Civil liability for AIDS transmission according to Iranian law and Shiite Jurisprudence

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Abstract

Several factors are involved in the transmission of sexually and blood transmitted diseases. These factors do not deserve the same liability and each is subject to a particular rule, from blood collection centers to the medical practitioner who administers the transfusion of contaminated blood or injects it. For this purpose, it is quite clear that scope and bases of their responsibilities are not the same and these may not be explained with the same theory. Many factors may also play a role in the transmission of an infectious disease that is difficult to identify. In this study the relationship among the factors that contributed to the creation and transmission of disease were studied. Study of factors using criterion of negligence and the causal relationship is something that is closer to the truth and its use gives conclusion more easily, compared with other legal measures.

Keywords: civil responsibility, cause of transmission of the disease, AIDS, Islamic jurisprudence, the law of Iran.
Introduction

Harmful action brings about numerous losses to the victim, one of which is non-material damage, which is "damage on the person or his personality or any type of damage on the person that is not directly financial, ranging from the non-material damage and damage to reputation and feelings and emotions or any non-financial damage to the person and rights relating to the damage or to non-financial belongings of the latter”.

Therefore, some argue about non-material loss that it may not be claimed while some believe that in many cases relief of victim realized by paying some money, with the amount not completely healing the damage, and hard to determine quantitatively. However, importance and use of recognition of spiritual damage is so much so that it may not be ignored under the pretext of said reasons.

In this respect, in the transfer of contagious diseases, different factors including unsafe blood transfusion centers to direct cause like a whore who is bereft of moral restrictions are involved. Clearly, scope and bases of their responsibilities are not the same and these may not be explained with the same theory.

Variations in the transmission of these diseases, especially AIDS, on the one hand and the lack of legislation specific for the identification of civil and criminal liability of the transferor and the criminalization and punishment of behavior have caused legal scholars to take further steps in this regard by resorting to legal institutions to solve problems because the study of solutions enabling the compensation of victims that could be useful in diseases such as AIDS is necessary; article 167 of the Constitution indicates such necessity.

In the meantime, establishment of causality is not always easily done, because when an unusual harm occurs to others by sexual contact, knowing there are several possible factors, it seems difficult and sometimes impossible to prove the causal relationship. Thus, proving causality is one of the major problems faced by the injured person in liability cases.

The literature
The concept and nature of civil liability

Liability means legal obligations of individuals to compensate another for harm caused by the former, whether caused by negligence of his or due to his/her act (Jafari Langeroudi, 1988, p. 142). Within Islamic jurisprudence and Sharia, liability is synonyms with the guarantee and one who is responsible for the obligation is called responsible or guarantor. (Khalilfars, 2010, p. 12).

The need to compensate for losses suffered by a person is called. And such liability that is mainly borne by one who inflicts harm and negligence is sometimes used in broad sense where a person is held liable for breaking a law, promise and inflicts losses.

In most cases, the civil liability is used in narrow sense in contrast with liabilities arising from breach of contract or delay in its implementation (contractual liability) (Ghasemzadeh, 1996, p. 25). The civil liability in specific sense is when an individual is held liable for causing...
injury suffered by others without any contract being signed between the two. Such responsibilities that is referred to in general rules and the general principles of civil law under the heading of "extra contractual requirements" is also called extra contractual liability. Liability may be moral or legal.

Jurisprudential foundations of civil liability

1400-year history of relation of law and Islamic jurisprudential justifies inevitable relation of law and jurisprudence in Islamic states; however, new law doesn’t accept many discussions of jurisprudential books, many issues discussed in jurisprudence are inspired by customs and can fertilize the new law and enrich it (Hagh Gostar papers on law, 2008, p. 15).

The rule of causality

This is a legislative rule of Islamic jurisprudence, and is unquestionable, stating that everybody who causes loss is liable even if he doesn’t know it is harmful and shall compensate for it, and civil liability is borne by the cause, for example one who constructs foundation of a several-story building and damages the neighboring house is liable and shall pay damages even if such damage is causes negligently. Causality is not subject to abetting while rule of loss is subject to it, causality has conditions and grounds, it has four grounds in Islamic jurisprudence including reasoning, consensus, Qur’an and hadith (Langeroudi, 1988, p. 42).

