



Provisions of Compensation for Physical Harm in Islamic Jurisprudence and Positive Law: A Comparative Analytical Study

Ghendir abdelbasset*

*Algerian South Laboratory for Research in
History and Islamic Civilization, (Algeria)
University of Ghardaia*

ghendir.abdelbasset@univ-ghardaia.edu.dz

Ali benelbar

*Algerian South Laboratory for Research in
History and Islamic Civilization, (Algeria)
University of Ghardaia*

ali1980.ac24@gmail.com

Abstract

This paper presents a rigorous comparative and analytical study of the provisions of compensation for physical harm (bodily injury) in Islamic jurisprudence (Fiqh) and positive law. The research examines the foundational concepts of harm, its typologies and classifications, the bases of legal liability, and the conditions governing entitlement to compensation in both legal systems. The central research question addresses how Islamic jurisprudence and positive law conceptualize and regulate compensation for physical harm, and what the points of convergence and divergence are between the two systems. The study employs an analytical-deductive methodology combined with a comparative legal approach, drawing on primary sources including classical Islamic jurisprudential texts, contemporary legal codes, and peer-reviewed academic scholarship. The principal findings reveal that Islamic law established a comprehensive and holistic compensation framework grounded in the principles of justice (adl), deterrence (zajr), and reparation (jabr); while positive law, though differing in procedural mechanisms, converges with Islamic jurisprudence in its overarching objectives of protecting human dignity and rights. The research concludes with recommendations for integrating principles of Islamic jurisprudence into contemporary positive legislation to enhance justice and guarantee the rights of victims. This study contributes to the scholarly dialogue between Islamic law and comparative legal traditions.

Article info

Received

April 21.2026

Accepted

June 01.2026

Keyword:

- ✓ Physical harm;
- ✓ Compensation;
- ✓ Islamic jurisprudence;
- ✓ Positive law;
- ✓ Civil liability;
- ✓ Blood money (Diya);
- ✓ Retaliation (Qisas);
- ✓ Indemnity (Arsh)

* autour Corresponding

1. Introduction

The issue of compensation for damages is considered one of the most fertile and wide-ranging topics in the field of comparative jurisprudential and legal studies, as it lies at the intersection of Islamic jurisprudence—with its rich body of religious texts and well-established legal rulings—and positive law, with its multiple jurisprudential schools and evolving legislative theories. The importance of this topic stems from the fact that it touches the very core of human rights and the protection of bodily dignity, values that are shared by divine religions and legal systems alike. In Islamic jurisprudence, the human body is regarded as a divine trust that must not be violated or harmed, and it is a protected right under explicit provisions of the Qur'an and the Prophetic Sunnah, beginning with the prohibition of killing, injury, and mutilation, and culminating in the establishment of the rules of retaliation (qisās), blood money (diyah), and compensation for injury (arsh) as means of redressing harm and deterring the aggressor (al-Shirazi, n.d., pp. 170–175; Ibn Qudamah, 1997, pp. 443–505). In positive law, the protection of bodily integrity constitutes a fundamental pillar of human rights, and both international and national legislations have attached great importance to it through a framework of criminal and civil rules that criminalize assaults on the body and oblige the offender to provide full compensation for the bodily, psychological, and material damages

resulting therefrom (Mazeaud & Tunc, 1965, p. 97; Flour, Aubert, & Savaux, 2011, p. 112)

Research Significance and Problem Statement:

The significance of this research stems from the fact that it addresses a highly sensitive scientific issue in light of contemporary legislative and social transformations, and within the context of the growing demand in Islamic societies for reconciliation between Sharī'ah-based references and modern legal requirements. The study contributes to clarifying the areas in which the Islamic system of compensation corresponds with its counterpart in positive law, as well as the aspects in which each differs from the other, thereby opening broader prospects for enriching national legislations through the principles of classical Islamic jurisprudence. The central problem of the study revolves around the following question: To what extent does the system of compensation for bodily harm in Islamic jurisprudence intersect with its counterpart in positive law in terms of principles, foundations, and mechanisms? Or is there a fundamental divergence arising from the difference in legal and legislative references?

Research Questions:

1. What is the concept of bodily harm in Islamic jurisprudence and positive law, and what are the points

of similarity and difference in its definition and classification?

2. What are the Sharī'ah-based and legal foundations upon which liability for compensation for bodily harm is established in both systems?
3. What is the nature of the relationship between harm and compensation in each system, and how is the value of compensation determined?
4. What are the points of convergence between the systems of *diyah* and *arsh* in Islamic jurisprudence and the system of civil compensation in positive law?
5. What recommendations may be proposed for the development of positive legislation in light of the principles of Islamic jurisprudence?

Research Objectives:

1. To identify the foundations of compensation for bodily harm in Islamic jurisprudence and the constituent elements of its comprehensive system.
2. To analyze the legal provisions governing compensation in comparative positive law.
3. To conduct a systematic scientific comparison between the two systems in order to determine the

points of convergence and divergence.

4. To present an integrated scholarly perspective on the possibility of benefiting from the principles of Islamic jurisprudence in the development of positive legislation.
5. To contribute to enriching the comparative jurisprudential and legal literature through an in-depth analytical study.

