

## Human Rights Violations in Private Relations and the Feasibility of Civil Liability: A Comparative Analysis with Reference to the Iranian Legal System

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### Abstract

In the traditional perspective, human rights are primarily concerned with constraining state power and protecting citizens against violations of human dignity by governmental institutions. However, the growing influence of non-state actors in various spheres has posed fundamental challenges to the state-centric exclusivity of human rights. In this context, the theory of the “horizontal effect of human rights”—as the extension of human rights obligations into private relations—has acquired a notable position in legal scholarship. Employing a descriptive–analytical method and a comparative approach, this article examines the feasibility of establishing civil liability for human rights violations occurring within private relations and seeks to elucidate the capacity of the Iranian legal system to employ civil liability rules for redressing such breaches. The study first explores the theoretical foundations of the binding force of human rights in private relations through the lenses of both direct and indirect horizontal effects. It then considers the adaptability of civil liability rules to instances of human rights violations and analyzes the distinctive features of human rights–related torts. The findings indicate that civil liability can serve as an effective instrument for ensuring and redressing human rights violations in private relations, provided that its interpretation and application are accompanied by due regard for the special considerations inherent in fundamental rights.

**Keywords:** Civil Liability, Compensation, Fundamental Rights, Horizontal Effect Of Human Rights, Human Rights Torts, Torts.

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## 1. Introduction

In the conventional view, human rights provide the standards and framework for securing legal protection against potential abuses of governmental power. Within this perspective, the absolute and exclusive authority of the state over its citizens necessitates oversight of how state officials exercise and wield that power. By identifying the core elements of fundamental and basic rights, human rights law imposes obligations on rulers, which serve to protect citizens and restrain the power of governments.

In recent years, however, the scope and reach of this human achievement have faced new challenges. The dramatic growth of the economic, media, and even political power of non-state actors—including large corporations, transnational financial institutions, social media platforms, and even influential individuals—has raised serious questions about the exclusivity of state responsibility for human rights. In today's world, the concentration of wealth and power is no longer the exclusive domain of governments, and many serious human rights violations may occur in relationships between private individuals or within the activities of non-governmental entities.

Against this backdrop, in recent decades legal scholarship—particularly in international instruments and the practice of human rights bodies—has increasingly focused on the concept of the *horizontal effect of human rights*, which refers to the possibility of holding private actors legally bound to respect human rights. This development presents a question: are only states obliged to observe human rights obligations, or must such obligations also be observed in private relations between citizens?

Comparative studies show that certain legal systems—particularly in Europe—have sought, through expansive interpretation of civil liability rules, to guarantee the protection of human rights within private relations as well. The Iranian legal system, in light of the role of civil liability, Islamic principles, foundations of restorative justice, and international commitments arising from membership in certain conventions, also faces the question of whether civil liability can be used as a mechanism to address human rights violations in private relations. Is such an extension consistent with the legal and jurisprudential foundations of the system?

This article seeks to examine the feasibility of establishing civil liability for human rights violations in private relations. Drawing on international sources, the practice of human rights bodies, and the experiences of selected legal systems, it assesses the capacities and challenges of the Iranian legal framework in this regard. The first section explains the concept and theoretical foundations of liability for human rights violations in private relations. The second section explores the legal bases for invoking civil liability, supplemented by a comparative analysis with selected jurisdictions. The third section analyzes the applicability of civil liability in the Iranian legal system for remedying human rights violations. The article concludes with

findings and offers recommendations for the theoretical and practical development of this subject.

## **2. Foundations and Approaches to the Binding Force of Human Rights in Private Relations**

The emergence of human rights in their modern sense was originally aimed at preventing political monopoly and arbitrary rule by monarchs and institutions tied to central power.<sup>1</sup> Relations between citizens were generally regarded as governed by a self-created and spontaneous order, usually shaped in the course of interactions grounded in a transactional balance of power between individuals, and, except in particular circumstances, did not warrant legislative intervention. By contrast, the nature of the relationship between the state and its citizens is imbued with governmental supremacy and dominance. This analysis shows that the applicability of human rights to private relations requires arguments and justifications capable of overcoming the initial presumption that human rights were designed primarily for public-law contexts.<sup>2</sup>

### **2.1. Scope of Human Rights Obligations**

The binding force of human rights on states is beyond dispute. Under the vertical effect of human rights, states are obligated to guarantee and protect all natural persons against violations of human dignity. The direct consequence of such an obligation is the establishment of liability when human rights duties are breached, thereby providing victims with a cause of action enabling judicial redress.<sup>3</sup> Explicit recognition of this effect in various international instruments—such as Articles 2 and 3 of the International Covenant on Civil and Political Rights, Article 2 of the International Covenant on Economic, Social and Cultural Rights, Articles 1 and 13 of the European Convention on Human Rights, and Article 1 of the American Convention on Human Rights—has encouraged not only theoretical acceptance of this obligation, but also the development of mechanisms for its implementation across different legal systems, with particular emphasis on practical enforcement as an inherent feature of human rights.<sup>4</sup>

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<sup>1</sup> For instance, in Europe, the earliest examples of relevant legal texts include the Magna Carta of 1215, aimed at constraining the powers of the King of England, and the Bill of Rights of 1689, which focused on preventing the abuse of political authority by the English Parliament. Petra Weingerl, Verica Trstenjak, (eds), *The Influence of Human Rights and Basic Rights in Private Law*, (New York: Springer, 2016), 4.

<sup>2</sup> Lottie Lane, “The Horizontal Effect of International Human Rights Law in Practice,” *European Journal of Comparative Law and Governance* 5, (Spring, 2018): 6.

<sup>3</sup> For example, paragraph 2 of Article 8 of the Human Rights Act 1998 in the United Kingdom, as well as the case of *Goodwin & I v. United Kingdom*, No. 28957/95, [2002] ECHR 52, also invoke this very provision.

<sup>4</sup> Jane Wright, *Tort Law and Human Rights*, (New York: Hart Publishing, 2001), 18; Paul Hoffman and Andrew Van Lighten, *Civil Liability For Human Rights Violations* (Oxford: Bonavero Institute of Human Rights, April, 2022), 19.

