

Al-Aijaz Research Journal of Islamic Studies & Humanities

(Bi-Annual) Trilingual: Urdu, Arabic and English
ISSN: 2707-1200 (Print) 2707-1219 (Electronic)

Home Page: <http://www.arjish.com>

Approved by HEC in "Y" Category

Indexed with: IRI (AIU), Australian Islamic Library,
ARI, ISI, SIS, Euro pub.

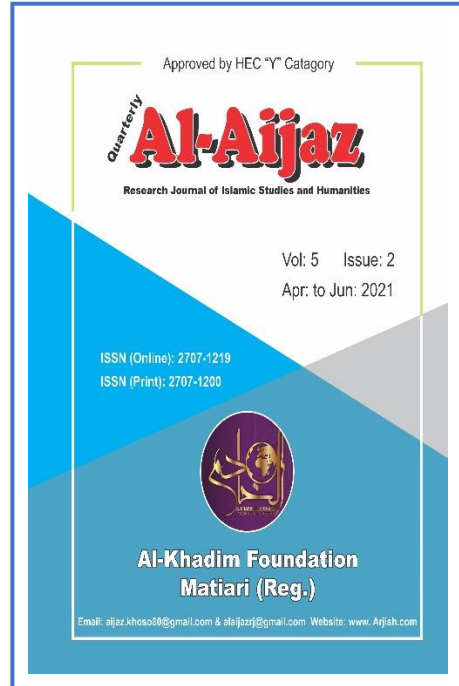
Published by the Al-Khadim Foundation which is a
registered organization under the Societies Registration
ACT XXI of 1860 of Pakistan

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TOPIC:

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Compensatory Damages

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How to cite:

Abbas, H. G. ., & Sajjad, M. . (2021). English-6 The Concept of Tortuous Liability under Islamic Law: An Inquiry into Question of Compensatory Damages . *Al-Aijaz Research Journal of Islamic Studies & Humanities*, 5(2), 68-80.

[https://doi.org/10.53575/English6.v5.02\(21\).68-80](https://doi.org/10.53575/English6.v5.02(21).68-80)

URL: <http://www.arjish.com/index.php/arjish/article/view/327>

Vol: 5, No. 2 | April to June 2021 | Page: 68-80

Published online: 2021-06-20

QR Code



The Concept of Tortious Liability under Islamic Law: An Inquiry into Question of Compensatory Damages

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Abstract

Islam also provides the concept of tort which deals with civil rights of the people. It has not been codified yet, which leads judges to rely on interpretations and precedents in non-monetary damages cases such as mental torture, emotional distress, defamation and alike. Judges face more difficulties in assessing non-monetary damages and award of fair compensation. This paper discusses the issue of compensatory damages for non-monetary harms as allowed under Islamic law. The objective of this paper is to look for solutions by examining the principles of Islamic law regarding compensation for non-monetary damages and to fill in gaps in policy and law perspectives. It suggests a clearly written statute on non-monetary damages, by incorporating Islamic law principles, which cover all kinds of damages and can be used as guidelines for judges. To complete this study, a doctrinal, analytical and qualitative method of research has been followed.

Keywords: Islamic tort, pecuniary compensation, intangible harm, Islamic law.

Introduction

Islam emphasizes on protection and promotion of all rights of the people without any discrimination. It prohibits to cause harm to the body and property of a person. Under Islamic law, everyone is obligated to abstain from causing harm to others. It is on the basis of most significant principle of Islamic law such as, "The harm neither be inflicted, nor reciprocated." It means that no one shall harm himself or other persons. In case of harm caused, Islamic law provides pecuniary compensation for some harms and only punishments for others. Pecuniary compensation, in Islamic law, is usually not provided against the intangible harm. Instead, the remedy is provided in the form of punishment or apology, for example, in cases where the harm is emotional distress without bodily harm. If a person accuses someone of adultery without evidence, he will be punished by lashes by the court. But the main issue arises when the compensation is required to award against intangible harm like harm to the feelings, mental torture, defamation etc. This is due to lack of clearly codified statutes on personal damages covering all kinds of damages which can be used as rules for judges. Therefore, non-existence of such statutes leads judges to depend on their own interpretation and precedents. Under this backdrop, there is need to examine the law of tort and compensatory damages from Islamic perspective. An attempt is being made to unfold this subject in this paper.

