

Comparison of Punitive Damages with Similar Institutions in Internal Law of Iran

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Abstract

The individual has to pay to complainant because of his behavior of indecent and jobbery in harm foundation of this institution was in common law particularly in England that was spread in other countries very fast. There is no institution as punitive damages in the internal law of Iran but there are some similar institutions. Any how we will consider that non Of these institutions is coincident with punitive recompense in other countries. These institutions are as obligation sum, virtual loss, constraint fine, delay payment recompense and blood money.

Keywords: Punitive damages, obligation sum, virtual loss, constraint fine, blood money.

1. Introduction

There are some institutions in internal law of Iran with some similarities to punitive recompense and can be substitute to punitive damages institution to fulfill this institutions in Iran s law. These institutions are as obligation sum, virtual loss, constraint fine, delay payment damages and blood money .in this essay in investigation of different and similarity aspects of these institution with punitive recompense we will know that how far these institutions are coincident to punitive damages. Research method in this descriptive and analyzing essay is referred to library facilities and documentary [1-4].

There is no institution under punitive damages term in internal law of Iran. But there are similarities to punitive damages in some law institutions in Iran as internal law which can be substituted punitive damages in some cases and fulfill these institution (punitive damages institution) in Iran s law . But we will see that non of these institution will be coincided to punitive damages institution, so in this topic we will compare punitive damages institution with obligation sum, virtual loss, constraint fine, delay payment damage and blood money institutions.

2. The Punitive Damages and Obligation

The obligation sum which is some times said to be punitive limitation is a definite sum that is conditioned in the contract for the promise if refusing to execute his onus. Rule No.230 of civil law has determined a definite sum for amount of the obligation sum and lawyer is not allowed to reform it. The only exceptional point in the problem and in fact the only way for the promise to demand sum out of the obligation amount is that at any cost he has to prove, the loss is not related to the contract and contract does not consist this kind of condition (crime) like when the harm is purposely from the point of amount, it seems that law make has not considered any limitation for obligation sum, also fie the court to condemn the wrongdoer to pay the obligation sum ,no need of propriety proof between the loss to the vendor and amount of the obligation sum, while even it is not necessary to prove the loss is pertinent to him. It is necessary to mention that in no contract responsibilities very seldom obligation sum limitation is seem and definite sum is not said to be obligation sum. For example if a factory owner agree to pay a definite amount to the garden owners of the same locality or near by in the case garden owners get any loss because of the pollution caused by the factory is not said to be obligation sum. so that is why we have borrowed (extracted) the term of eventual punishment from erupt law [4-8]. If obligation sum is as recompense for delay in duty execution, both the obligation sum payment and execution of the main duty can be asked form judge. But this instance needs to be proved and in fact it is said that obligation sum is an assurance for if the mandate is not executed so recompense and mandate execution can not both together and asked and complainant must choose one of these two.

Similar aspect in both punitive damages and obligation sum are as follows:

- 1- Punitive damages and obligation sum both are sums paid to complainant and it is at the beneficent of complainant not the government.
- 2- Though the viewpoint of law maker in institute of obligation sum is an amendment sight but obligation sum some times like punitive damages is non relief aspect and it is when, the loss to complainant is less than the obligation sum amount determined in contract.
- 3- Obligation sum like punitive damages is some time a preventive aspect.
- 4- Punitive damages and obligation sum both in civil law got a generic meaning and are not accounted as eventual punishment.

In punitive damages and obligation sum the following points are considered.

- 1- Punitive damages is often discussed in civil responsibility and tort debate, but obligation sum is more investigated of course as we saw in previous topics, generally location of punitive damages is in civil responsibility and obligation sum is placed in contracts but specially in punitive damages the above points are offended.

2- Obligation sum consists an agreed element and compromised by the both sides but amount of punitive damages is determined by court and it consists constraint element (convenience and inconvenience).

3-Punitive damages sum is not predictable and it is determined by court according to the position and situation but amount of obligation sum is determined in definite form by both sides be fore.

4- To release an order of obligation sum payment, no need to expose the wrongdoer s intent otherwise the case will be more than a matter of obligation sum, as it is mentioned before, obligation sum can not be a lure of purposely losses and on the contrary in punitive damages. When court can release payment order that any how the jobbery or purpose of the promise is obvious [9].

5-Punitive damages can not relief the loss while obligation sum is replaced the loss, though some time is punitive aspect.

