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A Comparative Approach to Civil Liability Arising from Damages Incurred during the Hajj Rituals, with Emphasis on the Sanctuary Contract

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Abstract

Every year, hundreds of thousands of Muslims from various countries travel legally and with visas to the Kingdom of Saudi Arabia to perform the Hajj and Umrah rituals. The conduct of these great spiritual ceremonies is under the supervision and management of the Saudi government, and no other country intervenes in their organization. Unfortunately, every few years, we witness bitter incidents during the performance of rituals around the Kaaba, Mina, or the Jamarat, resulting in the death or serious injury of some pilgrims. Now, if individuals who travel to Saudi Arabia with the permission of the Saudi government to perform the rituals incur personal or property damage during or on the occasion of these acts, who is responsible for compensating for these damages? Although the Saudi government refrains from accepting responsibility for these damages, since the management of these ceremonies is solely the responsibility of the Saudi government and the entry of pilgrims into Saudi Arabia is with the permission of the government of that country, according to the theory of reliance, the responsibility for compensating for damages falls on the organizer and responsible party for holding these ceremonies, namely the Saudi government. Furthermore, since pilgrims from other countries are foreign nationals who have entered that country with the permission of the Saudi government, according to international laws and based on the principle of sanctuary, Saudi Arabia is obligated to ensure their safety, both in terms of life and property, and any shortfall in this matter will result in the responsibility of the Saudi government.

Keywords: Civil Liability, Incidents, Rituals, Hajj, Umrah.

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Introduction

The Saudi Arabian government, as the organizer of the grand Hajj and Umrah ceremonies, issues visas for hundreds of thousands of Muslims from different countries each year, based on a specific quota for each country. It takes pride in hosting pilgrims at the House of God and the holy shrine of the Prophet Muhammad (peace be upon him). The conduct of these ceremonies over several days and in the form of a multi-national assembly requires precise and strong management, and any disruption or shortfall will result in painful and irreparable damages.

As the host of these great religious ceremonies, the Saudi government is obligated to provide the necessary conditions for the proper and risk-free conduct of the Hajj rituals with a multi-national population and diverse cultures. It should preemptively plan and provide welfare services in a manner that allows pilgrims to focus solely on performing their rituals without any concerns. In other words, the Saudi government, which determines the participation capacity of these religious ceremonies and announces the quotas for countries accordingly, must provide the necessary infrastructure commensurate with the invited population. Therefore, given the hosting role of the Saudi government, if citizens of other countries incur personal or property damages during these ceremonies, the question arises as to which entity or government is responsible for compensating for the incurred damages? Since the relations between pilgrims and the Saudi government are delineated in both international and domestic law, this paper simultaneously seeks to incorporate international legal perspectives, as the relationship between pilgrims as nationals of a foreign state and the Saudi government is based on intergovernmental rights. This issue becomes particularly important during the compensation for damages and the application of "diplomatic protection" (a state's assertion of claims on behalf of its nationals) (Roberts, 2023, 292).

Regarding this matter, articles titled "International Law and Saudi Arabia's Obligations and Responsibilities towards Iranian Hajj Pilgrims" and "Investigating Saudi Arabia's Legal Responsibility for the Mina Incident" have been written. However, in this article, we evaluate the responsibility of the Saudi government from a new perspective (such as the sanctuary principle, etc.), in addition to examining the theory of reliance and its impact on establishing the civil liability of the Saudi government, as well as the scope of Saudi Arabia's responsibility. Furthermore, another article titled "The Mecca Tragedy from the Perspective of Civil Liability Law" examines this issue from the perspective of domestic laws in Saudi Arabia. In this paper, we will address the issue from another perspective – the hosting role of the Saudi government, its responsibility towards foreign nationals, its role as the organizer of the Hajj ceremonies, and

the sanctuary principle.

1. Foundations of Civil Liability Arising from Incurred Damages

The foundations of civil liability of the Saudi Arabian government regarding the issue under investigation can be examined from various perspectives. In this study, the authors will address the issue from the perspective that the Saudi government issues visas for foreign nationals to enter its country and is also responsible for the organization of the grand Hajj ceremonies.