The Definition and Concept of Tort in Islamic Law

Islamic law recognizes and establishes moral and legal duty and a Muslim is bound to follow them in a normal situation.¹ To fulfill this duty, a Muslim is required to act in a responsible

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manner to protect others against risks. Thus, every Muslim, under Islamic law, is legally as well as morally responsible for his actions. In case of infringing this duty, he will be liable for punishment or compensation. On subject of torts, the following can be the sources of reference for duties such as: "contract, individual will, harmful act, useful action and principles of Islamic law". So, harmful act due to a wrongful act done is one of the sources of duties which are recognized by Islamic law. Consequently, the harm creates a right for the victim to avail himself of remedy against such harm or damage.²

Definition of Tort

The literal meaning of term 'tort' is similar to the Arabic terms for example "*madarrah, darar, khasarah*".³ In the *al-Mughni al-Akhbar* 'tort' is *fil-darar*.⁴ Similarly in Faruqi's Law Dictionary, 'tort' is considered as '*fil al-darr*'.⁵ Further, Islamic law also uses the term '*jinayah*' for 'tort'. Classical Islamic jurists used it for damages in the form of *diyah* (compensation) to the victims of fatal and non-fatal harms,⁶ latter in cases where the legal heirs don't demand *qisas*.⁷

According to Sanhoury, a tort under Islamic law is the infringement of a legal obligation.⁸ It is also defined as a promise to provide compensation for an injury to others.⁹ In simple words, tort is infringement of a duty under Islamic Law which should be compensated with damages. In Islamic law, this duty originates from the objective of protecting and promoting the right to life and property of others by deterring the wrongdoers. In this regard the Quran says:¹⁰

فمن اعتدى عليكم فاعتدوا عليه بمثل ما اعتدى عليكم البقرة: ١٩٤

Means, if someone causes harm to others, the victim has right to cause harm to the wrong doer. However, it does not mean that a person wronged by other can inflict physical violence on the wrongdoer. It means that the damage caused by the wrongdoer will be reciprocated but shall not exceed the extent of damage caused by the wrongdoer. . In this respect, Islamic law uses 'tort' as a legal term for prohibited deeds against an individual or his material goods. Further it is an infringement of a private right of an individual and a civil wrong violative of protection of freedom, self-respect and repute of an individual.

Tort in the *Qur'an* and *Hadith*

Under Islamic Law, civil rights of a person are protected as it forbids causing of damage to the individuals' freedom, body and property.

These concepts can be found indicated by the *Quran* and *Ahadith* in several places and different perspectives.

For example, for the protection of property, the *Qur'an* forbids to take others' property with illegal means.¹¹ Similarly, it allows the victim to have legal recourse against injury inflicted on him by the wrong doer.¹² But it also ordains that the recourse against the wrongdoer should also not exceed but reciprocate the wrong done by the wrongdoer.¹³ Al Quran advises it people to not long for what Allah has conferred on others as men will have their share according to what they earn.¹⁴

Al-Mawdudi stated about this verse that a man, naturally, thinks about the status and

prosperity of others and may get jealousy. This, factor basically leads towards unending competition in the society, and becomes a war against the nature which gives birth to variety of wrongs in the society.¹⁵

Similar subjects, as given in the Quran, have been mentioned in *Ahadith*.

The last sermon of the Prophet (PBUH) is an important example wherein, the Prophet (PBUH) gave the status of sacredness to the body and property of the people.

“Your blood, your properties and your honor are as sacred as the sacredness on this day of yours, in this city of yours and in this month of yours.”¹⁶

In another place, the Prophet (PBUH) says about harm that no one should cause harm to other person even himself: “There should be neither harming nor reciprocating harm.”¹⁷

He also prohibits to take someone’s property without his consent.

“It is not permissible for a man to take his brother' staff apart from with his goodwill.”¹⁸

It is ordained in the commandments narrated from Prophet (PBUH) that if a person finds property someone’s, he should return in the same condition to the owner.