Research Methodology

This study relied on a set of integrated scientific methods that contributed to addressing the subject from all its dimensions:

1. **The inductive-analytical method:** through the examination of Sharī'ah texts from the Holy Qur'an and the Prophetic Sunnah, the opinions of Muslim jurists, and the provisions of positive laws, followed by their analysis in order to derive the essential rulings and principles.
2. **The comparative method:** through a systematic comparison between the position of Islamic jurisprudence and positive law regarding the rules governing compensation for bodily harm, with reference to the Algerian Civil Code, the Egyptian Civil Code, and the French Civil Code as models of positive law.

3. **The historical method:** by tracing the development of the concept of compensation in Islamic jurisprudence across its various historical stages.

The research also relied on original sources drawn from classical jurisprudential references, positive laws, and peer-reviewed academic studies published in journals with recognized impact factors.

Previous Studies:

Previous studies have addressed the issue of compensation for harm from multiple perspectives. In the field of Islamic jurisprudence, al-Zarqā (1998) contributed to laying the foundations of the theory of harm through the well-known jurisprudential maxim “*lā ḍarar wa-lā ḍirār*” (“there shall be neither harm nor reciprocating harm”), offering an in-depth analysis of the Sharī‘ah principles governing compensation (al-Zarqā, 1998, pp. 342–345, 565–566, 979–1049). In the same context, al-Sanhūrī (1964) presented a pioneering study on civil liability in comparative Arab law, in which he established a link between Sharī‘ah principles and the provisions of civil law (al-Sanhūrī, n.d., pp. 119–200). At the international level, Schacht (1964), in his seminal work, examined the principles of Islamic law and the mechanisms of compensation, pointing to the comprehensive nature of this system (Schacht, 1964, p. 185). Vogel and Hayes

(1998) also highlighted the relationship between Islamic jurisprudence and modern legal systems within the context of mixed legal systems (Vogel & Hayes, 1998, p. 147). The present study is distinguished by offering a comprehensive and systematic comparison that combines classical jurisprudential analysis with the contemporary legal approach, with particular emphasis on Algerian and Maghrebi jurisprudence.

2. Bodily Harm in Islamic Jurisprudence

Islamic Sharī‘ah has categorically prohibited transgression against others and the infliction of harm upon them, as it is founded upon a comprehensive general principle, namely the principle of the prevention and removal of harm, which is based on the Prophet’s saying, peace be upon him: “*There shall be neither harm nor reciprocating harm*” (Ibn Mājah, n.d., p. 784, Hadith no. 2341). This foundation is not limited to deterring the harmful act itself; rather, it goes further by requiring the removal of harm after its occurrence and its reparation through compensation to the injured party. This system is grounded in well-established jurisprudential maxims, most notably: “*Harm must be removed,*” “*Harm must not be removed by means of harm,*” and “*Greater harm is removed by the lesser harm*” (al-Suyūṭī, 1983, pp. 83–87).

2.1 The Concept of Harm in Islamic Jurisprudence

2.1.1 Definition of Harm Linguistically and Terminologically

First: The linguistic definition of harm:

The word *ḍarar* (harm) is derived from the verb *ḍarra-yaḍurru*. In the Arabic language, it denotes the opposite of benefit and advantage. Ibn Manẓūr states in *Lisān al-‘Arab*: “*Ḍurr is the opposite of benefit; its plural is aḍrār. Ḍarar is the noun form. One says: he harmed him (ḍarrah), harmed him directly, or harmed him mutually (ḍārrahu) in the sense of inflicting harm or reciprocal harm*” (Ibn Manẓūr, 1414 AH, pp. 482–488). In *al-Ṣiḥāḥ*, al-Jawharī states: “*Ḍarar refers to constriction of space and diminution entering into a thing; hence it is said: a man of defect (dhū ḍarar), meaning one who has a bodily*” (al-Jawharī, 1987, pp. 719–721). The term *harm* may also be used figuratively to refer to anything that causes physical, psychological, or material pain.

Second: The terminological definition of harm:

Jurists have defined harm in various ways that converge in their essential meanings. Al-Kāsānī defined harm as: “*the infliction of detriment upon another in his property, body, or honor*” (al-Kāsānī, 1327 AH, pp. 164–191). Al-Zarkashī defined it as: “*every injury that befalls a person, whether in his property, honor, or emotions*” (al-Zarkashī, 1985, pp. 321–346). *Majallat al-*

Aḥkām al-‘Adliyyah defines it as: “*the causing of something undesirable to another without his consent*” (*Majallat al-Aḥkām al-‘Adliyyah*, Article 19). Among the most precise and comprehensive definitions is that adopted by Mālikī jurists, who described harm as: “*the injury suffered by a person as a result of interference with one of his rights or a legitimate interest belonging to him, whether that right or interest relates to his bodily integrity, property, emotions, freedom, honor, reputation, or otherwise*” (al-Dardīr, n.d., pp. 243–246).

These definitions share three common elements: the existence of a harmful act, the occurrence of injury to a specific party, and the absence of consent or lawful authorization.

