevented from harming one another. The effect of this prohibition is that the loss must be compensated (Tabrizi, 2015: 135-174).

Therefore, and according to this principle, if multiple injuries occur to one person at a time, all damages must be compensated and *diyah* should be paid for all damages. For the full implementation of The above principle, the place of damages, the causal relationship between them, their dependence, or the multiplicity of harmful acts must not be effective. In jurisprudence, we see a reference to a principle, called the principle of nonoverlapping (‘Alī Tabatabei, 1418: 299). That is, the blood money of all damaged organs can be

claimed ('Alī Tabatabei, 1418: 299; Amilī, Zayn al-Dīn Ibn 'Alī Ibn Aḥmad, 1544: 204). This notion is accepted in Article 538 of the Criminal Code: "In the multiplicity of crimes, the principle is based on the multiplicity of blood moneys and their nonoverlapping." This belief is more consistent with logic and is in line with the purpose of civil liability law. Because it completely compensates for the damages.

CONCLUSION

When at the same time and in a single accident two or more damages are inflicted on a person, the discussion of the possibility or impossibility of the summation of damages arises: a discussion that is familiar in jurisprudence with the title of overlap of blood moneys. The concern to keep the amount of blood money equal to the amount of damage incurred as the basis for implementing the principle of full compensation for damages is the guide to answer the above question.

Jurists have put forward different hypotheses to solve this problem. In some cases, some of these assumptions have been upheld in the Islamic Penal Code of Iran. However, these assumptions appear to be exemplary and cannot serve as a rule. The main rule in this regard is the application of the principle of full compensation, which has a background in Islamic jurisprudence (LAZARAR RULE). According to this principle, all one's losses must be compensated. It seems the best way to protect the rights of someone who has been injured is to compensate for all his or her injuries, even though these injuries occur at the same time.

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