



Review Paper

Compensation for Moral Damages Resulting From Medical Malpractice



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ABSTRACT

Background and Objectives: Numerous surgeries are performed daily, some necessary and some unnecessary. With the advancement of medical sciences, the rate of medical errors has significantly decreased and in most cases, skilled physicians begin the treatment process for patients by conducting initial procedures and necessary tests. However, not all surgical procedures are performed with the patient's full consent, leading to damages and losses to patients, whether material, moral or physical. Various factors may contribute to harming the patient, such as medical errors in diagnosis, the prescription of incorrect medication, the physician's lack of required skills, or sometimes the patient causing the accident and damage themselves. Among all other damages, moral damages are particularly noteworthy. These include disfigurement of the patient's appearance and limbs, leading to distress and isolation.

Methods: This article employed an analytical descriptive approach to investigate and study this subject in Iranian law. The methods proposed for compensation of moral damages primarily include punitive damages, actual damages, providing an equivalent, and non-financial methods, such as apologies and publishing the verdict in newspapers.

Results: However, despite the clarity of the compensation methods, these methods are sometimes not quite suitable for the subject.

Conclusion: In such cases, it is more effective to consider alternative methods to compensate for the damage, focusing on the circumstances of the injured party and what would alleviate their distress, ensuring that the damage is fully compensated. In other words, attention to the legitimate and feasible remedies sought by the injured party, while maintaining the injurer's rights under the law's supervision, is proposed for better compensation.

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Introduction

The purpose of civil liability is to compensate the victims for both contractual and non-contractual damages. One type of damage that can significantly affect an individual's life is moral damage, which harms one's feelings, emotions, personality, and reputation [1]. Various factors can contribute to inflicting this type of damage; for example, medical malpractice is one of the causes of moral damage. Due to the physician's error, lack of adequate skills, or failure to fulfill their duties, the intended [2] and sometimes agreed-upon outcome between the physician and patient may not be achieved, resulting in moral damage to the patient. A minor example is rhinoplasty surgery, where the patient's intended and desirable outcome is not achieved, leading to discouragement and dissatisfaction with themselves. These factors cause the person to become isolated from society and lose job and educational opportunities. Although methods of compensating moral damages, such as actual damages, punitive damages, apology and publishing the verdict in newspapers [3], as well as financial compensation, have been proposed, in some cases, these methods may not be suitable for all circumstances and can potentially exacerbate the situation. It is suggested that an alternative approach, which involves considering the circumstances of the injured party, be used while maintaining the rights of the injured party and ensuring legal supervision. This approach aims to make the victim's remedy feasible, rational, and legitimate, thereby compensating for the inflicted moral damage as completely as possible and the achieving victim's satisfaction.

Methods

An analytical descriptive method was employed to explore moral damage within the context of Iranian law. The analytical descriptive method involves a systematic approach to examining and describing a phenomenon or concept in detail. It combines elements of both analytical and descriptive research methods, allowing for a comprehensive understanding of the moral damage. The suggested approaches for compensating moral damages mainly involve punitive damages, actual damages, providing a substitute, and non-monetary methods like offering apologies and publishing the court decision in newspapers. Its ability includes both contractual liability and non-contractual liability, as well as liability arising from crime and tort.

Results

Definition of liability

Liability is an artificial or coined term stemming from "liable," meaning being obliged to do something or having a commitment and accountability [4]. In legal terminology, liability is often used in the sense of "guarantee". However, due to the broad application of the term guarantee, the term liability cannot be used in all such cases. For example, the word guarantee is also used in the sense of reciprocal guarantee and contractual guarantee [5]. Some jurists express the opinion that "anyone who harms another must compensate them, unless the harm to others is permitted by law, or the damage inflicted on the person seems unfair and abnormal" [6]. Moreover, another definition states that liability means a person's accountability for actions that are customarily attributed to them, which has different legal sanctions depending on the type of liability [1]. In a general sense, civil liability includes both contractual liability and non-contractual liability, as well as liability arising from crime and tort [3].

Physician's liability

Physician's liability refers to the physician's obligation to compensate for damages resulting from guilt, error, or harm inflicted on another as a result of medical actions. Medical liability can have two ethical and professional aspects. The ethical aspect relates to general morals and manners, which a physician is obliged to observe and the professional aspect relates to the medical profession and principles that the physician must follow [7]. The significance of both the professional and ethical dimensions is paramount in the field of medicine, owing to the substantial level of responsibility associated with it.