2.1.2 Definition of Harm Linguistically and Terminologically

Islamic jurists classified harm into various categories from different perspectives. The most important of these classifications are as follows:

First: Moral (non-material) harm:

Moral harm refers to injury affecting a person’s honor, dignity, reputation, or emotions, without necessarily impacting his property or body. This includes false accusation, insult, abuse, backbiting, slander, and everything that affects one’s reputation and social standing. The majority of jurists held that moral harm

entails *ta'zīr* (discretionary punishment), while some, such as Ibn Ḥazm, maintained that financial compensation for moral harm is obligatory on the basis of the principle of comprehensive justice (Ibn Ḥazm, n.d., pp. 205–233).

Second: Material harm:

Material harm is divided into two categories:

A. Financial harm:

Financial harm is the injury caused to a person's property and possessions, whether through total destruction, impairment, or deprivation of its benefit. Jurists made compensation mandatory in this case based on the principle: *"Whoever destroys the property of another is liable to guarantee it"* (Ibn Taymiyyah, 2004, pp. 169–174).

B. Bodily (physical) harm:

Bodily harm is the injury inflicted upon the human body, whether through killing, wounding, amputation of a limb, mutilation, or disability. This is the subject addressed in detail in the present study. Islamic Shari'ah devoted precise and detailed rulings to this type of harm, including *qisās* (retaliation), *diyah* (blood money), *arsh* (compensation for injury), in addition to *ḥukūmat al-'adl* (equitable judicial assessment) (Ibn Qudāmah, 1997, pp. 105–456; al-Shirāzī, n.d., pp. 334–369).

2.2 Types of Bodily Harm in Islamic Jurisprudence

Islamic jurisprudence has paid great attention to offenses against the human body, establishing a precise system for their division and classification. Ibn Qudāmah states in *al-Mughnī*: *"In أصل language, jināyah refers to every prohibited act involving harm to oneself or others; however, in Sharī'ah usage and in the terminology of jurists, it has become specifically associated with acts of transgression against the human body"* (Ibn Qudāmah, 1997, pp. 13–526). Jurists have accordingly divided bodily offenses into three principal categories:

2.3 Rules Governing Compensation for Bodily Harm in Islamic Jurisprudence

Islamic jurisprudence established an integrated system of rules governing compensation for bodily harm, founded upon the principles of justice, equality, and deterrence. Among the most important of these rules is the following:

First: *Qisās* (retaliation):

This refers to equality in punishment between the offender and the victim; thus, the killer is put to death, and the one who inflicts an injury is subjected to an equivalent injury, as indicated by the Qur'anic verse: *(And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal*

retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allāh has revealed - then it is those who are the wrongdoers [i.e., the unjust]. Its application is subject to several conditions, including equality in religion and legal status of freedom, certainty of intent, the absence of a parental relationship, and the fulfillment of other relevant conditions (Ibn Rushd, 2004, pp. 178–187; al-Shāfi‘ī, 1983, pp. 255–304).

Second: Diyah (blood money): It is the amount of wealth prescribed by Sharī‘ah for causing the loss of life, or what is treated as equivalent to it. Its original measure is one hundred camels or their equivalent. Jurists have regulated it through precise and detailed rules related to the type of offense, its location, and its degree. Al-Ḥāfiẓ Ibn Ḥajar stated: “*Diyah is derived from wada yadi when he gave*”, as indicated by the Qur’anic verse: And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment [diyah] presented to his [i.e., the deceased’s] family [is required], unless they give [up their right as] charity. But if he [i.e., the deceased] was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family)

[al-Nisā’: 92] (Ibn Ḥajar, 1380–1390 AH, pp. 212–213).

The *diyah* for a full human life amounts to one hundred camels, while the *diyah* for limbs is assessed in proportion to their relation to the *diyah* of the full person (al-Mawwāq, 1994, pp. 331–353; Ibn Qudāmah, 1994, pp. 3–21).

Third: Arsh:

Arsh is the financial compensation prescribed by Sharī‘ah for bodily injuries specifically mentioned in Islamic law, such as al-jā’ifah and similar injuries. In the case of injuries for which no fixed amount is expressly prescribed, compensation is assessed through ḥukūmah (judicial estimation), whereby the injured person is hypothetically evaluated like a slave in the marketplace, once as sound and once as defective, and the proportion of the difference is then taken from the full diyah (al-Ḥaṣkafī, 2002, pp. 704–725; al-Shīrāzī, n.d., pp. 179–248).

Fourth: Financial ta‘zīr:

A group of jurists held that financial ta‘zīr is permissible in the amount that the judge considers sufficiently deterrent and appropriate. This corresponds, to some extent, to civil compensation in positive law in cases of negligence that do not reach the level of a specifically quantified bodily offense (Ibn Taymiyyah, 1987, pp. 529–536).

3. Rules Governing Compensation for Bodily Harm in Positive Law

In positive law, the treatment of compensation for bodily harm rests upon two interrelated foundations: criminal liability, which is concerned with punishment and deterrence, and civil liability, which is concerned with redressing harm and restoring balance. Civil liability constitutes the primary basis upon which the injured party relies in order to obtain fair compensation covering all material and moral dimensions of the harm. This framework has undergone significant development in modern legislation, particularly through the expansion of compensable harm to include bodily, psychological, and social injury (Carbonnier, 2004, p. 234).