Holy Quran verses have numerous references to the rule of causality and responsibility such as Sura An’am (verses 164 and 104) and Surah Saba (verses 24 and 41) and Az-Zumar (verse 9) Ma’idan (verse 104) and Israel (16, 106 and 77) and (verses 51, 52, 53), referring to liability and liability of the cause, but the Hadiths also have the numerous references to this, which are beyond the scope of this paper.

Conditions of causality in jurisprudence: In jurisprudence, terms of causality are the same as stipulated in the Civil Code and are summarized as follows:

1. Emergence of loss from positive or negative action of the cause
2. Capacity of the cause
3. Loss must be caused by fault of the cause (the relationship between loss and action)
4. The cause must not have mens rea.
5. Cause must not be perpetration in creating the loss.

The fifth term of causality is non-perpetration because if the cause perpetrates the harm then the cause doesn’t match causality but matches the rule of loss, which is the case in which positive act of a person causes loss to another directly, for example, a driver hits his car to a shop recklessly and breaks the window of the shop, while in causality, positive or negative act causes loss to another with mediation. The act of the cause may be positive or negative: positive act is for example when someone put in the passage melon skin and passersby who carries his china and crystal with slides over it and breaks his china and crystal. The cause of negative act is for example when the guardian withholds from leasing property of his ward and withholds from the trading with the extra money of the minor (Langeroodi, 1988, Pp. 43-47).
Negligence

Known lawyers so far have offered various definitions of negligence; some have considered it as a violation of previous commitments. Infringement of cautious behavior or usual behavior, failing an assignment, violation of behavior whose observance is required for protection of others, violation of reasonable behavior are among famous definition (Ghasemzadeh, 1996, p. 48).

In all cases brought based on negligence, the burden of proof is on plaintiff (Moussavi, 2009, No. 19).

The causal relationship and negligence

Iranian Civil Code Article 334 states: "The owner or possessor of the animal is not responsible for damages caused by that animal unless he is negligent in keeping the animal, but in any case if the animal causes loss by any man's act, the source of losses will be responsible for damages (Mohaqeq Damad, 2008, p. 120).

Existence of negligence is necessary for establishing causal relationship, and without that, harmful act will not be capable of attribution to the cause. In other words, without infringing (fault), there is no causal relationship between the damage and the act committed.

No responsibility for the transmission can be established for person not involved in such transmission. But it should be noted that there is distinction and differentiation between causal relationship and negligence. The causal relationship means the relationship between language and act of the subject, whether this relationship is distant or close. Mere establishment of causal relationship, especially a distant relation, for example, the causal relationship of carries of blood with the Blood Center cannot be accurate basis and unique basis of liability, but common practice recognize and assign the responsibility of compensation to the cause. In the examples of jurisprudence, all efforts are made to create a causal relationship and attribute losses the cause, while this causal relationship, in other cases, doesn’t lead to responsibility without element of negligence (Mohaqeq Damad, 2008, p. 122).

On the other hand, it should be noted that choice of negligent cause and holding the latter liable doesn’t result in disconnection of other cause with loss, but they are related to loss, as track carrying contaminated blood of hospital or veterinarians secretary who turned on sterilizing device for surgical instruments, etc. all are transmission-related, but only relationship that doesn’t seem to create responsibility and liability.

Thus, contrary to the above, some jurists believe negligence is not the causal relationship, but there is a separate element whose existence at least in some cases is necessary to establish responsibility. So when several causes cause damage, the negligence element by being attached to one of them determines responsible cause. Yes, we may say that the customary law only consider causal relationship between the negligence and the loss as established and ignores the other causes, but this doesn’t mean that element of negligence and the causality are one and same in causal relationship. (Mohaqeq Damad, 1992, p. 15).
The concept of loss (damage)

About Hadith of la Zarar, Akhund Khurasani writes in investigating the cause: "Loss is what is against the interests, that is, harm to the life or property or part of the body or reputation or property" (Khorasani, 2004, p. 381).

Loss is loss of what is owned by the human, including life, reputation or property or limbs and body parts. So if a person’s property or body parlor life is lost through the loss or partial loss or if he dies, or his reputation is harmed, whether intentional or unintentionally, then he is called as harmed. However, according to customary law, loss of profit is also loss in case it should be obtained. He explicitly stated that criterion of loss is customary law (Katouzian, 2008, p. 112).

The types of losses and their definition
A group divide losses to three financial, non-material losses and physical injuries, some divide losses into two categories of material and non-material. Some divide losses to material and non-material and mixed, with the last one related to one who can claim both material and non-material, as exemplified by physical injuries (Lourasa, 2006, p. 107).