The most important criterion for attributing the result to the physician and establishing his/her liability from the perspective of medical principles can be referred to as the physician's behavioral inconsistency with scientific and technical principles, or, more simply, a failure to observe scientific standards. These behaviors fundamentally stem from the physician's neglect. Specifically, these actions are the medical personnel's duty, but there has been failure in performing them. The range of these cases may be from the physician's negligence and failure to perform his/her duty to carelessness and negligence in guiding the patient to perform diagnostic tests [7]. Therefore, the common point of all these cases can be considered as an omission. Before the enactment of the Islamic penal code in 2013, there were disagreements

among jurists regarding the establishment of liability due to an act of omission; however, after the adoption of this law, these disagreements were resolved. According to Article 295 of the law, an act of omission has been explicitly defined as one of the forms of establishing liability. Therefore, the existence of two necessary conditions is required to identify the medical personnel's liability arising from an act of omission. The first condition is the existence of a legal duty [8]. This means that the patient must have been under the supervision and treatment of the relevant physician in some capacity. Any law or regulation that creates an obligatory relationship between the patient and physician will fall under this clause. For example, in cases where the government or legal entities have contracted medical personnel to perform a specific duty, these individuals become obliged and committed to fulfilling certain tasks under this contract. They are required to meet their contractual obligations according to Article 10 of the Iran civil code, and if they neglect their duty, they will be held liable. Also, directives issued by the Islamic Republic of Iran Medical Council are among the regulations that impose duties and obligations on medical professionals; violating or failing to implement them is binding [9].

The second condition is the existence of causation. Physician liability can only be discussed when there is a causal link between the act of omission and the resulting outcome [10]. Sometimes, healthcare workers refuse to admit a patient, resulting in the patient's death; however, the cause of death may not be the refusal to admit the patient but rather the injury or condition that led to their death. In this case, there is no causation; thus, the medical personnel cannot be held liable. Conversely, there are instances in which medical personnel fail to fulfill their duty to the patient and provide necessary services, resulting in the patient's death. In such cases, causation is established and the medical personnel can be held liable for the incident [9].

In the context of a physician's contractual liability, if a harmful act occurs, the physician is liable for the harmful act resulting from his/her action. If it is proven that the physician has undertaken all the treatment requirements for the patient, just as he/she is liable for the mistake, he/she is also responsible for the mistakes, negligence, and carelessness of his/her assistants. According to Articles 19 and 20 of the Medical Disciplinary Regulations ratified on July 31, 1994, the replacement of the attending physician with a new physician, along with the patient's acceptance of medical treatment, results in the termination of the previous physician's consultation and medical actions, as a new contract has been established with the

patient. Therefore, if the physician conveys his/her instructions to the nurse regarding his/her responsibilities for a particular patient and the nurse makes a mistake in carrying out these instructions, the physician is not liable to the patient [11].

Article 495 of the Islamic penal code states: "If a physician, in the course of treatment, causes death or bodily injury, she/he shall be liable for blood money, unless his/her actions conform to medical regulations and technical standards, or she/he has obtained a waiver before treatment and has not been negligent. If obtaining a waiver from the patient is invalid due to the patient being a minor or insane, and if it is not possible due to unconsciousness or similar reasons, then a waiver must be obtained from the patient's guardian.

Note 1: If there is no negligence or malpractice on the part of the physician in knowledge and action, he/she shall not be liable even if he/she has not obtained a waiver.

Note 2: The patient's guardian includes both the specific guardian, like the father and the general guardian, who is the Supreme Leader. In cases where the specific guardian is absent or inaccessible, the head of the judiciary, with the permission of the supreme leader and by granting authority to the relevant prosecutors, can grant a waiver to the physician."

Based on Note 1 of this article, a physician is responsible for the damages and losses caused to a patient, unless it is proven that he/she was not at fault or negligent, or he/she had obtained a waiver and was also not culpable. In other words, this article is based on presumed negligence or fault on the part of the physician, but the burden of proof, given the circumstances is variable and transferable.