3.1 The Concept of Legal Liability

Definition of liability:

Linguistically, it is derived from the verb *sa'ala-yas'alu* ("to ask"), and jurists have used it in the sense of accountability and answerability. Allah the Almighty says: "*But stop them; indeed, they are to be questioned*" [al-Şāffāt: 24]. Terminologically, legal liability is defined as: "*a person's obligation to make reparation for the harm resulting from his act, omission, negligence, or from the acts of persons and things under his custody and care*" (al-Sanhūrī, n.d., pp. 743–774). Legal doctrine distinguishes between two principal types of liability:

First: Criminal liability:

This is a person's capacity to bear the criminal sanction prescribed for the offense he has committed. It is based on two elements: the material element, represented by the criminalized conduct and its result, and the moral element, represented by intent or negligence. Its establishment also requires the existence of discernment and freedom of choice (Pradel, 2014, p. 89; Merle & Vitu, 1997, p. 712).

Second: Civil liability:

This is a person's obligation to compensate for the harm resulting from his unlawful act, whether that act is contractual or tortious. In its basic structure, it rests on three elements, as established by comparative legislation and Western legal doctrine: **fault, damage, and causation**. These three elements constitute the cornerstone of the theory of civil liability (Mazeaud & Tunc, 1965, p. 97; Terré, Simler, & Lequette, 2009, p. 657).

This framework has been enshrined in the Algerian Civil Code in Articles 124–140 under Law No. 07-05, Ordinance No. 75-58, as well as in the Egyptian Civil Code in Articles 163–178 under Law No. 131 of 1948.

3.2 Civil Liability and Its Conditions

3.2.1 The First Element: Fault

Fault is the deviation from the ordinary conduct expected of a reasonable person

under the same objective circumstances as those of the defendant. Whenever a person departs from this objective standard and thereby causes harm to another, liability arises. Fault has two indispensable elements:

A. The material element (wrongful conduct):

This is established by any negative or positive deviation from the behavioral standard of the ordinary person, whether such deviation consists in an act, such as assault or wounding, or in an omission, such as the failure to provide necessary assistance. Wrongful conduct therefore includes positive acts, omissions, negligence, and default (Viney & Jourdain, 2006, p. 378).

B. The moral element (discernment):

This requires that the actor be capable of discernment and aware of his actions. Accordingly, a non-discerning minor and an insane person are not personally liable for their acts, although liability may still attach to those responsible for supervising them. This requirement is established in the Algerian Civil Code in Article 125, and in the Egyptian Civil Code in Article 164 (al-Sanhūrī, n.d., pp. 775–795, 796–809).

3.2.2 The Second Element: Damage

In civil liability, damage refers to the injury or loss suffered by the claimant as a result of the harmful act. Civil liability cannot arise without actual damage, regardless of how serious the fault may be. For damage

to be compensable, it must satisfy the following conditions:

1. **It must be certain:** whether immediate or future, provided that its occurrence in the future is established with certainty.
2. **It must affect a legitimate interest:** no compensation is granted for the loss of an unlawful interest.
3. **It must be personal:** it must affect the claimant himself, while also taking into account indirect or consequential damage suffered by the victim's relatives.

In the context of bodily harm, comparative law recognizes specific categories of damage:

- **Material bodily damage:** including medical expenses, rehabilitation costs, total or partial loss of earning capacity, and permanent bodily disfigurement (Carbonnier, 2004, p. 246).
- **Moral bodily damage:** including pain, suffering, disfigurement, and what is known in French law as *préjudice d'agrément*, namely the loss of the enjoyment of life (Flour, Aubert, & Savaux, 2011, p. 132).
- **Loss of chance (*perte de chance*):** the damage resulting from the loss of a legitimate opportunity that the injured party could have realized

had it not been for the harmful act (Viney & Jourdain, 2006, p. 98).

3.2.3 The Third Element: Causal Relationship

The causal relationship is the necessary and direct link between fault and damage. It must be established that the damage suffered by the injured party is the direct and logical result of the harmful act attributed to the defendant. Legal doctrine has developed several theories to determine this relationship:

1. **The theory of multiple causes:** this theory holds that every cause contributing to the occurrence of the damage is equally responsible for it (von Buri, 1873).
2. **The theory of the adequate cause:** this theory maintains that liability attaches to the cause that is considered appropriate and sufficient to produce the damage according to the ordinary course of events (von Kries, 1888).
3. **The theory of the direct cause:** this is the prevailing view in Egyptian and Algerian jurisprudence, according to which the damage is attributed to its nearest and most effective cause (al-Sanhūrī, n.d., pp. 872–914).

Once the causal relationship is established, liability arises and the wrongdoer becomes

bound to provide full or partial compensation according to the extent of his contribution to the occurrence of the damage. Positive law also allows the trial judge to reduce the compensation or even extinguish it entirely if it is proven that the fault of the injured party himself contributed to the occurrence of the damage or increased its extent (Egyptian Civil Code, Article 216; Algerian Civil Code, Article 127).

