



**Bodily Harm**

**Between Civil and Criminal Law**

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**Abstract:**

The legal article addresses bodily harm, highlighting its significance in both Moroccan civil and criminal law. Bodily harm is a fundamental element in civil claims and requires compensation when caused by unlawful acts. The article distinguishes bodily harm from material and moral damages, considering it an independent type of harm that affects the right to life and physical integrity, and addresses various forms such as assault, wounding, and administering harmful substances, emphasizing the protection of physical integrity and the penalties for those responsible.

**Introduction:**

Bodily harm is the fundamental and essential element in civil claims because it is the basis of the obligation to compensate for damages. It is enough for a person to be held liable if their action, by itself, results in harm to others. Bodily harm is considered a primary condition for establishing liability for all types of harm that affect a human body, which many jurists consider to be the third type of damage that affects people. They have called it bodily or physical harm, considering it distinct from the two traditional types of harm, material and moral.

The damage that may arise from an unlawful act includes both bodily and moral harm. Therefore, it can be said that bodily harm is anything that affects a person's right to life and the integrity of their body. Any act that violates a person's right to life or bodily integrity is considered an offense and constitutes a criminal act punishable by law. It causes bodily harm that requires compensation, although scholars have differed in reaching a clear concept of bodily harm, and hence its definition as a distinct type of harm (First Section). Bodily harm affecting the human body is not of a single nature but is diverse and varies according to the severity of the act (Second Section).

**Section One: The Concept and Definition of Bodily Harm**

Researching the concept and definition of bodily harm leads us to study the notion of bodily harm in jurisprudence (First Paragraph), followed by the study of bodily harm in legislation and the judiciary (Second Paragraph).



### ***First Requirement: The Concept of Bodily Harm in Jurisprudence***

The concept of bodily harm has raised many discussions in both Islamic jurisprudence (First Paragraph) and legal jurisprudence (Second Paragraph).

#### **First Paragraph: The Concept of Bodily Harm in Islamic Jurisprudence**

The expression of bodily harm and compensation for it appears in the section related to bodily crimes in Islamic jurisprudence. The central point is that human beings are created inviolable, with their lives and bodies protected from harm. Thus, their rights must be preserved<sup>1</sup>. God created man and honored him<sup>2</sup>, making him His representative on earth. Man cannot achieve the purpose for which he was created unless he enjoys full elements of growth and complete rights. Among the most sacred of these rights is the right to physical integrity and life<sup>3</sup>.

For this reason, Islamic jurisprudence has established penalties for harmful acts that affect the human body, with consideration given to the severity of the attack. For accidental killing, Islam imposes compensation through "diya" (blood money) and expiation, applying the same for intentional killing by an incompetent individual, such as a child or a person with mental illness. In cases of death<sup>4</sup> caused by assault or intentional killing, four consequences are imposed: sin, disinheritance, will, expiation, and retribution.

In addition to emphasizing the right to life, Islam also protects the right to bodily integrity. If a person is injured, the offender is not liable for "diya" until the injury heals, and the risk of complications is averted. If the injury spreads to other parts of the body, the offender is held accountable. Islamic jurisprudence has dedicated a section called "Chapter of Wounds," covering every human body part and specifying the obligatory compensation for its loss due to an assault<sup>5</sup>.

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<sup>1</sup> - Taha Abdul Mawla Taha: "Compensation for Bodily Injuries in Light of Jurisprudence and Modern Cassation Judgments," Dar Al-Kutub Al-Qanuniyya, Al-Mahalla Al-Kubra, Egypt, 2000, p. 77

<sup>2</sup> - Allah Almighty says: {And do not kill the soul which Allah has forbidden, except by right } - (Surah Al-Isra, verse 33), and the Prophet (peace and blessings be upon him) said, "It is not permissible to shed the blood of a Muslim who testifies that there is no god but Allah and that I am the Messenger of Allah, except in one of three cases: a married person who commits adultery, a life for a life, and one who leaves his religion and separates from the community."