1-1. Host Government's Responsibility towards Foreign Nationals

1-1-1. Based on International Laws and Principles

Governments are responsible for individuals residing within their territorial jurisdiction, whether these individuals are nationals of the said state or foreign nationals (subjects of other states) or stateless persons, for short or long periods (Seljouki, 2006, p. 161). Although the duties of governments towards their own nationals are greater than towards other individuals (Osoianu, 2019, pp. 119-120), according to the principles of international law, governments are generally responsible for foreign nationals and stateless individuals (Osoianu, 2019, pp. 119-120). Even though governments are not generally obligated to accept foreign nationals into their country, once a foreign person is accepted onto the territory of a state, basic rights must be afforded to them (Nasiri, 2008, p. 89). By identifying minimum rights for foreigners within their territory, governments confer legal personality upon them within their jurisdiction. This act is not only conducive to domestic order but also compatible with the requirements of international order, as stated in Article 6 of the Universal Declaration of Human Rights, which asserts: "Everyone has the right to recognition everywhere as a person before the law" (Shabrang, 2003, p. 185). Furthermore, the International Institute of International Law, established in Geneva in 1874, declares: "Foreigners, independently and without any treaty obligation in their favor, and even without the existence of a condition of reciprocity, have rights and privileges that states are obligated to respect" (Nasiri, 2008, p. 91).

International law, regarding the protection of foreign nationals, applies various criteria. The most important of these criteria include "national treatment," "minimum international standards," "minimum reciprocal conduct," and "complete goodwill conduct." According to the criterion of "national treatment," countries are obliged to treat foreign nationals like their own nationals (Bradley, 2020, p. 201). According to the theory of "minimum international standards," the host country is obliged to treat foreign nationals in a manner befitting a civilized nation (Bradley, 2020, p. 201). According to the criterion of "minimum reciprocal conduct," the host country must exhibit at least

the same conduct towards nationals of other countries that those countries exhibit towards its own nationals. According to the criterion of "complete goodwill conduct," the host country must treat nationals of another country in a manner that is as favorable as possible (Baldwin, 2016, p. 97). Among these criteria, some legal scholars consider the perspective of "minimum international standards" as better guaranteeing the rights of foreigners in a country, and they believe that international law is more influenced by this criterion (Ziaei Bigdeli, 2004, p. 252). This theory, known in international law as "observance of minimum international standards," has been established in areas involving foreigners and has become a customary principle of international law (Chimni, 2018, p. 11). In addition to customary international law, there are also written rules in support of foreign nationals, including the Universal Declaration of Human Rights, bilateral or multilateral friendship agreements, the International Covenant on Civil and Political Rights, and so on.

Although the extent of rights and obligations of foreign nationals in the host country varies and is subject to strengths and weaknesses, all these criteria agree on foreign nationals' entitlement to minimum customary human rights. One of these rights is fundamental rights, namely personal freedoms and personal inviolability. These rights, enshrined in the fundamental rights of countries, are recognized for humans as humans, regardless of whether they are nationals or foreigners. It is customary for foreigners to enjoy, in the realm of public rights, the same human rights as nationals of that country, and these minimum rights are considered for foreigners. One of the most fundamental rights is the protection of the life and property of foreigners, which the host government is obliged to strive for. Any failure by the host government to provide necessary protection for the life and property of foreign nationals will result in its international responsibility (Danesh Pezhuh, 2007, p. 272).

Furthermore, despite the numerous convergences and divergences in the relations between Iran and Saudi Arabia in recent decades in the realm of politics and, consequently, in the field of law (Nakhavali, 2022, p. 5), international law has sought to provide a tool for the convergence of these two. The Friendship Treaty concluded between Iran and the Hijaz and Najd states in 1929, the Security Cooperation Agreement between Iran and Saudi Arabia enacted in 2001, and the Economic and Cultural Cooperation Agreement between Iran and Saudi Arabia enacted in 1998 are part of the legal mechanisms for the improvement and enhancement of Iran-Saudi Arabia relations and interactions. Based on these treaties, the Saudi Arabian government is obligated to ensure the life and property security of Iranian nationals. In the event of the Saudi Arabian government's deviation from the aforementioned duties and obligations, it will be liable for the incurred damages (Hashemi, 2016, p. 60).

1-1-2. According to the principle of protection

1-1-2-1. Semantics and documentation of the principle of protection

One of the most important jurisprudential rules in the field of international jurisprudence is the principle of protection. This principle entails a contract and covenant concluded between a Muslim individual (Imam, deputy of the Imam, or any Muslim) and a non-Muslim combatant, whereby the non-Muslim combatant grants permission to enter the Dar al-Islam (the Abode of Islam). This contract can be realized upon the prior request of the non-Muslim combatant or even without his request and in the form of initial commitment by a Muslim individual. (Zanjani, 1421, 3, 258) Islamic jurisprudents have considered the permission to conclude protection contracts as a matter of consensus among all Islamic schools of thought (Helli, 1412, 14, 121), and they have cited verses and narrations, including the noble verse 6 of Surah At-Tawbah, the sermon of the Prophet (PBUH) in Masjid Khif, the narration of Sukuni, the narration of Mas'adah bin Sadqah, and also the narration of Muhammad bin Hakam (all three narrations) from Imam Sadiq (AS), as evidence for its legitimacy. (Ibn Baraj, 1406, 1, 305; Montazeri Najafabadi, 1409, 2, 726)

