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ANALYTICAL RESEARCH

Award of Monetary Compensation for Intangible Damage with Special Reference to Defamation under Islamic & Pakistan Law

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Abstract: This paper examines the controversy among modern Islamic jurists whether in case of any intangible damages (especially defamation), any monetary compensation (solatium) under Islamic law (Sharī'ah) can be extended or not. It also evaluates the method used for measurement of monetary compensation for intangible damage by Pakistani courts. Further, whether monetary compensation awarded for intangible damage is legal, just, fair and reasonable. It finds that majority of modern Islamic scholars consider the award and claim of the monetary compensation for intangible damage as legal. It also, in Pakistan's perspective, finds that; (i) there is no yardstick or definite principle for measuring compensation, (ii) compensation awarded is valid, but generally not just, fair and reasonable, (iii) discretion used by the courts to award compensation seems subjective and, (iv) harmony lacks between the amount of compensation claimed by the victims, and that awarded by the courts. It concludes that courts should formulate viable principles in this regard.

KAUJIE Classification: B0, H55
JEL Classification: Z12, Z13

INTRODUCTION

Every person has right to be compensated against the violation of his civil rights. The compensation may be tangible or intangible in nature. The tangible damage generally includes any harm caused to the human body and wealth, while intangible includes that damage which affects emotions, sentiments or intellects. The assessment to award of tangible damages is easy for courts as compared to intangible damages. In Islam, tangible damages have been discussed in detail by the classical jurists. However, intangible damages have not been discussed in detail, though some of the minute details are available under the rubric of *Ḥudūd* Laws. Further, there is a controversy amongst modern Islamic scholars who

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consider that the award and claim of the monetary compensation for intangible damage can be extended or not.

In Pakistan, it is trend by the victims of intangible damage, such as defamation, to file suit for compensation in Millions, Billions or Trillions; on the other hand, courts do not award the amount claimed by the victims. This trend, indirectly, provides an unhealthy impact, which, resultantly, creates frustration for the victims and difficulties for the courts as well. For example, although in Pakistan, courts are competent to award monetary compensation for intangible damage such as defamation or/and mental torture sustained by the plaintiff; but the important issue which confronting the courts is assessment of compensation for intangible damage. Under this backdrop, there is need to examine the method used for assessment/measurement of monetary compensation for intangible damage in Pakistani courts. In addition, stance taken by modern Islamic scholars for intangible damage needs elaboration. In this research, an endeavor has been made to unfurl this subject through descriptive and qualitative method of research.

Intangible Damage & its Remedies: Common Law Perspective

Intangible damage/loss: Intangible loss involves the intangible and additional expenses that relate to the personal damage. This loss involves difficulties to prove, due to the standards of burden of proof. It includes the heads of damage such as: (i) loss of expectancy of life, (ii) comforts and, (iii) agony and suffering. Further, agony and suffering, consequential to damage, caused to the victim is a head of damage. The intensity of agony and suffering to the victim vary for awarding of the damages (Khokhar, 2004, p. 184).

Remedies for intangible damage: There are two kinds of remedies to the victim of tort, such as, judicial and extra-judicial. The remedy awarded through the court is called 'judicial remedy' such as; (i) awarding of damages, (ii) granting of injunction and, (iii) specific restitution of property. Remedy, whereas, available to the victim, in certain circumstances, through his individual actions is called 'extra judicial remedy' such as; (i) exclusion of trespass, (ii) re-entry on property, (iii) receipt of properties, (iv) distress damage feasant[1] and, (v) reduction of nuisance. The judicial remedy, 'award of damages' and 'grant of injunction' are two different methods of remedy for the same wrong. In the judicial remedy of 'award for damages' the court awards monetary compensation to the victim (Khokhar, 2004, p195). In this regard, there are five kinds of damages such as: (i) contemptuous damages, (ii) nominal, (iii) ordinary, (iv) exemplary and, (v) general damages (Singh, 2009). By awarding damages/compensation, the court has to measure the same.