In some jurisdictions, it is possible to invoke international human rights conventions directly before domestic courts. This approach, known as the direct vertical effect, is recognized in countries such as the Netherlands (Articles 93 and 94 of the Constitution), France (Article 55 of the Constitution), and Germany (Article 25 of the Basic Law). Conversely, in countries such as Australia (Section 51(xxix) of the Constitution), South Africa (Section 231(2) of the Constitution), the United Kingdom (Sections 3 and 6 of the Human Rights Act), and Iran (Articles 77 and 125 of the Constitution), only an indirect vertical effect is recognized: international conventions cannot be invoked directly before domestic courts unless incorporated into national law through parliamentary enactment.<sup>5</sup>

The extension of human rights protections into non-governmental or private relations is referred to as the horizontal effect of human rights, under which human rights obligations apply to relations between citizens who, in the absence of sovereign authority, are considered equal in status.<sup>6</sup> In countries such as Ireland, the strong horizontal effect is fully recognized, based on the view that constitutional rights are among the highest expressions of human rights and, like other rights, give individuals the capacity to seek judicial enforcement.<sup>7</sup> Section 8(2) of the South African Constitution is another example that explicitly recognizes the direct horizontal effect of human rights—sometimes referred to as the substantive horizontal effect.<sup>8</sup>

By contrast, the indirect horizontal effect—also termed the procedural horizontal effect—is based on the state’s duty to protect and enforce human rights in a manner that requires reference to human rights norms in private disputes. In this model, private parties cannot directly invoke human rights provisions in litigation; however, the state remains bound not to disregard human rights violations in the course of applying domestic law and ensuring fair trial guarantees, nor to interpret or enforce laws in a manner contrary to such rights.<sup>9</sup>

A limited form of this approach, which requires only that the interpretation, application, and development of laws be consistent with fundamental human

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<sup>5</sup>. Nathan Miller, “Human Rights Abuses as Tort Harms: Losses in Translation,” *Seton Hall Law Review* 46, (April, 2016): 515.

<sup>6</sup>. Charmaine Spencer, “The Use of Tort Law in the Protection of Human Rights: An Alternative to Human Rights Boards” (Master Thesis, University of Saskatchewan College of Law, 1991), 18.

<sup>7</sup>. *Meskeil v. Coras Iompair Eireann*, [1973] I.R. 121, 133.

<sup>8</sup>. Eleni Frantziou, “The Horizontal Effect of the Charter of Fundamental Rights of the European Union: Rediscovering the Reasons for Horizontality,” *European Law Journal* 21, no. 1 (2018): 41.

<sup>9</sup>. Joanna Krzeminska- Vamvaka, *Horizontal Effect of Fundamental Rights and Freedoms – Much Ado About Nothing? German, Polish and EU Theories Compared After Viking Line*, (New York: The Jean Monnet Center for International and Regional Economic Law & Justice, September: 2020), 11.

rights values, is termed the weak indirect horizontal effect. Under this model, the default rule in private relations is to give primacy to the will and autonomy of the parties.<sup>10</sup> By contrast, another approach—known as the strong indirect horizontal effect—maintains that human rights influence all spheres of law, not merely by aligning private law with human rights principles, but by creating a deeper structural and conceptual interdependence between the two. Under this model, although parties in private disputes cannot rely directly on human rights provisions (due to the absence of a direct effect), courts may still issue judgments against one party based on principles such as equality and human dignity. In this way, the court's role extends beyond mere interpretation in light of human rights (the weak form) to the exercise of binding authority grounded in human rights norms (the strong form).<sup>11</sup>

The European Court of Justice (ECJ) has recognized at least two rights under the Treaty of Rome as possessing a direct horizontal effect: the right to equal pay and the prohibition of discrimination in working conditions on the basis of nationality.<sup>12</sup> The Supreme Court of Canada, in applying the Charter of Fundamental Rights and Freedoms, distinguishes between rights and fundamental values: it applies the vertical effect to rights, but allows courts to apply the Charter's horizontal effect—grounded in fundamental values—in the development of the common law.<sup>13</sup>

A brief review of the prevailing approaches shows that, despite differing opinions, the effect of human rights in private relations—albeit in the form of an indirect effect—has today been recognized in most countries.<sup>14</sup> It is therefore essential, in order to better understand how liability may arise in this field, to assess the normative foundations of this approach so that they may serve in analyzing the feasibility of applying civil liability.

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<sup>10</sup>. Dilara Donmezkus, "The Theory Horizontal Effect and Freedom of Expression: The Perspective of the Turkish Constitutional Court," *Anaysa Yargisi* 41, no.1 (2024): 457.

<sup>11</sup>. Stephen Gardbaum, "The Horizontal Effect of Constitutional Rights," *Michigan Law Review* 102, no. 3 (2003): 443.

<sup>12</sup>. *Defrenne v. Sabena*, No. 3, [1976] ECR. 455.

<sup>13</sup>. *Retail, Wholesale & Dep't Store Union v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573.

<sup>14</sup>. Frantziou, "The Horizontal Effect of the Charter of Fundamental Rights", 14.

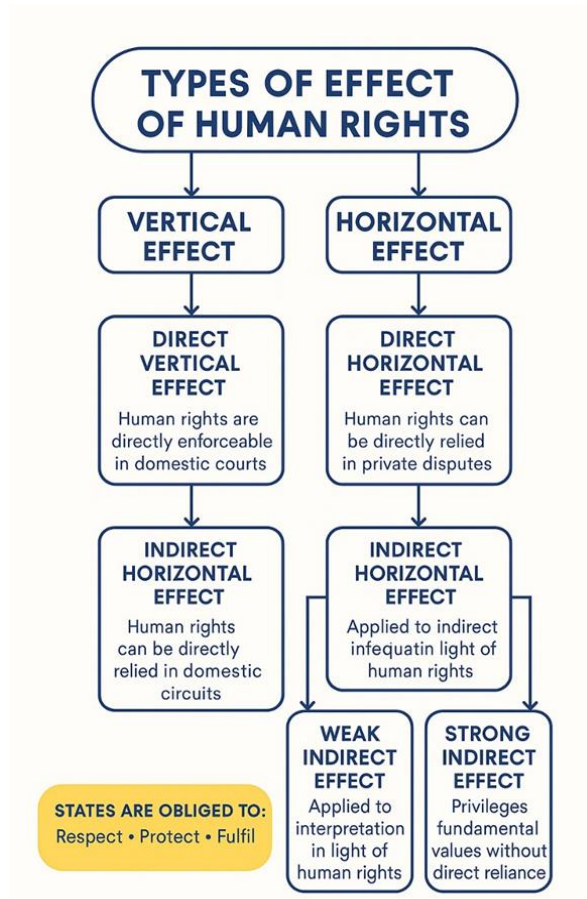


Figure 1. Approaches to the Effects of Human Rights

## 2.2. Normative Foundations of the Horizontal Effect of Human Rights

Some scholars<sup>15</sup> argue that extending human rights norms to private relations undermines the elevated concept and lofty objectives of human rights. They contend that the fundamental values protected by human rights transcend the norms governing private law, as they are not based on the will or consent of the parties but were established to regulate and restrain the power of governments. The exigencies of these two spheres are therefore different, and recognizing the horizontal effect of human rights disregards the structural and historical distinctions of human rights<sup>16</sup> and is inconsistent with the principle of freedom of contract.<sup>17</sup> Furthermore, international instruments and

