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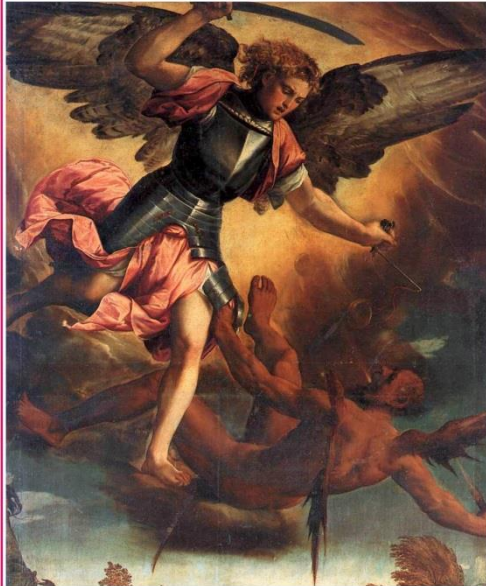
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The Psychological Damage Inflicted on the Accused and its Treatment In Islamic Jurisprudence And Law

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Abstract

Recently, the development of youth entrepreneurship has received a considerable attention from both the literature and the governments. Yet, most studies focus on developed countries. Therefore, this study was based in the Malaysian context through developing social entrepreneurial training program to inculcate entrepreneurship skills and knowledge. This paper aimed to analyse the entrepreneurial training determinants that successfully formed entrepreneurial intention among secondary school teachers. A survey via questionnaire was conducted among 73 teachers. Exploratory factor analysis and multiple regression analysis were utilized. The selected schools are among the large schools in the city and provide entrepreneurial knowledge, especially to students with disability. The findings yielded that knowledge of entrepreneurship positively affects students' intention mediated by, norms, attitude and self-efficiency.

Keyword: Entrepreneurial, Education, Entrepreneurial, intention, Teachers

El Daño Psicológico Infligido A Los Acusados Y Su Tratamiento En La Jurisprudencia Y La Ley Islámicas

Resumen

La naturaleza del daño psicológico es una naturaleza inmaterial que no afecta el dinero o el cuerpo, sino que toca la emoción, el honor, los valores morales y el estatus social. Por lo tanto, la jurisprudencia ha dudado durante mucho tiempo en aceptar la idea de compensar el daño psicológico; eso se debe a que el daño psicológico no afecta el dinero de las personas afectadas, sino más bien un interés correcto o no financiero.

Este tipo de daño hace que el llamado aspecto social de las estatuas morales, literarias o psicológicas, generalmente se asocie con daño material, o que afecte la emoción o la sensación de dolor que ocurre en el alma y el dolor, y luego se denomina emocional. lado de lo moral y psicológico, estar solo sin daño material, y haber sido afectado otras cosas que no son de naturaleza financiera, como creencias religiosas o ideas morales. La dignidad humana se basa en el principio de igualdad entre los hombres. Nuestro Profeta Muhammad (que la paz y las bendiciones sean con él) dijo: “Oh pueblo, pero su Señor es uno, y si su padre es uno, no hay preferencia por un árabe en no árabe o no árabe en árabe o un rojo sobre negro, ni negro sobre rojo, excepto con la piedad informada).

Introduction

The Islamic law has protected the human race from all kinds of hurts, and has honoured and preference him, as Allah glory be to Him said: “Verily we have honoured the Children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment”. Therefore, the Islamic law forbade harming people in their symptoms, emotions and feelings. Islam came to give all the same status and consideration and respect the dignity; large or small, man or woman, white, black or red, each of whom is a human being whom must be respected for his humanity. International norms and laws have stated on that, as the Universal Declaration of Human Rights stated: “Everyone has the right to enjoy all the rights and freedoms set forth in this Declaration without distinction, such as race, colour, sex, language, religion, political opinion or any other opinion, national or social origin, property, birth or

other status, Discrimination between men and women ...) .

This study dealt with an important subject in human rights (psychological damage to the accused and his treatment in religion and law). The study is divided into an introduction plus three main sections and a conclusion. Section one: the concept and definition of psychological damage, section two: types of psychological damage, and the third section: compensation for psychological damage and its theories.

