

The Possibility of Compensating for Moral Damages Under Civil Liability in the Nuclear Field

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Abstract: *Using an analytical methodology, this study examines the extent to which moral (non-material) damages are compensable under civil liability in the nuclear field. The study reveals that the Saudi Civil Liability Law for Nuclear Damage, along with comparative nuclear legislation and international conventions on civil liability for nuclear damage, neither explicitly affirm nor deny compensation for moral damage resulting from nuclear incidents. They remain silent on the matter, neither excluding nor accepting it outright. The study underscores that compensation for moral damage is no less important than compensation for material damage, as in some cases, moral harm can have a more profound impact on the victim than physical damage.*

The study recommends the recognition and inclusion of compensation for moral damage arising from nuclear harm, provided that the legal conditions for damage are met and the harm is of sufficient severity—such as psychological trauma or hereditary effects caused by nuclear incidents. It also calls for the explicit inclusion of moral damage in both the Saudi Civil Liability Law for Nuclear Damage and the Vienna Convention on Civil Liability for Nuclear Damage.

Keywords: *Nuclear energy, liability, moral damage, compensation.*

INTRODUCTION

Nuclear damage, in most cases, is not limited to tangible physical harm to property or infrastructure. It often extends to affect the moral, psychological, and emotional well-being of the affected individuals. This type of harm may manifest directly through the immediate consequences of a nuclear incident or indirectly through long-term effects that leave a lasting imprint on the victims' lives. Non-material consequences include psychological trauma, social disruption, loss of trust and safety, and violations of human dignity and ethical standards. Thus, nuclear damage imposes not only material burdens but also profound moral and emotional challenges on victims, varying in degree and intensity.

This study addresses the issue of whether compensation for moral damages is possible under civil liability in the nuclear field, and why civil liability laws and relevant international conventions fail to explicitly include such damages within their provisions.

The objective of this study is to clarify and detail the concept of moral damage, distinguish it from material damage, and examine the stance of nuclear liability laws and international conventions regarding such harm. It also seeks to highlight the perspectives of legal scholars specializing in nuclear law on this subject.

RESEARCH METHODOLOGY

The research methodology involves an in-depth and comprehensive analytical approach to examining

the possibility of compensating for moral damages under civil liability in the nuclear field. This includes a detailed analysis of all aspects related to such compensation, particularly in the context of nuclear incidents. The methodology further encompasses a thorough evaluation of national nuclear liability laws and relevant international conventions, with a focus on the legal and practical feasibility of compensating moral damages in the nuclear sector—recognizing that such damages are no less serious than material harm.

THE NATURE OF MORAL DAMAGES

Most legal scholars agree that moral or non-pecuniary damage is harm inflicted upon a person in a non-material aspect (Al-Sanouri, n.d.; Al-Qadi, 1954; Al-Kazbari, n.d.; Al-Amiri, 1981; Al-Fadl, 2006; Al-Hasnawi, 1999).

Moral damage is defined as any harm that affects a person's honor, emotions, or feelings (Bousaq, 1999). It has also been described as anything that injures a person's emotional well-being or causes sorrow or pain (Saad & Qasim, 2010). Another definition refers to it as harm to an individual's dignity, reputation, or honor (Abideen, 1995). It is further defined as the psychological pain experienced by the injured person due to physical injuries such as fractures, wounds, and disfigurement, in addition to the financial consequences such as medical expenses and loss of income (Al-Sharqawi, 1981).

Markos (1971) views moral damage as any injury to a person's honor or dignity—such as slander or insult—and any emotional pain resulting from physical assault, humiliation, or the loss of a loved one. More broadly, it includes any infringement upon a right, such as violating another's property, regardless of whether it results in financial loss. Al-Awji (2009) defines it as harm to the non-material aspects of a person, affecting emotions, sensations, feelings, personal or social status, and resulting in psychological pain or a diminished sense of self-worth. This is the definition adopted by this study.

Judicial definitions of moral damage align with those in the literature. Abideen (1995) cites a ruling by the French Court of Cassation on October 13, 1955, defining moral damage as “harm inflicted upon a person other than in their financial rights or interests.” Similarly, a ruling by the Egyptian Court of Cassation dated April 29, 1998, defines it as “any harm that affects a person's honor, emotions, or feelings” (Sha'lah, 2003).