3.3 Compensation for Bodily Harm in Positive Law

The assessment of compensation for bodily harm is regarded as one of the most complex issues in comparative civil law, since the law seeks to achieve **full reparation of damage** (*réparation intégrale*), so that the injured party is restored, as far as possible, to the position he or she was in before the occurrence of the harm. The methods of assessment are divided into the following:

First: Judicial assessment:

This is the principal method in most comparative legal systems, whereby the judge enjoys broad discretionary authority in determining the amount of compensation, assisted by medical and economic experts. Under this framework, compensation may cover medical and rehabilitation expenses, lost income, permanent partial or total disability, aesthetic damage (disfigurement), and

emotional and psychological harm (Flour, Aubert, & Savaux, 2011, p. 140).

Second: Agreed assessment:

This occurs where the parties may settle and agree upon compensation by way of amicable resolution, bearing in mind that some legal systems do not permit the prior waiver of the right to compensation for serious bodily injuries.

Third: Guideline tables:

Some legal systems and judicial frameworks have adopted standard compensation schedules, such as medical scales and judicial guideline tables, in order to promote consistency and fairness, although courts are generally not strictly bound by them (Viney & Jourdain, 2006, p. 178; Carbonnier, 2004, p. 257).

4. Comparative Study between Islamic Jurisprudence and Positive Law

Comparative study is among the richest scientific approaches in legal and jurisprudential research, as it enables us to identify the essential characteristics of each system, to recognize its strengths and weaknesses, and to benefit from the more developed systems in improving those that are less advanced. In this study, I have chosen three principal axes of comparison: the concept of harm and its levels, the foundations of liability and the conditions of compensation, and the methodology for assessing the amount of compensation.

4.1 Points of Convergence between the Two Systems

The analytical study reveals numerous aspects of profound convergence between the rules of Islamic jurisprudence and positive law:

First: Convergence of objectives and purposes:

Both systems meet in the higher objective of protecting the human person, preserving bodily integrity, and guaranteeing the right to redress for suffered harm. In Islamic jurisprudence, the protection of life is regarded as one of the five essential necessities, while in modern constitutional and legal systems, the right to life and bodily integrity is considered among the highest fundamental rights (al-Ghazālī, 1993, pp. 173–180; Dworkin, 1977, p. 90).

Second: Convergence in the elements of liability:

Both systems require, for liability to arise and compensation to become due, the presence of three corresponding elements: the harmful act (*fault* or *jināyah*), the damage, and the causal relationship. Although the terminology of each element and its procedural details may differ, the essential legal logic remains shared (al-Sanhūrī, n.d., pp. 679–688; Mazeaud & Tunc, 1965, p. 102).

Third: Convergence in distinguishing between degrees of intent:

Both systems distinguish between intentional acts, quasi-intentional acts, and accidental acts, although the effects of this distinction differ in each system in terms of aggravation or mitigation of punishment or compensation.

Fourth: Convergence in the principle of removing harm and the obligation to redress it:

The jurisprudential maxims “*There shall be neither harm nor reciprocating harm*” and “*Harm must be removed*” parallel the principle of *full reparation of damage* (*réparation intégrale*) in positive law. Both aim, as far as possible, to restore the victim to the condition he or she was in before the occurrence of the harm (al-Zarqā, 1998, p. 245; Viney & Jourdain, 2006, p. 16).

4.2 Points of Divergence between the Two Systems

In contrast to the points of convergence, there are fundamental differences that reflect the divergence of the two legal and legislative reference systems:

First: In reference and source:

Islamic jurisprudence derives its rulings from divine revelation—the Qur'an and the Sunnah—as well as *ijtihād*, which gives these rulings a character of stability and sanctity. Positive law, by contrast, is based on human legislative will, which makes it

more flexible and more open to change, development, and adaptation in response to shifting social and political circumstances.

Second: In the system of quantitative assessment:

In cases of specifically quantified bodily offenses, Islamic jurisprudence adopts a relatively fixed financial system—such as *diyah*, assessed at one hundred camels or their equivalent, and prescribed *arsh*—which ensures certainty and equality of treatment. Positive law, on the other hand, grants the judge broad discretionary authority, which may lead to disparities in compensation across similar cases (Flour, Aubert, & Savaux, 2011, p. 143).

Third: In punishment and compensation:

Islamic jurisprudence combines bodily punishment (*qiṣāṣ*) with financial compensation (*diyyah*), and it also permits pardon and settlement between the offender and the victim or the victim's family. Positive law, however, generally separates criminal liability (punishment) from civil liability (compensation), although it may allow both to be pursued together through an accompanying civil action.

Fourth: In compensation for moral damage:

Muslim jurists differed regarding compensation for purely moral harm.

While some of them—such as Ibn Ḥazm, and Mālikī jurists in certain forms—recognized it, the majority of earlier jurists limited the response to *ta'zīr* without financial compensation. Modern positive law, by contrast, broadly recognizes and judicially applies compensation for moral and non-material damage (Carbonnier, 2004, p. 248; Abū Zahrah, n.d., pp. 69–75).