Measurement of damages for compensation: The meaning of expression 'measure of damages' or 'assessment of damages' is the scale or standard through which the sum of damages is to be measured. This may increase to nearly any sum, or only nominal/small amount. The important point to mention here is that the measurement of damages has not been fixed by the

[1] A case wherein the crop is spoiled by cattle or beasts of another person; The owner of the crops has right to take custody of the cattle until he receives compensation for the damage suffered by him.

law. Resultantly, the measurement is unclear and indefinite. Normally, it is determined keeping in view the circumstances of every case. For example, a jury while awarding damages, considers the state, grade, class, business, profession or skill of the victim as well as culprit in the case of criminal conversion, battery, imprisonment, slander, malicious prosecution etc. (*Huckle v. Money, 1763*). On the other hand, the measurement of damages for intangible damage, especially agony and suffering, loss of comforts, mental torture and defamation create great problems. As one's position of health and status cannot be restored even by the courts of law, the court can award merely reasonable damages to the victim by a guess work (*Per Viscount Dunedin in Admirality Commissioners v. S.S Susquehanna, 1926*). It also uses discretion by awarding the damages. In this context, the words of Lord Morris in (*West (H) & Sons Ltd.v. Shephard, 1963*) can be referred which have developed certain rules to create a level of homogeny such as: i) "the sum of compensation must be rational and measured with moderation; ii) identical cases must be considered and, iii) the sum must be conventional".

Defamation & its remedy: Every person has an inherent personal right of a good reputation which must not be infringed. This property is more valuable than any other types of property. Islam also gives value and protection for the same. Under the objectives of Sharī'ah, libel is regarded under the shield of honour and dignity. In Pakistan, a suit for damages may be filed before the court to get remedy for defamation. The court may restrain the publication of defamatory statements through the injunction either under S. 30 or 31 (1) of "the Specific Relief Act of 1877". In Islamic law, whereas, there are two categories of punishments/remedies especially for defamation: i) criminal (under *ḥadd* punishments); ii) *ta'zīr*, not fulfilling the standards of *ḥadd* punishments in criminal cases. This study discusses the award of monetary compensation for intangible damage with special reference to defamation.

Compensation for Intangible Damage: An Islamic Law Perspective

As for as Islamic law (Sharī'ah) is concerned, the classical jurists have been discussed tangible damages in details. However, intangible damages have not been discussed in detail, though some of the minute details are available under *ḥudūd* Laws (Munir, 1980)[2]. The Punishments of intangible damage are also determined in the same vein in shape of imprisonment or stripes. Nonetheless, intangible damage, in particular, needs elaboration. An endeavor is made below to unfurl this subject.

The literal meaning of damage is any harm caused to things. Almighty Allah says in the Qur'ān "غَيْرُ أُولِي الضَّرَرِ", "other than those who have a hurt" (4: 95). The antonym of damage is remedy. The definition of damage is "all that damage which cause human honor, dignity, fame, sentiments and emotions" (Mowafi, 1997).

[2]"The 1979 *Ḥudūd* Ordinances of Pakistan" are: (i) "the Offence of *zinā* Ordinance" which relates to adultery, fornication, rape and abduction; (ii) "the Offence of *Qazf* Ordinance" relates to false accusation of *zinā* including adultery and fornication; (iii) "The Prohibition Order" deals with the use of alcohol and drugs; (iv) "the Offence Against Property Ordinance" deals with theft and armed robbery, and; (v) "the Execution of Punishment of Whipping Ordinance". In addition, a sixth ordinance amending "the Code of Criminal Procedure" was also passed."

Status of intangible harm in Islamic law: If we go through the classical literature, we will find that there are two kinds of punishments with respect to intangible damage discussed by the jurists.

i) False accusation of adultery

ii) Insults and verbal abuse

Almighty Allah says about who makes false accusation of adultery (defamation), "فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً" (24:4), "flog them with eighty stripes"[3]. The Prophet (PBUH) has prohibited from charging against the chaste (I. Bukhari, 1422 h).

Jurists have extensively discussed about above-mentioned crimes and their punishments. Whosoever calls other persons as 'liar' (كاذب), pagan (كافر), fornicator, evil doer (فاجر), etc, then such person can, lawfully, be awarded a discretionary punishment. This punishment can be in terms of whipping or mere detention. It becomes evident from these two mentioned punishments that monetary punishment is not mentioned anywhere. Therefore, there is a controversy among modern jurists that a monetary compensation can be awarded or not in intangible damage. Following are opinions and the logical arguments to explain these two forms.