“It is incumbent upon a person who takes a thing from another to return the thing to the rightful possessor.”¹⁹

The Prophet (PBUH) prohibited from taking a chattel of another person with bad motive. He emphasized on minor things like if someone takes even stick of another person, he should return to the owner.

“No one among you should take a chattel of his partner with or without grave intention. If anybody takes, even the stick of his partner, he should return it to him.”²⁰

Under the above discussion, it reveals that Islam emphasis on protection and promotion of all rights including civil rights which also come in the ambit of law of tort. In case these rights are infringed by someone, the victim is entitled to legal remedy against the wrong doer under the principles of Islamic law which are discussed in the coming part of this study.

The Definition and Concept of Harm:

Islamic law emphasis on attaining the public’s interest in Muslim community. It recognizes harm and considers it one of the causes of liability for compensation. According to Islamic law, harm is “a damage to the victim in the shape of pecuniary, corporeal, emotional, property or dignitary”. It is divided into main two groups such as physical and emotional harms. In general, there are three circumstances under Islamic law wherein someone can be held liable such as: “violation of Islamic law principles, breach of contract and harmful

action". Here harmful action is the third cause/element wherein a person is held liable. Therefore, it is stated here that, considering the third element, a judge must decide if a victim has established a recognized harm to his body or property.

The Definition of Harm:

Islamic scholars define harm as, "it is any injury sustained by a person causing him financial loss". Similarly, they also define as, "causing injury to another whether or not the injury is physical or financial".²¹ Under these definitions, we can see that these do not cover all kinds of damages and "emotional injury".

Types of Harm:

The definition of moral harm, according to Fawzi, is "a harming others person their dignity, hurting their feelings, tarnishing their honor, defiling their religion, or causing damage to their reputation".²² This implies that "any harm that hurts a person in his honor, emotion, dignity and even what results from slandering his close relative is called moral harm". Such harm is embodied in "defamation, swearing and slandering" which also inflict agony and suffering as corporeal damage to the aggrieved person.²³ Islamic law tends to protect a person reputation and dignity from various forms of moral harm by ordaining in the Holy Quran says:

"And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with preference."²⁴

The underlying idea of the above verse is the dignity and honor of a person being member of the human community irrespective of his religion, cast, ethnicity, race or any other background.

The Principles of Islamic Law on Harm:

There are certain principles regarding harm which have been derived by the Islamic scholars from the injunctions of Islam and further drafted on the basis of their interpretations which are as under:

1) لا ضرر ولا ضرار²⁵

The meaning of this principle is that no one should cause harm to the other person even himself. In Islamic law this principle has great significant in the field of harm as its foundation is the Hadith of the Prophet (P.B.U.H).

2) الضرر يزال

The meaning of this principle is that damage should be removed. This principle comes from the verse: ولا تمسكوهن ضرارا لتعتدوا

3) الضرر لا يزال بالضرر²⁶

It means that harm should not be removed with the same or other harm.

4) إذا تعارض مفسدتان روعي أعظمهما ضررًا بارتكاب أخفهما²⁷

It means in two harms/evil, the smaller can be chosen.

5) "Private harm be tolerated than in the face of public harm". This principle echoes the principle of priority of public interest over the private.

6) "Severe harm is removed by lesser harm". Meaning thereby, if a greater harm can be avoided by allowing a lesser or smaller one, the latter will be tolerated in the interest of minimizing the effect.

The Definition and Concept of Compensation in Islamic law

Definition of Compensation: According to the Islamic law, compensation, in general, is "to repair the harm and to place the victim in the position he would have been had the harm never happened". Islamic scholars, such as Al Zoheily, state that "compensation is returning the same thing that was injured; giving the value of what was injured and a promise for pecuniary compensation to an injured person".²⁸

As per aforesaid definition, compensation can be written orderly in three situations such as: i) by returning the thing damaged; ii) if it is unavailable for a defendant, by providing the same value of the thing damaged; iii) compensation to the aggrieved by the wrong doer for physical damage.