4.2 Points of Divergence between the Two Systems

4.3 A Comprehensive Comparison between the Two Systems

4.4 Distinctive Features of Islamic Jurisprudence in the System of Compensation

Islamic jurisprudence is distinguished by a set of essential characteristics that make its compensation system exceptional:

1. **Comprehensiveness and integration:** Islamic jurisprudence addresses harm through three integrated dimensions: the deterrent criminal dimension (*qiṣāṣ*), the financial compensatory dimension (*diyah* and *arsh*), and the moral and social dimension (repentance, pardon, and reconciliation). This integration makes it a more humane and comprehensively just system (al-Zuhaylī, n.d., pp. 4489–4832, 5550–5790, 6372–6376).

2. **Stability and certainty in specifically quantified bodily offenses:** Islamic jurisprudence ensures equality under the system of *diyah* for all individuals regardless of their social or economic status. This is not always achieved under judicial assessment, which may vary according to circumstances, the personality of the judge, and the extent of the economic damage.

3. **Promotion of pardon and reconciliation:** Islamic jurisprudence encourages pardon and reconciliation, which contributes to repairing social relations, achieving social peace, and reducing the intensity of disputes. By contrast, criminal cases in positive law often remain subject to formal procedures that may prolong the conflict and increase the suffering of the victim and the victim's family.

Table 1. Table title (this is an example of table 1)

Category	Definition and Rulings
Offense against the person (homicide)	It is the taking of a human life by one person against another. The majority of jurists divided homicide into three categories: 1. Intentional killing: where the killer deliberately intends to take life by means that are usually lethal (al-Sarakhsī, n.d., pp. 181–185). 2. Quasi-intentional killing: where the offender intends the assault but not the killing, such as striking with something not usually lethal, yet the victim dies. 3. Accidental killing: where the killer neither intended the killing nor the act against that specific person, or erred in his act (Ibn Qudāmah, 1997, pp. 463–465).
Offense against what is less than life	It refers to any assault upon the human body while life remains, including wounds, amputation, fractures, mutilation, and disability. It is divided into offenses that entail <i>qiṣās</i> (retaliation) and those that entail <i>diyyah</i> (blood money) or <i>arsh</i> (injury compensation), according to precise rules related to the injured organ and the location of the offense (al-Mardāwī, 1995, pp. 5–38).
Offense against the fetus	It refers to aggression against the fetus in its mother's womb leading to its miscarriage. Its legal basis is the hadith of Abū Hurayrah, may Allah be pleased with him, in the case of Hudhayl, in which the Prophet, peace be upon him, ruled: “ <i>The compensation for her fetus is a ghurrah, a male or female slave, and he ruled that the blood money of the woman was to be borne by her ‘āqilah</i> ” (al-Bukhārī, p. 2532, no. 6512; Muslim, p. 1309, no. 1681).

Table 2. The table illustrates the comparison between Islamic jurisprudence and positive law with regard to the rules governing compensation for bodily harm.

Aspect of Comparison	Islamic Jurisprudence	Positive Law
Legislative source	Divine revelation (the Qur'an and the Sunnah) and <i>ijtihād</i>	Human legislative will and judicial precedents
Concept of harm	Material and moral injury affecting a person in his life, property, or honor	Infringement upon a legitimate interest, whether material, bodily, or moral
Basis of liability	<i>Jināyah</i> (offense), unlawful transgression, and the causing of a factor leading to harm	Positive or negative fault according to the standard of the reasonable person
Types of compensation	<i>Qiṣās</i> , <i>diyyah</i> , <i>arsh</i> , <i>ḥukūmat al-‘adl</i> , and financial <i>ta‘zīr</i>	Material and moral compensation, as well as monetary and specific reparation
Assessment of compensation	Prescribed by Sharī‘ah in major bodily offenses (<i>diyyah</i> and <i>arsh</i>), and discretionary in other cases	Primarily determined by judicial discretion, with guidance from standard tables
Consideration of intent	A distinction is made between intentional, quasi-intentional, and accidental acts in determining the effect on compensation	Intent and negligence affect the degree of liability, though not the general rule itself
Prevention and deterrence	<i>Qiṣās</i> is a strong deterrent, as stated in the Qur'an: “ <i>And there is for you in legal retribution [saving of] life, O people of understanding, that you may become righteous</i> ” [al-Baqarah: 179]	Criminal fines and civil compensation are the two principal tools of deterrence
Role of the victim and the victim's family	The rights of pardon, settlement, and acceptance of <i>diyyah</i> are recognized and encouraged by Sharī‘ah	The right of waiver is limited, and the public action remains independent from the civil action

4. CONCLUSION

1. Islamic Sharī'ah has established an integrated and comprehensive system for compensation for bodily harm that, in its human and social dimensions, goes beyond what is offered by most positive legal systems.
2. The rules of compensation in Islamic jurisprudence are founded on three integrated pillars: deterrence (*qiṣāṣ*), redress of harm (*diyyah* and *arsh*), and social reconciliation (pardon and amicable settlement).
3. The profound convergence between the two systems in their higher objectives—namely the protection of the human being and the safeguarding of his rights—outweighs their differences in technical and procedural mechanisms.
4. Contemporary positive law has developed effective tools for assessing compensation, particularly in the area of moral and psychological harm, which is a field that deserves deeper examination within the framework of Islamic jurisprudence.
5. The Islamic system of *diyyah* contains mechanisms that ensure equality and justice in

compensation in a manner that is more certain and stable than traditional judicial assessment in positive law.