First opinion: Some jurists (Al-zuhayli, 1433 h; Al-darini, 1408 h; Al-Sanhori; Al-siraj, 1410 h; Shaltoot, 1410 h) are of the views that monetary compensation is lawful against intangible damage.

Second opinion: On the other hand, some jurists (Al-zarqa, 1409 h; Al-khafif, 2012; Mowafi, 1997; Ahmad, 2012) opine that monetary compensation is unlawful against intangible damage.

Arguments of these both opinions are mentioned below.

Arguments of first opinion: Arguments of first opinion (who are in favor of monetary compensation) include:

1) Holy Prophet (PBUH) says: "لا ضرر ولا ضرار" (Malik, 2004; Hanbal, 2001; Albani, 1985). "There should be neither harming nor reciprocating harming".

This *ḥadīth* is general in eradicating of harm or damage 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.

2)

[3]Qur'ān e Karim: English translation by Mufti M. Taqi Usmani. Available at www.noorihidayat.org

عن أبى هريرة ، أن زيد بن سعنة طالب رسول الله قضاء دينه، وأغلظ له القول، وخاطبه بعنف، فقال:"ألا تقضيني يا محمد حقي؟ فوالله، ما علمتكم بني عبد المطلب بمطل، فقال عمر: فوالذي بعثه بالحق لولا ما أحاذر فوته، لضربت بسيفي هذا عنقك"، فقال رسول الله.... "اذهب به يا عمر فاقضه حقه وزده عشرين صاعا من غيره مكان ما رعته، فقال زيد: ما هذه الزيادة؟ فقال عمر: أمرني رسول الله أن أزيدك مكان ما رعتك, فقال زيد: ما هذه الزيادة؟ فقال عمر: أمرني رسول الله أن أزيدك مكان ما رعتك".

(Hubban, 1988; Qari, H 2906)

It is narrated by Abu Haraira that Zayd ibn Sa'nah demanded from the Messenger of Allah (PBUH) to return his loan. He used harsh language and spoke violently and said: "O Muhammad! will you not return my loan"? by the swear of Allah, I did not know any delay from Bani Abdul Muttalib... Umar (R.A) said, by the swear of he who sent Him with truth, if I did not fear of what I will breach, I would strike your neck with this sword. The Messenger of Allah said: O 'Omar Go with him and give his right, and increase twenty *ṣā*'[4] other than the principal amount as consideration of what you have made him frightened. Zaid (RA) said: why this increment is being awarded. Umer (RA) said that Prophet (PBUH) order me to increase your mount as a consideration of what I have made you frightened.

The above statement of prophet (PBUH) clearly points out that monetary compensation can be awarded against the intangible harm (mental harm).

Arguments of second opinion: Following are some important arguments by the proponents of monetary compensation of damage.

1) Sharī'ah does not regard human honour and dignity as a property which could be claimed in monetary terms. That is why; Sharī'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 Sharī'ah requires proportionality between damage and compensation, and there is no yardstick which would measure the intangible harm. Therefore, it is much difficult to create proportionality between monetary compensation and intangible damage/harm. Thus, it would be injustice to award the monetary damages against the intangible harm as it is estimated without a proper yardstick.

Preference: In the light of above-mentioned arguments of both opinions, the first opinion seems preferable. The reason is that the Prophet (PBUH) emphasized upon the removal of harm. The word (used in above *ḥadīth*) is general which includes both tangible and intangible harm/damage. Therefore, a judge or *qāḍī* 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 damage, nothing stops him for awarding monetary compensation. As for as measurement of monetary compensation is concerned, there is no

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

strict rule for this purpose. Nonetheless, it is the discretion of the both tangible and intangible harm/damage. Therefore, a judge or *qāḍī* 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 *ta'zīr* punishment to anybody in monetary term if he causes defamation. It is incumbent to re-move.

Monetary Compensation for Intangible Damage with Reference to Defamation: In Pakistan Law Perspective

Defamation falls in the category of intangible damage. It is regarded both a crime and a tort (civil wrong) in Pakistan wherein culprit may be dealt under civil proceedings to recover compensation as well as prosecuted for the crime. For criminal prosecution, it has been codified within "the Pakistan Penal Code, 1860", whereas for civil wrong (tort) law has not been codified yet[5]. To provide remedy for victims, defamation laws have developed over several centuries (Encyclopedia Britannica)[6].