<sup>15</sup> Frantziou, "The Horizontal Effect of the Charter of Fundamental Rights", 30.

<sup>16</sup> Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (New York: Oxford University Press, 2006), 33.

<sup>17</sup> Donmezkus, "The Theory Horizontal Effect and Freedom", 457.

conventions—the primary sources shaping human rights—are adopted and signed by states, and it would be inappropriate to impose their obligations directly on non-state actors.<sup>18</sup> To do so would create legal duties for individuals based on sources external to domestic law, resulting in the creation of a parallel legal order that could undermine the domestic legal system and its accepted principles, such as the rule of law and the separation of powers.<sup>19</sup>

None of these objections, however, has gone unanswered. The central idea of human rights has always been the protection of fundamental rights so as to eliminate injustice in all its forms. The emphasis on the state's role in this regard was not due to any intrinsic characteristic of human rights, but rather to the historically dominant position of the state. Thus, it is mistaken to assume that human rights are concerned exclusively with assessing and constraining state conduct.<sup>20</sup> How can it be accepted that safeguarding human dignity is a binding legal obligation for states, yet its disregard by other individuals in non-state relations is of no legal consequence? The horizontal effect of human rights therefore serves to reinforce and entrench fundamental norms, strengthening their overall influence.<sup>21</sup>

The international human rights instruments codify and regulate principles that can be understood and endorsed through the collective conscience of humankind and aim, in their core function, to articulate methods for ensuring the protection of rights. Consequently, the binding force of human rights should not be seen as deriving solely from these instruments, nor solely from the fact that states have signed them. From a normative perspective, the content of these instruments is more declaratory than innovative in nature,<sup>22</sup> and human rights should not be equated with other legal obligations—such as those arising in company law or commercial instruments—that are created entirely through legislative will.<sup>23</sup>

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<sup>18</sup>. Abigail Jackson, "Home, Human Rights and Horizontal Effect: An English Approach to Article 8 of the European Convention on Human Rights," *The Queen Mary Human Rights Law Review* 4, no. 1, (2017): 27.

<sup>19</sup>. Morteza Hajipour, "A Comparative Study of the Exercise of Fundamental Human Rights in Private Law," *Journal of Comparative Law Studies* 9, no. 2 (Fall and Winter 2018): 571–594. <https://doi.org/10.22059/JCL.2018.252355.633631>.

<sup>20</sup> Ibrahim Kanalan, "Horizontal Effect of Human Rights in the Era of Transnational Constellations: on the Accountability of Private Actors for Human Rights Violation", accessed August 10, 2025, <https://ssrn.com/abstract=2539110>.

<sup>21</sup>. Nicolas Carrillo Santarelli, "Non-State Actors Human Rights Obligations and Responsibility Under International Law," *Revista Electronica de Estudios Internacionales* 11, (2005): 7.

<sup>22</sup>. Lisa Laplante, "Human Torts, New England Law," *Boston Research Paper* no. 18-03, (2014): 11; Jackson, "Home, Human Rights and Horizontal Effect", 27.

<sup>23</sup>. August Reinisch, "The Changing International Legal Framework for Dealing With Non-States Actors", in *Non-State Actors And Human Rights*, ed Philip Alston (New York: Oxford University Press, 2005), 70.

The principle of freedom of contract cannot serve as a pretext for excluding human rights from private relations, as that principle is itself limited by other legal principles—chief among them the protection of fundamental human rights, which necessarily acts as a constraint upon it.<sup>24</sup> Under a vertical effect model, whereby states bear the primary direct obligation to uphold human rights, the duty to protect such rights is broad in scope and extends to relations between private individuals. In this sense, the state’s duty to protect fundamental rights requires it not to ignore violations of those rights between individuals and to take appropriate legal action both to compensate for harm and to prevent recurrence.<sup>25</sup> Some scholars<sup>26</sup> also argue that while the obligation to guarantee human rights falls directly upon states, the duty to respect them is universal and applies to all individuals, whose disregard for such duties likewise results in liability.<sup>27</sup>

Taken together, these arguments have led to a broad contemporary consensus that the “constitutionalization of private law” is not seriously in doubt,<sup>28</sup> and that the influence of human rights in non-state relations is both significant and strongly justified.<sup>29</sup> On this basis, human rights cannot be neatly subsumed under the traditional division between public and private law; rather, their foundations lie in natural rights aimed at protecting the essence of human dignity—a goal that must be safeguarded in all legal relationships.<sup>30</sup> Only in this way can the inalienable and indivisible nature of human rights<sup>31</sup> be realized and their relevance extended to all human interactions.

Numerous legal instruments and case law examples underscore this reality: Section 8(2) of the Asian Human Rights Charter; the Guiding Principles on Business and Human Rights issued by the United Nations; corporates codes

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<sup>24</sup> Paula Giliker, “A Common Law Tort of Privacy? The Challenges of Developing a Human Rights Tort,” *Singapore Academy of Law Journal* 27 (2015): 761.

<sup>25</sup> Lisa Tortell, *Monetary Remedies for Breach of Human Rights, A Comparative Study*, (London: Hart Publishing, 2006), 53.

<sup>26</sup> Seyed Mohammad Hosseini, Saeed Rahaei. “Due Diligence as a Normative Standard at the Heart of the International Human Rights System.” *The Journal of Human Rights* 19, no. 1 (Spring & Summer 2024): 65.

<sup>27</sup> Wright, *Tort Law and Human Rights*, 29.