The Compensation and its Sources:

One of the basic purposes of Islamic law is to protect and promote the rights of fellow members of society. Therefore, causing harm to others is forbidden and compensation is provided as a right to the victim against the wrong doer. The legitimacy of compensation can be inferred from the following textual sources in the Quran and the Ahadith, which are briefly touched upon below:

The Compensation as per the Quran

Quranic perspective on the concept of compensation can be understood from the following texts.

In Chapter Al Shura, it is provided: "The recompense for an injury is an injury proportionate to it; but if a person forgives and makes reconciliation he shall be rewarded by Allah, (as) He does not like the transgressors."²⁹

It also says: "And if you punish, punish with an equivalent of that with which you were harmed. But if you are patient, it is better for those who are patient."³⁰ Similarly, another verse says:

"So, whoever has transgressed on you, you are also entitle to reciprocate (such transgression) on him in the same way that he has done to you."³¹ These verses have been interpreted by the Islamic scholars in the meaning of compensation for injuries or harm.³²

The Compensation as per the Hadith:

There are certain examples of compensation indicated in different Ahadīth reported from the Prophet (PBUH) He says: "Food for food and vessel for vessel".³³ From this hadith Islamic scholars inferred that one sort of compensation can be "restitution". In another hadith, the Prophet (PBUH) says:

"...The bankrupt in my Ummah is the one who comes with *Salah* and Fasting and *Zakat* on the Day of Judgment, but he comes having abused this one, falsely accusing that one, wrongfully consuming the wealth of this one, spilling the blood of that one, and beating this one. So, he is seated, and this one is requited from his rewards...."³⁴

It is inferred from this Hadith that causing a harm to others is a very serious act and great importance has been given to the compensation. For example, if a wrong doer does not pay the compensation in this world, Allah will be the judge and will compensate to the victim by giving good deeds of the wrong doer.

Likewise, the Prophet (PBUH) is reported to have said: "None of you should take the property of his brother in amusement (jest), nor in earnest."³⁵ Scholars have interpreted this Hadith that no anything should be snatched from others because it may result in causing him fear or shock, sadness and suffering of losing things. According to the above mentioned all Ahadīth, it is indicated that causing harm or injuries to others and emotional distress is forbidden; and who causes harm, he must repair his wrongful act.

Bases of Compensation in Islamic law

Under Islamic law, a wrong doer cannot be held liable if the ingredients of tort are absent which are as under: i) wrongdoing (fault), ii) injury (harm), and iii) causation. Whereas, common law includes the elements of tort such as: i) duty, ii) breach of duty, iii) causation, and iv) damages. It is important to mention here that Islamic scholars use the "bases of liability" rather than the "elements of tort" because of slightly different approach of Islamic law tradition which provides that "everyone is liable for his wrongs (to others) and liable for compensation".³⁶

Islamic Law Rules of Compensation:

There are certain rules for compensation which have been outlined by the Islamic scholars from the injunctions of Quran and Sunnah. Some of the important and relevant rules are being mentioned here:

- 1) "If there is both a direct and the indirect cause, the direct is liable":³⁷ This rule means that if the cause of the wrong is directly attributed to one person and indirectly to the other, the former will be held liable for the reason of causing the harm directly.³⁸
- 2) "The direct cause is liable regardless of intent":³⁹ Under this rule, a person not intending to cause damage is still liable for the payment of compensation to the victim.⁴⁰
- 3) "The indirect cause is not liable unless it is intended":⁴¹ This rule is different from the previous one as here the one directly causing the harm is liable notwithstanding his intentions, while the one causing wrong indirectly is liable only if he intends to cause harm by his acts.

- 4) "Acts are associated with the actor, not one who incite the actor".⁴² It means that a person committing a wrong is liable for his act, and he will pay the compensation and not the inciter.
- 5) "Legal permissibility negates liability":⁴³ The actor will not be liable for those acts which have been permitted by Islamic law.⁴⁴
- 6) "Necessity does not negate compensation".⁴⁵ Irrespective of the necessity that forced the wrongdoer to commit a tort, he will still be liable for compensation to the victim.

