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THE LEGAL NATURE OF WERGILD IN JORDANIAN CIVIL LAW

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Abstract

Wergild is the financial equivalent of the physical harm caused to the right to life and the right to physical integrity. The Jordanian legislature treated it as an element of compensation for bodily harm, along with compensation. Opinions differed on the legal nature of wergild; one view held that Wergild is purely criminal, another held that it is purely civil compensation. A third view holds that it is a sanction that combines both punitive and compensatory qualities. In this study, we tried to arrive at the proper legal adaptation of Wergild in Jordanian civil law by referring to the historical source of Wergild as one of the concepts of Islamic criminal legislation. We reviewed its philosophical and legal basis and concluded that the Wergild provided for in article (273) of the Jordanian Civil Code is a fixed compensation in the legal text as an alternative to loss of life and loss of organs or paralysis of their functions, without including material and moral damages resulting from such destruction. Therefore, the text in article (274) of the Jordanian Civil Code states supplementary compensation to the Wergild, including such damages. In view of this complementary relationship between the wergild as an objective compensation and the personal compensation intended in article (274), a combination of Wergild and compensation is possible.

Keywords: Wergild, Physical Harm, Compensation, Punishment, Legal Nature, Jordanian.

INTRODUCTION

The Ottoman Code of Judicial Judgments was the civil law applicable in Jordan until the promulgation of the Jordanian Civil Code in 1976, which drew some of its provisions from the French Civil Code and left the provisions of the Ottoman Code of Judicial Judgments un-conflicting with its provisions. The dual historical source of the Jordanian Civil Code made it necessary to seek the proper adaptation of rights derived from Islamic law, including the Islamic Daman, Al-Arish, and "Hukumat Al-Adl" (compensation determined by experts) [1], in a manner consistent with the terms derived from the French Civil Code, including compensation and criminal fines.

The operative part of article (274) of the Jordanian Civil Code stresses that obtaining the Wergild that is due once the assault is committed does not preclude the victim, his heirs, and dependents from claiming compensation for the damage caused by the attack. Did the Jordanian legislator so wish to combine Wergild with compensation for the assault? The answer requires a consideration of the legal nature of Wergild, which, if punitive, can be combined with compensation, and if compensation. The general principles of civil liability preclude double compensation for the same act.

Research plan: In the first section, we review the wergild as a legal penalty with criminal and civil characteristics; we then examine the possibility of combining Wergild with compensation.

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Section I

Wergild: Between Punishment and Compensation

Legal scholars disagree on the adaptation of wergild due to their view of wergild in light of the criteria of the Latin legal system for distinguishing between punishment and compensation (the first problem). The Jordanian Civil Code has a different adaptation of wergild from what the legal scholars stated (the second problem).

The First Quest

The Jurisprudential Interpretation of Wergild

Views on determining the nature of blood money differed into three groups: one group believes that it is of a criminal nature, another believes that it is of a civil nature, and a third believes that it is of a dual nature.

Topic I

Criminal nature of Wergild

One trend of jurisprudence has been to state that wergild is purely criminal and is either an accessory penalty, whereby Wergild is awarded as an alternative punishment where retribution is extinguished in intentional killing [2], or a predicate penalty, which is avoided in negligent homicide and is replaced by a custodial penalty when pardoned. [3]

This trend is indicative of the common elements between wergild and punishment, but no specific adaptation has been agreed upon. Some have argued that it resembles special penalties, which were defined in Roman law [4]. Others have argued that they resemble fines because their value is fixed by the legislator, is unchanged from one person to another, and is not dependent on individual demand, retribution for murder, or compensatory solutions when pardoned [5].

Topic II

The Civil Nature of Wergild

The aim of the wergild is to compensate the victim to some extent for the harm caused by the crime. The wergild is part of the property of the victim or his heirs and is not included in the treasury of the state. The victim or his guardians may waive it or reconcile it with the perpetrator unconditionally because it is pure money. The wergild is not borne by the perpetrator but is borne by his mind [6].

Topic III

The Dual Nature of Wergild

This view considers wergild as of a dual nature, as it is a penalty that revolves between punishment and compensation, as some differentiate in their adaptation of wergild between the wergild due in the case of premeditated murder, where the penalty renders the offender incur blood money in his own money, and the wergild obligatory in the case

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of unintentional manslaughter, which is only a compensation for charges against the blood relatives. Others differentiated between the money specified in Sharia that is paid upon self-assault, such as wergild and indemnity, taking the status of penalty, and the unspecified money due to what is below the loss of life, which is determined by the judge and called the "Hukumat Al-Adl" (compensation determined by experts), taking the status of compensation [7].