Financial loss

Financial loss is monetarily measurable loss as loss of object or profit. Reducing one’s asset or preventing its increase in any manner is also loss. Financial loss is also tangible loss of property or physical integrity due to loss of property or profit. Article 728 of the former Criminal Procedure Act where the origin of all the definitions was realized material loss provided that: loss may be due to loss of property or profit that may result due to fulfillment of obligation, as embodied in 520 article of Civil procedure Act of 2002 embodied and can also be used by obtaining evidence in civil liability. These losses include loss of property or preventing the strengthening of a benefit. For example, if due to infectious or blood disease, a patient is hospitalized, much medical expense is imposed on him, he is deprived of the benefit resulting from doing his job or profit resulting from performing his obligation. In all these cases, financial loss occurs (Ghasemzadeh, 1996, p. 41).

Non-material damage and its definition

Non-material damage includes damage to non-financial benefits such as emotional and physical pain and suffering, feelings, loss of reputation and freedom and with respect to paragraph 2 of Article 9 of the Code of Criminal Procedure and the last part of article one civil liability Act, the source of non-material detriment is harm to the rights and freedoms of the individual character and honor, or is the result of trauma (Katouzian, 2008, p. 222). Also in this regard, detriment to credits dignity of persons or trauma and in other words, moral damage or loss to prestige and emotions of persons are non-financial rights (non-material) loss, even hurting sense of friendship, family and religious as well as the suffering that occurs as a result of an accident can be claimed today as moral damages (Safai, 1976, p. 240).

Another author writes: "The non-financial damage includes physical injury like assault and battery, full and partial disability and losses caused by deprivation of liberty of the individual
such as imprisonment, detention, deportation, unlawful deportation and finally non-material damage caused by bearing the suffering that and hurts the feelings of human spirituality" (Fuyuzi, 1977, p. 215).

What all these definitions show is definition by example rather than the concept and definition of rules for finding the instances. But all these definitions are an expression of the moral damages, whether to natural or legal person. Moreover, the damage has not a financial aspect unlike financial losses that apply to property with property rights.

Civil liability AIDS

AIDS as an emerging disease in the field of health sciences had spread in recent decades and faced human society with great challenges. Since society is faced due to this phenomenon with many risks, the individual and society mutual commitment requires the community to think of measures to overcome these challenges.

Establishing causality in the transmission of AIDS

Burden of proving the causal relationship is on the suffered party and the latter has to show the causal link between the act of the cause and the damage. Establishing causal relationship is obviously needed because other events are not involved in the causation of damage as it is especially the point of departure discussion of this paper.

In this regard, it is stated that "Establishing the causal relationship between fault and damage sometimes creates complex problems that may not be solved without help of the common taste and attention to evidence (Hart, H, L, O, translation 2010, p. 101).

Transmission through blood

Responsibility of practitioner

The contractual relationship is created with legal personality of hospitals and medical treatment center and practitioner as a member of that personality undertakes the treatment. The doctor personality will not be ineffective in no case. The physician's responsibility should be investigated in accordance with the general rules rather than contract with the hospital and the patient may in certain cases invoke both extra contractual and contractual terms.

Despite the contract, doctor is traditionally committed to try and use maximum power in treatment and less frequently doctor guarantees success of the treatment. Also the assurance that doctors gives for successful treatment is based on suspicion and probability and the courts do not interpret such promises as guarantees (Katouzian 2008, p. 215).

But according the Shiite jurisprudence, doctors are liable for harms caused during the treatment of patients, although he has taken the necessary precautions in treating the patient (Najafi, 1991, vol. 42, Imam Khomeini, Tahrir, 2011, vol. 2, Khansar, 1985 AH, vol. 2). The important point in this case it that condition of immunity doesn’t preclude liability of practitioner and he is liable even if he has obtained immunity (Zeraat, 2008, p. 71).
Immunity here takes the form of proviso, that is, patient tells doctor to treat him for an agreed amount and in exchange it is stipulated that doctor is not liable for damages resulting from treatment (Katouzian, 2008, p. 153).

According to the recently adopted law, with four articles (paragraph c of article 158 and articles 495, 496 and 497), this is revised. Paragraph c of article 158 reads: “any medical or surgical procedure that is done with the consent of the person or the legitimate parents or guardians or legal representatives, and technical and scientific issues and observing the government regulations - in urgent cases, consent is not required – shall not be subject to punishment” (Mansur, 2014, p. 15).

