



Civil and Criminal Liability for Emotional Damages Inflicted by Spouses on Each Other in Married Life

Abolfazl. Alishahi Ghale Joughi¹

Fariba. Taei^{2*}

Nejat. Alipour³

1. Associate Professor, Department of Theology, Farhangian University, Tehran, Iran

2. *Corresponding author: Doctoral Student, Department of Jurisprudence and Law, Mazandaran University, Mazandaran, Iran

3. Master's Degree, Department of Private Law, Urmia Branch, Islamic Azad University, Urmia, Iran

Email: faribataee73@gmail.com

Received: 26.05.2022

Acceptance: 22.11.2022

Journal of
Applied Family Therapy

eISSN: 2717-2430
http://aftj.ir

Vol. 4, No. 4, Pp: 566-580
Fall 2023

Original research article

How to Cite This Article:

Alishahi Ghale Joughi, A., Taei, F., & Alipour, N. (2023). Civil and Criminal Liability for Emotional Damages Inflicted by Spouses on Each Other in Married Life. *aftj*, 4(4): 566-580.



© 2023 by the authors. Licensee Iranian Association of Women's Studies, Tehran, Iran. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0 license) (<http://creativecommons.org/licenses/by-nc/4.0/>)

Abstract

Purpose: The present research aims to investigate the civil and criminal liability for emotional damages inflicted by spouses on each other in married life. **Methods:** This research employs a descriptive-analytical method and is conducted using authoritative legal and jurisprudential library sources. **Results:** Undoubtedly, the primary objectives of marriage for spouses are not profit and benefit, but rather to achieve peace, respect, loyalty, intimacy, and security. Among the damages that can be inflicted on a person is moral damage, which is not about losing property; rather, these damages affect the individual emotionally and psychologically. Moral damage is often related to the rights associated with a person's character and includes harm to physical and moral integrity, such as physical suffering, identity, reputation, emotions and feelings, and dignity. **Conclusion:** Consequently, we find that if spouses suffer from mental illness or are harmed due to constant quarrels, blame, suppression, or slander, the culprit is liable for civil and criminal damages. However, it is also understood that compensating for emotional damage is not solely through monetary payment but should also involve expressions of affection, commitment to not repeating behavior, public apologies, psychotherapy, etc.

Keywords: Spouses, Damage, Emotional, Civil Liability, Culprit.

Introduction

Moral damages within the realm of civil law, particularly in the sphere of civil liability, occupy a pivotal and foundational role. Given that most harmful acts and behaviors inflicted by spouses on each other are more of a psychological than a material nature, such as the presence of bad manners, insults, false accusations, infidelity, and failure to meet sexual needs, all of which are instances of marital misconduct, neglecting psychological damages in the family not only impairs the ethical relationships between spouses but also leads to the collapse of the family system. Additionally, the private nature of family member relations, the intangible nature of psychological damages, and the overlooking of their adverse effects make addressing the grievances of the injured party challenging. In response to the psychological harm between spouses, there are specific characteristics and various states. Such that sometimes the legal approach is preventative against the occurrence of psychological harm (conditions within the marriage contract), at other times it aims to halt the continuation of psychological harm (divorce and annulment of marriage). In some cases, mandatory reparative measures become applicable (permission for the husband to remarry). Certain approaches take on a punitive aspect through the renunciation of rights (permission to waive the wife's maintenance or separate residence for the spouse). All these instances reflect the legislator's efforts to create peaceful relations between spouses and ultimately prevent the destabilization of the family system.

The innovation of this article lies in the attempt to establish that civil liability in the emotional harm of spouses, especially severe mental and psychological illnesses, is not solely resolved through monetary compensation, as psychological harm lacks external manifestation and cannot be compensated with money. Instead, the offender must endeavor to alleviate the suffering of the person afflicted with mental illness, such as expressing affection, a written commitment to not repeat the behavior and speech, etc., in such a way that the afflicted person returns to their former state, i.e., before the illness. Importantly, this article also addresses the criminal liability of psychological harm inflicted by spouses on each other. In this article, we seek to answer the following question: What are the reasons for establishing civil and criminal liability for the psychological harm inflicted by spouses on each other?

Method

This research employs a descriptive-analytical method and is conducted using authoritative legal and jurisprudential library sources.

Results

Undoubtedly, the primary objectives of marriage for spouses are not profit and benefit, but rather to achieve peace, respect, loyalty, intimacy, and security. Among the damages that can be inflicted on a person is moral damage, which is not about losing property; rather, these damages affect the individual emotionally and psychologically. Moral damage is often related to the rights associated with a person's character and includes harm to physical and moral integrity, such as physical suffering, identity, reputation, emotions and feelings, and dignity.