3. Punitive Damages and Virtual Damages

Virtual loss is a kind of loss that harms ones prestige, for example exposing his secret and it is opposite to property loss. According to rule No 9 of the last law of punitive procedure in demandable recompense, virtual loss is considered too. But this item is outdated in new law in 1978, but this case made no problem to demanding possibility of virtual recompense in Iran s law. Because this case is accepted in rule NO 171, of civil law. Though item 1 of civil responsibility say that (any other right due to law is considered for individual) and form the preciosity of item 10 of above law and also item NO. 58 of Islamic punishment law, demanding possibility of virtual recompense in Iran s law can be easily understood but there is variety of viewpoints is this case that this kind of recompense can be relieved or not. Guardian council has refused relieving possibility of virtual loss by money in a theory but this instance has been criticism end by law professors. While rule no171 of civil law has accepted the relief of virtual loss and lawyer knows the guilty as a surety. So it is not known how Islamic holy judicial is against the relief of virtual loss, if implicated to pay to lost. So by this way the lost will be disarmed and it will persuade people in demanding their virtual loss and or it is said that (Iranian ruler following Islamic jurisprudence for to waste sex joy and some other virtual limitations such as virtual loss of seminal and virility has resolved by corporeal relief through blood money. So with idealistic resolutions plea of being corporeal wealth moonscape with virtual loss at least should not exclude the lost from relief of some part of his loss. It is said that in international law most believe that demanding of virtual loss is possible. There is no doubt in French law that virtual loss damages demanding is possible too. Meanwhile some believe that virtual recompense can punish the wrongdoer though otherwise he would not compensate the loss. He has mead, completely, so virtual damages has a practical punishment. But this word can not be correct, because virtual loss

recompense is a kind of relievable loss and has no practical punishment aspect, though its preventability is considerable as the same professor himself has mentioned that virtual loss recompense is in the way to compensate the loss completely [10-12].

Similarity aspects in punitive damages with virtual loss damages can be classified as below:

1-virtual loss recompense and punitive damages both are in some way prevention aspect.

2-Virtual loss recompense and punitive damages both are at the benefit of lost and non of them is to the benefit of government.

3-Amount of punitive damages and virtual loss recompense sums are both stated by court and are unpredictable.

4-Non of punitive is considered to compensate and virtual loss recompense is considered to compensate corporeal loss.

Different aspects of punitive damages and virtual loss recompense are divided as follow.

1-Virtual loss recompense is completely a loss recovery and is paid against harm and its aim is to recover virtual losses. But punitive damages nature is completely non loss recovery and it is not paid against harm.

2-Base of determination of punitive damages sum in court differs from the base of determination of virtual loss recompense sum. In punitive damages

The temperament of wrongdoer and his act is considered, but in virtual, to return the lost to his before position is considered [13].

3-In punitive damages rudeness and jobbery of the individual must be obvious but they are not necessary to be obvious for virtual loss and responsibility of guilty in virtual loss is on the base of general civil responsibility and guilt.

4. Punitive Damages and Constraint Fine

Constraint fine or financial fine is a pecuniary fine that is often on the basis of daily delay in payment and can be based on additional order against the individual, by court and if compromiser does not do according to the order conditions so he will be under pressure that his due will increase daily. In item 729 of old law of civil procedure (sanction 1920) court was permitted to release such order and in item 47 waver of civil order execution law (sanction 1980) which is indispensable at the present and also referring to item 729 of said law at the present in this object that whether item 729 is trans formed (rejected) or according to item 47 civil executive law, which it is performance able yet, there is variety of viewpoint between law makers. Some believe in rejection of this item of law, so they reuse the constraint fine institution in Iran s law. While some belier that referring item 47 to item 729 in civil execution law, court can release

constraint fine order according to the item 47; but it is not practically accepted by our court procedure, and no constraint fine order has been released since 1979, so it seems that lawmaker should work on this case to promote this useful institution in law of Iran and ends the different viewpoints [14].

Similarly aspects in punitive damages and constraint fine can be explained as the following aspects.

1- Constraint fine like punitive damages has punitive aspect and it is not against the loss. In other words aim of lawmaker in instituting constraint fine is not to retribute to former position.

2- Punitive damages and constraint fine both are to the benefit of the complainant and government has not contribution in that.

3- Punitive damages and constraint fine both is determined by court law maker nor any one of the complainants got infraction in it.

4- Punitive damages and constraint fine both are future viewers and the past has no efficacy in them. It means there is no view on past losses in them.

5- Punitive damages and constraint fine both have got prevention aspect [15].

5. Segregation Aspects in Punitive Damages and Constraint Fine

1- Punitive damages is basically in civil responsibility law and it will be vat able when behavior is along with jobbery but constraint fine is in onus right (law) and it is when that execution of onus is promise duty and he refuse to do it.

2- Punitive damages edict itself, but constraint fine is pubs edict and its execution is due to definite order by lawyer.

3- Edict of punitive damages of is a credit closure an and can not be reformed by same court later on. But constraint fine can be increased or decreased later as it is mentioned in item NO.730 of old law of civil procedure.

4- Amount of punitive damages sum is determined by court, but constraint fine sum is for each day or week and its sum depends on time passing.