The basic purpose of these rules is to determine the circumstances surrounding commission of a tortious act for which a wrongdoer may be held liable. If these rules are codified and take the force and effect of a legislation, it will be helpful for the judges to employ these principles in adjudicating cases involving question of tort, tortious liability and the compensation as redressal of the wrong done to the aggrieved.

Mental Harm due to Defamation and its Remedies

Under objectives of Islamic Law, libel can be considered under the protection of honor and dignity of the person. The concept of defamation has been stated in the Qur'an that falls within the meaning of the word *Al-Fitnah*.⁴⁶ The word 'fitnah' has been mentioned in the Qur'an about sixty times and eighty-six Ahādīth recorded in *Ṣaḥīḥ al-Bukhārī* in its own chapter, i.e., Kitāb Al-fitan.⁴⁷

Ahādīth of Prophet (PBUH) affirms the protection of personal liberty, honor and dignity. For example, the Prophet (PBUH) in His last sermon (*Khutbah Hujjat-ul-Wida'*) stated about the holiness of the body, property, dignity and honor of others such as:

فإن دماءكم، وأموالكم، وأعراضكم، بينكم حرام، كحرمة يومكم هذا، في شهركم هذا، في بلدكم⁴⁸

("Your blood, your properties, your honor and dignity are as sacred as the sacredness on this day of yours, in this city of yours and in this month of yours").

In light of the above sources, defamation is also a culpable wrong since it causes mental agony and dents a person's reputation in the community, he lives in. It does not cause any physical injury but a moral or intangible harm to the victim. With this background, the scope of and compensation for defamation as has been elaborated by different Muslim scholars is discussed below.

Remedies According to the Islamic Scholars

Abdul Qadir Awdah has categorized the legal recourse against the act of defamation into two: 1) *Hadd* punishment for *Qazaf*; and 2). *Ta'zīr* punishment for defamation which does not fall within the ambit of *Hadd*. According to the Islamic legal principles, it is indicated that the punishments of defamation are concerned with the degree of such acts itself as the consequences of the said act are very vital in ensuring protection of individual interest of a person's right to reputation and the public interest of curbing any transgressions on such right. The word of slander or 'fitnah' has been classified by Salih Al-Fawzan into two categories: 1) plain words; and 2) allusive words.⁴⁹ Similarly, Mohammad Hashim Kamali says that freedom of speech can be considered as vital interest to maintain the socio-

political order. But this freedom should be used under the principles and restrictions as mentioned in *Maqāsid Al-Shari'ah* such as “protection of faith, life, intellect, lineage and property”.⁵⁰

According to Sa'ad, the offences that may generate compensation legal liability in terms of reputational damage can be categorized as follows:⁵¹

- 1) Public utterance of hurtful speech;
- 2) Slandorous accusation (qazaf);
- 3) Libel (iftirā');
- 4) Insult;
- 5) Cursing (lia'an);
- 6) Attribution of disbelief to a Muslim;

As for as remedies are concerned, in Islamic law, there are two categories of remedies especially for defamation such as *Hadd* and *Ta'zīr*. Punishment in *Ta'zīr* is given if the offence is not covered under *Hadd*. However, with reference to this study focusses on compensatory awards.

Status of Intangible Harm in Islamic law

According to the Islamic scholars, there are certain conditions to harm wherein compensation can be awarded. It means that not all harms can be compensated. Deliberations are there for excluding these harms. For example, the custom plays a significant role for awarding compensation. Thus, compensation cannot be awarded if it is not recognized by the custom. According to the Hanafī jurists, compensation can be awarded for intangible damage if damaged because of custom and Islamic law. In this regard, the “value of any item” is the spotlight whether it is permitted and beneficial. Such as, under Islamic law, consumption of alcohol is prohibited thus if 'A' breaks a bottle of alcohol of 'B', 'B' cannot be awarded the compensation as it is not considered as a “valued item”. Thus, damaging the bottle may not give rise to the “right to compensation”.⁵²

Further, if we go through the classical literature, we will find that there are two kinds of punishments with respect to intangible harm discussed by jurists such as false accusation of adultery, insult and verbal abuse

Almighty Allāh says about who makes false accusation of adultery (defamation) should be flog with eighty stripes.⁵³

