



Compensation and Remedies for Human Rights Violations in International Instruments and Afghan Laws

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Abstract: The right to compensation is a recognized legal right in international instruments and national laws. Compensation is a legal principle that holds the party responsible for causing harm accountable for the damages incurred. This research adopts an analytical-descriptive approach using library studies. The aim of the research is to address the following questions: What is the position of Afghan laws and international human rights law regarding compensation for harm resulting from human rights violations? What are the remedies for the enforcement of human rights violations in Afghan laws, and what methods exist for compensating such damages in international law and Afghan laws? The research findings demonstrate that compensation is generally accepted as a fundamental legal principle in international law and Afghan laws, and this applies to harm resulting from human rights violations. Respect for human rights and the preservation of human dignity are emphasized in international law and Afghan laws, and various methods such as restitution, monetary payment, and obtaining the consent of the victim are available for compensating damages in international law. In Afghan domestic law, methods such as specific performance, substitute performance determined by the judge, and agreement between the parties are recognized. Moreover, Afghan law provides enforcement guarantees for violators of human rights, including penalties such as imprisonment, fines, and execution.

Keywords: Compensation; Domestic laws; Human rights; International instruments.

INTRODUCTION

The concept of "right" has various meanings and interpretations. In its literal sense, it refers to correctness, truth, reality, entitlement, share, or a name for the Almighty (Satanzai, 1387, p. 19). In legal terminology, rights refer to the privileges and capacities that laws grant to individuals within a society (Katozian, 1377, p. 4). Human rights are considered fundamental and inherent rights that are essential for the existence of humanity (Wallace & Artiga, 1394, p. 327). Human rights encompass a set of entitlements that individuals possess in a society and are established in relevant rules, guaranteeing individuals, based on their humanity, necessary protections and support in their relationships with other members of society and those in power. Human rights are traditionally categorized into civil and political rights, economic, social, and cultural rights, and collective and group rights, referred to as the first, second, and third generations of human rights, respectively (Wallace & Artiga, 1392, p. 328). In a newer understanding, communication rights have also been recognized as the fourth generation of human rights. This generation of rights was introduced by the French scholar Jean D'Arcy in 1954 in a French communication journal (Karimi, 1397, p. 28).

The obligation to provide compensation for harm resulting from non-performance of obligations is a social and legal matter that ensures order, balance, and respect for agreements and contracts between parties. When an individual undertakes a legal, social, ethical, or religious duty, the fulfillment of that duty becomes their legal and moral responsibility (Karimi, 1397, p. 55). "Harm" has different meanings, including causing damage or loss. In its literal sense, harm refers to a loss or a collection of damages (Ansari & Taheri Nia, 1386, p. 1284). In Al-Munjid, harm is defined as "a loss, contrary to benefit, and signifies distress, hardship, and deficiency occurring in something" (Al-Munjid, 1374, p. 447).

Harm can take various forms. It can be material, which refers to damages inflicted upon people's property. Examples include house damage, accidents, vehicle damage, broken windows or shops, destruction of crops, and so on. Harm can also be physical or bodily, referring to damages inflicted upon an individual's body. For instance, if a person loses a limb or suffers spinal cord injury or any form of physical harm, it falls under bodily harm (Jafarilangroudi, 1381, Vol. 3, p. 1816).

Some forms of harm and damages do not pertain to property, body, or life but rather relate to the dignity and reputation of individuals. For instance, if someone falsely accuses an innocent person of theft, adultery, fraud, or any other crime, it damages the reputation of that person among the community. Therefore, moral harm can be defined as damage inflicted upon one's honor, dignity, and moral values. According to Dr. Katozian, it is difficult to provide an exact definition of moral harm, but it can be understood as the impairment of emotional and non-financial interests, such as physical pain and mental suffering, loss of honor, dignity, freedom, and the creation of shame (Katozian, 1377, p. 246).

Based on what has been said, if an individual or a government causes harm to another individual or government, they are recognized as responsible and must compensate for it. A person is considered responsible when they are accountable for their attitudes, reactions, and actions. Therefore, responsibility refers to the question or demand placed on a person regarding their duties and actions they are responsible for (Khosrowabadi, 2006, p. 110).

Generally speaking, it should be noted that the obligation of an individual to be accountable for infringing upon others can occur either to support individual rights or to defend society, under the title of criminal responsibility or "criminal liability." Civil liability is the legal commitment of a person to compensate for the harm they have caused, whether the harm is due to their own fault or their activities. Thus, civil liability refers to the commitment to compensate for damages (Amiri Ghaemmaghami, 1999, p. 157).