In Pakistan, defamation is dealt as a criminal act under "Ordinance No. LVI of 2002 (An Ordinance to Make Provisions in Respect of Defamation)", as amended. Defamation, under this ordinance, is:

"any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable as defamation" (The Defamation Ordinance, 2002, Section 3(1).

Further, there are two kinds of defamation under the same ordinance, section 2 namely: i) libel; and ii) slander. Libel, under section 3 (4), is "any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means of devices that amounts to defamation". Slander, whereas under section 3, is "any false oral statement or representation that amounts to defamation". If the claim of defamation is proved, the court under section 9 may give directions to the culprit; to tender apology, publish the same defamatory statement in alike way, if the victim is satisfied, pay the ordered amount of money as general damages and any special damages if proved.

In addition, "the Pakistan Penal, 1860" through its Sections 499-502 provides the definition,

[5]See chapter XXI of the Pakistan Penal Code, 1860.

[6]"Although defamation is a creation of English law, similar doctrines existed several thousand years ago. In Roman law abusive chants were capitally punishable. In early English and Germanic law insults were punished by cutting out the tongue. As late as the 18th century in England, only imputation of crime or social disease and casting aspersions on professional competence constituted slander, and no offenses were added until the Slander of Women Act in 1891 made imputation of unchastity illegal. French defamation laws historically have been more severe. An Act of 1881, which inaugurated modern French defamation law, required conspicuous retraction of libellous material in newspapers and allowed truth as a defence only when publications concerned public figures. Modern German defamation is similar but generally allows truth as a defence. In Italy truth seldom excuses defamation, which is criminally punishable there." Encyclopedia Britannica, s.v. "Defamation."

explanation, exceptions and punishment for the defamation[7]. This offence is bail-able, non-cognizable and compoundable. Under Section 500 of the same Code, "punishment may extend to 2 year or fine or both and; originator of defamatory imputation may extend to 5 year or fine minimum Rs.100, 000/- or both".

The purpose of said laws is to provide a balance between right to freedom of expression and reputation. Criminal law, in Pakistan, recognizes the intentional torts to person such as assault (The Pakistan Penal Code, 1960, Section 351), battery (Section 350), false imprisonment (Section 339 & 340)[8]; however suit for civil remedy is very rare in the same (The Civil Procedural Code of 1908, Section 19). Similarly, the tort regarding deliberate causation of emotional pain is not fully regarded. Remedy for emotional or mental distress is usually alleged under torts of defamation or malicious prosecution. This remedy is secondary to damage; however, remedy for emotional pain can be claimed by other ways directly.

The important issue to examine here is the method used by the courts for assessment of intangible damage in respect of defamation/mental torture sustained by the victims.

Measurement/Assessment of Monetary Compensation against Defamation: A Survey of Cases in Pakistan

The important issue which comes before the court to decide the case is method /yardstick for the assessment/measurement of actual quantum of compensation in respect of defamation/mental torture sustained by the claimant. This issue was considered to discuss in the case of Ms. Zahra Zaidi v. M. Anwar Khan Ghauri, 2004 in which the court held that no yardstick existed to measure or assess actual quantum of compensation in respect of mental torture sustained by claimant while facing agony of a frivolous litigation against her. Keeping in view the facts and circumstances which had given rise to the present suit, especially the fact that plaintiff who was a *pardah nashīn* (veil making) lady belonging to a respectable family, was dragged by defendant and she had to face the agony of such frivolous litigation for a number of years before various courts in order to vindicate and safeguard her right of property, family prestige and reputation. Court concluded that ends of justice would meet if suit of plaintiff be decreed and she be awarded an amount of Rs. 1 million as compensation to be paid by defendant to her.

The principles inferred from this judgment are: i) compensation for intangible damage (mental torture) is legal; ii) no yardstick exists to measure or assess actual quantum of damages; iii) in case of non-existence of yardstick, court is competent to award of compensation; iv) court can award compensation according to the situation of every suit.