1- Concept and definition of psychological damage

First: the concept of psychological damage:

The damage is generally affects a right or a legitimate interest, and this damage in two types in general; it may be material damage (financial or physical), leading to financial loss, missing the victim gain or damage in his body, or it may be psychological (moral or spiritual) harm. Psychological damage, in contrast to physical damage, does not affect the money of the victim, but it affects a non-financial right or interest. Psychological damage causes pain to the victim.

For example, the injury of the body is material damage as in an attack on the human right to life, the safety of the body. The psychological damage affects the victim in his feelings and emotions and bring grief to the heart for what has happen to the body.

The manifestations of this damage are very diverse, and they can be limited to these aspects by saying: The psychological damage is causing pain to the injured, and the diversity of these aspects lies in the diversity of the sources of this pain and severity.

Examples of psychological damage include the loss of certain values such as happiness, beauty and the enjoyment of life. Psychological damage related to physical injury are, emotional and psychological damage, aesthetic and sexual harm, and AIDS damage.

Thus, two kinds of psychological damage can be distinguished:

First, a psychological damage related to material damage, as in the case of physical assaults, such as the loss of one of the eyes of the injured person and, as a result, the inability to work and the loss of work.

Second, abstract mental damage that is free from any physical damage, such as pain inflicted on parents as a result of the loss of one of their children, feelings of tenderness and affection, and religious feelings, and this kind is called purely literary damage.

Definition of psychological damage

The term “psychological, or moral damage” is a rather a modern term. It was not known in the way it is in our time. It is stated in the Kuwaiti Fiqh

Encyclopaedia: “We did not find any of the scholars on this, but it is rather a modern expression” . The jurists of Islamic law used terms by which they express psychological damage, including:

1. The term “Atha” (harm): If each type of psychological damage has a special term among the jurists, it seems from their words that they have taken from the term “Atha” (harm) to express the psychological damage in general, whether related to the attack on the honour, feelings or other.
- 2 - The term “Itlaf” (moral damage), as in the context of forcing the wife’s servant to commit adultery. Ibn al-Qayyim quoted from a group of scholars as saying: “It is moral damage to her, or it is a moral equivalent to her.”
3. The term “Aar” (shame) is used by the scholars to express the psychological damage to the honour or reputation damage in general:
- 4- The term “shain” (harm) is used when a Muslim is called as (without adultery), punk, pagan, malevolent, or thief, because it hurt him and cause the harm to him.

There are number of definitions for the psychological damage in the books of jurisprudence or the books that explain the including :

Psychological damage is the harm to the human in his honour from an act or speech and it causes a pain in his body, even it is not seen on the body. And it is a non-financial interest missing, as when a committer refuses to implement his obligation .

The term “damage” in the civil law:

Law scholars defined it as a violation of a right or interest .

It is the harm to the person as a result of the violation of a right or a legitimate interest, whether that right or interest is related to the safety of his body, his passion, honour, status, social status or others.

2- Types of Psychological damage

The psychological damage has many images that cannot be limited, and vary in scope according to time and place, and according to considerations of social and economic development and the legal texts that regulate. It is possible to summarize some of the most common forms of psychological damage according to the Islamic legislation.

First: the psychological damage that result from an attack on the human body:

It refers to the harm afflicts the emotion and feeling of the victim directly, and brings the grief to the heart. Examples of this type of psychological damage are the wounds and damage to the human body, and the subsequent distortion of the face and organs or the body in general. With this psychological damage, there will be a financial damage resulted from the

abuse of money in the treatment or lack of ability to earn money.

Second: Psychological damage related to honour, dignity, and respect:

All legislation has agreed on human rights and the preservation of dignity. These rights have received international attention. Article 12 of the Universal Declaration of Human Rights states:

(No one shall be subjected to arbitrary interference in his or her private life, family, home, correspondence or campaigns in his honour and reputation, and everyone has the right to the protection of the law against such interference or campaigns) .

Spoiling, abusing, insulting reputations, assaults on dignity, and other forms are considered as a psychological harm because they affect the social status of the person. This also can be applied to false cases of reputation, respect and social status.

Abusing the honour and reputation may be through publication in the press by insulting and libel, even there was no bad intention to do that.