Apart from civil and criminal liability, which are referred to in legal science, there is another form of responsibility known as moral responsibility. Moral responsibility refers to a sense of shame and guilt, which is more personal in nature (Karimi, 2018, p. 48).

Human rights are highly significant at the international level and are recognized as the primary ethical and legal standard for human beings. The importance of this research lies in gaining a better understanding of human rights and ensuring their realization at the domestic and international levels. It can assist governments and international organizations in promoting and improving the implementation of human rights in Afghanistan and around the world. Additionally, this research can provide guidance to judicial authorities and legislators in Afghanistan to improve the judicial system and laws related to human rights, thereby contributing to the enhancement of the effectiveness of the legal system and justice in the country and the international community.

Regarding the present research entitled "Methods: Compensation for harm and guaranteeing enforcement resulting from the violation of human rights in international documents and laws of Afghanistan," no specific research has been conducted so far. However, there are writings on the subject, and some of these writings are referred to below.

Ghani (2022) in an article titled "World Human Rights Day: A Look at Human Rights Violations in Afghanistan" examines cases of human rights violations in Afghanistan following the Taliban's takeover of the country. Karimi (2018) in a master's thesis in the field of international law titled "Compensation for harm resulting from the violation of human rights obligations in international law and the laws of Afghanistan" investigates the compensation for harm resulting from the violation of human rights obligations and its methods in international law and the laws of Afghanistan. Qasemi (2016) in a book titled "Civil Liability arising from contract violation" examines contractual liability in the legal system of Afghanistan. Ramezani Ghavamabadi and Sabahani (2013) in an article titled "Compensation programs in transitional societies" discuss the right to compensation and the challenges of realizing it in human rights abuses, particularly in serious and organized human rights violations in transitional societies. Ibrahim Gol (2011) in a book titled "International State Responsibility" examines the draft of international state responsibility in 2001.

1. Legal Nature and Basis of International Responsibility

Discussing the compensation for damages resulting from the breach of international obligations by states entails addressing the significant aspects of enforcing international rights. When a blatant violation of norms and fundamental principles of international law threatens human security and future, international responsibility assumes a special position. The foundation of international responsibility has its roots in customary law. Just as individuals are held accountable for wrongful acts or actions contrary to the law in domestic contexts, states are also deemed responsible for their wrongful acts in the international dimension. In this regard, the evolution of the concept and forms of compensation for damages cannot be separated from the development and expansion of international law. In international law, the existence of necessary and essential rules of responsibility in this system is acknowledged, and it is commonly understood that any breach of a commitment entails the responsibility of the breaching party and the reparation of damages arising from it (Gol, 2011, p. 11).

Currently, the system of international responsibility has been codified by the International Law Commission in the form of the Draft Articles on State Responsibility. However, this draft considers state responsibility as a relationship between states, whereas today states have assumed numerous international obligations towards human individuals. According to Article 1 of the International Law Commission's 2001 draft, any internationally wrongful act gives rise to the international responsibility of that state. An internationally wrongful act of a state may consist of one or more acts or omissions or a combination thereof. Whether such wrongful act has occurred initially depends on the requirements of the violated commitment, and subsequently on the conditions specified for such an act in the first part (Gol, 2011, p. 25). The International Law Commission's Draft Articles on State Responsibility (2001) devotes its second part to the reparation of damages and the related procedures. This action by the Commission can be considered as a response to filling the gaps that existed in the field of international responsibility.

Based on the above principle, any breach of a commitment leads to the obligation to compensate for damages. Therefore, the system of state international responsibility cannot be limited to obligations that merely represent state rights. Thus, the obligation to compensate for damages exists when human rights commitments of states are violated. Although the right to compensation for victims of all human rights violations exists, the necessity for realizing this right is felt more strongly when such violations occur in a severe and organized manner. International crimes, which are mostly recognized as gross and systematic human rights violations, initially violate the rights of the victims. Gross and systematic human rights violations, like other human rights violations by states, hold them accountable for compensating the victims (Zakeryan, 2011, p. 155).

During the formulation of the rules regarding the international responsibility of states, it has always been emphasized that state responsibility is the result of the failure to fulfill legal obligations by that state, regardless of the nature of the commitment and the subject matter to which it relates (Pejouman & Naseri Larijani, 2007, p. 86). Article 12 of the Draft Articles on State Responsibility explicitly confirms this principle and states: "A breach of any international obligation by a State entails the international responsibility of that State, regardless of the origin of the obligation or the nature of the act or omission."