According to Islamic standards, a foreigner who enters an Islamic country based on a protection contract, whether for short-term or long-term residency, enjoys certain general and specific rights, and the host government is obliged to enforce them, and no one has the right to violate his recognized rights (Amid Zanjani, 1421, 3, 287). The minimum immunity and personal freedom resulting from a protection contract involve safeguarding the life and honor of the foreign subject, which, in addition to non-aggression by the host government, also requires the host government to protect it against aggression by its own citizens (Tusi, 1387, 2, 59; Helli, 1412, 15, 158; Abi Ya'la, 1421, 161). Furthermore, according to the protection contract, the host government is obligated and responsible for protecting the financial rights of the foreign subject, and the foreign individual, by merely receiving protection, will also have financial protection - even in the absence of explicit mention of financial immunity in the protection contract - because financial loss harms the individual, and the essence of the protection contract is to prevent harm to the individual (Ameli, 1413, 3, 32).

1-1-2-2. The Significance of the Principle of Protection

Considering that foreign nationals enter the Kingdom of Saudi Arabia with the permission and visa issued by the Saudi government, a relationship can be established between the Kingdom of Saudi Arabia and the citizens of other states. This relationship can be aligned with the principle of protection in

Islamic jurisprudence based on precedence and interpreted accordingly. Although the protection contract is concluded between a non-Muslim and a Muslim (Allameh Helli, 1414, 9, 85), it can be argued that according to Islamic standards, when compared to a pact concluded between a Muslim and a non-Muslim, the Muslim is obligated to fulfill this commitment, and he does not have the right to aggress against his property, life, honor, or other recognized rights (Amid Zanjani, 1421, 3, 287). In a similar vein, when such commitment and pact are established between an Islamic state and the Muslim citizens of other states, that state is obliged to uphold its duties and commitments towards them. The granting of entry permits and visas by the Kingdom of Saudi Arabia to foreign nationals for entry into its sovereign territory, which creates rights and obligations for both parties, is analogous to a protection contract concluded between two parties, and both parties are obliged to adhere to its provisions.

As the issuance of entry permits is a product of modern international legal constructs, this discourse inherently addresses the framework of international law. In the realm of international law, the issuance of entry permits places the state and the foreigner in a relationship of rights and obligations, with the state wielding predominant authority. Particularly in the field of labor law (which exposes foreigners to greater risks to their rights), the state bears a greater responsibility for safeguarding the rights of foreigners (Bloom, 2015, 5). Consequently, there is a recognized correlation between state responsibility and visa issuance; however, this responsibility places obligations on foreigners themselves. In a protection contract, a foreigner who legally enters an Islamic country for short-term or long-term residency enjoys certain general and specific rights, and the host government is obliged to enforce them. Here, we specifically discuss the rights of personal and financial immunity.

The minimum immunity and personal freedom that a foreigner acquires through a protection contract and that the host government is obligated to uphold involve safeguarding the life and honor of the foreign subject, which, in addition to non-aggression by the host government, also requires the host government to protect it against aggression by its own citizens (Tusi, 1387, 2, 59; Helli, 1412, 15, 158; Abi Ya'la, 1421, 161). Moreover, it is stated that the host government is obliged to support the foreign subject against the invasion of foreign governments - even the government of the individual's origin. This protection of life is to such an extent that if the host government is requested to repatriate the foreign subject by their government, it does not have the right to repatriate them. This level of support for foreigners, which Islam has deemed obligatory for Islamic states, not only existed in the past but also persists in contemporary times. Even in the event of war between the host government and the foreign subject's country of origin, the host government does not have the

right to capture or expel the foreign subject, and all foreign rights, including their personal immunity, remain fully preserved, unless they collaborate with the enemy in some way or there are serious indications of their betrayal (Danesh Pazhouh, 1386, 311).

Another fundamental principle of Islamic legal system is respecting the property of foreign subjects. According to the protection contract, the host government is obligated to safeguard the financial rights of foreign subjects. The principle of the necessity of host government's protection regarding the financial rights of foreign subjects is so obvious that it is not even necessary to mention it in the protection contract, and by receiving protection regarding life, the foreign subject will also have financial protection, even if not explicitly mentioned in the protection contract, because financial loss harms the individual, and the essence of the protection contract is to prevent harm to the individual (Mahdi Helli, 1408, 1, 286). This commitment is so binding that even after the cessation of personal immunity of the foreign subject, their financial immunity persists because financial immunity, despite its dependence on personal immunity, does not require the continuation of personal immunity for its survival (Najafi, 1404, 21, 103). According to the statements of jurists, there is no difference between whether the foreign subject is a combatant or non-combatant; only according to the Hanafi perspective, a protection contract with a person engaged in war only entails their personal immunity and does not include their spouse, minor children, and property because a combatant, by entering into a protection contract, seeks only their own salvation, unlike a person who, by entering into a protection contract, intends to enter the Islamic country for residence and trade, where the protection contract includes the combatant themselves, as well as their spouse, minor children, and property (Al-Zuhayli, 1419, 256).