Third, the psychological damage that result from the violation of the established rights:

The name and surname are the fixed and distinctive mark of the personality and thus, they are fixed personal rights. Attacking these rights gives the harmed person the right to claim compensation for the harm he has suffered, because the mere assault on the fixed right causes psychological harm.

Therefore, the title-holder is given the right to prevent any attack on his or her name; by the misrepresentation or unjustified use of a particular person's name or title. The law provides for compensation to those who suffer physical or psychological harm or both.

Paragraph (1) of Article (40) of the Iraqi Civil Code states that "Every person has a name, a surname and this surname by virtue of the law comes to his children."

The entry of the properties of others, for example, with the opposition of the owner, gives the owner the right to claim compensation for psychological damage, even if he has not suffered any material damage.

Fourth: psychological damage related to personal freedoms:

Private life and personal freedom is to live as the person pleases, which is all that does not enter into public life. When a person makes a mistake and touches the personal freedom of another person, the latter has the right to demand compensation for psychological damage because that affects his freedom. Islamic law and constitutions have guaranteed these freedoms. For example, it is not permissible to wiretap, spy, monitor or photograph

a person without his consent. But, private life may be subject to such actions by the consent of the judge or when personal privacy involves acts contrary to public morality.

Violation of the inviolability of correspondence, such as mailings and the disclosure of the confidentiality of telephone calls is an infringement of the private interests of the victim. Similarly, the publication of a photograph of a person without his permission and consent for propaganda purposes is considered an illegal act, which requires compensation.

Fifth: Psychological damage resulting from death:

One of the most prominent forms of psychological damage is the damage caused by the death of someone dear to the victim. Some see that the torment of relatives who suffer permanent disability is greater and more difficult than their torment in the case of the death of the injured, because it is very difficult to forget the amount of compensation this torment.

the relatives of the deceased who have suffered moral damage may claim compensation for the psychological damage caused by the murder of their relative.

Sixth: The psychological damage resulting from harming the rights of literary and artistic production:

Creators and talents in the field of literary, artistic and scientific productions, inventions and discoveries need rules that protect them. These rules are called intellectual property, copyrights, and patents.

Any author of a scientific, literary or artistic work has the right to object to any conduct that would distort his work and to claim compensation for the violation of his moral right for producing it. The Iraqi legislator stipulated in the Law (Copyright Protection No. 3 of 1971) On:

Article (1): The authors of the original works of literature, arts and sciences, however the manner, importance or purpose of classification were, shall enjoy the protection of this law.

Seventh: damage that result from accompanying:

This type is caused by changes in daily life, such as changing marital life, deprivation of emotional life, and all the hardships of daily life in which a wife suffers from accompanying an incapacitated and permanently disabled person.

Eighth: psychological damage affects the emotion and feeling of tenderness:

Emotional damages or what is expressed by indirect moral damage, happen more in practical life, especially those related to compensation for pain caused by the death of someone dear to a person or because of the

physical pain he feels when a painful accident occurs.

Taking a son from the mother and the assault on the children, mother, father or husband or wife, all these acts injure the victim in his feelings and bring grief and sorrow into the heart.

Ninth: Violation of marital obligations:

There is damage of another kind, which is sexual harm. This type prevents the victim from the pleasure of sexual enjoyment, or loss of reproductive capacity and cause pain and grief of loss of maternal life,

Compensation shall be based on the medical and legal expert's determination of the extent of the sexual harm. the medical and legal facts make it difficult to prove sexual harm, and the judiciary is bound by several criteria in the award of compensation.

3- Compensation for psychological damage and its theories

The compensation does not mean to remove the psychological damage from existence. Otherwise, the psychological damage cannot be removed and cannot be disappeared with a material compensation. The loss will not be eliminated but it will be compensated by it.

The psychological damage is from the issues about which controversy has not stopped so far. There were different views on compensation, although it has roots extends to a distant time. The ancient Roman law allowed compensation for psychological damage, and modern laws mostly take compensation for psychological damage. The compensation for psychological damage differs greatly from the compensation of material damage, because it is difficult to be estimated and therefore difficult to estimate and calculate the amount of compensation. There is no measure of the physical value of honour, reputation, dignity, love, pain, suffering and other forms of psychological damage.