Generally, compensation for such damage is granted when there is an infringement of a non-financial or natural right or any element related to the moral integrity of the person (Al-Najjar, 1994; Sultan, 1983). Therefore, this type of damage pertains to the emotional or social aspect of one's moral or personal integrity (Al-Saeed, 1992).

From the above, it is clear that moral damage affects human emotions and sensations, causing internal pain that only the injured party can truly feel.

METHODS FOR DISTINGUISHING BETWEEN MORAL AND MATERIAL DAMAGE

Moral damage rarely occurs in isolation when rights are infringed; it is usually accompanied by material damage. Thus, some jurists (Zaki, 1976) sought to define a criterion to help identify and clearly delineate moral damage, based on its unique features. However, consensus has not been reached, and two main standards have emerged:

1. The nature of the right or interest that was violated.

2. The nature of the consequences or effects of the violation.

According to the first standard, damage is considered material if it affects a financial right or interest. If it affects a non-financial right—such as those inherent to personal identity—the damage is considered moral (Ghanem, 1967). Under the second standard, if a financial right is infringed but no financial loss results, the damage is not considered material. However, if the violation causes emotional distress or affects values held dear by individuals, it may be regarded as moral damage (Sharaf al-Din, 1982).

Moreover, a violation of a non-financial right may result in material damage if it causes a reduction in financial benefits derived from exercising that right. For example, injury to a person's health or body leads to medical expenses and loss of earning capacity (Hijazi, 1954).

Although the right to bodily integrity and life is considered a personal, non-financial right—and thus any harm to it would be classified as moral damage under the first standard—legal scholars often consider it material damage under the second standard, due to the financial consequences such as medical costs and income loss (Markos, 1948).

This study supports combining both standards to differentiate between material and moral damage. It is necessary to consider the nature of the right or interest that was violated without ignoring the resulting consequences. For instance, harm to the human body is inherently non-financial; however, this does not negate the relevance of financial consequences. Judges must take into account both the nature of the violated right and the subsequent effects when assessing compensation.

Compensation for Moral Damages Arising from Nuclear Damage and the Possibility of Awarding It

The issue of compensation for moral or non-material damages has long been a matter of debate among legal scholars. Some early French jurists argued that moral damage could not be subject to compensation (Mar'i, 1936; Al-Saeed, 1992; Hakbari, 2008), reasoning that the purpose of compensation is to repair the damage and restore the injured party to the state they were in prior to the harm. In this view, such reparation is not possible in cases of moral damage, as financial compensation cannot erase the injury to one's honor or feelings, nor can it restore the victim to their prior emotional state. Moreover, civil liability requires a balance between the damage and the compensation, which is difficult to achieve when the damage cannot be monetarily evaluated (Mar'i, 1936).

It is also argued that assessing the extent of moral damage requires delving into the subjective emotions of the individual, which is inherently challenging due to the variability in human sentiment (Al-Dhannoun, 1991).

Nevertheless, legislation, jurisprudence, and case law have generally recognized the eligibility of moral damages for compensation (Abu Stateet, 1945; Mar'i, 1936).

For example, Article 222 of the Egyptian Civil Code No. 131 of 1948 states that compensation includes moral damages, although such compensation may only be awarded to spouses and relatives up to the second degree in the case of death, and only if claimed or contractually agreed.

Similarly, Article 268 of the Unified Civil Code for the GCC states that moral damage is compensable when it results from infringements upon a person's liberty, honor, reputation, social standing, or financial credibility. Compensation can also be awarded to family members for emotional suffering due to the victim's death.

Recent Saudi jurisprudence has also recognized the right to compensation for moral harm. In case no. 2220/2/Q of 1431H, affirmed on appeal in case no. 4618/2/S of 1436H, compensation was awarded for moral damage resulting from a mistaken medical diagnosis. In case no. 2084/1/Q of 1435H, and its appellate affirmation (no. 519/4), passengers were awarded damages for psychological and emotional distress suffered during a flight.

Hence, moral damages are no less significant than material damages; in some cases, they may have an even greater impact on the injured party.