<sup>28</sup> Heshmatollah Shahbazi, Ebrahim Taghizadeh, and Morteza Shahbazi-Nia. “Human Rights in Private Law.” *Private Law Research* 5, no. 19 (September 2017): 77. <https://doi.org/10.22054/jplr.2017.7799>

<sup>29</sup> Leonardo Hubner and Luca Kaller, “Germany: Tort Law’s Potential to Remedy Human Rights Violations,” in *Civil Liability for Human Rights Violations*, ed. Ekaterina Aristova and Catherine O’Regan, Working Paper No. 65 (Oxford: Bonavero Institute of Human Rights, 2011), 182.

<sup>30</sup> Kamran Karimzadeh, Zohreh Shakiba, and Mohammad Sham’i, “The Interaction of Private Law and Social Constitutional Law (Normative Justification of the Horizontal Effect of Fundamental Human Rights in Private Law),” *Interdisciplinary Studies in Fiqh* 4, no. 16 (October 2024): 169; Abdolrasoul Diani et al., “The Exercise of Human Rights in Private Relations.” *Civil Law Knowledge* 2, no. 2 (March 2014): 18.

<sup>31</sup> Parisa Kazemi and Akbar Bashiri, “Mechanisms for Ensuring Fundamental Human Rights in the Iranian Public Law System,” *Islamic Human Rights Studies* 8, no. 16 (August 2019): 126.

of conduct; Articles 27–29 of the African Charter on Human and Peoples’ Rights; the recognition by the UK Supreme Court of the horizontal effect of the European Convention on Human Rights<sup>32</sup>; rulings by the Inter-American Court of Human Rights acknowledging horizontal effect<sup>33</sup>; the OECD Guidelines for Multinational Enterprises; and a range of domestic court decisions in various jurisdictions<sup>34</sup> all affirm that human rights are no longer confined to the political sphere or to state–citizen relations, but extend to the activities of all actors and participants in society.<sup>35</sup>

### **3. The Role of Civil Liability in Addressing Human Rights Violations**

In addition to the theoretical foundations and justifications for the necessity of the horizontal effect of human rights, the question of *how* liability for such violations can be realized is of particular importance. It must be examined whether the existing foundations and mechanisms for compensation under civil liability are compatible with the application of the horizontal effect of human rights.

#### **3.1. Assessing the Compatibility of Civil Liability with Human Rights Violations**

In justifying the Human Rights Tort-Based approach, it should be noted that in civil liability, the foundations of liability, causation, conditions for exemption, and the most effective mechanisms for restoring the *status quo ante* are addressed—and these elements can also be applied to human rights violations. Contrary to certain opinions<sup>36</sup> that argue human rights violations require systemic remedies and therefore differ from the personal-compensation-based framework of civil liability, it must be emphasized that the ultimate aim of civil liability is to establish social order, guide citizens’ behavior towards respect for one another’s rights, and foster a society free of rights violations. The same objective exists in human rights, making it by no means an exception.<sup>37</sup>

The purpose of civil liability is to protect personal security, property, reputation, and economic interests.<sup>38</sup> Human rights, in turn, seek to safeguard human dignity by protecting these very rights and legitimate interests. Therefore, the subject matter of civil liability and human rights is essentially

<sup>32</sup>. Parliament of UK, House of Lords, Opinions of the Lords of Appeal for Judgment in the Cause *In re S (FC) (a child) (Appellant)*, Re S [2004] UKHL 47 [23ff], October 28, 2004.

<sup>33</sup>. Inter-American Court of Human Rights (I-ACtHR), *Judicial Condition and Rights of Undocumented Migrants - Advisory Opinion OC-18/03*, September 17, 2003, 146ff.

<sup>34</sup>. Federal High Court of Nigeria, *Gbemre v Shell Petroleum Development Company Nigeria Limited and others* (2005) AHRLR 151 (NgHC 2005) (14 November 2005); High Court of Uganda, *Kasha Jacqueline et al. v Rolling Stone Ltd*, no 163/2010 (30 December 2010).

<sup>35</sup>. Kanalan, “Horizontal Effect of Human Rights”, 49; Weingerl, Trstenjak, *The Influence of Human Rights*, 7; Reinisch, “The Changing International Legal Framework”, 88.

<sup>36</sup>. Miller, “Human Rights Abuses”, 505.

<sup>37</sup>. Hoffman and Van Lighten, *Civil Liability For Human Rights Violations*, 13.

<sup>38</sup>. Cris Turner, *Unlocking Torts*, (London: Routledge, 2014), 4.

aligned in terms of the types of rights they protect. Just as the pursuit and recovery of damages in all legal branches is fundamentally based on the principles of civil liability, damages arising from human rights violations must also rely on these rules.

While human rights law may provide specific remedies, the general rules of civil liability remain binding in their application. Moreover, civil liability can fill the gaps in human rights enforcement mechanisms. In this way, it becomes the primary legal foundation for realizing and operationalizing Human Rights Due Diligence.<sup>39</sup> Without adherence to its requirements, fair adjudication of human rights claims and the achievement of effective remedies will not be possible.<sup>40</sup>

Additionally, certain torts, as defined under international instruments or conventions, inherently possess human rights dimensions (constitutional torts). Thus, human rights and civil liability should be understood as having a reciprocal relationship<sup>41</sup>; on the one hand, human rights influence the identification of new tort categories,<sup>42</sup> the characterization of acts,<sup>43</sup> and the analysis of civil liability concepts<sup>44</sup>—expanding, for example, the scope of the duty to care; on the other hand, civil liability serves as a comprehensive framework for remedying losses and preventing repeated violations of human rights.<sup>45</sup>

Through effective compensation mechanisms, civil liability can restore an individual to a condition as close as possible to that existing before the violation occurred. Furthermore, it promotes justice and deterrence, providing a legal policy framework suited to the protection of human and fundamental

<sup>39</sup>. Ekaterina Aristova and Catherine O'Regan, *Civil Liability for Human Rights Violations* (Oxford: Bonavero Institute of Human Rights, April, 2022), 3; Russell Hopkins, "England and Wales: The Common Law's Answer to International Human Rights Violations," in *Civil Liability for Human Rights Violations*, ed. Ekaterina Aristova and O'Regan Catherine (Oxford: Bonavero Institute of Human Rights, April, 2022), 182.