The extent of psychological and emotional impacts can be examined based on the type of surgery performed on the patient, specifically whether the procedure was necessary or elective/cosmetic. Necessary surgeries include heart surgery, kidney transplant, lung surgery, etc. which are directly related to the patient's health. Elective surgeries refer to plastic surgery, which is further divided into reconstructive and cosmetic categories—the reconstructive aspect is considered a necessary procedure [12].

Plastic surgery is defined as "reshaping, reconstructing, and restoring to original form" [13]. It refers to procedures aimed at enhancing beauty or repairing damaged organs and tissues. In other words, plastic surgery in-

volves repairing or modifying the shape and function of body parts. There are two types of plastic surgery: Reconstructive and cosmetic. Sometimes the two may overlap, especially since cosmetic procedures often complement reconstructive surgery. In other terms, reconstructive surgery is utilized to correct disfigurements and the associated pain and suffering [2]. Reconstructive surgery is specifically used for abnormal features of the human body, usually resulting from congenital defects, developmental abnormalities, infections, tumors, or diseases. Overall, the aim of reconstructive surgery is to improve organ function while also creating a more normal appearance [14]. Reconstructive surgery has also been defined as “restoring the appearance or function of a body or body part to normal after an injury or disability” [15].

Sometimes the goal of cosmetic surgery is not to relieve physical pain but to improve appearance and create an attractive face, in addition to enhancing the individual’s inherent beauty. Examples include facelifts, liposuction, otoplasty, and rhinoplasty [16]. In such procedures, if the treating physician is negligent, the psychological effects after surgery will be more pronounced, as the person’s objective in undergoing surgery is to achieve a desired level of beauty. If the opposite result occurs after surgery, it will impose a heavy psychological burden on the patient for whom the attending physician is responsible.

Physician’s malpractice

Among the cases of medical malpractice are those that require medical consultation, but the physician proceeds with treatment without doing so and makes an incorrect diagnosis. An inaccurate diagnosis not only fails to improve the patient’s condition but may also prolong the illness. However, it should be noted that an incorrect diagnosis alone does not make the physician liable; rather, all factors influencing the diagnosis must be considered. For instance, in some cases, the physician’s prescription is based on the circumstances and the patient’s statements. If the patient provides inadequate or false information about his/her illness, the physician’s negligence is no longer legally justifiable. In other words, the physician is not responsible. In general, if a physician does not adhere to scientific and technical standards and fails to exercise due diligence in diagnosing the illness, leading to a misdiagnosis, they are liable. In contrast, there are instances when a physician correctly diagnoses an illness but does not initiate treatment promptly, and this failure to begin treatment in a timely manner harms the patient [9].

Although medical errors have significantly decreased with advancements in medical science, some instances of medical negligence still occur. Such errors can happen in any surgery, whether necessary or elective, resulting in bodily harm and emotional distress to the patient. For example, in common surgeries, like rhinoplasty, the outcome may not match the patient’s requests and expectations, potentially damaging the nose and causing emotional harm. Thus, it is evident that based on the patient’s condition and the type of surgery, the physician should be held liable for compensating the inflicted damages.

One of the basic conditions for establishing physician liability is committing a harmful act, whether an act or omission. Cases, such as failure to monitor the patient during treatment, delays in performing surgery, negligence in treatment, and improper surgical procedures are examples of such harmful acts. For a person to be held liable, there must be consistency between their physical act and mental state; the perpetrator must be negligent, meaning that they either intend for the act to occur or consider its occurrence likely, and they must be aware of violating the legislator’s orders and prohibitions [17]. In most cases, a plastic surgeon’s faults are unintentional and take the form of medical malpractice. According to Article 145 of the Islamic penal code and its note, if any damage, whether material or moral, is inflicted on the patient resulting from the physician’s negligence (carelessness and inconsiderateness) in surgery and treatment, the physician is liable. The occurrence of a physician’s negligence or error is necessary for establishing liability. Specifically, the physician must not have acted in accordance with medical laws and regulations, such as the Medical Council’s bylaws and the Ministry of Health’s instructions, as part of their duty in surgery and treatment. For example, if the physician is negligent in conducting initial diagnostic tests or fails to consult with the medical team when diagnosis and treatment require expert consultation, this is considered a case of medical error. The criterion for determining medical error is medical custom and adherence to professional and occupational standards, as well as public requirements according to medical laws and regulations [2]. Harming the patient—whether physically, financially, or morally—will lead to physician liability; however, if no harm is inflicted on the patient due to the physician’s actions, the physician is not liable [18]. Also, establishing causation between the harmful act and its consequence is necessary. In other words, if this act or omission had not occurred, such harm would not have occurred to the patient.