Also, Article 495 of the new law, that should be said has been replaced former Penal Code Article 319, states: "Whenever the doctor who performed the treatment causes loss or injury, unless his act conforms to the provisions of medical treatment, or he obtains immunity from patient beforehand, and if immunity obtained is not valid due to insanity or immaturity of patient, or it is impossible to obtain immunity for unconsciousness of patient and the like, immunity shall be obtained from the guardian of the patient”.

Article 496 states that "When a doctor issues orders to nurse or patients, if any harm or physical injuries occur, he shall be liable unless he acts in accordance with Article (495) of this Act". The provision of this Article with regard to order of treatment to patient or nurse is an instance of causality (Walidi, 2013, p. 25). Liability of doctor is stated in this article, and in the first place, doctor is held liable.

**Responsibility of nurse assisting blood transfusion**

Blood transfusions are typically prescribed and performed by a nurse. So here perpetration of nurse is considered in contaminated blood transfusion. According to Article 332 of the Civil Code, "Whenever one creates financial losses and other perpetrates such loss of the property, the perpetrator shall be liable rather than the cause, unless the cause is stronger so that loss is attributed to him by customarily law. Thus, in first glimpse, nurse is liable for transmission of disease, because he perpetrated the harm, and harm is directly inflicted by him.

It should be noted that first doctor that is cause is stronger than perpetrator because he is competent to prescribe medicine, and is dominant over nurse, while nurse transfuses blood by order of doctor. In this case, cause, that is, doctor has a more effective role than nurse and is liable, but if nurse knows about contaminated nature of blood, and does transfusion knowingly, the latter shall be liable.

Second, cause is stronger than perpetrator when will of the cause turns will of perpetrator into a dangerous one. Thus, if blood transfusion organization fails to exert sufficient control as responsible of the health of the same, the will of the cause turns the will of nurse into dangerous will, in which case the latter is more effective than perpetrator (Ghotbifar, 2011, p. 49).

**Responsibility of hospitals and medical centers**

If blood is contaminated in hospital, although failure of hospital in supply and storage of blood results in urgency for patient, or due to failure, untested blood is transfused urgently,
which then causes diseases, hospital shall be liable. According to Article 143 of the IPC "In the realization of intentional crimes, in addition to knowledge of the perpetrator of subject of the offense, there should be established his intention to commit criminal act. In case of crimes whose occurrence is subject to the realization of the result, intention to realize the outcome or knowledge of results should be confirmed." In case of the existence or lack of any contractual relationship between the patient and health care centers, the latter shall be obliged to observe customary law including provision of conventional therapy services to patients, observance of health issues, the drug shall be prescribed at due time, providing medical and surgical equipment, etc.. Therefore, failure to perform any of these obligations in the event of damage caused by the treatment centers will be contractual liability. Of course we should not ignore the fact that it is blood transfusion organization the give blood and blood products to hospitals.

So rather than a private law governing the relationship between them, rules of public law and administrative law provisions govern relations. Besides, if loss is due to negligence of members of legal persons such as nurses, ward authorities, managers, etc. they are responsible for compensation for damages caused by their fault out of their property and personal property. But it should be noted that members’ fault doesn’t result in legal person’s exemption from responsibility but rather in most cases, the injured person may prosecute the legal person, claim damages from the latter. Then in the next step and after compensation of damages, a legal person can prosecute the faulty person for reimbursement of compensation in accordance with the rules (Ghotbifar, 2011, p. 51).

**Responsibility of Blood Transfusion Organization**

Enforcement of contractual liability provisions requires proper contractual relation between the suffered party and the oblige and also if damage arises from extra contractual obligation, the rules governing the same shall apply, and thus, if it is established no contractual relation existed between the patient and blood transfusion organization, patient may prosecute the latter based on civil liability rules.

Blood Transfusion Organization as an official body of law in the country has responsibility for the health of blood and blood products and in case of transmission through blood is responsible (organization, in this case is stronger than the perpetrator and other factors such as nurses and doctors are excluded from liability in this issue and will be exempt from the coverage of liability in this case (Mohammadkhani, 2007, p. 39).

It should be noted that it is not only causality rules that makes the organization liable for contaminated blood transfusion but regulations of professional responsibility makes such liability stronger.