<sup>3</sup> - Issam Ahmed Mohamed: "The General Theory of the Right to Bodily Integrity, A Comparative Criminal Study, Volume 1," Dar Al-Fikr wa Al-Qanun, Mansoura, 2008, p. 144.

<sup>4</sup> - As jurisprudence has applied, the act of killing is classified as quasi-intentional homicide. Islam prescribes two consequences for it: the first is guilt because it involves killing a soul that Allah has forbidden to be killed, except by right, and the second is the aggravated blood money (diya) imposed on the perpetrator's family.

<sup>5</sup> - Abdul Wadoud Yahya: "A Summary of the General Theory of Obligations, Sources of Obligation," Dar Al-Nahda Al-Arabiya, Egypt, 1990, p. 251.



## **Second Paragraph: The Concept of Bodily Harm in Legal Jurisprudence**

Civil and criminal law scholars have defined bodily harm as a type of damage that warrants compensation and punishment for the perpetrator. To understand its meaning, we must refer to the works of these scholars, who have divided the concept into three approaches.

- The first approach considers bodily harm as a type of material damage. Material damage is defined as any harm inflicted on a person's body or property, resulting in financial loss<sup>6</sup>.

Al-Sanhuri defines material damage as an infringement on an interest of the injured party that has financial value<sup>7</sup>.

- The second approach classifies bodily harm under moral damage, where moral harm is defined as damage that does not affect a person's financial situation but rather their emotional or personal status<sup>8</sup>.

- The third approach defines bodily harm as damage resulting from intentional or unintentional crimes directed against individuals, affecting their senses or physical integrity, causing harm to the body<sup>9</sup>.

From these definitions, it becomes clear that bodily harm has two meanings: a narrow meaning that refers to the direct physical harm to the body and a broader meaning that includes all forms of physical, emotional, and spiritual harm.

### ***Second Requirement: The Concept of Bodily Harm in Legislation and Judiciary***

Researching the concept of bodily harm necessitates studying legislative and judicial perspectives on this topic. To this end, I will first address the concept of bodily harm in legislation (First Paragraph), followed by an examination of the judiciary's stance on bodily harm (Second Paragraph).

## **First Paragraph: The Concept of Bodily Harm in Legislation**

It is well known that it is not the legislator's role to define legal concepts, as this is typically left to scholars and the judiciary to avoid conflicts between the legislative text and its definitions.

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<sup>6</sup> - Taha Abdul Mawla Taha: "Compensation for Bodily Injuries," Previous Reference, p. 76

<sup>7</sup> - Abdul Razzaq Al-Sanhuri: "The Intermediate in the Explanation of Civil Law, Volume 1, On the Theory of Obligation in General (Sources of Obligation)," Dar Al-Nahda Al-Arabiya, Cairo, 2nd Edition, 1964, p. 97.

<sup>8</sup> - Jamil Al-Sharqawi: "The General Theory of Obligation, Sources of Obligation," Dar Al-Nahda Al-Arabiya, Egypt, 1981, p. 484.

<sup>9</sup> - Al-Habib Behi: "Explanation of the New Criminal Procedure Code, Volume 2: Prosecution and Claim," Dar Al-Qalam for Printing, Publishing, and Distribution, Rabat, 1st Edition, 2006, p. 163.



Upon reviewing the texts in both civil and criminal laws, we find that some of these laws present general formulations, while others provide enumerations of damage types without offering explicit definitions.

For example, in Moroccan legislation, bodily harm is mentioned in Article 7 of the Code of Criminal Procedure (C.C.P.), which states in its first paragraph: "The right to bring a civil action for compensation for harm resulting from a felony, misdemeanor, or infraction belongs to anyone who has personally suffered bodily, material, or moral harm directly caused by the crime."

Furthermore, Article 98 of the Obligations and Contracts Law (O.C.L.) defines harm in crimes and quasi-crimes by stating: "Harm in crimes and quasi-crimes...".