<sup>40</sup>. Gabrielle Holly and Clair O'Brien, *Human Rights Due Diligence Laws: Key Considerations*, (Copenhagen: The Danish Institute For Human Rights, 2021), 8.

<sup>41</sup>. Aristova Ekaterina and Ugljesa Grusic, eds., *Civil Remedies and Human Rights in Lux, Key Legal Developments in Selected Jurisdictions* (London: Hart Publishing, 2022), 13.

<sup>42</sup>. For example, in England and Wales, pursuant to Section 42 of the U.K. Human Rights Act (1998), the misuse of personal information and breach of confidence have been recognized as constituting a *new tort*, the creation and protection of which are grounded in human rights principles. Giliker, "A Common Law Tort of Privacy" 766.

<sup>43</sup>. If, in earlier times, slavery was a common and justifiable practice, today human rights principles have led to its prohibition within legal systems. Wagner, Gerhard, "Tort Law and Human Rights," in *Transnational Legal Activism in Global Value Chains*, eds Miriam Saage-Maab, Peer Zumbansen, Michael Bader, Palvasha Shahab, (New York: Springer, 2021), 219.

<sup>44</sup>. For example, doubt has been raised as to whether strict liability is compatible with human rights principles and the prohibition of unjust discrimination. Max Loubser, "Strict Liability", in *Private Law and Human Rights, Bringing Rights Home in Scotland and South Africa* eds Elspeth Reid, Daniel Visser, (London: Edinburgh University Press, 2013). 210.

<sup>45</sup>. Sarah Joseph, Joanna Kyriakakis, "Australia: Tort Law Filling a Human Rights Void", in *Civil Liability for Human Rights Violations*, ed. Ekaterina Aristova and O'Regan Catherine (Oxford: Bonavero Institute of Human Rights, April, 2022), 43.

rights. Implementing civil liability empowers courts, as competent judicial bodies, to address gaps in human rights instruments and conventions, reinforcing their role as the primary forum for redress and facilitating access to justice.<sup>46</sup>

Civil liability enables the application of the principle *ubi jus ibi medium*—that where there is a right, there must be a remedy—in the human rights arena.<sup>47</sup> By employing models based on deterrence, compensatory justice, restorative justice, and retributive justice, it aligns fully with the objectives and purposes of human rights.<sup>48</sup> The 2005 United Nations General Assembly’s Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.—though primarily linked to the vertical effect of human rights—is also grounded in these very principles.<sup>49</sup>

In both civil liability and human rights law, the objective is to guide and reform human behavior through alignment with the standards of a reasonable person. Consequently, just as the scope of human rights has evolved over time, reflecting conceptual fluidity and cultural context, the notion of fault in civil liability has likewise acquired a social dimension,<sup>50</sup> rendering both concepts inherently flexible.<sup>51</sup> On this basis, it can be argued that disregarding one’s obligations toward the community—as expressly stipulated in Article 29 of the Universal Declaration of Human Rights—constitutes conduct that is unreasonable and abnormal, which, under the principles of civil liability, amounts to fault and gives rise to personal responsibility.<sup>52</sup>

### **3.2. Challenges of Applying Civil Liability to Human Rights Violations**

Although the applicability of civil liability rules in human rights law is well-founded and offers multiple advantages, the inherent demands of human rights and the intrinsic importance of fundamental rights create challenges for civil liability. These challenges require careful analysis and sometimes

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<sup>46</sup>. Emmanuel Nartey, “Accountability Criteria and Remedies Under Tort Law for Victims of Human Rights Abuses”, (PhD diss., University of East London, 2018), 475.

<sup>47</sup>. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Articles 19, 20; Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo), Compensation Judgment [2012] ICJ Rep 324.

<sup>48</sup>. Dinah Shelton, *Remedies in International Human Rights Law*, (London: Oxford University Press, 2015), 22.

<sup>49</sup>. Laplante, “Human Torts, New England Law”, 33.

<sup>50</sup>. Nasser Katouzian, *A Comparative Study Extra Contractual Obligations*, Vol. 1 (Tehran: University of Tehran Press, 2007), 349. Alireza Yazdaniyan, *Ghavayed-e Omumi-ye Masouliat-e Madani*, Vol. 1 (Tehran: Mizan, 2016), 234.

<sup>51</sup>. Jason Varuhas NE, *Damages and Human Rights*, (London: Hart Publishing, 2016), 473.

<sup>52</sup>. Edwin Peel, James Goudkamp, *Winfield And Jolowicz On Tort*, (New York: Sweet & Maxwell, 2014), 710; Spencer, “The Use of Tort Law,” 159.

rethinking of the criteria and methods for compensation. The following sections explore these issues in detail.

### 3.2.1. Characteristics of Human Rights Torts from the Perspective of Civil Liability

Civil liability primarily aims to compensate for unlawful damages caused by harmful acts outside contractual relations. Alongside fault and causation, the occurrence of damage is a core element of liability that must be proven by the claimant in judicial proceedings. This focus on compensation reflects the dominant approach in civil liability law.<sup>53</sup>

In the context of human rights violations, the concept of damage does not differ fundamentally. Violation of fundamental rights and the resulting harm to human dignity constitutes a form of damage, which may be either financial or non-material (moral/psychological). Many legal systems recognize such non-material harm<sup>54</sup>, and failure to address it triggers liability.<sup>55</sup>

Human rights represent the highest-order legal protections and occupy the top of the normative hierarchy. Accordingly, the punitive function of civil liability is most prominent in protecting these rights, while compensatory functions dominate for lower-tier rights. Adopting such a framework ensures both the effectiveness of civil liability and the design of appropriate protective measures for each right. The practical implications of this approach include:

- **Limitations on contractual waiver of rights:** Generally, parties may agree to limit or waive liability. However, such agreements regarding fundamental rights are legally invalid because these rights reflect societal values beyond individual interests. Their central role in preserving human dignity prevents individuals from waiving them or limiting others' responsibility. Allowing such waivers would undermine social order and security. (Articles 959 and 960 of the Iranian Civil Code).

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<sup>53</sup> Cees Van Dam, *European Tort Law* (London: Oxford University Press, 2013), 347; Peel and Goudkamp, *Winfield And Jolowicz On Tort*, 485.

<sup>54</sup> Article 1240 of the French Civil Code; Article 823 of the German Civil Code; Article VI–1:101 of the *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*; Section 7(1) of the *Restatement (Second) of Torts* in the United States; in the United Kingdom, the judgment in *Rothwell v Chemical & Insulating Co Ltd* [2007] UKHL 39; Article 41 of the Swiss Code of Obligations; and Article 2043 of the Italian Civil Code.