Similarly, in another case, *Abdul Wahab Abbasi v. Gul Muhammad Hajano, 2008* allegations in constitutional petition filed by defendant were defamatory in nature. False and malicious allegations had caused loss of reputation, mental torture, financial losses and immense legal injury to plaintiff for contesting false and malicious previous suit. High Court

[7]It says: "Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

[8]See, "Chapter XVIA of the Pakistan Penal Code, 1960".

awarded a sum of Rs. 1.5 million as compensation to the plaintiff for malicious prosecution. The court is competent in circumstances to ascertain quantum of compensation which has been held in certain cases for example, in the reported case of *Muhammad Sharif v. Nawab Din, 1957* court held that:

"... If we are to access damages only if the exact amount is proved, no damages can ever be decreed. Damages have so many times to be awarded by the rule of thumb but the fact that the exact amount is not determinable can be no reason for dismissal of a suit...."

The other judgment related to the assessment of compensation for mental torture, nervous shock and damage. The court held that:

"... There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an inquiry. It may be bodily injury loss of reputation, business and also mental shock and suffering...." (*Muhammad Ishaque v. The Metropolitan Corporation Lahore, 1996*).

The competency of the court to ascertain the question of compensation has been settled by the court in different cases (*Pakistan Industrial Development Corporation v. Aziz Qureshi, 1965*)[9].

But assessment of fair compensation is also a basic requirement for the ends of justice. For this purpose, the principles of assessment of fair compensation, factors to be kept in view, discretion of court and relief have been discussed in the suit of *Mehran Electrons Company v. National Bank of Pakistan, 2006* which was for compensation and injunction for defamation. The court by using discretion might determine the amount to be awarded to the victim. Along with discretion, the court should also satisfy its conscience. This case was filed under Art 14 (for defamation) of "the Constitution of Pakistan, 1973" which provides that "dignity of man is inviolable and it is legitimate right of plaintiff to defend his good name and the defendant has no right to defame him". In this case, it was proved through the evidence that the defendant had caused defamation, mental agony and physical discomfort to the claimant and defamed him in his business community by damaging his good name. As such, the court awarded compensation to the plaintiff.

Although the compensation awarded must be fair, but its nature as a punitive or exemplary has been discouraged. This fact has been observed in important case that: i) to determine the criteria, there is no hard and fast rule for grant of general damages and; ii) amount assessed must not appear to be punitive or exemplary in nature (*Anwer Mooraj vs. Fateh Farukh, 2008*).

The principle for assessment of general damages in a case of libel also applies to the case of slander and the damages have to be assessed according to the situation of every case (*M/s. Mehran Electrons Company v. National Bank of Pakistan, 2006*). The assessment for fair compensation becomes difficult on account of mental torture and nervous shock in this regard. It was held:

"Fair compensation would be difficult to assess in such cases. Court would have discretion to determine on basis of evidence, fair sum to be awarded to affected person. Further, the

[9]As held in the reported case of Pakistan Industrial Development Corporation vs. Aziz Qureshi, PLD (W.P) [Karachi] 202 (1965).

conscience of the court must be satisfied that damages awarded would not completely, at least satisfactorily compensate the victim who suffered mental torture and nervous was thus, entitled to recover damages" (*Abdul Qadir v. S.K. Abbas Hussain, 1997*).

In certain cases, plaintiff not only suffers mental agony, torture and reputation but also financial loss. For example, a false and malicious prosecution under Art 4 and 14 of the constitution was brought before the court. The court held that every citizen has right of good repute or fair name in Islam. The basis of compensation for malicious prosecution consists not in the abuse of the court procedure, but in the procedure of law. If man is subjected to false and malicious persecution the objective is to prosecute and harass not only that man but his dependents and family also. In a result, man and his whole family suffer[10]. Plaintiff had suffered not only financial loss in the form of engaging counsel to follow his case but also caused him mental agony, torture and reputation (*Munir Ahmed v. Mst. Fazlan, 2005*). For determination of exact amount of compensation, quantification of compensation has been discussed in the case titled *deeb Javedani v. Yahya Bakhtiar, 1995* by advocate on the basis of article published in a monthly digest by defendant. Principal consideration in suits for damages would be to see whether, in case of a publication, certain imputation harmful to the reputation of a person was contained or not. So, the determination of exact amount of compensation was not possible in this suit.

In addition to the civil suits, the principle of compensation for 'imputation of a criminal offence' has been settled. The court observed that plaintiff can recover compensation for malicious prosecution and for injury to his reputation even in accusation of a criminal offence[11].