**HIV transmission from an infected person or through intercourse**

If we believe in objective or absolute liability, existence of act of a person and causality relation between said act and damage is enough, which seems to be basis of civil liability in Islamic law.
What is important is that regardless of the intention to inflict losses to another person, the person inflicting harm is held liable, as even minor or insane or immature people who are not of sound mind and may not be found guilty are liable (Article 1216 of Civil Code).

Scholars who believe that negligence exists in civil liability consider the above article to indicate social fault. (Katouzian, civil liability, 2008, p. 119).

Based on the causality theory that it is basis of Article 328 of civil Code, harmful act, even if the perpetrator is not to blame, brings about liability. (Emami, 2011, p. 147).

Compensation and civil liability for AIDS

The discovery of the AIDS virus and hepatitis A and B and the spread of infection and increase of number of patients with HIV in some countries made legislators to adopt a special regime for compensating the victims of this type of infection, and to establish a special fund based on the national solidarity.

Effects of damage under civil liability for AIDS

One of the three pillars of civil liability is causing of damage. Damage can be divided into two categories: material and non-material. Non-material damages receive less attention than material damage and it is controversial how to compensate them. But sometimes non-material damages harm the victim so much so that the law cannot be indifferent to it and compensating at least part of it seems necessary.

Death and damage to the body (injury)

Some consider injuries as merely material. (Langerodi, 1988, p. 262), and as stated in the book of extra contractual liability, bodily injury liability is divided into non-material and material losses, while both share the material nature. The latter both mentally causes harm and imposes the costs of treatment, surgery, disability and others losses to the individual’s assets (Katouzian 2008, p. 249). Some lawyers have considered it as non-material damage (Soltaninejad, 2001, p. 216).

In the physical injuries, the main nature is immaterial and non-financial, which is also accompanied with financial loss, in any way they are different from each other and therefore it could not be said that a new nature of the damage by the name of the mix damage occurs”. It seems that accepting the latter view is prior because relationship of the human with his body parts has not a proprietary nature, but these are means endowed by the god in order for the human to reach perfection and although body parts such as kidney are now transplanted by contract, it can be said that,

First, price Paid is not price of transplanted member donated.
Secondly, what is really transferred the other party is the right of the donor to transfer his body part rather than the title of the part, because man is not owner of his parts and may not sell them but may convey them or disposes himself of them. (Taheri, 1999, p. 42). In this regard, there is much to be debated, which is spared here.

Serious illnesses such as AIDS, hepatitis B, C pose injured person to danger of death and ultimately to death. Primarily the loss of life is imposed on deceased person while upon the
death; compensation for his death becomes impossible; upon death, one loses his legal personality and ceases to have rights and obligations of a living person (Safaei, 1998, p. 52). Despite this, his physical body is worthy of respect and infringement thereof is deserving of compensation, but it does not allow compensation for direct losses incurred by the deceased. Therefore, relatives of the deceased as his heirs are the victim and entitled to compensation. But physical injuries such as amputation or loss of any of the members of the body, cause of injury or disease, etc. are causes of damage to patients, and these injuries are inflicted on the body of the patient directly and compensation for such losses is considered for the harmed person rather than his survivors.

Holy religion of Islam provides for these kinds of damages (physical damage and death) legal institution of atonement, then mere provision of this system shows necessary of non-material loss compensation, as should the damaged not be to compensated for, such means was irrelevant (Safaei, 1998, p. 54).

**Loss of hope in life**

Blood and sexually transmitted diseases such as AIDS are usually multi-phase and once the patient get the disease, he doesn’t die immediately. Therefore, since these diseases due to lack of treatment lead to death, knowledge of the patient of the disease in the body leads to depression and loss of all hope to live, apart from direct injury to the body or property damage that he has suffered for health care. In Islam, life is a gift of God that must always be respected and length of life is only dependent on the will of the God and depriving oneself of life (suicide) is considered an unforgivable sin. Various verses of the Quran has discouraged people from murder and suicide (Surah Nisa, verse 29), then the Muslim is not allowed to lose hope in life as required by Islam.