The opinions of Islamic jurists were divided into two opinions or two concerning financial compensation for psychological damage:

First: the possibility of financial compensation for psychological damage: Some jurists see the possibility of accepting the idea of financial compensation for psychological damage based on several considerations, the most important of which is that the religion approved enhancing the moral aspect. Also it approved the idea of this enhancing by taking money, and the ruler should resort in the manner of enhancing to what he sees as suppression of corruption and reported in reform.

In Islamic jurisprudence, it is useful to compensate for psychological damage. It was reported in Mabsout Al-Sarkhasi: "It was narrated from Muhammad Ibn al-Hasan al-Shaibani in the operations that heal on a face and

does not have an effect must be compensated as much as suffer it does.” The arguments on which compensation for psychological damage based are as follows:

1. Repairing damage: The repairing here is not to remove the damage, because even in physical damage compensation does not permanently remove it, for example: in causing the loss of sight of a person; material compensation cannot restore the ability to work before injury.
2. Moreover, civil liability is not intended to eliminate harm but rather to repair it. Money allows it to obtain satisfaction of a material and spiritual nature.
3. Compensation for psychological damage would not leave the mistakes that did not cause material damage without punishment. Compensation for psychological damage in such cases would be a special penalty for the person responsible for the damage rather than compensation for the victim. It is narrated that Ali Ibn Abi Talib paid the debts of the dead, paid the value of the material money that was destroyed in their homes even the pots used by the dog, and then paid compensation for the fear caused by entering the horses to the children and women, which is purely psychological damage.

The compensation for the psychological damage caused by the abuse of reputation is not provided by our old jurists, and it can be adopted in modern jurisprudence in accordance with the rules of the religion, as a rule of prohibition of defamation, and the rule (there is no injury nor return of injury) .

Second: the non-monetary compensation for psychological damage:

Some scholars believe that the psychological damage is not compensated. The basis for this is that the compensation is based on reparation by compensation, by replacing the money with the equivalent of the money to return the case to what it was, removing the damage and reparation for the deficiency. If the harm of this kind is a crime, a sin, and a forbidden matter, it shall be treated as saying prophet said: (there is no injury nor return of injury), it is in the interest of society to protect people from it.

According to the law, it is necessary to compensate for psychological harm. Article (205) of the Iraqi Civil Code (40) of 1951 states: “The right to compensation deals also with moral damage.

Any person who infringes ones’ freedom, moral, honour, reputation, social status or financial consideration shall be responsible for compensation. The law is entitled to claim a compensation for not only physical damages resulted from an accident, imprisonment or beating, but also for the psy-

chological damage and suffering caused to the harmed by the accident. Sanhuri believes that psychological damage is compensable, and it has been approved by ancient laws such as Roman law and then adopted by contemporary laws starting with French law. Compensation is not meant to remove the damage and remove it from existence. Otherwise, the psychological damage cannot be removed and cannot disappear with material compensation. Many Islamic jurists and all laws adopt the theory of satisfaction. The idea of this theory is that: The general goal of compensation is the satisfaction of the injured, as it is a way to remove or reduce the damage. The adoption of this theory as a basis for psychological damage is more effective than others.

We conclude from the foregoing that the modern standards have asserted for the compensation for psychological damage in general, as it became obvious in the civil and administrative judiciary, that there is no difference between the physical or psychological damage, and both can be compensable.

Any judgment that refuses to compensate for psychological damage can face the veto. It is no longer difficult to estimate the amount of the psychological damage that prevents the injured person from being compensated. Moreover, the inability to compensate for the psychological damage does not prevent the victim from finding his condolences in monetary compensation, according to the theory of satisfaction as a basis for compensation. The statement of non-compensation makes the person responsible for the psychological damage without any civil liability, and this opinion is not adopted by anyone.

Theories of compensation for psychological damage

There are two basic theories on the basis of compensation for psychological damage: first: the theory of special punishment; and the second: the compensation theory.

First: the theory of special punishment:

In all primitive societies, an individual who suffers damage to his body, money or honour is motivated by his or her instinct to retaliate with a similar or multiple reaction to punish and deter the person responsible for the damage. Revenge is considered as one of the characteristics of the special punishment. After the stability of power, the so-called "optional ransom" is appeared as a form of punishment on the offender.