Respect for property extends to the extent that it even includes property that is not permissible for honorable Muslims, such as alcoholic beverages, pork, etc., and if any harm is inflicted on this property, compensation must be paid (Danesh Pazhouh, 1386, 325). Furthermore, in the event of war between the country of origin of the foreign subject and the host government, the financial immunity of the foreign subject remains intact, and their property and ownership are respected, unless they use their property against the Islamic state or join the belligerent side and become a prisoner of war, in which case their property, along with the spoils of war, will be taken as booty by the Muslims (Al-Zuhayli, 1419, 248; Najafi, 1404, 21, 105).

Since in the early days of Islam, borders were delineated based on Dar al-Islam and Dar al-Kufr, prevention of entry into the Islamic government's territory and permission to enter were only applicable to presumed infidels, whereas all Muslims were citizens of the Islamic state and had the right to travel

throughout the entire geographical territory of Dar al-Islam. Therefore, if a non-Muslim was allowed to enter the Islamic country according to a protection contract, despite being a non-Muslim, the Islamic state was bound by this contract and was required to safeguard and support their life and property within the territory of the Islamic government. In case of entry-related damages, the government was obliged to compensate for the damages. This commitment was so obligatory that even during war with the country of origin of the individual, this protection and support remained intact. When a protection contract holds such credibility according to Islamic teachings, undoubtedly, if such a contract is concluded between an Islamic state and a Muslim foreign subject, it will be equally valid and binding as the aforementioned contract. Indeed, in that era, due to the unified nature of Islamic governance, such contracts were not applicable. However, today, when Islamic countries have independent governance territories and their citizens are not permitted to travel freely within each other's territories, such a contract is conceivable. Therefore, if a country grants entry permission to a Muslim subject of another country, undoubtedly, similar to a protection contract, and even more so according to precedence, the host government is obliged to safeguard and support their life and property, and if any harm or damage is inflicted on them, it must be compensated.

1-2. The Responsibility of the Saudi Government as the Organizer of Hajj Ceremonies

Given that Saudi officials pride themselves on being the custodians of the two Holy Mosques and the spiritual pilgrimage of Hajj is annually managed by the Saudi government, the responsibility of the Saudi government can also be examined from this perspective. Regarding the foundations of civil liability, various viewpoints are presented, which we will briefly discuss.

A: The Fault Theory

The first proposed basis for justifying government civil liability is the fault theory. According to this view, the reason for an individual's liability to compensate for damages inflicted on another is the existence of a causal relationship between fault and harm. That is, someone is liable if harm arises as a result of their fault. (Rahpeyk, 2011, p. 37) Some argue that the most obvious and rational basis for liability is the fault of the actor causing harm, "because when searching for the person responsible for the damaging incident, the first individual that comes to mind is the one whose fault resulted in the harm." (Katouzian, 1990, p. 102) In Iranian law, the first part of Article 11 of the Civil Liability Law refers to this matter.

As the complexity of workshop structures and the occurrence of incidents where it was impossible to prove the fault of anyone increased gradually,

proving the fault of the liable party became difficult or impossible, (Rahpeyk, 2011, p. 38) jurists employed solutions to protect the injured, such as "expanding contractual liabilities," "using fault presumptions," and "applying a concept of a certain type of fault," and gradually, this theory lost its ethical appeal. (Katouzian, 1990, p. 104) Obviously, according to this view, to receive compensation, the fault of the Saudi government must be proven by the injured party.

B: The Risk Theory

The risk theory states that if someone creates an environment for personal benefit that potentially poses risks to others, in case of harm, they are responsible for compensation. (Rahpeyk, 2011, p. 39) According to this theory, fault is not a component of establishing civil liability, and in the event of the commission of a damaging act, the existence of a causal relationship between harm and the damaging act is sufficient to compensate for the damage. Therefore, according to this theory, the government is responsible for damages resulting from administrative activities to individuals because government activities create a risky environment for individuals, and anyone who benefits from something must compensate for the harms caused to individuals. According to this theory, the French Council of State granted compensation to a worker of a government factory who was injured during work - without the need to prove the fault of the employer (the government). (Abolhamd, 1975, 2, p. 427) Although Hajj is a spiritual ritual, the presence of Muslims with its vast congregation brings significant economic benefits to the Saudi government. Therefore, alongside benefiting from these advantages, the Saudi government must also be accountable for the damages resulting from these ceremonies.