We observe that Moroccan legislators did not provide a clear definition of bodily harm but instead listed various types of damage caused by crimes. Additionally, the drafting of Article 7 of the C.C.P. and Article 98 of the O.C.L. shows that Moroccan legislators adopted a tripartite classification in criminal procedure law<sup>10</sup>, unlike the traditional binary classification in civil law and jurisprudence, which divides damage into material and moral categories<sup>11</sup>.

Moroccan civil law does not recognize bodily harm as a separate category under the name "bodily harm"; rather, it considers it a type of material damage. However, the Moroccan Criminal Code explicitly refers to bodily harm in Article 7 of the C.C.P., thus recognizing bodily harm as an independent type of damage.

### **Second Paragraph: The Concept of Bodily Harm in Judiciary**

Defining legal concepts is not the original task of the judiciary, but in cases where legislative texts are unclear or ambiguous, judges may clarify or define the concept if there is disagreement.

In this context, the Egyptian judiciary has attempted to define the concept of bodily harm, with the Court of Cassation presenting two main approaches:

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<sup>10</sup> - - This is the same classification adopted by the current French Code of Criminal Procedure, which states in the second paragraph of its third article: "A civil claim may be accepted for all types of damage, whether material, bodily, or moral, arising from the facts subject to prosecution."

"L'action civile peut être exercée en même temps que l'action publique et devant la même juridiction elle sera recevable pour tous chefs de dommages, aussi bien matériels que corporels ou moraux, qui découleront des faits objets de la poursuite."

<sup>11</sup> - Omar Abu Al-Tayeb: "Compensable Damage in Criminal Courts – A Comparative Study of Moroccan Law with French and Egyptian Laws, Volume 1," Doctoral Dissertation, Mohammed V University, Faculty of Legal, Economic, and Social Sciences, Rabat, 1982, p. 149



- The first approach, which is dominant, states that bodily harm requiring compensation only exists if the injury affects the victim's ability to earn income or incurs medical expenses.<sup>12</sup>

According to this narrow view, a victim is only entitled to compensation if they can prove that the assault resulted in financial loss or the cost of medical treatment. Failure to prove these elements means that no compensation is due for any harm<sup>13</sup>.

- The second approach asserts that a person's right to physical integrity is guaranteed by law, and any damage to the body, such as the loss of a limb or an inflicted wound, constitutes material damage by itself.

If the injury results in the victim's inability to work or causes medical expenses, these are additional financial losses, but the harm to the body itself is sufficient to warrant compensation.

## **Section Two: Forms of Bodily Harm**

The injuries that affect a person's body and result from criminal acts are not of a single type but vary according to the severity of the act. These include assault or wounding (First Requirement) or the administration of harmful substances, violence, and harm (Second Requirement).

### ***First Requirement: Assault and Wounding***

To fully understand non-lethal bodily injuries, I will discuss them in two forms: assault (First Paragraph) and wounding (Second Paragraph).

#### **First Paragraph: Assault**

Assault is a form of material damage that affects the victim's body. Legal scholars define assault as "any action that affects a person's body without causing a wound."<sup>14</sup> Others define it as "any pressure applied to the body tissues without tearing them, even if no bruising or redness occurs."<sup>15</sup> Generally, assault leaves visible marks on the victim's body, such as redness, swelling, or changes in skin color (e.g., bruising)<sup>16</sup>.

To constitute an assault, the victim's body does not have to be stationary, and the external force can be applied to a moving body. For instance, pushing the

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<sup>12</sup> - Muhammad Naji Yaqout: "Compensation for the Loss of Life Expectancy," The Modern Arab Printing Press, 1980 Edition, p. 76.

<sup>13</sup> - Taha Abdul Mawla Taha: "Compensation for Bodily Injuries," Previous Reference, p. 76.

<sup>14</sup> -- Mubarak Al-Saeed bin Al-Qaid: "Special Criminal Law," Babel Printing, Publishing, and Distribution Company, Rabat, 1st Edition, 2000, p. 207.

<sup>15</sup> - Sharif Al-Tabbakh: "Crimes of Wounding, Beating, Administering Harmful Substances, Workplace Injuries, and Disabilities in Light of Law and Forensic Medicine," Dar Al-Fikr Al-Jamei, Alexandria, 2004, p. 14.