Damages to the patient

Some surgeries result in bodily and moral damage to the patient. This means that the surgery can disfigure the person's limbs or disable an organ, which can lead to moral damage as well. For example, the person loses the self-satisfaction he/she used to enjoy in the past, leading to feelings of isolation. Thus, compensation can be claimed. However, claiming compensation is illogical if no damage or loss has occurred, even if the physician has failed to act properly. On the contrary, in some cases, the damage is inflicted by the injured party him/herself, that is, the individual has caused damage and loss to him/herself, and the attending physician certainly cannot be held responsible.

Discussion

Methods for compensating moral damages

Restoring the previous condition or actual damage method

According to jurists, this method is one of the most comprehensive approaches to compensation. However, restoring the previous condition does not mean reviving the situation before the occurrence of the damages; rather, it means that if the harmful act had not occurred, this situation could have been avoided [19]. Some jurists refer to restoring the previous condition as actual compensation or loss elimination since this method aims to return the victim's situation to the state it was in before the damages occurred [20]. Actual compensation is often in the form of compelling the obligor to either perform a specific action or abstain from doing so. However, the mandatory performance of an obligation or directly forcing the obligor to execute such an obligation is impossible, since forcing an obligor to act or refrain from action is ineffective or contrary to individual freedom [21]. According to certain legal experts, the method of actual compensation is considered more suitable for contractual liability and is regarded as an exception to the obligation arising from a wrongful act. In their view, few instances of moral damage can be compensated by restoring the previous situation. For example, receiving money for the repair of a body organ or regaining lost functionality of body organs through connivance can be considered instances of restoring the previous condition. After functionality is repaired, the organ is still not the same as it was before, but it is said that the victim has regained their previous condition [19].

Alternatively, there are instances where the existing moral damage cannot be restored to the previous condition. For example, consider a woman who had one last chance to become pregnant but lost her fetus due to another person's actions in an accident. In this hypothetical situation, how can the victim's condition be restored to its previous state? Another example is the damage to the emotional damage suffered by the deceased, as the opportunity for compensation is permanently lost [22]. In cases of moral and physical damage, it is often impossible to restore the victim's previous condition. Therefore, the current compensation method is not particularly effective, although it can be utilized for financial damages [3]. Article 311 of the civil code states: "The usurper guarantees to return the property to the owner, and if the property is lost, they must pay the equivalent in kind or value to the owner in fulfillment of the obligation and if returning the property itself is impossible for some reasons, they must pay its equivalent." While this form of remuneration may appear comprehensive to certain legal experts, the authors of this paper contend that it lacks effectiveness in numerous instances. Courts resort to alternative methods of compensation when it becomes apparent that the existing damages cannot be adequately redressed.

Compensation by providing an equivalent

The main purpose of this method is to return the equivalent of what has been lost due to the infliction of damages to the injured party. In this method, various approaches can be adopted to compensate for the incurred loss. One of the most commonly used types is the financial method of compensation. Furthermore, the equivalent is not necessarily financial or monetary; the courts can determine the most appropriate equivalent in the verdict, considering the case, the parties' circumstances, and other mitigating factors [19]. Article 3 of the civil liability law stipulates: "The court shall determine the extent of the loss and the method and manner of compensation by considering the circumstances of the case...". Although this method can be used for both cash and non-cash tangible damages, monetary compensation for moral harm may be considered as a way of compensation [3]. While monetary compensation is commonly employed to provide restitution for moral damages, it should not be regarded as the general rule for compensating such harm [23]. In today's laws, instances of suffering losses encompass not only losing one's material or financial benefits but also the psychological and emotional harms that individuals endure. Sometimes, these inner torments manifest as emotional damages that cannot be measured in monetary terms [6].

