

Spiritual Damage more than the Amount of Blood-money in Jurisprudence and Islamic Law

No one is allowed to harm another person's life or property. Financial damages are discussed in the field of civil liability, and personal damages are discussed in the literature of criminal law. Damages may be inflicted on the soul and spirit of individuals, which are called "moral damages." In some countries with a common law legal system, such as England, this issue is included in criminal matters. However, in our country, this type of damage is discussed in the field of civil liability. According to Article 452 of the Islamic Penal Code, approved in 1392, blood money is a personal right of the victim or his guardian, as the case may be, and has the provisions and effects of civil liability or guarantee. The perpetrator's liability is not discharged except by paying blood money, reconciliation, acquittal, and set-off; therefore, assuming that moral damages are included in the field of civil liability, it will not be possible to compensate for the damage in excess of the blood money. However, there are various opinions on this matter that consider the possibility of compensation in this situation possible. Ahmad Idris (1993) stated in a book titled "Diya" that the purpose of the Diyah was to heal the pain of the deceased's family and thus provide financial support for the period after death. At the same time, it is considered a deterrent against the occurrence of crimes. With these characteristics, the nature of Diyah is independent of the material damage associated with it. Salehi (1999) in a book titled "Diya or Financial Punishment" considered the issue of Diyah to be separate from rights and therefore concluded that at the time of death, there was no Diyah and after going through the legal procedures, this type of Diyah was paid and therefore the title of material damage cannot be applied to them. Qolozhi (2013) stated: Given the high value of human life, saving it is of great importance and this is more important than compensating for material damage. Mir Modarres (2013) stated that in Islamic jurisprudence, blood money is in the nature of life damage, which is considered in terms of civil and criminal matters; therefore, it cannot be called anything else and this damage will be paid to those who have suffered mental harm. Ame (2017) stated that the criteria for blood money cannot be determined according to the amount of damage caused and that these two have an independent concept. Kameli (2018) criticized the current judicial practice, which in most cases considers blood money as part of our inheritance, and in philosophical discussions about ownership and damage, concluded that blood money and damage should not be connected to each other. Haraj et al. (2014) referred to the possibility of receiving more damage than blood money. Given that there are currently several cases open in the courts on this issue and the procedure for their proceedings is not clear, it is necessary to reach a certain consensus on this issue. Given the importance of Article 167 of the Constitution, it is also necessary to explain the jurisprudential basis of this issue. Therefore, the researcher decided to study the possibility of receiving moral damages in excess of the amount of blood money in Islamic jurisprudence and law. First, some information was stated about moral damages in Islamic jurisprudence, then, while stating its legal basis, the judicial procedure of this issue was discussed and the groundwork was prepared to answer the main research question.

Despite the formality of moral damages, its mechanism is not clearly defined, and therefore, judges mainly try to reconcile the parties. The relationship between material and moral damages has not been considered in Iranian law. If the treatment and rehabilitation costs of the victim in unintentional crimes exceed the amount of blood money or arsh, and the excess amount is proportionate to the principle of blood money and is a reasonable amount, according to jurisprudential interpretations and also the principles of civil liability, it is possible to claim it from the person who caused this situation, and otherwise, double damages cannot be considered. If the damage is due to the commission of intentional crimes, it is possible to claim all damages from the criminal, so that in this case, it is considered a deterrent factor from committing a crime.