<sup>16</sup> -- Abdul Wahid Al-Alami: "Explanation of Moroccan Criminal Law, Special Section," Al-Najah Al-Jadida Press, Casablanca, 6th Edition, 2013, p. 306.





victim to the ground constitutes an assault. Additionally, there is no minimum number of strikes required to qualify as assault; even a single blow is sufficient<sup>17</sup>. The means of committing the assault are also irrelevant, whether it is done using an object like a stick or with the body, such as hitting with a hand or kicking with a foot<sup>18</sup>.

### **Second Paragraph: Wounding**

A wound is a medical term referring to the separation of tissue within the body<sup>19</sup>. In this study, however, we will examine the legal definition of wounding.

Moroccan criminal law does not define wounding, but some legal scholars define it as "an action by the perpetrator that leaves a mark on the victim's body"<sup>20</sup> or "any tearing of body tissue"<sup>21</sup>, regardless of its severity"<sup>22</sup>.

Wounds can range from minor injuries<sup>23</sup>, such as a needle prick, to severe injuries, such as those caused by a knife. Legally, a wound also encompasses fractures, as fractures involve the tearing of the tissues that cover the bones.<sup>24</sup>

A wound may involve the complete severing of a body part, such as the amputation of a hand or leg, or it may involve only a partial tearing of body tissues without complete separation, such as burns, abrasions, or fractures.<sup>25</sup>

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<sup>17</sup> - Issam Ahmed Mohamed: "The General Theory of the Right to Bodily Integrity – A Comparative Criminal Study – Volume 1," Previous Reference, p. 266.

<sup>18</sup> -- Ahmed Abu Al-Rus: "Crimes of Killing, Beating, Wounding, and Administering Harmful Substances from a Legal Perspective," The Modern University Office, Alexandria, 1997, p. 64

<sup>19</sup> -- Sharif Al-Tabbakh: "Crimes of Wounding, Beating, Administering Harmful Substances, Workplace Injuries, and Disabilities," Previous Reference, p. 55.

<sup>20</sup> -- Abdul Wahid Al-Alami: "Explanation of Moroccan Criminal Law, Special Section," Previous Reference, p. 175

<sup>21</sup> -- Diaan Abdullah Aboud Al-Asadi: "The Right to Bodily Integrity as a Guarantee for the Defendant," Master's Thesis, Faculty of Law, University of Babylon, Iraq, 2003, pp. 43-44.

<sup>22</sup> -- Dhanoun Younis Saleh Al-Mohammadi: "Compensation for Damage to Human Life and Bodily Integrity: A Comparative Study," Zain Legal and Literary Publications, Lebanon, 1st Edition, 2013, p. 175.

<sup>23</sup> - Sharif Al-Tabbakh: "Crimes of Wounding, Beating, Administering Harmful Substances, Workplace Injuries, and Disabilities," Previous Reference, p. 13.

<sup>24</sup> -An injury is not considered grievous unless it causes a tear in the victim's tissue. This distinguishes it from blows, as both affect the body's material, but an injury without a tear is considered harm rather than a wound

<sup>25</sup> - - Fawzia Abdul Sattar: "Criminal Law, Special Section," Cairo University Press, Cairo, 2nd Edition, 1988, p. 151.



### ***Second Requirement: Violence, Harm, and the Administration of Harmful Substances***

The Moroccan legislator criminalizes actions that aim to harm a victim's body through physical violence or harm (First Paragraph), as well as the administration of harmful substances (Second Paragraph).

#### **First Paragraph: Violence and Harm**

Violence and harm are forms of physical damage that do not reach the severity of assault, wounding, or administering harmful substances<sup>26</sup>.

Violence is defined as "any unlawful use of physical force exerted by the perpetrator against the victim to achieve specific goals."