However, despite some shortcomings of the risk theory, it could not completely overcome the fault theory and become the sole field of responsibility, "and it can be said that justice is the same; because none of these two theories have the ability to implement justice in society absolutely; and the flaws in each of them were due to the absolutism of the proponents of these theories rather than their principles." (Taheri, 1999, 2, p. 290)

C: Mixed Theories

Due to the inability of either the fault or risk theories alone to fully achieve justice, some legal scholars have advocated for a mixed theory, which is a combination of the two theories of risk and fault. In this manner, they have considered fault as the basis of civil liability in some cases and risk in others; however, these individuals have offered different opinions regarding the scope of their application and the role of fault and risk in establishing liability. For instance, "some believe that fundamentally civil liability is based on fault and, subsidiary and ancillary, in cases where justice and fairness dictate, liability will

be based on risk." (Taheri, 1999, 2, p. 289) This group aims to preserve the ethical basis of fault - which is based on ethics - while simultaneously justifying various cases of liability without fault existing in the applicable law by accepting the risk theory as a secondary basis. However, the problem with this theory is that justice is an ambiguous and undefined concept and cannot be the basis of a rational and stable legal system. (Safaei, 2010, p. 70)

According to some other legal scholars, both fault and risk are equally the basis of liability, and neither is superior to the other. "However, this group disagrees on determining the scope of the fault and risk theory - what constitutes fault and what constitutes risk. Some say liability arising from one's own act is based on fault, but liability arising from the act of others and liability arising from ownership and control over objects are based on risk." (Taheri, 1999, 2, p. 289) This viewpoint also faces some challenges, including the fact that firstly, distinguishing and separating the act of a person from the act of objects is not easy. Secondly, fundamentally the term "act of objects" is incorrect; because objects are tools in the hands of humans and the harm always arises from the action of humans. (Safaei, Rahimi, 2010, p. 71)

D: The Theory of Guarantee

This theory, unlike the fault and risk theories which only focus on the perpetrator of the damage, directs its attention to the situation of the injured party. Supporters of this theory argue that all members of society have the right to live and be safe, and this right is also guaranteed by laws, so everyone is obligated to respect the rights of others and compensate for any losses incurred.

However, it must be said that just as the law identifies the right to security for the injured, it also recognizes the right of the actor to engage in activity; and in some cases, although the actor acts in accordance with their right, they cause harm and damage to others. The question then arises as to why the right to security of the injured party should always take precedence over the right to engage in activity of the actor causing harm? In resolving the conflict between the "right to engage in activity" and the "right to security," it is said: security rights are of two types:

A) Rights to Attract Benefits - such as individuals' rights to compete in trade by offering superior and cheaper goods or advertising the advantages of their goods - in this category of rights, individuals are allowed to continue their activities, even though they may cause harm to others, and the "right to engage in activity" prevails over the "right to security." Liability only arises when a person fails to properly exercise their right and commits a fault. (Taheri, 1999, 2, p. 292)

B) Vital and Property Rights such as "right to life" and "physical and financial security," which their execution and recognition do not entail any harm

to others, and in the execution of any right, harm cannot be inflicted upon them. In such cases, the "right to security" supersedes the "right to engage in activity." It is as if allowing driving and recognizing this activity does not mean allowing someone to kill another or inflict financial harm, and the violator of the right is responsible for compensating for the resulting damage. (Katouzian, 1990, p. 130) This viewpoint also has its shortcomings, and in terms of the theoretical distinction mentioned, it lacks a solid basis. In other words, what is the fundamental difference and distinction between the life and property of a person, and their honor, dignity, and economic interests, which are protected, but their honor, dignity, and economic interests are deprived of this protection! (Safaei, Rahimi, 2010, p. 74)

H: Theory of Reliance Capability

The term "reliance" denotes "conclusiveness," "excusability," and "bindingness with authority" (Akhund Khorasani, 1409, 280), as well as being understood as "completion of disclosure" (Khoee, 1417, 163). Shi'a jurists believe that reliance is a jurisprudential issue and pertains to conclusive reliance (Mostafavi, Foreign Lessons, 1392). According to the statements of jurists, the intended meaning of "reliance capability" as the basis of civil liability is the capability of reliance on the creator of the damage, meaning that whenever damage occurs, compensation is incumbent upon the person who is conventionally attributed to the damage (Mobin, 1391, 98; Sadeghi Bahabadi, 1394, 88).