The International Court of Justice, in the Rainbow Warrior case, explicitly affirmed this principle, stating that general principles of international law apply equally to the violation of any international obligation. As there is no distinction between contractual and non-contractual responsibility in international law, any breach of an obligation by a state, regardless of its nature and origin, leads to the responsibility of the state and the obligation to provide compensation. It is evident that this principle corresponds exactly to the system of domestic law, where rules of liability are divided into contractual and non-contractual responsibilities depending on the circumstances (Pejouman & Naseri Larijani, 2007, pp. 86-87).

The current international judicial practice requires two conditions to establish state international responsibility: first, the act in question (an act or omission) must be attributable to the state in question; second, the act must be internationally wrongful and illegal (Emadzadeh, 1990, p. 202).

According to Article 3 of the Draft Articles on State Responsibility (2001), the description of a state's act as internationally wrongful is subject to international law, and it is not affected by the legal characterization of the same act under domestic law (Gol, 2013, p. 112). Furthermore, Article 32 of the same draft, regarding the obligation to provide compensation and cease unlawful conduct, states that the responsible state cannot rely on its domestic law to justify the breach of its international obligations. These two articles emphasize the non-reliance on domestic law, both in justifying the violation of international obligations and in evading the obligation to provide compensation and cease unlawful conduct (Darabpour & Zare Nemat, 2011, p. 207). Therefore, neither in the creation of secondary obligations nor in the stage of fulfilling them, can domestic law be invoked. In fact, international law, despite respecting the sovereignty of states, does not allow reliance on domestic law except for certain descriptions.

2. The Right to Compensation for Damages in International and Regional Documents

The right to compensation for damages in international and regional documents has received significant attention. Article 8 of the Universal Declaration of Human Rights refers to the right of every person to obtain effective remedies for acts that violate their rights. It states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Similarly, paragraph 3 of Article 2 of the International Covenant on Civil and Political Rights of 1966 addresses the right to compensation for victims. Each member of the Covenant is committed to:

- a) Ensuring that individuals whose recognized rights and freedoms have been violated have an effective remedy, even if the violation has been committed by persons acting in an official capacity.
- b) Ensuring that individuals claiming compensation have their claims considered by competent judicial, administrative, or legislative authorities, or by any other competent authority established by the legal system of the country, and that the possibilities for judicial and legal remedies are developed.
- c) Ensuring that competent authorities enforce compensation in case such damages are awarded.

Article 7 of the Declaration on the Elimination of All Forms of Racial Discrimination also refers to the right to compensation for victims. In some human rights documents, this right is limited to a specific type of compensation, namely monetary payment. For example, Article 10 of the American Convention on Human Rights refers to the right of victims to receive compensation in case of violations of the rights enshrined in the Convention.

In paragraph 2 of Article 21 of the African Charter on Human and Peoples' Rights, the right to adequate compensation is explicitly stated. Article 5(5) of the European Convention on Human Rights, Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance all refer to the right to receive compensation for victims.

Although Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance and Article 14 of the Convention against Torture refer to the right to receive compensation instead of the right to compensation for damages, they consider compensation as including the necessary means for the full rehabilitation of the victim.

Some human rights documents have taken a broader view of the right to compensation for damages. For instance, Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination recognizes the right to adequate compensation or satisfaction for any damages resulting from discrimination. Similarly, according to Article 32 of the Convention on the Rights of the Child, member states must take all necessary measures to ensure the physical and psychological recovery and social reintegration of child victims.

In addition to human rights treaties, humanitarian law treaties also address the right to compensation for victims. Article 68 of the Geneva Convention of 1949, concerning the treatment of prisoners of war, includes specific provisions regarding the payment of reparations to those prisoners whose rights have been violated under these conventions. Article 55 of the Geneva Convention of 1949, relating to the protection of civilians during times of war, requires that the occupying power consider necessary arrangements for the payment of fair compensation for any confiscated property.

Apart from the above-mentioned documents, the first international instrument specifically addressing the right to compensation for victims is the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," adopted by the United Nations General Assembly in 2005. According to its third paragraph, the commitments include the adoption of appropriate legal and administrative measures to prevent further violations, investigation and prosecution of committed violations, taking action against individuals responsible under international or domestic law, ensuring equal access to justice for victims, and providing effective reparations to victims. These commitments are integral to the guarantee and respect for human rights and humanitarian law by states (Ramazani & Sobhani, 2013, p. 122).