Conclusion

Nowadays, conflicts and disagreements between spouses in married life have become much more prominent and frequent due to reasons such as jealousy, unrealistic expectations, excessive family interference, cultural differences, disillusionment with life, etc. Especially since modern-day spousal conflicts often stem from stubbornness and retaliatory behavior, often culminating in insults, accusations, blame, suppression, humiliation, and defamation. Although these expressions may seem trivial and insignificant at the beginning of married life, their continual repetition over time, particularly towards a spouse with a sensitive and delicate temperament, can lead to mental and psychological illnesses and other adverse consequences, which each spouse repeatedly uses in their speech without awareness of the consequences of these offensive expressions. Therefore, due to constant conflicts and the use of offensive expressions over time, each spouse may become afflicted with mental or psychological illnesses. Unfortunately, civil law does not explicitly address psychological harm inflicted by spouses on each other in married life. However, considering Article 171 of the Constitution, which pertains to judicial guarantees, it is possible to apply the principle of priority and generality of Article 171 of the Constitution to psychological harm in marital life and consider the offending party as liable for compensation; thus, it can be inferred that if either spouse inflicts psychological harm on the other in their married life for any reason, they are liable and responsible for compensating the inflicted damage. Additionally, based on Articles 1 and 10 of the Civil Code, one can establish the psychological responsibility inflicted by spouses on each other; to this point, based on the generality of the rule of priority and Articles 1 and 10 of the Civil Code, we have been able to establish civil liability for the psychological harm of spouses. But what about criminal liability? How can criminal liability be established? Although the criminal liability for psychological harm between spouses is not mentioned in the Islamic Penal Code, considering the speech and behaviors used between spouses and the importance of the crime and its punishment, criminal liability for psychological harm between spouses can be established; for instance, accusing someone of adultery, which is slander and punishable, or using insults, which falls under the crime of insult and is punishable according to Article 608, among other recognized criminal expressions.

However, the most critical point here is the method of compensating for the damage, whether compensation is in the form of monetary payment or other methods. Given the paramount importance of mental and psychological health, even more so than physical health, compensation is not just through monetary payment, as moral damage lacks external manifestation and is intangible; hence, it is not materially quantifiable, and any amount of damage determined by the court is based on conjecture and is inherently unrealistic. Instead, the offending party, be it the wife or the husband who has caused the harm, should make every possible effort, such as attending counseling sessions, public apologies, expressing sincere and continuous affection, listening to each other's grievances and words, a written commitment to not repeat their objectionable behaviors, medication and psychotherapy, etc., in such a way that the person afflicted with mental illness is completely healed and returns to their previous state, i.e., before the illness. Therefore, it can be stated that in the civil liability for the psychological harm of spouses, monetary payment is not the priority; especially since the factor of one

spouse's affliction with mental illness is not material or monetary, but rather due to lack of attention, insult, defamation, lack of affection, etc. Based on these methods and reasons for the affliction, the person should be treated.

References

- Akbari, M. R. (2005). Civil liability - Compensation for moral damage in Iranian law, *Dadresi Monthly*, 9(52), 49-71.
- Asghari, F. (2003). Compensation for moral damages in Iran. *Mazandaran University Journal of Humanities and Social Sciences*, 3(9-10), 17-35.
- Boroujerdi Abdeh, M. (1950). *Civil Rights*, Tehran: Alavi Publications.
- Davoudi, H. (2011). Financial Compensation for Moral Damage in Divorce Due to Misconduct, *Biannual Journal of Jurisprudence and Family Law (Neda-e-Sadegh)*, 7(15), 91-110.
- Emami, H. (2005). *Civil Rights*, Vol. 4, 18th Edition, Tehran: Islamic Publishing.
- Esfahani, Sheikh Mohammad Hossein. (1998). *Treatise on Renting*, Qom: Society of Teachers.
- Fazli, A. (2001). *Lessons in the Principles of Imamah Jurisprudence*, Vol. 1, Tehran: Umm al-Qura Institute.
- Habibi Tabar, J. (2004). *Step by Step with Family Law*, Tehran: Step by Step Publishing.
- Hakim, M. (1985). *Supporting the Strongest Evidence*, Vol. 1, Qom: Ayatollah Marashi Library.
- Hilli, Ibn Idris. (1989). *Al-Sara'ir*, Beirut: Fountain of Jurisprudence Collection.
- Horr Ameli, M. H. (1993). *Wasael al-Shia to obtain Shia issues*, Beirut: Al al-Bayt Institute.
- Hosseini Ameli, S. M. J. (1995). *Key to Generosity in Explaining the Principles of Allama*, Qom: Islamic Publication Institute.
- Hosseini Hayeri, K. (2002). *Judgment in Islamic Jurisprudence*, Qom: Islamic Thought Assembly.
- Jafari Langroudi, M. J. (2009). *Comprehensive Terminology of Law*, 4th Edition, Tehran: Ganj-e Danesh.
- Karami, M. T., & Sajjadi Amin, M. (2010). Critique and Review of Article 23 of the Family Protection Bill. *Social and Cultural Council of Women Quarterly*, 12(48), 91-119.
- Katouzian, N. (1983). *Civil Law - Compulsory Warranty - Civil Liability*, Tehran: Dehkhoda Publications.
- Khodadadpour, M. (2009). *Civil Responsibility of Spouses with Comparative Study in European and Islamic Countries*, Tehran: Presidential Women and Family Affairs Center.
- Naghbi, A. (2007). Theory of Financial Compensation for Moral Damage in Iranian Law. *Islamic Studies Journal*, 6(9-10), 22-46.
- Parvin, F. (2003). *Moral Damages in Iranian Law*, Tehran: Ghoghnoos.
- Shafiei Mazandarani, S. M. (2011). Treatment of Wife's Disobedience from the Perspective of Islamic Jurisprudence, *Fiqh and Principles*, 7(9), 10-31.
- Soltaninejad, H. (2001). *Civil Liability - Moral Damage*, Tehran: Noor al-Thaqalain.