<sup>55</sup> Germany, Federal Republic of Germany (Bundestag), German Civil Code (Bürgerliches Gesetzbuch), BGB, January 1, 1900, Article 253; England, Judiciary of England and Wales (Court of Appeal decision), Case Law: *Hinz v Berry – Hinz v Berry* (Court of Appeal), 1970; Switzerland, Swiss Federal Assembly, Swiss Code of Obligations (Obligationenrecht), 1912, Article 47; Italy, Italian Parliament (Parlamento Italiano), Italian Civil Code (Codice Civile), Cod. Civ., 1942, Article 2059; European Union, Study Group on a European Civil Code and Research Group on EC Private Law, *Draft Common Frame of Reference (DCFR)*, 2009, Article VI.–2:20; France, Cour de cassation, Case Law: French civil liability rulings, Cour de cassation decisions, Decisions: 16 July 1975 (n 74-11.133); 12 October 1961 (Bull. crim. n 482); 22 February 1995 (n 93-16.766); 19 June 2003 (n 01-15.394).

- **Absolute liability regardless of material damage:** While violations of fundamental rights often result in material harm, liability for their infringement does not require proof of loss. The intrinsic importance of these rights makes any violation actionable *per se*. Loss of legal entitlements such as bodily integrity<sup>56</sup>, liberty<sup>57</sup>, or privacy<sup>58</sup> itself constitutes damage. This is because the mere deprivation of such legal entitlements constitutes harm in itself, and the occurrence of damage in cases of their violation is based on a legal presumption.<sup>59</sup> For example, Flase imprisonment—as one of the instances of a human rights-related tort—gives rise to liability even if the detained person has not actually suffered financial loss or endured harsh conditions.<sup>60</sup> Therefore, liability arising from the violation of human rights is not contingent upon proving the deterioration of one’s condition.<sup>61</sup>
- **No need to prove fault:** Protection of fundamental rights justifies strict liability. Judicial focus is on establishing the violation of rights rather than proving the defendant’s blameworthiness.<sup>62</sup> This strict liability approach reflects the collective ethical backing of fundamental norms,<sup>63</sup> where any breach, regardless of intent, constitutes fault.<sup>64</sup>
- **Irrelevance of foreseeability of harm:** Despite debates on whether foreseeability should limit liability, human rights torts impose full responsibility on the violator. Compensation extends beyond foreseeable damages, covering all consequences of the rights violation.<sup>65</sup> Examples in Europe include loss of profit due to false imprisonment<sup>66</sup>, full medical expenses from torture<sup>67</sup>, or wasted costs such as hotel reservations lost due to arrest.<sup>68</sup>
- **Restrictions on justifications for harmful acts:** The need to maximize protection of fundamental rights limits defenses for harmful conduct to

<sup>56</sup>. Ashley v. Chief Constable of Sussex Police [2008] 1 AC 962.

<sup>57</sup>. Murray v. MOD [1988] All ER 521, 529; John Lewis v Tims [1952] AC 676, 680.

<sup>58</sup>. Gulati v. MGN Ltd [2015] EWHC 1482.

<sup>59</sup>. Varuhas NE, Damages and Human Rights, 58.

<sup>60</sup>. R (Lumba) v SOSHD [2008] EWHC 3166, [130]; Cullen v Chief Constable Royal Ulster Constabulary [2003] 1 WLR 1763, [81].

<sup>61</sup>. In France, only the violation of the right to privacy is regarded as giving rise to absolute liability, without the need to prove any damage. Lucie Chatelain, Virginie Rouas, Esther Sebillotte, *Civil Liability For Human Rights Violations in France*, (Oxford: Bonavero Institute of Human Rights, 2022): 11.

<sup>62</sup>. George Fletcher, *Tort Liability for Human Rights Abuses*, (London: Hart Publishing, 2008), 40.

<sup>63</sup>. Aktas v Westpac Banking Corporation Ltd (2010) 241 CLR 79.

<sup>64</sup>. Loubser, “Strict Liability”, 212; Wagner, “Tort Law and Human Rights”, 219.

<sup>65</sup>. NE Varuhas, Damages and Human Rights, 73.

<sup>66</sup>. Childs v Lewis (1924) 40 TLR 870.

<sup>67</sup>. Rabone v Pennine Care NHS Foundation Trust [2012] 2 AC 72; Van Colle v Chief Constable Hertfordshire Police [2007] 1 WLR 1821; DSD v Commissioner for Police [2015] 1 WLR 1833 [DSD HC]; OOO v Commissioner for the Metropolis [2011] HRLR 29.

<sup>68</sup>. Link Technology 2000 Ltd v Attorney-General [2006] 1 NZLR 1, [22], [88]–[89].

exceptional cases, such as national security or clear public interest. Human rights tort liability does not generally allow mitigation or state-run compensation schemes, emphasizing personal responsibility and punitive objectives. For instance, in New Zealand, State-Run Compensation Schemes do not replace the personal liability of violators in human rights cases.

This framework demonstrates that while civil liability principles are compatible with human rights enforcement, their application requires adaptation to the absolute, non-material, and socially significant nature of fundamental rights. It also highlights the tension between traditional civil liability criteria and the ethical imperatives embedded in human rights law.

On this basis, today the most significant example of vindicatory torts can be regarded as those arising from the violation of fundamental rights. While sharing certain common principles, they possess characteristics that distinguish them from compensatory torts. These distinctions are most prominently reflected in the differing methods of redress, which will be examined in the following sections.

### **3.2.2. Methods of Compensation and the Application of Effective Remedies**

The intrinsic significance of fundamental rights and the imperative to safeguard them at the highest possible level render the methods of compensating their violation distinct from other torts. Compensation in this context is objective and emphasizes prevention of recurrence; thus, judicial proceedings do not merely aim to repair material loss, but also allow for the imposition of punitive or exemplary damages.<sup>69</sup> Even in the absence of financial loss, such remedies can fulfill the objectives of deterrence and serve as a civil liability sanction.