Regarding the basis of direct and indirect liability, there are expressions in the jurisprudential literature that can be said to reflect the perspective of reliance capability. For instance, some jurists have stated: "In the case of reliance on the cause for the act of harm, the cause is liable, and in the case of reliance on the cause for the act of harm, the cause is liable." (Naeini, 1373, 1, 295). It is also stated that if reliance on the act is conventionally attributed to the cause before it is attributed to the indirect cause, the cause is liable. (Fayaz, n.d., 3, 402). Additionally, according to some jurists, the general criterion for prioritizing the cause over the indirect cause in liability is the reliance of the act on the cause. (Ghomi, 1413, 2, 399). It is also stated that the criterion for liability lies in the validity of conventional reliance, and the reason for prioritizing the cause over the indirect cause is the weakness of reliance on the indirect cause and the strength of reliance on the cause. Therefore, the issue of liability revolves around the scope of reliance and the strength of reliance. (Najafi, 1359, 2, q1, 141). Some jurists have also stated that if causation is such that the act is conclusively attributed to the cause, there is no problem in holding the cause liable. (Khoee, n.d., 4, 360).

Khoei believes that if someone other than the sleeper, while asleep, inadvertently causes harm to another, neither the sleeper nor his guardian, nor

the public treasury, is liable. He explains the lack of necessity for compensation on the sleeper's part by stating: to consider the sleeper and his guardian liable for murder, it must be established that the murder is conclusively attributable to the sleeper—intentionally, negligently, or accidentally—and merely being the cause of the murder, without the actual attribution of murder to him, does not entail liability. Even in cases of pure accident, murder cannot be conclusively attributed to the sleeper because, even in an accident, the individual must have intended the action despite lacking intent for the consequences, but in this case, the sleeping person had no intention at all. Thus, the occurrence of accidental murder is ruled out (Khoei, Foundations of Takmili al-Manhaj, 42, 274).

Imam Khomeini in the matter of carrying a load by a porter says: If someone carrying firewood and a load leans them against a wall without the permission of the wall's owner to rest and relieve fatigue, and if the wall collapses due to leaning and placing the firewood on it, resulting in damage to property or life, the person carrying the firewood is liable because if he had not leaned against the wall, it would not have collapsed. Therefore, his leaning against the wall causes the collapse of the wall, and thus the person is liable for the collapse and for the damages resulting from it. He further states: Likewise, if the firewood falls from the wall and causes damage upon falling, the aforementioned person is liable for the damages, even if the firewood does not fall at the moment of placing it on the wall but falls after some time, as long as the damage is caused by the person's action, he will be liable (Khomeini, n.d., 2, 192).

Moreover, the narrations that recognize the impermissibility of trespassing, aggression, or abandonment as factors for liability do not contradict this principle; because aggression or accompanying excessive action is, in fact, a factor for the validity of reliance. In other words, for custom to attribute an incident to a specific actor or actors, various elements— including aggression, trespassing, and abandonment—are considered. Also, since negligence or the lack of authorization for an action leads to conventional reliance damage, the cause of liability in the statements of jurists has sometimes been considered to be the fault of the perpetrator and sometimes the absence of authorization for the action (Alidoust, Bai, 1391, 70).

Therefore, considering the aggregate opinions of jurists—despite some opinions regarding the criterion of the liability of the indirect cause and the cause (Ameli, 1413, 15, 326; Behrani, 1405, 15, 261; Haeri, 1418, 16, 374) and the issues arising from other bases of civil liability, it can be said that the theory of "reliance capability" is more robust. The purpose of reliance is also the causal relationship between the harmful act and the incurred damage in a way that the damage incurred is conventionally attributed to the party.

Based on the above discussions, since the responsibility for organizing the

Hajj rituals lies with the government of Saudi Arabia, which considers itself the Custodian of the Two Holy Mosques, if during the performance of the Hajj rituals and as a result of this grand ceremony, any life or property damages occur to the pilgrims of the Kaaba, there exists a conventional causal relationship between the harmful act and the incurred damage. Consequently, the damage and loss incurred are conventionally attributed to the Saudi government, and it is obliged to compensate for the damages incurred. Delegating some responsibilities to private sectors does not relieve the Saudi government of its responsibility because, according to Article 7 of the International Responsibility Draft of States for Internationally Wrongful Acts, the actions of subsidiary components of a single entity that are not part of the official entities of the state, but have the authority to act according to domestic laws, are recognized as state acts subject to their own laws. Also, Article 8 of the aforementioned draft has laid down two conditions for recognizing the state as liable for the actions of private individuals: first, it must be evident that these individuals or groups have acted on behalf of the state, and second, these individuals or groups have exercised some governmental powers in the absence of official authorities and under conditions that justify their actions. Therefore, since the responsibility for organizing the Hajj rituals lies with the Saudi government as the Custodian of the Two Holy Mosques, if some of these actions are delegated to private sectors, their actions will be attributed to the Saudi government according to the aforementioned provisions, and in the event of damage, the Saudi government will be responsible.