The Prophet (PBUH) has prohibited from accusing the chaste and the innocent.⁵⁴ Jurists have extensively discussed about above-mentioned crimes and their punishments. Whosoever calls other persons a 'liar', pagan, wicked, immoral fornicator, evil doer or usurer etc., then such person can, lawfully, is awarded a discretionary punishment. This punishment can be in terms of whipping or mere detention. It is evident from these two mentioned punishments that monetary punishment is not mentioned anywhere. Therefore, there is a disagreement among modern jurists that in case of intangible damage, a monetary compensation can be extended or not. Following are opinions and the logical arguments to explain these two forms. Some jurists such as Al-zuhaylī, 1433 h; Al-dārinī, 1408 h; Al-

sanhūrī; Al-sirāj, 1410 h; Shaltūt, 1410 hare of the views that monetary compensation is lawful in case of intangible damage.⁵⁵ On the other hand, some jurists such as Al-Zarqā, 1409 h; Al-khafīf, 2012; Mowāfi, 1997; Ahmad, 2012 opine that monetary compensation is unlawful against intangible damage.⁵⁶

Arguments of these both opinions are summarized below.

Those who are in favor of monetary compensation argue that Holy Prophet (P.B.U.H) said: "There should be neither harming nor reciprocating harm".⁵⁷

- 1) This Ḥadīth is general in eradicating of harm of any form i.e., tangible or intangible. Therefore, it is inferred that harm must be removed by using all kinds of means; either by pecuniary remedy or physical punishment; and
- 2) Once Zayd ibn Sa'nah used harsh language against the Prophet (PBUH) while demanding back his loan. 'Umar (R.A) said...I would strike your neck with this sword. The Messenger of Allāh ordered to 'Umer to increase twenty *sa'a*⁵⁸ along with principal amount as a consideration of what he made frightened to Zayd.⁵⁹

The above underline statement of Prophet (P.B.U.H) clearly points out that pecuniary damages can be awarded against the intangible harm (mental harm). Following are the some important arguments by the proponents of monetary compensation of damage:

- 1) The *Shari'ah* does not regard human honor and dignity as property which could be claimed in monetary terms. That is why; the *Shari'ah* did not award the monetary damages against the intangible harm. As the imprisonment or whipping are adequate damages for intangible harm. Therefore, discourse would not be for monetary damages;
- 2) The *Shari'ah* requires proportionality between damage and compensation. There is no yardstick which can measure the intangible harm. Thus, it would be injustice to award the monetary damages against the intangible harm if it is estimated without a proper yardstick.

In the light of above-mentioned arguments of both opinions, the first opinion seems preferable. The reason is that the Prophet (P.B.U.H) emphasized upon the removal of harm. The word (used in above Ḥadīth) is general which includes both tangible and intangible harm. Therefore, a judge or *qazī* can remove the harm (whether tangible or intangible) by lawful means which he thinks suitable. Thus, if a suit is filed to award monetary compensation against intangible harm, nothing stops him for awarding monetary compensation.

Issues in Measuring of Monetary Compensation

For the purpose of measurement of monetary compensation, there is no strict rule. Nonetheless, it is the discretion of the *qazī* to quantify it keeping in view the circumstances

of the case i.e. the reputation of the victim and his status in the society, repetition of guilt and intensity and harshness of the incident. The ruler can award 'tazīr' punishment to anybody in monetary term if he causes defamation/intangible damage. Regarding *Shari'ah*, the first ruling on assessment of procedural and practical is the admissibility requirement that the institute or person uses its greatest struggle in assessing it. It is indicated in the Ḥadīth of the Prophet (P.B.U.H):

أنتم أعلم بأمر دنياكم⁶⁰

This Ḥadīth obviously indicates the consideration of *Shari'ah* for expert use of ijtihād on assessment matters. In this regard, muslim scholars emphasized this method during thier ijtihād in assessing the degree of application. For example, Imām Mālik has used recurrently two opinions such as: i) "This is to be decided by the ijtihād of ruler; we have no determined position other than leaving it to the ijtihād of ruler," and, ii) "It is up to the ruler to decide about such persons."⁶¹