**Deprivation of capabilities**

Sometimes, deprivation of abilities is deprivation resulting from amputation or loss of one or more members from other parts of the body, sometimes seen as exclusion from employment or professional activity. The first that is the loss of members and deprivation resulting from actual or potential lack of it can cause loss of balance, endangered physical life, etc. The issue of financial damages is considered by the god as atonement in proportion to the losses incurred. But the second type, the exclusion of a certain occupation or profession suggests two concepts:

a) Deprivation due to discontinuation of work as one who is a surgeon or midwife may lose his job due to AIDS or other contagious diseases just as surgeon who loses his thumb. Apart from non-material loss, it falls within the first group as well (financial damage).

b) Occupational deprivation in future, if a person at 18 years and the end of public education gets the disease and loses competence to do surgery or work in Iranian blood transfusion organization and his medical history provides circumstantial evidence of his incompetence to do a certain job in selection (Bariklu, 2006, p. 72).

Although item (a) causes non-material damage to a professional, it is not in question here. Then, we now aim to study the harm inflicted on patient due to transmission of disease, which results in loss of opportunities and capabilities for a certain job. Diseases results in loss of
opportunities by which he could have a desired social life. The question is if the one who transmits the disease is the cause of harms and deprivations suffered by the patient. The answer is yes because he could inform the surgeon or dentist of the disease, but the question is if this precludes other means and elements of damage so that the latter may be held liable for compensation.

What makes us caution is that such opportunities and capabilities would realize overtime and person’s course of actions is involved in whether or not they realize. Why cannot we say that the rivals of the patient are as effective as the transmitter of disease in patient’s loss of the opportunity to become a doctor? Although disease rules out competence of a person for working in surgery wards, it cannot be said for certain that it is the ultimate cause.

Holy legislator and the legislator provide the obligatory decision in compensation for all losses but the question what it is loss and what it is not loss is left to the customary law and reason. Earlier, we saw that Islamic jurists believe that view of customary law about whether or not something is harmful holds. There is no guarantee that medical students would become a skilled surgeon. At the same time, a medical student spends years of his life and material and non-material capitals of his in this way.

In Iranian applicable law, there is no text explicitly indicating compensation for such damages. However, with realization of customary concept of harm and application of damage, loss of capabilities will also be subject to maxim of compensation of any loss. However, it is conditional on the capabilities being recognized by applicable laws. For example, if applicable law doesn’t endow the right to study midwifery to a person, then the latter may not claim compensation for loss of such opportunity. In Iranian law and particularly civil liability Act, damages is not the right of one whose right is not infringed, and article 1 of said Act provides that “Anybody who causes harm to life, health, property, freedom, reputation or commercial reputation or any other such right as provided by law for people, he shall be liable to compensate for such harm” (Katouzian, 2006, p. 54).

Lack of enjoyment of life

Contagious and dangerous diseases such as AIDS, etc. in many cases result in lack of enjoyment of life for patients. The most significant may be a legitimate sexual abstinence and discontinuing marital relations.

According to the legislator having a wife and children for humans is desirable. The god states this frequently in Holy Quran.

“Beautified for people is the love of that which they desire - of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return.” (Ali Imran: 14).

“Wealth and children are [but] adornment of the worldly life. But the enduring good deeds are better to your Lord for reward and better for [one's] hope.” (Kahf: 46).

Zinat in relevant books means showing the good (Raqib Isfahani, 1984, p. 373). Thus, having children and property is relevant for the human in itself, and he wants to have them. In Islamic jurisprudence, loss of reproduction power is subject to atonement.

Mental damage resulting from damage to reputation
Having psychological security and lack of unnecessary stress for no reason are causes of maturity and perfection and materials for the individual’s healthy social life. The legislator also considers importance of these factors and deems them detrimental to the psychological security and tries to ensure the prevention and eradication of these factors by criminal sanction and along with the Holy God has always put emphasis on maintaining human dignity.

Is social reputation that honest results of years of life not like as a light on the storm? This non-material damage is so severe sometimes that even years are not enough to restore the credibility of the injured person and its possible social repercussions last for long after the death of a person.

Holy legislator has stress the dignity and reputation of individuals and elsewhere emphasized it in religious orders. Even, failure to observe minimum number of witnesses brings about hadd of false imputation of non-chastity and abomination; permanent loss of right to testify as well as 80 lashes (Soltaninejad, 2001, p. 55).