However, the focal point of this resolution is the commitment of states to provide full reparation for the inflicted harm. In order to fulfill the commitment to full reparation, as outlined in Article 18 of this resolution, states resort to common forms of reparation in the international system of state responsibility, namely restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. According to this, there is no distinction in international responsibility between the responsibility of states towards each other and the responsibility of states towards their own nationals. None of the international documents refer to the mechanisms to be used to achieve the right to compensation for damages; they solely elaborate on the principles of the right to compensation for damages. In case of violations of the obligations set forth in the relevant documents, the monitoring bodies of these documents and

international human rights courts condemn the delinquent states to provide reparation for the inflicted harm. The European Court of Human Rights, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, among others, have repeatedly reminded delinquent states of their obligations in this regard (Karimi, 2018, pp. 65-66).

3. Methods of Compensation for Damages in International Law

Violation of international law by a state gives rise to its international responsibility (Gol, 2011, p. 25). Therefore, states are accountable for their wrongful acts in the international arena vis-à-vis other states. Additionally, a state may be held responsible if it has aided, assisted, supervised, or coerced another state in its wrongful conduct. A state cannot escape liability based on its domestic laws or the absence thereof (Wallace & Ertega, 2015, pp. 278-280).

The commitment to fully compensate the injured state for the harm suffered is the second general customary obligation of a state that has committed an internationally wrongful act. This has been clearly demonstrated in the judgment of the International Court of Justice in the Corfu Channel case. The general obligation of compensation is stated in Article 31 of the Convention on the Responsibility of States for Internationally Wrongful Acts. It means that the state's obligation arises from the breach, not from the right of the injured state or states (Gol, 2011, pp. 185-186).

In international law, various methods have been considered for compensating damages resulting from the breach of obligations. These methods are mentioned in Article 34 of the International Law Commission's 2001 Draft Articles on State Responsibility, which addresses the forms of compensation. According to this draft, the methods of compensation in international law include restitution, payment of damages, and obtaining satisfaction.

3-1- Restitution

This method prioritizes restoring the previous state. It means that the government, as the wrongdoer, should first compensate for the damages by restoring the previous condition. If this is not feasible or sufficient, other methods of compensation should be used (Darabpour & Zarae Ne'mati, 1390, p. 208). Restitution in this method is not absolute and unlimited; it depends on the circumstances. The first form of restitution based on this principle is returning to the previous state. Although there is no specific definition of restitution to the previous state, it can be understood as the reestablishment and revival of the previous state, i.e., the state that existed before the wrongful act occurred. Alternatively, restitution to the previous state is the reestablishment of a state that would have existed if the wrongful act had not been committed (Ibrahim Gol, 1390, p. 200).

3-2- Payment of Compensation

Payment of compensation has been considered the most common method of redress for damages. International courts consider this method as the most common form of compensation (Darabpour & Zarae Ne'mati, 1390, p. 209). The second method for compensating for damages resulting from the violation of an international obligation or wrongful act by one state against another is based on Article 36 of the International Law Commission's 2001 Draft. Payment of compensation by the violating state is usually subject to negotiation. There is no fixed principle or standard for determining the amount to be paid. In the case of material damages, the amount of compensation is generally equivalent to the amount of the incurred damages, and damages resulting from non-pecuniary harm are calculated in comparison to similar owners of comparable properties (Wallace & Ertega, 1394, p. 290).

The concept of the right to receive compensation for victims of international crimes was introduced into international law with the United Nations General Assembly declaration in 1985. Today, it is accepted that victims of international crimes can claim compensation. In the final report of the United Nations Special Rapporteur to the Human Rights Commission in 1999, the right of victims of international crimes to receive compensation, restitution, satisfaction, and guarantees of non-repetition was predicted. The establishment of the United Nations Compensation Commission is in line with the implementation of this principle within the framework of crimes against peace (Sadat Asadi, 1388, p. 56).

3-3- Seeking Satisfaction

The third and final method of redress for damages resulting from the violation of international rights or international obligations is seeking satisfaction, as stated in the International Law Commission's 2001 Draft. Redress for damages may be achieved through diplomatic negotiation, apology, and assurance that the violation of international standards will not be repeated (Wallace & Ertega, 1394, p. 289).