Assessment of compensation for intangible loss is difficult for the plaintiff also as he needs to prove an intangible loss through tangible evidence. If he fails to provide the evidence the court cannot award the compensation. This principle has been settled in the suit of *Abdul Qayum Khan vs. Federal Government of Pakistan, 2009*. The suit was filed for the compensation for intangible damage such as mental torture, stress, corporeal suffering and social disgrace. Due to non-existence tangible evidence, the court did not award the compensation in circumstances.

From the above discussed cases, important findings can be inferred as given below:

i) Award of compensation for intangible damage is legal in Pakistan;

ii) The court itself can determine the quantum of compensation and award of monetary compensation according to the situation of every case;

iii) There is no standard fixed by law for measuring the compensation therefore it becomes very hard to measure a just, fair and reasonable damages;

iv) In the absence of a standard to measure a fair compensation, discretion of the court is exercised. Doing this, the court needs to satisfy its conscience;

The important principle (iv) inferred which is that due to non-existence of yardstick, the court using its discretion determines and awards just, fair and reasonable compensation. To see the application of this principle, below we mention certain cases of awarding

[10]See at https://www.pljlawsite.com/2013art40.htm
[11]Ibid.

compensation by the courts:

Title of the Case	Compensation Claimed by the Plaintiff	Compensation Awarded by the Court
1. Muhammad Hussain v. Syed Nazir Shah, 2008.	Rs.25,000	Rs.15,000
2. Anwer Mooraj v. Fateh Farukh, 2008.	Rs:40,00,000	Rs:10,00,000 with markup @ 10
3. Muhammad Feroze Panjani v. Mrs. Mehr-un-Nissa & another, 2006.	Rs.2 crore (20 ml)	Rs.1 crore
4.Board of Governors v. Musharaf Khan, 2014.	Rs.50,00,000	Rs.200,000
5. Khalid Aziz v. PTV, 2017.	Rs. 20 crore (200 ml)	Rs. 700,000 only

The above-mentioned cases reveal that compensation claimed by the plaintiffs is different whereas the courts did not award the same/whole compensation as filed by the plaintiff. These cases show that courts do not provide the compensation according to the claim. It also appears in the cases of intangible compensation that there are two assessment standards for example, first is used by the claimant who might be exaggerating and the second by the courts. The claimant estimates before filing the suit keeping in view his social status in life, family, dignity and mental torture suffered, whereas courts assesses it on its own discretion. The matter for consideration is that which standard should be dominated. Because it is trend in Pakistan that victims claim their compensation in Millions and Billions, but courts do not award them according to their claims. If the method of assessment of the court is accepted then courts needs to restrict the victims to claim such a heavy amount to claim, for example in case of *Khalid Aziz v. PTV etc.?* (a defamation case) the victim claimed Rs. 200 million, while the court awarded to him only 7 lac Rs. Right to honor, reputation, respect and chastity is a basic right of every citizen. So, compensation awarded, 7 lac, in this case may not be just, fair and reasonable. Therefore, the discretion used by the court to award compensation seems subjective. On the other hand, the amount of claims filed by the victims is very high and not justifiable. This trend, ultimately, creates a bad impact in the society and it might be led for discrimination and frustration for actual victims.

CONCLUSION

In the light of the above discussion, it is concluded that majority of the modern Islamic scholars consider that the award and claim of the monetary compensation for intangible damage is valid. The same practice is being done by the courts in Pakistan, such as under defamation ordinance, 2002. Although loss to reputation of a person cannot be restored by monetary compensation, and the intangible damages cannot be exactly determined in terms of money, even then the courts cannot decline to award compensation. However, there is

no standard to measure compensation; therefore, it is very hard to measure a just, fair and rational compensation.

The study of various cases shows that harmony lacks between the amount of compensation claimed by the victims and compensation awarded by the courts. The amount of compensation filed by the victims is very high and not justifiable; in this regard courts should restrict the victims to claim such a heavy amount to claim through implementing any viable principles. An important aspect taken by the court, in such cases, is that the court may satisfy its conscience by awarding the just and fair amount of compensation while ensuring the following: (i) Adequate care has to be taken while quantifying the award of monetary compensation, (ii) the court should also be vigilant to see that claim is not fanciful or remote, (iii) the award should never rise to be reflective of abundant generosity and, (iv) the court should give victim what it considers in all the circumstances a fair and reasonable damages for his/ her loss.