6. Punitive Damages and Delay payment Recompense

1- Nature of delay payment (payoff) recompense: payoff delay recompense is discussed in contracts right and it is relevant to where a promise does not do his onus on time and so promise gels some loss and which one of the execution warranties is to pay fine to promise, and in item No. 226 of civil law demanding possibility of it is accepted. But in pecuniary onus delay, it is not so. In this case, though lawmaker has take steps with precaution that the fine to be payee in update fee. And some say there is

different between fine and gavel and they believe that firstly gavel is a sum which has been agreed between the promise and the promise, but recompense is determined by court, secondly, gavel will come to and on a definite time and which recompense will start since then. Any how in no regulation possibility of relief of loss due to delay of payment is permitted [16]. Payment delay recompense and punitive damages both are as supplementary recompense beside the main recompense and are of first principle subsidiary, it means return the promise to his last position or recover his loss completely. Payment delay recompense and punitive damages both are at the benefit of promise and government is not shared in it. Payment delay and punitive damages both have prevention aspects [17]. Punitive damages and payment delay recompense both are determined by court unless otherwise both sides have agreed about payment delay recompense sum before. Different aspect in punitive damages and payment delay recompense are as below.

1-payment delay recompense is discussed in contracts law and it is about contracting regulations but punitive damages is in fact discussed in civiler responsibility law.

2-Punitive damages has no relief aspect but payment delay recompense is completely relievable and to release and order or rule for it. There must be reciprocally loss and or at least arrival of the loss be considerable so it is not to punish the individual.

3-In court, origin of determination of punitive damages sum differs from the origin of payment delay recompense. In punitive damages relief of loss is not considered and jobbery behavior of the harmer person(man)is the reason and on the contrary in payment delay recompense. Season is position of the loser , though it will hare a deterrent aspect for the guilty.

4-In payment delay recompense , what is important is, reaching the date appointed in contract or in agreement and refusal of promise to perform his duty and this case (refusal of performing the duty) is accounted as a guilt and it is an enough reason for the court, while in punitive damages jobbery and purpose of the promise is considered, and in other words , in here action of special guilt is considered.

7. Punitive Damages and Blood Money

1- Nature of blood money in item 294 of Islamic punishment law, regarding blood money, it is said that (blood money is a money paid to a beaten person, to this guardian or to the family of a killed person regarding the crime to this life or limb loss)).lack of clearness in above said item(article)about nature of blood money caused different viewpoints between lawmakers in this case because in this article it is said that blood money is money paid to the individual and it is nothing but a recompense ;while in article 12 of Islamic law, blood money is regarded one of five punishments. What can in conclusion say blood money has a punitive nature as well as civil nature. In confirmation of the two nature of blood money, judiciary law administration released the theory No.7.2991 in 1987 saying that blood money pecuniary retribution is a property punishment but any how it is a payment of a duty an also a financial right for the killed

person family and it is an obligation on the killer so by death of losing party blood money must be demanded from the deceased property. There are many different viewpoints regarding possibility of demanding extra blood money though some law makers have known it possible is relying to law of civil responsibility harmless regulation, causation, sin negation and logical bases but juridical procedure intends not to accept it though this case is accepted some times [18-19].

Similar aspects of punitive damages and blood money are as below.

1- Blood money and punitive damages both have the two nature, it means that. They have got civil aspects as well as punitive aspect and non of them is pecuniary retribution.

2- Blood money recompense both are paid to competent and got no share in that.

3- Though viewpoint of lawyer and legislator in blood money is amendatory viewpoint. Blood money is also some times like punitive recompense, non amendatory aspect and it is when the crime is less than blood money sum.

4- Blood money and punitive damages both consists prevention aspect.

Different aspect in punitive damages and blood money are

1- Amount of blood money is determined by holy legislation or law and it can not be increased or decreased, while amount of punitive damages sum is determined by lawyer and or jury and its amount is not specified.

2- Aim of legislation and law maker in determination of blood money sum is that to predict it equal with real recompense and the aim in that is more reparation and to return the position to the before position, though it is some times less or more than that, while punitive recompense is completely no reparation and its main aim is punishment.

3- Blood money will accrue to individual when he is injured and it will not accrue him he is other case and to relief any other loss he should go via juridical claim.

4- Blood money is discussed in punitive law and Islamic punishment rule, while punitive recompense is discussed in tort and civil responsibility law.

5- Subject of blood money payment must be a crime, whether purposely or not but rule subject of punitive damages of civil guilt is along with insolence and jobbery.

6-ordering to pay a punitive recompense is in competency of curt law while order to pay blood money is released by punitive court.

Conclusion

As considered you see that there are differences in punitive damages institute with any other institutes which investigated. As position of the punitive damages is in civil responsibility and position obligation sum is in contracts. while amount of obligation sum is determined by the bout sides but amount of punitive damages is determined by court and or obligation sum is replaced by relief loss. Also in comparative investigation of punitive damages with virtual loss. We came to this conclusion that virtual recompense is completely to relieve the complainant and base of its determination is the loser. While in punitive recompense it is non relieve and is due to the act of wrongdoer also while the subject of punitive damages sum is discussed in the field of commitments right. In constraint recompense the sum can be reduced or increased and is determined daily or weekly while in punitive damages it is not so because it is determined by court fixedly. There are similar different in punitive damages and delay payment recompense and blood money. So by investigation of these institutes we concluded that non of them is coincided with punitive damages.

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