The responsible state for an international wrongful act is obliged to seek the satisfaction of the injured state for the damages that cannot be remedied by restitution or payment of compensation. Seeking satisfaction may include accepting the violation, expressing regret, making an official apology, or any other formal method. Seeking satisfaction must be commensurate with the incurred losses and should not be demeaning to the responsible state. Generally, seeking satisfaction is used in relation to intangible losses that are not readily quantifiable. This method of redress cannot be considered a standard tool for compensating for damages. Therefore, Article 37 of the International Law Commission's draft on state responsibility compels the responsible state to resort to seeking satisfaction when restitution or payment of compensation is not possible (Darabpour & Zarae Ne'mati, 1390, p. 210). In international law, there is no specific method for compensating for damages resulting from human rights violations. Therefore, for redressing damages resulting from the breach of human rights obligations, the existing methods in the internationally approved Draft on State Responsibility (2001) are used.

4. Legal Foundations of Respecting Human Rights in the Laws of Afghanistan

One of the important and fundamental objectives of responsibility in civil and criminal matters is the right to compensation for damages. According to this right, if all the conditions and elements of civil and criminal liability are met, the injured party can seek compensation for the damages caused by the liable party, and the party causing the harm is also obliged to compensate for the harm attributed to them. Thus, a legal relationship (obligation) arises between the injured party and the liable party. This relationship is created as a result of civil liability (Karimi, 2018, p. 74).

Afghanistan, as an independent country and a member of the United Nations, has always expressed its commitment to human rights obligations and has respected and valued human rights. Article 7 of the Afghan Constitution obliges the Afghan government to

respect the Universal Declaration of Human Rights, international treaties that Afghanistan has acceded to, the United Nations Charter, and other international agreements to which Afghanistan is a party or has joined.

The preamble of the Afghan Constitution also emphasizes the observance and respect for the United Nations Charter and the Universal Declaration of Human Rights. It further states the commitment to establish a civil society free from oppression, despotism, discrimination, and violence, based on the rule of law, social justice, the preservation of dignity and human rights, and the guarantee of freedoms and fundamental rights of the people. This itself signifies the reverence for human rights and the rights of individuals in society.

Article 6 of the Afghan Constitution also obliges the Afghan government to create a prosperous society based on social justice, the preservation of human dignity, and the protection of human rights. The government is obliged to create a prosperous and progressive society based on social justice, the preservation of human dignity, the protection of human rights, the achievement of democracy, the promotion of national unity, equality among all ethnic groups and tribes, and balanced development in all regions of the country. Article 12 of the Afghan Penal Code, considering the principle of preserving human dignity, prohibits penalties that are contrary to human dignity and that violate the sanctity of individuals. It states: (1) Determining penalties contrary to human dignity is not permissible. (2) The adaptation of penalties to the offender must be done while respecting human dignity.

Article 135 of the Penal Code completely rejects the determination and imposition of penalties that are contrary to human dignity, humiliating, or insulting. Despite all the measures and the enactment of various laws in the section on respecting human rights obligations and the principle of respecting human rights and preventing human rights violations in Afghanistan, unfortunately, numerous cases of human rights violations have occurred in all provinces and cities of Afghanistan by the government and Afghan citizens. In a report prepared and published by the Independent Human Rights Commission of Afghanistan in 2016, the overall situation of human rights violations in Afghanistan is described as follows:

In 2016, a total of 16,765 cases of human rights violations were registered with the Commission. These included civilian casualties, with 10,608 individuals affected (2,823 killed and 7,785 injured), 5,575 cases of violence against women, and 582 cases of specific human rights violations (registered through citizen complaints in a separate information center within the Commission) (Razai and Motamedi, 2017, p. 8).

According to the latest reports of the Independent Human Rights Commission, nearly six thousand civilians have been killed or injured as a result of aerial attacks and nighttime raids in just six months of the year 2018. It is clear that alongside the right to life and the right to security, other fundamental rights of citizens, including the right to education and work, especially for women, are repeatedly violated. The Afghanistan Human Rights Commission used to present its annual report on human rights violations in Afghanistan before the fall of the republic system in Afghanistan. According to the reports of this institution, human rights were violated in various areas, and the government lacked the capacity to respect human rights in Afghanistan. In the latest reports published by human rights organizations, since the establishment of the Islamic Emirate in Afghanistan, human rights have been violated in various areas, including the restriction of fundamental rights and freedoms of women, restrictions on women's mobility and access to public services, exclusion of women from the social and political scene, prohibition of peaceful assembly, and torture. The privacy of individuals has also been disregarded by the ruling regime in Afghanistan.

5. Right to compensation for damages and enforcement guarantees resulting from human rights violations in Afghan laws

Article 51 of the Afghan Constitution refers to the right to compensation for damages and states the following: Any person who suffers harm from an official's actions is entitled to compensation and can file a lawsuit in court to obtain it. Except in cases specified by law, the government cannot take action to waive its rights without a court order.