For the proponents of this theory, compensation for psychological harm is possible, but they do not consider compensation as a means of appeasing the victim, but rather a special punishment, which is expected for the

guilty. The goal of this theory is not to satisfy the victim as much as to punish the guilty. In Islamic law, the ransom must be paid to the guardians of victims. In the case of amnesty or conciliation in intentional killing, ransom takes the form of punishment.

Second: the theory of satisfaction:

The proponents of the theory of satisfaction adopt the idea that the general aim of compensation, whether for material damage or for psychological harm, is to satisfy the injured person in a way suits the damage caused to him. Compensation, for the proponents of this theory, a way to satisfy the injured, not to punish the guilty.

Considerations and external influences in estimating compensation for psychological damage

The judge assesses the compensation for psychological damage according to the importance of this damage in the body of the injured person, taking into account the circumstances and the influences that are beyond harm. This is what was adopted by the most laws that provide compensation for psychological and aesthetic damage. these circumstances and the influences are:

First: Age of the injured:

When the judge assesses the distortion, he must take into account the age of the victim. The disfigurement of young women or young men varies in severity and affects the distortion of old women or old men. The smaller the age of the injured, the greater the aesthetic damage. Some jurists believe that the effect of distortion is reduced whenever the injured is older.

Second: the Sex (gender) of the victim:

The jurists agree that the amount of compensation for aesthetic damage varies according to the sex of the victim. The distortion that affects women is more severe than the distortion that affects men because beauty, for women, is of great value. However, some jurists see that the sex of the injured is not taken as a basis when assessing the compensation for aesthetic damage.

Third: Family status of the victim:

Distortion in the face of a girl who did not marry is more severe than the same distortion in the face of a married woman. Similarly, to deform the face of unmarried young man is more harmful than a married man who has a wife who sponsors him even after he has suffered deformity and is satisfied with her husband's condition.

The psychological damage caused to a person by imprisonment and deprivation from his family, especially if he is the head of a family, affects his

psychology, as well as the status of his family. Therefore, depriving the accused at the time of the temporary imprisonment causes real psychological damage that must be remedied and repaired.

Fourth: social status of the victim:

According to jurists, deformity that affects men and women and prevents them from communicating with the social environment, or the practice of social activity and the participation of associations, seminars and conferences held, requires compensation.

Fifth: Taking into account the function of the injured:

The loss of the accused's job negatively affects his or her psychology. Thus, the law grants compensation to the accused who is placed in custody. Since the accused was practicing a public job, and spends the period of provisional detention, it can be said that the accused have suffered moral harm from unjustified confinement that affect his job reputation, which should be awarded compensation.

Conclusion

From the above discussion, the following results can be concluded and summarized as follows:

- Psychological damage is the harm that afflicts the feelings and emotions of the victim directly, and brings grief to the heart.

- The nature of the psychological damage is an immaterial nature that does not affect the money or the body, but touches upon the emotion, honour, moral values and social status. Therefore, jurisprudence has long hesitated to accept the idea of compensating the psychological damage but a real or non-financial interest.

- Psychological damage affects the so-called social or moral aspect, causes feeling of pain, and may cause other things that are not of a financial nature, such as religious belief, or moral ideas.

- The psychological damage varies depending on the personality of the victim, his profession, age and gender. Accordingly, the issue of assessing psychological pain and its impact on the psyche of the victim is a relative issue.

- To compensate the psychological damage doesn't mean to remove the psychological damage from existence (this is not possible), otherwise the psychological damage cannot be removed and does not disappear with compensation material and the loss does not go away, but there will be compensation to replace it.

- The modern standards have asserted for the compensation for psychological damage in general, as it became obvious in the civil and ad-

ministrative judiciary, that there is no difference between the physical or psychological damage, and both can be compensable.

- Any judgment that refuses to compensate for psychological damage can face the veto. It is no longer difficult to estimate the amount of the psychological damage that prevents the injured person from being compensated. Moreover, the inability to compensate for the psychological damage does not prevent the victim from finding his condolences in monetary compensation, according to the theory of satisfaction as a basis for compensation.

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