REFERENCES

Abdul Qadir v. S.K. Abbas, PLD [Karachi] 566 (1997).

Abdul Qayum v. Federal Government of Pakistan, PLD [Karachi] 252 (2009).

Abdul Wahab v. Gul Muhammad, PLD [Karachi] 558 (2008).

Adeeb Javedani v. Yahya Bakhtiar, CLC [Quetta] 1246 (1995).

Albani, N. (1985). *Irwao-ul-galil.* Beirut, Lubnan: Almakta-ul-Islami.

Al-Bukhari, Sahih ul-Bukhaari. (1422 h). Vol. 10, Hadith 2766. Dar touq-un-Najat.

Al-darini, F. (1408). *Nazriya al-ta'assuf.* Beirut, Lebanon: Muassasah al-risalah.

Al-khafif, A. (2000). *Al-daman fil-fiqhil islami.* Qairo, Egypt: Dar-al-fikar al-arabi.

Al-siraj, M. A. (1410 h). *Daman al-udwaan.* Qairo, Egypt: Al-siqafah linnashar wa al-tauzi'.

Al-zarqa, M. A. (1409 h). *Al-fi'al al-daar wa al-daman fih.* Damashaq, Iraq: Dar al-qalam.

Al-zuhayli, W. (1433 h). *Nazriyah al-daman.* Damashaq, Iraq: Dar-ul-fiker.

Anwer Mooraj vs. Fateh Farukh, MLD [Karachi] 12 (2008).

Board of Governors v. Musharaf Khan, YLR [PHC] 2667 (2014)

Huckle v. Money, 2 Wilson 205, 206 (1763).

Ibn Anas, M. A.-M. (2004). Vol. 4, Hadith 600. Abu Dhabi: Mowassah Zayed bin Sultan.

Ibn Hanbal, A. (2001). *Musnad Ahmad.* (Vol.5, Hadith 2865). Beirut, Lubnan: Muassasah al-Risalah.

Ibn Hubban, M. (1988). *Sahih Ibn Habban.* (Vol.1, Hadith 288.) Beruit, Lubnan: Muassast ur risalah.

Khalid Aziz vs. PTV, PLD [Peshawar-HC] 115 (2017)

Khokhar, M. A. (2004). *Law of torts.* Lahore, Pakistan: Irfan Law Book House.

Mehran Electrons Company v. National Bank of Pakistan, CLC 440 (2006).

Mowafi, A. (1997). *Al-zarar fi al-fiqh al-Islami.* Egypt: Dar ibn-e- affan.

Muhammad Feroze v. Mehr-un-Nissa & Ors, MLD [Karachi] 62 (2006)

Muhammad Hussain vs. S Nazir, YLR [Lahore] 444 (2008).

Muhammad Ishaq v. The Metropolitan Corporation Lahore, PLD SC 737 (1996).

Muhammad Sharif v. Nawab Din, PLD W.P. [Lahore] 283 (1957).
Munir Ahmed v. Fazlan & Ors, MLD 690 (2005).
Munir, M. (1980). *From Jinnah to Zia.* Lahore, Pakistan: Vanguard Books Ltd.,.
Pakistan Industrial Development Corporation v. Aziz Qureshi, PLD (W.P) [Karachi] 202 (1965).
Per Viscount Dunedin in Admirality Commissioners v. S.S Susquehanna, AC 655 (661, 662) (1926).
Shaltoot, M. (1410 h). *Al-Islam aqeedah wa Shari'ah.* Dar-al-Sharaf.
Singh, G. P. (2009). *The law of tort* (25th ed.). Nagpur, India: LexisNexis ButterworthsWadhwa.
The Civil Procedural Code of 1908.
The Constitution of Pakistan of 1973.
The Defamation Ordinance, 2002 (Ordinance. LVI of 2002).
The Hudood Ordinances of Pakistan 1979.
The Pakistan Penal Code of 1860.
West (H) & Sons Ltd. v. Shephard, 2 All ER 625, 631 HL (1963).
Zahra Zaidi v. M. Anwar, CLC 223 (2004).

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