Article 23 of the Afghan Constitution emphasizes the right to life and states: Life is a divine gift and a natural right of human beings. No person shall be deprived of this right without lawful permission.

According to Article 170 of the Penal Code, the following are cases of capital punishment, unless otherwise stated in this law: genocide, inhuman, war crimes, aggression against the state, assassination, bombing, abduction or hostage-taking, which result in the death of a person or persons. Intentional murder is also included in cases specified in this law. In addition, Article 338 of the same Penal Code provides for lesser penalties for other human rights violations.

Article 24 of the Afghan Constitution emphasizes the right to freedom and states: Freedom is a natural right of human beings. This right has no limits except for the freedom of others and public interests regulated by law. Human freedom and dignity are inviolable. The government is obligated to respect and protect the freedom and dignity of human beings. Article 589 of the Afghan Penal Code imposes penalties for the unlawful violation of freedom, regardless of whether the perpetrator is a police officer, prosecutor, or judge: (1) If the police, national security officer, or local official exceeds the legal deadline for detention, arrest, imprisonment, or confiscation of personal freedom by more than one day, they shall be sentenced to short-term imprisonment or a fine of three thousand Afghanis per day.

Article 25 of the Constitution of Afghanistan supports suspects and convicts by stating: Presumption of innocence is fundamental. A suspect is considered innocent until proven guilty by a final verdict of a competent court. Article 26 expresses the personal nature of a crime. A crime is an individual act. The pursuit, arrest, or punishment of a suspect does not apply to another person.

Article 31 provides privileges for accused individuals to defend their rights. It states: Every person has the right, upon being detained or for the purpose of proving their rights, to appoint a defense lawyer. The accused has the right to be informed of the charges upon being detained and to be present in court during the specified period determined by law. The government appoints a defense lawyer for indigent defendants in criminal cases. The confidentiality of conversations, correspondences, and communications between the accused and their lawyer is protected from any form of violation. The duties and qualifications of defense lawyers are regulated by law.

Article 29 declares torture as prohibited: Torture of a human being is prohibited. No person, even under investigation, arrest, detention, or conviction, can engage in or order their torture, even for the purpose of discovering the truth. The imposition of a punishment that is contrary to human dignity is prohibited. Additionally, the Penal Code of Afghanistan enacted in 1396 provides penalties for perpetrators of torture in Article 451. According to Article 451 of the Penal Code: (1) A person who commits the crime of torture is sentenced to more than three years of imprisonment. (2) When the crime mentioned in paragraph 1 of this article causes

bodily harm to the victim, the offender is sentenced to the maximum punishment of moderate imprisonment. (3) When the victim subjected to torture is a child, woman, or disabled person, the offender is sentenced to the maximum punishment of moderate imprisonment. (4) When the commission of the crime mentioned in paragraph 1 of this article causes permanent physical or mental disability or amputation, the offender is sentenced to long-term imprisonment. (5) If the accused dies as a result of torture, the offender is sentenced to the prescribed punishment for intentional murder under this law. (6) Threats of torture are considered a crime, and the offender is sentenced to the punishment mentioned in paragraph 1 of this article. (7) The commencement of the crime of torture is recognized in the judgment of torture. (8) An accomplice or collaborator in the crime of torture is sentenced as the principal offender. (9) The perpetrator of the crime of torture is also separated from their duties in addition to the punishment for the committed crime.

The Constitution of Afghanistan values and respects human rights. The Penal Code of Afghanistan and the Code of Criminal Procedure of this country provide for the perpetrators of crimes such as genocide, inhuman, war crimes, acts against the government, assassination, explosion, kidnapping or hostage-taking, or terrorism resulting in the death of a person or persons, the punishment of execution.

The right to personal freedom and security is also emphasized in Afghanistan, and for those who illegally subject a person or persons to captivity, detention, or restriction of freedom, the Penal Code of Afghanistan provides for moderate imprisonment.

Article 323 of the Afghan Code of Criminal Procedure enacted in 1392 states: (1) Days of supervision and detention, including the day of arrest, are counted as part of the sentence of imprisonment. (2) If a person, during the investigation, is found to lack reasons for continuing the arrest or if the court acquits the person or issues a judgment of unnecessary prosecution, the period of detention and supervision endured by the person will be compensated by the government proportionally to each day, with a specific amount determined by the competent court, for a person who is unemployed.

According to Article 589 of the Afghan Penal Code approved in 1396 (2017), the following is stated: (1) If the police, national security personnel, or local authorities restrict personal freedom for more than one day beyond the legal deadline under surveillance, detention, or seizure, they shall be sentenced to short-term imprisonment or a fine of three thousand Afghanis per day.