**Indemnification**

The need to compensate for the loss of life has never been questioned in Islamic jurisprudence and Iranian law. Even given the prohibition of inflicting such damage and the sanctity of life is a basis in principle of the need for compensation (financial and physical) (Wasail al-Shia, book of Hajj, chapter 158). To compensate for the losses incurred and the establishment of sanction to protect the physical integrity of human beings, sharia determines based on the severity and type of damage inflicted casualties sets a certain amount of money as compensation payments for the damage to the victim to be paid to victim (and in the case of death, his hair). In cases where compensation payments are not predetermined, the judge sets compensation based on the severity of the damages. If there is no possibility of compensation in this way; ultimately, payment will be made from the public treasury (Dr. Edris, 2001, p. 20).

Before the victory of the Islamic revolution in Iran, the method of determining the compensation was used separately for the financial and non-material damages and the lawyers and the courts to the logic and the rulings were familiar with its theoretical aspects. But with the approach of the Islamic jurisprudence as used after the Islamic revolution in Iran and stressed of Constitution on conformity with the provisions of the laws on religious criteria, and especially with the enactment of Islamic penal code, atonement chapter, essential changes were made to compensation system.

In this situation, the compensation capability of a range of losses, especially losses due to physical damage became ambiguous and conflicting opinions emerged and spread the scope of these disputes extended to the courts and the Supreme Court. Among the lengthy discussions about the nature of atonement and criminal nature (as a criminal penalty) or civil liability nature (in terms of the compensation), and the acceptance of any of these views justify specific provision on compensation for material and non-material damages caused by injuries. Therefore, the question is if losses in excess of the minimum payable or damage that is not covered by atonement payable? And if one may not render that other damages resulting
from physical ones shall be compensated for and if amounts determined are payable and therefore damages in excess of them or damages not covered by atonement are payable? In this case, treatment costs and damages and occupational disability damages and non-material damages of relatives are issues that are subject of discussion of lawyers. In these cases, many articles and papers have been written and views expressed for and against.

Non-material losses (non-financial losses) resulting from injuries

One of the problems facing modern system of civil liability is how to estimate the non-material damage (non-financial) due to injuries. This damage have qualitative and non-quantitative nature and are not measurable. In some systems after establishing non-material and non-economic damages, determining their level is left to judge and jury in some other countries. The average value determined varies from one country to another and even within countries varies from year to year and in some legal systems, in the absence of measure and determination of the damage, large amounts for redress are considered. This is causing problems in the legal systems of some countries which is called the "liability crisis".

Financial losses resulting from injuries

Major economic losses caused by the injuries are treatment costs and permanent or temporary disability. In addition to the latter, economic losses due loss of income on the families of injured or deceased who have right to subsistence are in place.

Treatment costs

These damages are material losses due to injuries or its treatment and preventing its development. The reasons stipulated for costs of claim for damages due to loss of object or interest resulting in liability of harm inflictor towards the victim in the civil procedure of public and revolutionary courts here also justifies the legitimacy of claim for treatment costs. In fact, the cost of treating damage caused by the physical damage and the nature of physical injuries is separate from and in addition to the injured imposed. As the principle of the need for self-preservation also requires, making such expenditures is unavoidable for the injured. Relation between treatment costs losses and injuries losses is very similar to financial losses suffered by owner of property following loss of property. Typical example of such financial losses is cost of legal proceedings costs. In this regard, traditional law and Islamic jurisprudence rules that the principal of compensation for loss of property must be paid and other damages arising from loss and damage to property are not considered. For this reason, damages for such losses were long subject of attention of legislator after Islamic revolution. Finally, legal and jurisprudential contemplations concluded necessity of damages to be paid as legal proceedings cost or failure or delay in fulfilling obligation and consistence of such obligation with sharia, and finally, legislator stated in article 515 of civil procedure of public and revolutionary courts dated 2000 that, “Plaintiff may sue for proceedings cost or for failure or delay in fulfilling obligation at petition or during legal proceeding or separately for legal proceeding costs or failure or delay in fulfilling obligation, claiming for the equivalent of the damages caused by failure or delay in fulfilling obligation (Babaei, 2010, p. 90).
Damages in excess of atonement

According to some of Tehran public court judges, if compensation payments do not cover the cost of treatment of physical damage, costs in excess of the compensation payments will be payable. While according to above said, no excess is in question, but treatment cost is considered as separate damages payable in addition to atonement, theory that only allows claim of amounts in excess of atonement is rejected by law and Islamic jurisprudence. Limiting indemnification capability of amounts in excess of atonement undermines philosophy of atonement. If atonement is for non-financial injuries, treatment costs that are financial may not replace it. Such financial damages are recoverable ones, in which case they are independent of atonement, or if they are non-recoverable, in which case if it is in excess of atonement, it is irrelevant to render that liability exists in that regard.