2. Scope of Civil Liability of the Saudi Government

After discussing the principle of the Saudi government's liability for damages, both bodily and financial, inflicted on the pilgrims of the Holy Kaaba during the rituals, and proving it, the issue arises as to the extent and domain of the Saudi government's liability and what damages and losses it is obligated to compensate. The conceivable damages and losses resulting from potential events during the Hajj and Umrah rituals can vary. Some damages are bodily or financial losses directly inflicted on the individual. For instance, a person's body part may become impaired, or some of their property may be destroyed in the incident. The ruling regarding these damages is clear, and undoubtedly, the Saudi government must compensate for these losses. However, there are other categories of damages that are somewhat more complex than the first category. For example, as a result of physical injury to an individual, the person may suffer psychological trauma, or their family and relatives may experience emotional distress. Additionally, the injured individual, especially if female, may lose the opportunity for marriage. Furthermore, the treatment of injuries

incurred by the individual may require very high medical expenses, or the injured person may lose their ability to work and become unemployed due to the incident. Considering the aforementioned explanations, this category of damages includes spiritual, medical treatment, and unemployment damages, which we will further examine in detail.

2-1. Medical Treatment Expenses

If, as a result of a documented incident during the Hajj and Umrah rituals that can be attributed to the Saudi government, bodily harm is inflicted on an individual or individuals, sometimes the blood money (diyah) received covers all medical treatment expenses, but sometimes the cost of treatment exceeds the blood money received. The question arises as to who is responsible for paying these expenses? In international law, states are obligated to ensure "full reparation" according to the principle of "full reparation for harm suffered" and also to base their domestic laws on this principle (Mayer, 2017: 188). Since blood money encompasses all damages and is not merely a punitive institution, and also considering the application of the rules of diyah, if the amount of blood money covers the medical treatment expenses, no additional amount can be claimed for treatment costs beyond receiving the blood money. However, if the blood money does not cover the exorbitant medical treatment expenses to the extent that, regardless of how the blood money is calculated, it does not cover the medical treatment expenses of the injured person, the question arises whether the excess expenses beyond the blood money are claimable or not? Perhaps someone may argue that the application of the rules of diyah, based on general principles such as causation and no harm, is applicable. In other words, if an amount beyond the blood money is claimable, it would have been mentioned at least once. In response to this question, it must be said for several reasons, reliance on the application of the rules of diyah is not possible. Firstly, religious leaders always spoke in accordance with the current circumstances, and their response was proportionate to the question asked of them. It was not such that Imam (AS) would consider a hypothetical situation that occurs a thousand years later in response to a question about severing a hand, and fundamentally, such a response is far from conventional method and might even provoke astonishment and ridicule from the listener. Secondly, the cost of treatment conventionally was significantly lower at the time of the revelation of verses and issuance of narrations related to blood money compared to current medical treatment costs. In other words, it was never imagined at that time that the cost of treatment for an individual would exceed the amount of blood money, so if Imam (AS) said, "The blood money for severing a hand is half of the complete blood money unless 50 camels cover the expenses of treatment resulting from the injury," such a statement might cause astonishment and

ridicule among the audience. Therefore, the rules of diyah are not applicable considering the circumstances and specific conditions of the legislative era, it lacks enforceability. In other words, the difference between our time and the time of the infallible Imams (AS) breaks the rational principle of expression and nullifies the possibility of reliance on it. In other words, the presence of absolute certainty in the place of addressing in a way that leads to definite understanding prevents argumentation and reliance on application (Naeini, 1376, 2, 575; Bojnordi, 1380, 2, 732), and in our discussion, such certainty exists; because when Imam (AS) says, "The blood money for a severed hand is half of the complete blood money," the minds of the audience turn away from common examples and never conceive that a time might come when the fixed amount of blood money does not cover the expenses of treating an injury.

Therefore, with the impossibility of relying on the application of the rules of diyah, attention turns to general principles such as the no harm principle and causation; because if we accept that the cost of treatment is conventionally a harm and loss inflicted on the injured person and accept that any financial loss must be compensated, the party causing the harm will be obliged to fully compensate the injured party and, to the extent possible, restore their situation to its original state, and among these damages is the expense of their treatment that must be paid. It may be questioned that the cost of treatment has no fixed amount; perhaps the injured person does not seek treatment, and the injuries gradually heal, while another person incurs exorbitant costs by seeking treatment at a private hospital, even abroad. This diversity in the methods of dealing with illness and the way treatment is carried out casts doubt on the predictability of treatment expenses. However, in response, it must be said that in such cases, the judge delegates the determination of the amount of expenses to an expert, and the relevant expert determines the reasonable amount considering the specific circumstances. It may also be questioned whether there is a direct causal relationship between the cost of treatment and the action that caused harm to the Saudi government; because sometimes the injured person can endure without seeking treatment until the injury heals on its own. The answer is that the discussion arises where there is a customary necessity for treatment, and otherwise, only the fixed amount of blood money is paid.