The use of these remedies, recognized in many legal systems<sup>70</sup> and supported by judicial precedent,<sup>71</sup> ensures the protection of human rights while simultaneously serving a deterrent function. Given the gravity of the rights at stake, human rights violations can also justify the award of

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<sup>69</sup>. Jennifer Klinck, Michael Elharrar, and Melisande Charbonneau-Gravel, *Civil Liability For Human Rights Violations in Canada* (Oxford: Bonavero Institute of Human Rights, April 2022), 12; Guido Calabresi, “The Complexity of Torts- The Case of Punitive Damages,” in *Exploring Tort Law*, ed. Stuart Madden (New York: Cambridge University Press, 2005), 336.

<sup>70</sup>. In the United States, punitive damages are available in all states except for four: California (LA CIV. CODE ANN. art. 3546, West Supp. 1993), Michigan (MICH. COMP. LAWS § 600.2911, 1991), New Hampshire (N.H. REV. STAT. ANN. § 507:16, Supp. 1991), and Nebraska (NEB. CONST. of 1875, art. VII, § 5). Brazil (Brazilian Civil Code, Art. 1538(1)), Ethiopia, and South Africa are other jurisdictions that adopt a similar approach. Shelton, *Remedies in International Human Rights Law*, 405.

<sup>71</sup>. European Court of Human Rights, *Chember v. Russia* (2008) Application No. 7188/03, (Judgment of 3 July 2008), para. 77 (10,000 euros); *X. v. Croatia* (2008) Application No. 11223/04 (Judgment of 17 July 2008), para. 63 (8,000 euros).

aggravated damages.<sup>72</sup> In determining proportional remedies for such violations, consideration must be given to the importance of the right infringed, and all available instruments of civil liability should be applied in proportion to the scope and impact of the violation.

For instance, in cases involving forced labor or the unauthorized publication of private photographs generating financial gain, the claimant may recover the profits obtained; however, punitive damages may be awarded regardless of financial benefit.<sup>73</sup> Alongside remedies such as restitution and profit disgorgement, declaratory relief, which formally recognizes the claimant's rights without imposing behavioral obligations on the defendant, may also be appropriate.<sup>74</sup>

The possibility of specific relief, i.e., judicial orders compelling or restraining conduct, in addition to financial compensation, can be highly effective in restoring violated rights and preventing ongoing infringements. For example, ordering a retrial of an unjustly convicted individual, or expediting fair judicial proceedings with compliance reporting, can safeguard the right to a fair trial.<sup>75</sup> Similarly, issuing an prohibitory injunction to relocate a polluting facility and prohibit its activity in a residential area effectively protects citizens' right to a clean environment.<sup>76</sup> Therefore, the scope for judicial remedies in human rights torts is broad and may be combined with other compensatory measures addressing past harm.<sup>77</sup>

In assessing damages for fundamental rights, consideration is given to loss of quality of life or hedonic damages. Here, the right to life encompasses not merely survival but the ability to enjoy a life of dignity and acceptable standards, which the legal system must protect.<sup>78</sup> In the United States, for instance, the right to life is interpreted as the right to a dignified existence, and various mechanisms have been developed to safeguard and compensate its violation.<sup>79</sup>

#### **4. Applicability of Human Rights in Private Relations and the Role of Civil Liability in Iranian Law and Islamic Jurisprudence**

In the Iranian legal system, fundamental principles and values are enshrined in the Constitution and addressed explicitly in multiple provisions, including Clause 6 of Article 2, Clauses 7, 8, 9, and 14 of Article 3, and Articles 19–42. Certain provisions, such as Article 50, recognize environmental protection as

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<sup>72</sup>. *Rookes* (n 201) 1221, 1229; *Broome* (n 34) 1124; *Commissioner of the Metropolis v. Shaw* [2012] ICR 464.

<sup>73</sup>. Miller, "Human Rights Abuses as Tort Harms," 549.

<sup>74</sup>. Hoffman and Van Lighten, *Civil Liability For Human Rights Violations*, 19

<sup>75</sup>. *Thompson v Commissioner for the Metropolis* [1998] QB 498; *Heil v Rankin* [2001] QB 272.

<sup>76</sup>. *CTB v NGN Ltd* [2011] EWHC 1232.

<sup>77</sup>. NE Varuhas, *Damages and Human Rights*, 148.

<sup>78</sup>. Shelton, *Remedies in International Human Rights Law*, 331.

<sup>79</sup>. Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay* (2005) Series C No. 125, paras. 162–4 (17 June 2005).

both a fundamental right and a public duty, binding on all citizens and the state.

Iran has also ratified, with or without reservations, international instruments including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child. Pursuant to Article 9 of the Civil Code, these instruments carry domestic legal effect.

Doctrinally, the horizontal effect of human rights has been recognized, framing fundamental rights within private relations as personality rights, encompassing both tangible and intangible dimensions.<sup>80</sup> Therefore, it may be stated that, in terms of the extent to which the legal system is influenced by fundamental and basic values, as well as the possibility of invoking them in private relations and the binding effects they may have within such relations, the Iranian legal system is not inherently distinct from other legal systems. Except in instances where the implementation or invocation of human rights norms is precluded due to incompatibility with domestic law or Islamic jurisprudential principles<sup>81</sup>, the aforementioned arguments concerning the horizontal effect of human rights are equally applicable to the Iranian legal system.

Civil liability, along with its compensatory mechanisms, is well established in Iran. Article 1 of the Civil Liability Law stipulates that any harm arising from infringement of another's rights imposes liability, covering both material and moral damages. Explicit provisions addressing harm to liberty and reputation (Articles 6, 8–10) and redress for moral damages arising from the defamation of women due to sexual assault (Article 9)—demonstrates that, in Iranian law, instances of fundamental and basic rights are regarded as matters of significant importance.<sup>82</sup> In determining the quantum and form of compensation, relevant circumstances must be considered (Article 3).

Although full compensation is a guiding principle, Article 4 allows courts to reduce awards where the claimant contributed to the harm or where the defendant is financially unable to pay the full amount. This demonstrates that, in specific cases, remedies other than strict compensation may be appropriate.

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<sup>80</sup>. Hasan Badini, "Civil Liability Arising from the Violation of Moral Rights Related to Personality and Human Rights," *Law Quarterly* 42, no. 1 (2012): 102.

<sup>81</sup>. Islamic Republic of Iran, Deputy for International Affairs of the Judiciary, Circular No. 4/20976/9000, November 28, 2023.