Article 54 expresses support for the right to form a family, stating that the family is the fundamental unit of society and is protected by the government. The government takes necessary measures to ensure the physical and mental health of the family, especially children and mothers, to educate children, and to eliminate customs contrary to the provisions of the holy religion of Islam. The right to marriage and the formation of a family is respected in Afghan laws, and forced marriage is generally rejected. Regarding forced marriage and the related punishment, Article 26 of the Law on the Elimination of Violence Against Women states the following: If a person marries a woman who has reached the legal age of marriage without her consent or engagement, they shall be sentenced to medium-term imprisonment, not less than two years, and the engagement and marriage shall be annulled in accordance with the provisions of the law. Furthermore, Article 24 of this law states the following regarding the buying and selling of women or girls: A person who sells, purchases, or mediates in the sale of a woman for the purpose of marriage or any other reason shall be sentenced to long-term imprisonment, not exceeding ten years.

Article 27 of this law addresses the prevention of the right to marriage, stating that if a person obstructs a woman from getting married or deprives her of the right to choose a spouse, they shall be sentenced to short-term imprisonment. Regarding marriage before reaching the legal age, this law stipulates the following in Article 71: If a person marries a woman who has not reached the legal age of marriage and violates the provisions of Article 71 of the Civil Code without observing it, they shall be sentenced to medium-term imprisonment, not less than two years, and the marriage shall be annulled upon the woman's request in accordance with the provisions of the law.

Article 40 of the Afghan Constitution supports the right to property ownership, stating the following: Property is inviolable. No person shall be prevented from acquiring or owning property except within the limits of the law. No person's property shall be confiscated without a lawful and competent court decision. The deprivation of personal property is only permissible by law for the purpose of securing public interests, in exchange for prior and fair compensation. The inspection and public announcement of a person's assets shall only be carried out by a court order.

In terms of guaranteeing the enforcement resulting from the violation of property rights, Article 34 of the Law on the Elimination of Violence Against Women states the following: A person who seizes or prevents the personal property of a woman shall be sentenced to short-term imprisonment, not exceeding three months, and the property shall be handed over to the woman.

Article 43 of the Afghan Constitution supports the right to education, stating the following: Education is the right of all Afghan citizens, and it shall be provided free of charge by the government in state educational institutions up to the university level. The government is obliged to ensure the balanced expansion of education throughout Afghanistan, provide mandatory secondary education, implement effective programs, and provide the teaching of mother tongues in areas where they are spoken.

The Afghan Penal Code, in Article 609, considers monetary fines and imprisonment for offenders who violate the right to education and upbringing. It states that a person who commits any of the following acts shall be sentenced to short-term imprisonment or fined from thirty thousand to sixty thousand Afghanis. The acts include:

1. Depriving a child of the right to education, technical education, and vocational training.
2. Depriving a child of access to healthcare services.

Furthermore, Article 35 of the Law on the Elimination of Violence Against Women also addresses this issue, stating that a person who prevents a woman from exercising her right to education, studying, accessing healthcare services, or enjoying other rights stipulated in the laws shall be sentenced to short-term imprisonment, not exceeding six months, depending on the circumstances.

Article 52 of the Afghan Constitution supports the right to health, stating that the government provides means for the protection, treatment, and free healthcare services to all citizens in accordance with the provisions of the law. The government establishes and supports private medical services and health centers in accordance with the provisions of the law. The government takes necessary measures to strengthen physical education, promote national and local sports, and encourage their development.

To summarize, the Afghan Penal Code in Article 609 considers monetary fines and imprisonment for violators of the right to education and upbringing. It includes punishments for acts such as depriving a child of education and access to healthcare services.

6. Methods of Compensation in Afghan Law

In Afghan domestic laws, there are various methods to ensure the principle of compensation. According to the Afghan Civil Code, there are four methods for compensating the damages caused to the affected party by the tortfeasor. These methods include direct compensation, substitute compensation, determination of a method by the judge, and determination of the compensation method by the consent of the parties.

6-1- Direct Compensation

It can be inferred from Articles 765 and 767 of the Civil Code that direct compensation is considered as one of the methods of compensation based on tangible restitution. Article 765 explicitly states that the wrongdoer is obliged to return what has been wrongfully taken.