That judge and lawyers stipulated necessity of amounts in excess of atonement; it is in order to prevent continuation of injustice resulting from acceptance of such theory (Larijani, 1996, p. 124).

Permanent and temporary disability compensation

Injuries typically cause temporary disability during the medical treatment and rest. This depends entirely on the type of disability and inability to work. In this way, downtime is totally personal and professional depending on the activity of the injured, and the damage will be different accordingly. At the same time the damage has a financial nature and is determined monetarily according economic and financial loss of injured over a period of disability.

As can be seen, despite losses from downtime are economically and in terms of valuation share features of cost of treatment; they have funded non-material differences with the latter. Treatment costs are not related to professional and social character and type of physical damaged determines its amount while disability damages are totally dependent of type of profession of the injured and employment agreement and loss of job and profit opportunities on the part of the injured.

Theory of application of loss according to customary law

In Roman law that is the source of entry of rule of negligence to the common law, based on the rule known as "Pom Ponius" when negligence of the injured in occurrence of injury to him is involved, he is completely deprived of compensation. This surprised lawyers due to the fact that no rational basis for it existed. Gradually the courts reduce violence and the toughness of this rule. For example, this rule was not applies in the case of intentional injury caused by victim. Also, when his negligence he was so heavy that was tantamount to intentional injury.

Secondly, in the case the negligence was violation of legal regulations, it was impossible to invoke this rule. The best and foremost measure taken in the proceedings in order to reduce the hardship of rule of contributory negligence was provision of the theory of "Last Opportunity". The theory is known in English law as «Last opportunity» and in the United States and Canada as «Last clear chance».
According to this theory, the person who had the last chance to avoid losses, and not used it negligently will be held liable.

The most fund anon-material criticism to be leveled against this rule was that it didn’t resolve criticism about the principle of "contributory negligence" and like the previous rule was based on "all or nothing solution".

Finally, in 1945 a law amending the contributory negligence was adopted and formally provided for division of responsibilities between the injured party and the party inflicting the harm. According to the first paragraph of first article of this law, if the negligence of the injured party together with negligence of other party is involved in the injury suffered by him, court proceedings should not dismiss the claim of the victim (based on his negligence), but by paying attention to the degree of involvement of victim in the loss, a fair and equitable amount of compensation is reduced (Ghatbifar, 2011, pp. 11-13).

**Conclusions**

Careful study of logic and philosophy and principles of jurisprudence to understand the new rules in cases where data on social and economic relations has changed since the revelation and the past, extracting legal rules that while remaining loyal to the provisions of Islamic Sharia meet the needs of modern life is possible. In this article it was tried to introduce a way consistent with considerations and logics of jurisprudence at the same time as being fair considering rules of law and Islamic jurisprudence about civil liability for AIDS.

This point should be considered that one should not think that all points can be considered in study of such subjects as AIDS, because sources are limited and sufficient knowledge to do so is not available. Yet, final conclusion from studies done here is that the best and closest factor causing dangerous contagious disease can be identified through negligence and causality. It may not be said which factor is at negligence for sure because it varies from one person to another, sometimes hospital or nurse and sometimes sexual partner is to blame, but important thing is that it is theory of negligence and causality that allows finding the negligence one rather than other legal topics.

With an increase in infectious and dangerous diseases today, the need for special protection of their rights by legislative rules to support them is clearly felt. The legislator should not leave this subject of increasing sensitivity to the interpretation of the principles and rules by lawyers.

Establishing causality in the above subject is the most important and at the same time the most difficult part of the burden of proof that is on the victim. The legislator should provide a legal presumption to save injured party from the bottleneck of proof of causal relationship. Until then, the theory of equality of the causes and contributing factors should be accepted. The role of customary law in that regard is stressed.

This can be studied in Iran by several factors:
1. With an increase in people with infectious and dangerous illness, the need for special protection of their rights and supportive laws and regulations is clearly felt. The legislator should not leave this subject of increasing sensitivity to the interpretation of the principles and rules by lawyers.
2. In theories related to principles of civil liability, although civil liability in Iranian legal system is based on negligence, but no theory, including negligence, guarantee of the right, etc. may not completely explain the basis of responsibility in the studied discussion, therefore, rigorous acceptance of a theory should not be used to explain the issues relating to topic or even in some cases to rule out indemnification.
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