6. The lack of legislative coordination between criminal and civil rules is one of the problematic features of positive law, whereas Islamic jurisprudence unifies both dimensions within an integrated system.

Second: Recommendations

1. To work toward revising civil legislation in Muslim-majority countries and incorporating the principles of Islamic jurisprudence into the compensation system, especially with regard to offenses against life and bodily injury short of death.
2. To establish specialized judicial bodies for compensation for bodily harm, composed of Sharī'ah scholars, legal experts, and medical specialists, in order to combine the dictates of Sharī'ah with contemporary requirements.
3. To prepare guiding compensation schedules for bodily injuries inspired by the system of *diyyah* and *arsh* in Islamic jurisprudence, while taking into account contemporary standards of living costs.

4. To encourage comparative scientific research between Islamic jurisprudence and positive law in the field of compensation, and to establish dedicated research chairs for this purpose in Algerian and Arab universities.
5. To include within the curricula of faculties of law and Sharī'ah an independent course in comparative legal jurisprudence dealing with the rules of compensation in both Islamic jurisprudence and positive law.
6. To strengthen international academic cooperation between research laboratories in Algerian universities and international academic institutions specialized in comparative Islamic law.

5. Bibliography List :

First: Arabic and Islamic Sources and References

- Ibn Taymiyyah, A. B. A. (1987). *Al-Fatāwā al-Kubrā* (1st ed., Vol. 4). No place of publication: Dār al-Kutub al-'Ilmiyyah.
- Ibn Taymiyyah, A. B. A. (2004). *Majmū' al-Fatāwā* (no ed., King Fahd Complex, vols. 1–37, Vol. 15). Medina: King Fahd Complex for the Printing of the Holy Qur'an.
- Ibn Hajar al-'Asqalānī, A. B. A. (1380–1390 AH). *Fath al-Bārī: Commentary on Ṣaḥīḥ al-Bukhārī* (1st ed., Vol. 12). Egypt: al-Maktabah al-Salafiyyah.
- Ibn Hāzīm, A. B. A. (n.d.). *Al-Muḥallā bi al-Āthār* (ed. 'Abd al-Ghaḥfār Sulaymān al-Bandārī, no ed., Vol. 11). Beirut: Dār al-Fikr.
- Ibn Rushd, M. B. A. (2004). *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (no ed., Vol. 4). Cairo: Dār al-Ḥadīth.

- Ibn Qudāmah al-Maqdisī, A. B. A. (1997). *Al-Mughnī* (ed. 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥilw, 3rd ed., Vols. 11–12). Riyadh: Dār 'Ālam al-Kutub.
- Ibn Qudāmah al-Maqdisī, A. B. A. (1994). *Al-Kāfi fī Fiqh al-Imām Aḥmad* (1st ed., Vol. 4). Dār al-Kutub al-'Ilmiyyah.
- Ibn Mājah, M. B. Y. (n.d.). *Sunan Ibn Mājah* (ed. Muḥammad Fu'ād 'Abd al-Bāqī, no ed., Vol. 2). Dār Iḥyā' al-Kutub al-'Arabiyyah.
- Ibn Manẓūr, M. B. M. (1414 AH). *Lisān al-'Arab* (3rd ed., Vol. 4). Beirut: Dār Ṣādir.
- Abū Zahrah, M. (n.d.). *Crime and Punishment in Islamic Jurisprudence: Punishment* (no ed.). Cairo: Dār al-Fikr al-'Arabī.
- Al-Bukhārī, M. B. I. (1993). *Ṣaḥīḥ al-Bukhārī* (ed. Muṣṭafā Dīb al-Bughā, 5th ed.). Damascus: Dār Ibn Kathīr.
- Al-Jawharī, I. B. Ḥ. (1987). *Al-Ṣiḥāḥ: Tāj al-Lughah wa Ṣiḥāḥ al-'Arabiyyah* (ed. Aḥmad 'Abd al-Ghaḥfār 'Aṭṭār, 4th ed., Vol. 2). Beirut: Dār al-'Ilm lil-Malāyīn.
- Al-Ḥaṣkafī, M. 'A. (2002). *Al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār* (ed. 'Abd al-Mun'im Khalīl, 1st ed.). Beirut: Dār al-Kutub al-'Ilmiyyah.
- Al-Dardīr, A. B. M. (n.d.). *Al-Sharḥ al-Kabīr 'alā Mukhtaṣar Khalīl* (with Ḥāshiyat al-Dusūqī, Vol. 4). Dār al-Fikr.
- Al-Zuhaylī, W. B. M. (n.d.). *Islamic Jurisprudence and Its Evidences* (4th ed., Vols. 6–8). Damascus: Dār al-Fikr.
- Al-Zarqā, M. A. (1998). *Al-Madkhal al-Fiqhī al-'Āmm* (1st ed., Vol. 2). Damascus: Dār al-Qalam.
- Al-Zarkashī, M. B. B. (1985). *Al-Manthūr fī al-Qawā'id al-Fiqhiyyah* (ed. Tayṣīr Fā'iq Aḥmad Maḥmūd, 2nd ed., Vol. 2). Kuwait: Ministry of Awqāf and Islamic Affairs.
- Al-Sarakhsī, M. B. A. (n.d.). *Al-Mabsūṭ* (no ed., Vol. 26). Beirut: Dār al-Ma'rifah.
- Al-Sanhūrī, A. R. A. (1964). *Sources of Right in Islamic Jurisprudence: A Comparative Study with Western Jurisprudence* (Vol. 1). Cairo: Institute of Higher Arab Studies.
- Al-Sanhūrī, A. R. A. (n.d.). *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madanī al-Jadīd: The Theory of Obligation in General* (Vol. 1, no ed.). Beirut: Dār Iḥyā' al-Turāth al-'Arabī.
- Al-Sanhūrī, A. R. A. (n.d.). *Sources of Right in Islamic Jurisprudence: A Comparative Study*