<sup>82</sup>. Iraj Babaei, *Civil Liability Law Based on the Critique and Review of Judicial Opinions and Case Law*, Vol. 1 (Tehran: Publications and Press Center of the Judiciary, 2024), 138.

Consequently, while punitive or aggravated damages are not explicitly codified, their application in human rights torts may be justified in Iran on several grounds:

- The requirement to consider circumstances and account for interests beyond mere compensation (as implied by Articles 3 and 4) demonstrates that the civil liability framework in Iran, in its current form, possesses the capacity to give special attention to fundamental and basic rights. These provisions indicate that, mere compensation is not the sole basis for civil liability in Iran; rather, actions can be taken based on interests that go beyond simple reparation.
- The possibility of mitigation further reflects the acceptance of a norm-oriented approach within Iranian civil liability. Accordingly, when the injuring party acts in good faith or commits a forgivable or excusable fault, full compensation is not awarded. Judicial practice can, with clear understanding of the rationale behind these provisions, enhance the protection and guarantee of fundamental rights. In cases where an individual infringes upon another's rights by violating their dignity, applying proportionate measures—such as aggravating liability or imposing punitive damages—can realize the purpose outlined in Article 3 and the proportionality intended in Article 4.
- Multiple principles in the Constitution also underscore that the preservation of human dignity is a fundamental and inviolable norm that must be considered within civil liability. Relying solely on material damages without attention to the nature of the conduct that caused them fails to achieve the intended deterrence in civil liability and the necessary proportionality between the harmful act and the method of reparation. Therefore, it must be acknowledged that within Iran's legal system, it is feasible to employ all proportionate instruments to compensate for damages and prevent recurrence in human-rights-related torts.

Therefore, it must be acknowledged that within the Iranian legal system, the utilization of all appropriate measures to compensate for damages and to prevent recurrence in human-rights-related torts is indeed feasible.

From the perspective of aligning the subject with Islamic jurisprudence, it must first be understood that, with the formal recognition of and the obligation to uphold fundamental rights, liability arising from their violation can be conceptualized based on a form of harm, whether direct harm (in cases where actual damage to property occurs due to an immediate harmful act) or causative harm (in cases where no material loss occurs and the act is indirect).<sup>83</sup> Such liability may even arise from the infringement of moral rights. Examples such as *diya* (blood money), which can be associated with the right to health and bodily integrity, demonstrate that liability premised on

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<sup>83</sup>. Mohammad Jafar Jafari Langeroudi, *Al-Fareq*, vol. 1, (Tehran: Ganj-e Danesh, 2007), 54.

fault and accompanied by the obligation to pay a fixed sum exists. Despite varying justifications, its fundamental basis lies in the importance of health and life and the imperative of their absolute protection within Islamic jurisprudence.

Furthermore, in the opinion of some jurists,<sup>84</sup> the mere prevention by an owner of another's rightful exercise of ownership constitutes harm, without the need to prove additional damage. This principle can be extended, in the context of preserving human dignity, to other instances of fundamental rights.

Such an analysis opens new horizons and provides a strong foundational basis for resolving certain contentious issues within jurisprudence. For example, regarding liability arising from the false imprisonment of another person, the dominant view holds that if detention merely delays the enjoyment of the individual's benefits, it does not incur liability—unless the individual is compelled to perform work or labor during this period.<sup>85</sup> Some jurists also argue that a human being is not a mere object to be placed “under control” or possession, and therefore the rule of *'ala al-yad* does not apply, rendering detention non-labile.<sup>86</sup> While the evaluation and analysis of these arguments require consultation of other studies, it is noteworthy that the false imprisonment has not been widely examined from the perspective of violating fundamental and basic rights. Consequently, in jurisprudence, the issue has traditionally been analyzed in terms of the monetary value of human benefits or the financial consequences involved.

However, under the approach presented in this article, the violation of freedom may be recognized as a fundamental right giving rise to liability, and proportional remedies can be employed even in the absence of financial damage, both to compensate the victim and prevent recurrence.

## 5. Conclusion

Human rights are inherently concerned with the protection of human dignity, and any act, whether by public authorities or private individuals, that results in the infringement of these rights gives rise to liability. Civil liability can play a crucial role in realizing the horizontal effect of human rights and remedying violations in private relationships, as disregarding these rights constitutes conduct contrary to the expectations of a reasonable person and may impose compensatory obligations.

This approach not only strengthens human rights protection but also aligns civil liability with fundamental societal norms, enhancing its deterrent effect and operational efficacy through the application of proportional compensatory measures and strict liability mechanisms. The Iranian legal

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<sup>84</sup>. Mohammad Baqir al-Sadr, *Mabahith al-Usul* (Qom: Esmaeiliyan Publications, 1987), 430.

<sup>85</sup>. Hasan ibn Yusuf al-Hilli, *Tadhkira al-Fuqaha*, Vol. 19 (Qom: Al al-Bayt Institute for the Revival of Heritage, 2002), 219; Zayn al-Din al-'Amili, *al-Rawdah al-Bahiyyah fi Sharh al-Lum'ah al-Dimashqiyyah*, Vol. 3 (Qom: Dar al-Tafsir, 2003), 109.

<sup>86</sup>. Sayyid Hasan Bejnurdi, *Qawa'id al-Fiqhiyyah*, Vol. 4 (Qom: Nashr al-Hadi, 1998), 183.

framework, drawing upon the Constitution, civil liability law, and jurisprudential principles—particularly the rule of *la Zarar va La Zerar* (no harm) and concepts related to human dignity—contains examples of a normative approach to civil liability, acceptance of strict and fault-independent liability, and reliance on deterrent principles, all of which can be leveraged in remedying human rights violations.

Nevertheless, challenges remain, including the lack of explicit legal provisions, limitations in available remedies, the need to employ less familiar concepts such as punitive damages and judicial obligations, and weaknesses in judicial practice, which impede the effective utilization of these capacities.

Therefore, to enhance the horizontal effect of human rights and improve the efficacy of civil liability in private relations, legislative reforms are recommended: expansive interpretations of liability, fault, and harm in light of human rights should be endorsed; deterrence-based principles in civil liability should be refined; and judicial practice in dealing with fundamental rights violations should adopt measures such as punitive damages and injunctive relief, with full recognition of their normative significance. Only through such measures can the legal system effectively safeguard human dignity, as a fundamental value enshrined in the Constitution and Islamic principles, against all forms of infringement—even when such violations arise within private relationships.

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