These opinions show that decision-making and authority has to be exercised by the ruler, which contains Islamic institutes and standard fixing authorities. Al-Shāfi'ī, in discourse of assessment of the compensation for game that has been murdered in hajj by a pilgrim wearing ihṛām, if it has no alike animal, stated that the case is to be referred to the ijtihād of specialists: "For those which are not lawfully edible, determination shall be made on the basis of precedent and analogy by paying their price to the owner. It is agreed that the decision as to the price should be on the price of the game in the place and the day, for vary from one place to another."⁶² Further, he also pointed out the differences amongst qādīs on the standards for those who are giving evidence: "Two judges may take a decision in which one of them accepts while the other rejects him. This is of disagreement, but each judge has fulfilled his duty."⁶³

Conclusion

In the light of above arguments, it is concluded that Islamic law prohibits causing of harm to others, whether physical or moral. It has its own system of compensation for an injurious act. Although it recognizes the concept of compensation to the victim for physical and mental harm but there are practical issues concerning determination of the quantum of compensation and the manner of assessment as well as the factors to be taken into consideration, though certain rules are found in the *Fiqh* literature which provide guidance in this regard. It is also noted that there is disagreement amongst classical Islamic scholars regarding determination of compensation, especially for moral damage, but in general the majority of these scholars are in favor of award of compensation. This difference of opinion, though, expands the orbit of scholarly discussion on the question of compensation. However, it is not practical for judges to take a preferred approach through pick-and-choose method, unless the Islamic law on the compensation for tortious liability is codified. This exercise definitely requires input and support from the Council of Islamic Ideology and the eminent scholars from *Shari'ah* and common law backgrounds in Pakistan. Such codification can resolve the disputed, or differently opined-on, issue of determination of quantum of compensation in case of a tortious act under Islamic law.

Conflict of Interest

There is no conflict of interest concerning publication of this paper.

Funding Source

This paper has not been funded by any individual or organization.

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- ²⁰ Muhammad bn Eisa-al-Tirmidhi, *Sunan-al-Tirmidhi*, vol.4, p.462.
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- ²² See e.g. Mohammed Fawzi, *the theory of guarantee* at. 92, *Tort Between Sharia and law* at 135
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- ³⁰ surat Al nahl, verse (16:126)
- ³¹ surat Al baqara, verse (2:194)
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- ³³ Jami` at-Tirmidhi 1359, Book 15, Hadith 39, Vol. 3, Book 13, Hadith 1359.
- ³⁴ Sunnah.com, <http://sunnah.com/urn/725980>
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- ⁴⁷ M. Baqī, *Al-Mu'jam Al-Mufahras li Alfazh Al-Qur'an Al-Karīm* (Beirūt: Dār al-Kutub al-Misriyyah, 1364), 521.
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- ⁵² Al Zoheily, 57.
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Albānī, N. (1985). Albānī says: this Ḥadīth is *Ṣaḥīḥ*. see: *Irwao-ul-Galil*. Vol. 2, Beirut: Al maktbaht-ul-Islamī; Ibn Hanbal, A. Musnad Ahmad, H#,2865, Egypt: Dār-ul-Ḥadīth, 5/600.

⁵⁸ A weight scale to measure the quantity used in the era of Prophet (PBUH).

⁵⁹ Ibn Hubbān, *Ṣaḥīḥ Ibn Habbān*. Vol.1, Ḥadīth 288 (Beirut: Mu'assasāt-al-Risālah, 1988); Mullah Qarī, *Mirqāt-ul-mafātīh*, Vo1. 5, Ḥadīth 2906 (Beirut: Dār-ul-fikr, 1955).

⁶⁰ Imam Muslim, *Ṣaḥīḥ Muslim*, Bāb Wujūb Imtithāl ma Qālahu Shar'an, no. 2363, viii. 100.

⁶¹ Sahnūn, *Al-Mudawwanah al-Kubrā*, ed. Umayrat, Z. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 502.

⁶² Imam Al-Shāfi'ī, *Al-Risālah: Treatise on the Foundations of Islamic Jurisprudence*, Majid Khadduri, Trans (Cambridge: The Islamic Text Society, 1961), 298.

⁶³ Ibid, 299.