However, neither the Saudi Nuclear Civil Liability Law nor comparative nuclear legislation or international nuclear liability agreements explicitly provide for compensation for moral damage resulting from nuclear accidents. These frameworks define nuclear damage strictly as harm to persons or to property.

This omission has prompted scholarly debate about whether moral damages fall within the scope of compensable nuclear damage.

The debate has yielded three main perspectives:

First Viewpoint: Exclusion of moral damages from compensable nuclear harm. Proponents argue that allowing claims for moral nuclear damage would open the floodgates to baseless claims driven by fear of future radiation effects, particularly genetic damage (Abdulaal, 2008; Fath Al-Bab, 2016). They also cite international treaties that explicitly limit compensable nuclear damages to bodily and financial harm. As such, these exceptional regimes should not be extended to include types of harm they do not explicitly address, especially those differing in nature (Nayel, 1994; Fath Al-Bab, 2016). Furthermore, moral harm is difficult to quantify or verify (Ahmed, 2016).

Second Viewpoint: Advocates compensation for moral damages based on general principles of civil liability and the pursuit of justice. They argue that moral injuries may be more severe than material ones, particularly in cases involving genetic illnesses (Fath Al-Bab, 2016; Nayel, 1994; Al-Bayeh, 2002).

Third Viewpoint: The issue is tied to the financial liability cap imposed on nuclear operators. If compensation for bodily and material harm exhausts this cap, then no funds remain for moral damage compensation (Abdulaal, 2008). Since international agreements defer to national laws regarding compensation components, the availability of moral damages depends on the applicable domestic law (Nayel, 1994).

Moral damages can indeed exceed material ones, particularly in cases of infertility, congenital deformities, psychological trauma, and genetic disorders.

For example, after the Fukushima disaster, some families were split due to fears of radiation exposure—wives and children relocated, while husbands stayed behind. Children relocated to safer areas had to wake up early and endure long commutes to distant schools, unable to play or exercise outdoors, leading to chronic anxiety and fatigue (Khairuddin, 2013). Moral harm may also take the form of the loss of enjoyment of a clean, unpolluted environment (Al-Barawi, 2009).

Thus, moral damage has gained recognition as a compensable harm both domestically and internationally. The International Arbitration Court has affirmed that moral harm is compensable, provided it is real and verifiable, not merely emotional or vague (Fadil, 1976).

Conclusion and Recommendation: The researchers conclude that moral damages resulting from nuclear harm should be compensable if the legal conditions are met and the damage is serious—such as in cases of psychological and genetic harm. They recommend explicitly including moral harm in both the Saudi Civil Liability Law for Nuclear Damage and the Vienna Convention on Civil Liability for Nuclear Damage.

FINDINGS

The findings of the study on the possibility of compensation for moral damages under civil liability in the nuclear field are as follows:

1. Moral damage affects human emotions and feelings, causing internal pain that can only be felt by the injured person.
2. The eligibility of compensation for moral damages has been consistently recognized in jurisprudence, legislation, and judicial rulings.
3. Compensation for moral damages is no less important than compensation for material damages; in some cases, moral harm may have a greater impact on the injured person than material damage.
4. Neither the Saudi Civil Liability Law for Nuclear Damage, nor comparable nuclear legislation, nor international agreements in the field of nuclear civil liability explicitly provide for compensation for moral damage arising from nuclear incidents. These frameworks neither exclude nor explicitly acknowledge such damages.

RECOMMENDATIONS

Based on the findings of the study on the possibility of compensation for moral damages under civil liability in the nuclear field, the following recommendations are proposed:

1. International efforts must be intensified to mitigate the risks associated with the peaceful use of nuclear energy by adhering to all means and measures of protection, safety, and security within nuclear facilities.
2. Compensation must be granted for moral damages resulting from nuclear harm, provided the legal conditions for liability are met and the moral damage is of serious nature, such as psychological or genetic harm resulting from a nuclear incident.
3. Moral damages resulting from nuclear incidents must be real and significant in order to qualify for compensation.
4. It is essential to explicitly include moral damage in both the Saudi Civil Liability Law for Nuclear Damage and the Vienna Convention on Civil Liability for Nuclear Damage.

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