In this regard, the new Afghan Penal Code initially considers direct compensation as a method of compensation and then considers substitute compensation. Article 14 states that a person who is punished according to this law, if they have obtained financial gain through a crime, shall be obligated to return the exact property, and if the property is not available, it shall be substituted with an equivalent or its value and returned to the owner. In addition to the prescribed legal punishment, a person who causes harm due to the commission of a crime shall be liable for compensating both material and moral damages. This provision also applies to cases where the law does not explicitly prescribe compensation.

6-2- Substitute Compensation

Although direct compensation can be derived from the legislator's statements regarding restitution, in other cases, substitute compensation seems to be preferred, as is the case with the provisions of Articles 766 and 761 of the Civil Code concerning loss. Article 766 stipulates that if the wrongfully acquired property by the wrongdoer is lost or destroyed in whole or in part due to depreciation or intentionally or unintentionally, the wrongdoer shall be responsible for compensating the lost property.

6-3- Determination of Compensation Method by the Judge

Another method of compensation in Afghan law is the determination of damages by the judge. The Afghan Civil Code explicitly states that the method of compensation is determined by the court, taking into account the circumstances. (Afghan Civil Code, Article 781) In cases where there is no method prescribed by law or agreed upon by the parties for determining compensation in civil liability, the judge is granted the authority to determine the appropriate and fair method of compensation considering the circumstances and conditions of the parties.

6-4- Determining the Method of Compensation by the Parties' Agreement

In the civil law of Afghanistan, there is no specific provision regarding compensation for damages caused by objects that are not covered by such an agreement. However, considering the principle of individuals' sovereignty over their property, the parties can agree on the method of compensation after the occurrence of damage. In such cases, compensation for damages is not problematic based on the parties' agreement, as in other cases of civil liability where such agreements have been accepted even before the occurrence of damage by the legislator. The Afghan Civil Law, in the second paragraph of Article 791, states the following: "The employer shall be deemed responsible for the damage incurred by an unauthorized act by the person under his employment during the performance of his duties or due to it, unless otherwise provided by the law or any other agreement." According to this provision, the primary principle is that the employer is responsible for the unauthorized act. However, in addition, the worker can include another condition in the employment contract to exempt himself from liability for any damage or loss and transfer all responsibility to the employer.

Conclusion

The research findings indicate that in Afghan domestic law and international law, generally, any violation of a commitment leads to an obligation to compensate for damages. The right to compensation for human rights violations has been recognized in international documents and judicial procedures. It is stated in Article 8 of the Universal Declaration of Human Rights. Similarly, Article 2(3) of the International Covenant on Civil and Political Rights of 1966 refers to the right to compensation for the victims. Article 7 of the Declaration on the Elimination of All Forms of Racial Discrimination also refers to the right to compensation for the victims. Article 10 of the American Convention on Human Rights refers to the right of victims to receive compensation in the event of a violation of the rights set forth in this Convention. Article 21(2) of the African Charter on Human Rights also specifies the right to adequate compensation. Article 5 of the European Convention on Human Rights, Article 1 of the Convention against Torture, Article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, and Article 14 of the Convention against Torture all refer to the right to receive compensation for the victims. Although Article 14 of the Convention against Torture mentions the right to compensation, it refers to the right to receive reparation instead of compensation. In addition to human rights treaties, the right to compensation for victims is also addressed in friendly human rights treaties. Article 68 of the Geneva Convention of 1949 regarding the treatment of prisoners of war contains specific provisions for the payment of compensation to those prisoners of war whose rights have been violated under these conventions. Damage can be compensated through various methods, including actual restitution and substitutionary methods. In international law and based on the International Law Commission's Articles on State Responsibility, methods of compensation include restitution, compensation payment, and satisfaction of the injured state or states.

Compensation for damages has been accepted in Afghan laws. The basis for this right is Article 51 of the Afghan Constitution, which emphasizes the right to compensation for damages. Furthermore, Article 6 of the Constitution refers to the preservation of human dignity, respect for human rights, and the creation of a prosperous society as the government's duties, and Article 7 emphasizes compliance with the UN Charter, international treaties and agreements to which Afghanistan has acceded, and the Universal Declaration of Human Rights. The right to life, the right to personal security, the right to work, the right to marriage, the right to freedom and security, the right to be free from torture, the right to property, and other similar rights have been accepted in Afghan laws. In addition to accepting compensation, sanctions for violators, such as execution, imprisonment, and monetary

penalties, are also provided. The methods of compensation for damages in Afghan law, according to Articles 765, 766, 781, and 791 of the Afghan Civil Law of 1355 (1976), and Article 14 of the Penal Code of 1396 (2017), include actual restitution, substitutionary compensation, determination of a method by the judge, and determination of a method by the parties' agreement.

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