Therefore, violence applies to any situation where there is slight harm to a person's body without rising to the level of assault or wounding<sup>27</sup>, such as tying up the victim with a rope or cutting their hair<sup>28</sup>. The French Court of Cassation, for example, ruled that pointing a loaded gun at a woman with the intention of frightening her constituted violence warranting punishment, as it caused emotional distress and panic<sup>29</sup>.

Harm, on the other hand, refers to any action involving the use of physical force that disturbs the tranquility of the victim's body without physically damaging it<sup>30</sup>. This includes firing a gun in the victim's direction with the intent to scare them, but not to hit them, or pointing a weapon at the victim, or making a loud noise with the intention of instilling fear in the victim<sup>31</sup>.

It should be noted that the Moroccan legislator used the term "harm," which is a Broad expression, in order to criminalize as many activities as possible that could affect This protected value.<sup>32</sup>

#### **Second Paragraph: Administering Harmful Substances**

The assault on a person may not take the form of physical blows or wounds, but rather the administration of harmful substances that damage the body, either

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<sup>26</sup> -- Dhanoun Younis Saleh Al-Mohammadi: "Compensation for Damage to Human Life and Bodily Integrity," Previous Reference, p. 179.

<sup>27</sup> -- Nour Al-Din Al-Omrani: "Explanation of Special Criminal Law in Accordance with the Latest Amendments," Al-Karama Press, Rabat, 1st Edition, 2005, p. 237.

<sup>28</sup> -- Issam Ahmed Mohamed: "The General Theory of the Right to Bodily Integrity – A Comparative Criminal Study – Volume 1," Previous Reference, p. 273.

<sup>29</sup> -- Abdul Wahid Al-Alami: "Explanation of Moroccan Criminal Law, Special Section," Previous Reference, p. 307.

<sup>30</sup> -- Ahmed Abu Al-Rus: "Crimes of Killing, Beating, Wounding, and Administering Harmful Substances from a Legal Perspective," The Modern University Office, Alexandria, 1997, p. 65.

<sup>31</sup> -- Issam Ahmed Mohamed: "The General Theory of the Right to Bodily Integrity – A Comparative Criminal Study – Volume 1," Previous Reference, p. 174.

<sup>32</sup> -- Mubarak Al-Saeed bin Al-Qaid: "Special Criminal Law," Previous Reference, p. 208.



temporarily or permanently, or disrupt its natural functions<sup>33</sup>. In other words, the act reduces the body's health. This act occurs when the perpetrator administers a substance that harms the victim's health<sup>34</sup>. The type or form of the substance (solid, liquid, gas) and the method by which it is given to the victim are irrelevant in the eyes of the law<sup>35</sup>.

The Moroccan legislator criminalized the administration of harmful substances that aim to harm a person's health or body in Article 413 of the Criminal Code<sup>36</sup>.

### **Conclusion:**

From the foregoing, we conclude that bodily harm results from unlawful acts and can be defined as any violation of a person's right to physical integrity. Any action that violates this right is considered an offense and a crime punishable by law. It causes bodily harm, which requires compensation. The injuries that affect a person's body are diverse and vary depending on the severity of the perpetrated act, such as assault, wounding, the administration of harmful substances, violence, and other forms of bodily harm. These forms of harm have been outlined by the Moroccan legislator as examples rather than an exhaustive list.

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<sup>33</sup> -- Ahmed Abu Al-Rus: "Crimes of Killing, Beating, Wounding, and Administering Harmful Substances from a Legal Perspective," Previous Reference, p. 64.

<sup>34</sup> -- Sharif Al-Tabbakh: "Crimes of Wounding, Beating, Administering Harmful Substances, Workplace Injuries, and Disabilities," Previous Reference, p. 23.

<sup>35</sup> - Adel Sadiq: "Crimes of Wounding, Beating, and Administering Harmful Substances," Previous Reference, p. 22.

<sup>36</sup> -- Article 413 of the Moroccan Penal Code, in its first paragraph, states: "A person who causes another to suffer an illness or incapacity for work by deliberately administering, by any means and without intent to kill, harmful substances, shall be punished by imprisonment from one month to three years and a fine of between 200 and 500 dirhams..."





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