with *Western Jurisprudence* (no ed., Vol. 6). Dār al-Hanā' lil-Ṭibā'ah wa al-Nashr.

Al-Suyūṭī, J. D. (1983). *Al-Ashbāh wa al-Nazā'ir fī Qawā'id wa Furū' Fiqh al-Shāfi'iyyah* (1st ed.). Dār al-Kutub al-'Ilmiyyah.

Al-Shāfi'ī, M. B. I. (1983). *Al-Umm* (ed. Rif'at Fawzī 'Abd al-Muṭṭalib, 2nd ed., Vol. 4). Beirut: Dār al-Fikr.

Al-Shīrāzī, I. B. A. (n.d.). *Al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī* (ed. Muḥammad al-Zuhaylī, Vol. 2). Dār al-Kutub al-'Ilmiyyah.

Al-Ghazālī, M. B. M. (1993). *Al-Mustasfā min 'Ilm al-Uṣūl* (ed. Muḥammad 'Abd al-Salām 'Abd al-Shāfi', 1st ed.). Dār al-Kutub al-'Ilmiyyah.

Algerian Civil Code. (1975). Ordinance No. 75-58 of 26 September 1975 containing the Civil Code (as amended and supplemented). *Official Gazette of the Algerian Republic*.

Egyptian Civil Code. (1948). Civil Code No. 131 of 1948. *Official Gazette of Egypt*.

Al-Kāsānī, A. A. B. (1327 AH). *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (1st ed., Vol. 7). Egypt: Maṭba'at al-Jamāliyyah.

Collective authors, ed. Najīb Hawāwīnī. (n.d.). *Majallat al-Aḥkām al-'Adliyyah*. Istanbul: The Ottoman Government, Nūr Muḥammad.

Al-Mardāwī, A. A. A. (1995). *Al-Inṣāf fī Ma'rifat al-Rājiḥ min al-Khilāf* (ed. 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥilw, 1st ed., Vol. 25). Cairo: Hajar for Printing, Publishing, Distribution, and Advertising.

Muslim, M. B. H. (1955). *Ṣaḥīḥ Muslim* (ed. Muḥammad Fu'ād 'Abd al-Bāqī, no ed., Vol. 3). Beirut: Dār Ihya' al-Turāth al-'Arabī.

Al-Mawwāq, M. B. Y. (1994). *Al-Tāj wa al-Iklīl li Mukhtaṣar Khalīl* (1st ed., Vol. 8). Dār al-Kutub al-'Ilmiyyah.

Carbonnier, J. (2004). *Droit civil: Les obligations* (22nd ed.). Paris: Presses Universitaires de France.

Dworkin, R. (1977). *Taking rights seriously*. Cambridge, MA: Harvard University Press.

Flour, J., Aubert, J.-L., & Savaux, É. (2011). *Les obligations: Le fait juridique* (13th ed.). Paris: Sirey.

Mazeaud, H., & Tunc, A. (1965). *Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle* (6th ed., Vol. 1). Paris: Montchrestien.

Merle, R., & Vitu, A. (1997). *Traité de droit criminel: Problèmes généraux de la science criminelle* (7th ed.). Paris: Cujas.

Pradel, J. (2014). *Droit pénal général* (20th ed.). Paris: Cujas.

Schacht, J. (1964). *An introduction to Islamic law*. Oxford: Oxford University Press.

Terre, F., Simler, P., & Lequette, Y. (2009). *Droit civil: Les obligations* (10th ed.). Paris: Dalloz.

Viney, G., & Jourdain, P. (2006). *Les conditions de la responsabilité* (3rd ed.). Paris: LGDJ.

Vogel, F. E., & Hayes, S. L. (1998). *Islamic law and finance: Religion, risk, and return*. The Hague: Kluwer Law International.

von Kries, J. (1888). *Über die Begriffe der Wahrscheinlichkeit und Möglichkeit und ihre Bedeutung im Strafrechte*. *Zeitschrift für die gesamte Strafrechtswissenschaft*, 9, 528–537.