2-2. Damage from Disability

Sometimes, bodily injuries resulting from incidents during the rituals of Hajj and Umrah cause the injured individual to permanently or temporarily lose the ability to work significantly, rendering them unable to attend to their duties and consequently unable to provide for the expenses of their family. To address this issue, a distinction must be made between a case where the injured party is an

employee of a factory or another entity and a case where they are not employed by others and work independently. In the former case, there is no doubt that the perpetrator of the crime must compensate for the damage caused by disability to the injured person, as after the conclusion of the lease, the tenant's current property interests are considered, and their destruction is deemed property damage, which falls under the scope of the principle of causation.

However, if the injured party is not a tenant of others and is, so to speak, self-employed, under jurisprudence, the issue of "loss of benefit damage" is discussed, and some believe that although it undoubtedly fits the criteria of damage according to customary norms (Najafi-Khonsari, 1994, 1373), it cannot be said that an actual loss has occurred, and therefore, it is not subject to the principles of destruction and causation. However, some in the matter of "wrongful imprisonment" that deprive a person of their freedom and prevent them from engaging in employment, according to the opinions of the wise, advocate for compensation (Musavi-Khomeini, 2002, 1421) so that this ruling can be refined, and it can be said that the precedent set by the wise does not have a specific characteristic in the matter of "wrongful imprisonment," and therefore, according to them, no damage should remain uncompensated. Thus, the criterion for the ruling is deprivation of employment, whether due to the occurrence of a crime by the perpetrator or due to imprisonment resulting from baseless litigation against the ruler. Therefore, in this scenario, the causative agent of the damage, whether through crime or imprisonment due to frivolous lawsuits, is liable and responsible for compensating for the loss and damage. Additionally, from a jurisprudential perspective, those who accept the application of the principle of non-injury to financial guarantees have considered damages as separate causes for liability alongside destruction and causation, and since the designation of damage to deprivation of employment is undoubtedly true, damages from disability must undoubtedly be compensated.

2-3. Moral Damages

Another category of damages resulting from bodily harm during the rituals of Hajj and Umrah is moral damages inflicted on the victim or the injured individual. The concept of moral damages refers to psychological and emotional injuries, pain and suffering, or damage to the dignity of individuals that are not perceptible and tangible externally. In international law, international documents such as the International Law Commission's Draft Articles on State Responsibility of 2001 and some judgments of the International Court of Justice have explicitly enumerated the obligation to compensate for damages resulting from non-material injuries (Lawry-White, 2014, 746-747). As stated in some jurisprudential sources, there is no doubt about the truth of the attribution of

"damage" and harm to moral injuries. Just as the sacred Sharīʿah is concerned with preventing moral harms, there is no doubt about the validity of attributing damage to them. The heart of a believer is the throne of God. "My earth and My heaven cannot contain Me, but the heart of My believing servant can." (Ibn Abi al-Jumhūr, 1405, 4, 7). The issuance of the hadith on non-injury signifies moral damage inflicted by Samura ibn Jundab on the Ansari and his family. Severe penal measures in Islamic law against those who unjustly harm others to the extent mentioned in the context of slander indicate the sacred Sharīʿah's concern for preserving the dignity of citizens and preventing moral harm or compensating for it. Therefore, there is no doubt about the sanctity of moral damages, but in terms of assessment and quantification of its cost, as it is now debated and implemented in Western law, there is room for doubt and reflection. Because moral damages cannot be measured in monetary terms, and on the other hand, the scope of those affected by moral damages is unlimited. It is not uncommon for a passerby to suffer significant mental anguish from witnessing a traffic accident, while having no familial relationship with the deceased, thus making it impossible to claim compensation for them. Therefore, it is up to the Islamic ruler to determine the methods of compensating for moral damages and its scope to ensure the sanctity of individuals and their dignity is preserved.

Conclusion

The Hajj pilgrimage, as one of the largest religious ceremonies held annually with the participation of hundreds of thousands of Muslims from various nationalities around the world in the land of Mecca, requires precise management. Any negligence or shortcomings can lead to dreadful incidents. According to research, if participants in the pilgrimage suffer any harm during the rituals, the Saudi Arabian government, as the host country that grants entry permits to foreign nationals and is responsible for ensuring the safety of their lives and property, will be liable for compensating the damages based on international laws and the principle of sanctuary. Furthermore, since the Saudi Arabian government, as the custodian of the two holy mosques, is responsible for organizing the annual Hajj pilgrimage, even though it may delegate some of its duties to private sectors, if any individual or individuals suffer harm or damage during the pilgrimage, the damages incurred, due to the theory of reliance and the existence of a causal relationship between the harmful act and the incurred damage, are customarily attributed to the Saudi Arabian government, and therefore, it is obliged to compensate for the damages. The scope of the Saudi government's civil liability includes not only direct and material damages but also medical treatment, disability, and moral damages.

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