According to some jurists, although this method can result in adequate compensation, in many cases, it can never restore the victim's situation to the previous state. This is because the material compensation method faces challenges with damage assessment, and exchanging the victim's dignity and reputation for money is seen as an insult. Therefore, it is evident that this approach cannot be used to compensate for moral damage [1]. In a case of moral damage compensation, the court sentenced the injuring party to pay a certain amount; however, the recipient was unwilling to accept the monetary compensation due to the emotional distress caused. The reason is that money cannot compensate for the moral damage. Additionally, despite the ineffectiveness of this method in many cases, and the fact that it certainly cannot fully compensate for moral damages with money, it is worth noting that in some instances, this method can provide some comfort and help alleviate the victim's psychological distress [24]. A jurist states that to better compensate for moral damages, a suitable method of compensation should be adopted to achieve a favorable outcome. According to this view, a distinction should be made between only moral damage and moral damage accompanied by financial consequences. If only moral damage is inflicted, it should be compensated morally, as material compensation may not be helpful. However, if the moral damage is accompanied by financial loss, it is preferable to provide material compensation [1].

Payment of punitive damages

If a party intentionally and maliciously commits an act causing harm to another, this method can be utilized to compensate for the damage. Some countries, like the United States and England, have adopted this method. One of the consequences of intentional and egregious fault is the issuance of a ruling for punitive damages, as the deliberate perpetrator's behavior is usually intentional, conscious, and insulting [25]. Some jurists define punitive damages as an amount awarded in favor of the plaintiff in addition to compensatory damages, due to the defendant's willful infliction of harm or deliberate misconduct [26]. Others believe that the purpose of civil liability is not to punish or penalize the injuring party but to compensate the victim, highlighting one of the differences between civil and criminal liability. However, another group of legal scholars believes that the purpose of civil liability should not only be compensation; prevention and punishment of the injured party should also be considered. One jurist opines that a theory of civil liability aimed solely at ensuring compensation for loss is incomplete and should also incorporate prevention and punishment [27]. As stated, punitive damages are used

in cases where a crime or civil wrong occurs maliciously and intentionally, causing harm to others. The court's ruling to compensate for this type of damage, in addition to punishing the perpetrator, serves as a deterrent for them and other members of society, preventing the commission of such wrongful acts in the future.

In addition to the aforementioned methods, the non-financial approach to compensating for moral damage has also been proposed in Article 1 of the Civil Liability Law and Note 1 of Article 14 of the Criminal Procedure Code. The non-financial compensation method can be an appropriate approach for compensation in some cases, depending on the circumstances of the incurred loss. However, it is evident that these methods alone are not sufficient, and in some instances, there is a need for a more comprehensive approach, such as paying attention to the injured party, which can be widely used. For example, when moral damage arises from medical malpractice and the patient does not enjoy a favorable mental state, the aforementioned compensation methods cannot adequately address such circumstances, necessitating the use of an alternative method of compensation. Hence, it is preferable to compensate for the incurred loss by considering the remedy sought by the victim while maintaining the rights of the injured party. For instance, if the desired outcome has not been achieved for the patient in a rhinoplasty, resulting in a loss of his/her former beauty, it may be beneficial to consult the patient about what would alleviate their distress and compensate for the moral damage. This approach aims to achieve the ultimate goal of civil liability, which is total restitution. This means that the patient becomes satisfied that another physician surgically repairs his/her nose at the expense of the erring physician.

Conclusion

Despite the clarity of methods for compensating moral damages, the lack of a precise measurement criterion often prevents the victim from achieving total satisfaction. This issue is particularly evident in cases involving damages arising from medical malpractice. When a surgical procedure results in a defect or impairment of the individual's limbs or appearance, such as the disability of organs due to the severing of a nerve in the hand or finger, or disfigurement caused by the physician's negligence during surgery, it gives rise to moral damage. Although the law specifies methods of compensation, these approaches may not always be suitable or effective, necessitating the exploration of new alternatives.

To address this, it is proposed that in such cases, the victim's input should be sought regarding the appropriate compensation method, while still upholding the rights of the injuring party and maintaining legal oversight to ensure the feasibility and legitimacy of the proposed compensation. This approach would align with the purpose of civil liability, which is to achieve compensation, and would allow for the fullest possible restitution to the victim.

Ethical Considerations

Compliance with ethical guidelines

There were no ethical considerations to be considered in this research.

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Authors' contributions

Study design, investigation and writing the original draft: Atefeh Niknezhad; Supervision, review and editing: Alireza Mazloomrahani and Alireza Rajabzadeh Stahbanati.

Conflict of interest

The authors declared no conflict of interest.

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