This tendency to indicate the wergild penalty was based on evidence from considering wergild of a criminal nature and the compensability there to based on the civil nature of wergild.

Second Quest

Wergild in Jordanian civil law

Topic I

The philosophical and legal basis of wergild in Jordanian civil law

In Jordanian civil law, tort liability is based on the general rule of tort removal Damage, whether physical or financial, is compensated, and compensation for financial damage is subject to the general rules[8]; The assessment of compensation for bodily damage to human life and less is governed by special legal rules provided for in articles 273 and 274 of the Jordanian Civil Code.

The Jordanian Civil Code makes a distinction in the context of compensation for bodily harm between money due upon assault against life and less [9], and compensation for damage by identifying the party to which they are entitled [10]. Wergild is paid to the victim or his heirs in the event of his death and is distributed to them as a legacy according to the legal assessment. Each victim, whether the victim or his legal heirs or their dependents, even if they are not heirs, may claim compensation for the extent of the damage they suffered. [11]

The Wergild is incurred in addition to the punishment of the perpetrator alone, even if it is not marked by murder. The Wergild is paid solely and exclusively to the family and the perpetrator in the manslaughter. In cases of indecent assault, human organs are damaged or malfunctioning, and indemnity is a form of wergild by agreement. It is the money that is assessed in advance. The just judgment is implemented for the indemnity that is not estimated by the legislator[12].

The wergild is often assessed by the just judgment through analogy with money. The amount of money estimated by the just judgment may not reach the amount of money predetermined in the wergild money and indemnity. No indemnity sentence is issued until the healing or stability of the case is determined according to a report by a specialized physician. Indemnity and the just judgment must benefit the victim against whom the damage was inflicted [13].

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The basis for privatizing compensation for bodily harm through a special regulation is due to the fact that man is not monetized. The financial compensation for bodily harm in the Jordanian Civil Code is not considered compensation in the strict sense of the word because compensation is based on reciprocity and equivalence. Money is not considered equivalent to a human being. Therefore, the law established this financial compensation in advance for a fixed amount, in which people are treated equally and their honor is preserved.

Legal scholars argue that the goal of compensation for physical harm is not to remove the damage, as the material means cannot remove the moral injuries, but rather to provide a kind of consolation for the injured and relieve pain for him as a matter of satisfaction, so they call it satisfaction, and this label is in the same sense as legitimate blood money.

Topic II

Wergild is a legal compensation

The wergild must be separately paid apart from other penalties in unintentional manslaughter, as the error nullifies the criminal character of the act, and where there is no crime, there is no penalty, provided that the excuse of the error, although it prevents the punishment, but it does not prevent the reparation of the damage caused to the soul, so Article (273) of the Jordanian Civil Code requires Wergild on the offender, even if he is not distinguished in order to preserve the soul from waste, and to bear the burden of paying Wergild negates the quality of Wergild as a punishment, one of the essential elements The punishment is the irresponsibility of the non-discriminatory and indiscriminate, such as the under-age and the insane[14].

Wergild is not a criminal fine, given that the fine is obliging the perpetrator to pay to the government treasury the amount estimated in the judgment, and it is due in the perpetrator's money alone, while the wergild is not payable except to the victim, and it is obligatory on the perpetrator alone in premeditated murder, while the blood relatives bear the wergild in installments over three years in manslaughter, and the fine may be extinguished with the death of the perpetrator, while the wergild does not terminate because it is a debt to be collected from the premeditated murder cases and from the blood relatives in the felony of accidental killing.

Rather, Islamic law considered obliging the perpetrator to pay full wergild as prejudice to him, as this represents a penalty. Therefore, the wergild was obligatory for the blood relatives to relieve the perpetrator and exclude suspicion of punishment. Although the wergild is obligatory for the blood relatives rather than the perpetrator, it is not considered a penalty against them but a matter of support and cooperation between relatives and the perpetrator[15].

The matter is a little more sensitive in the case of premeditated murder, in which the perpetrator is alone charged with the Wergild. Hence, wergild is understood to have the status of a penalty in premeditated murder, which is incorrect when referring to the Islamic criminal legislation from which the Jordanian legislator derived the concept of wergild that

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is shared with other penalties in premeditated murder since blood money must be paid in view of the size of the damage caused by infringing on the integrity of the human body and his right to life, while the penalties of retribution and discretionary punishment must be executed in view of the seriousness of the act for society. Wergild and retribution are the rights of the victim, while discretionary punishment is a definite right of society. The victim may not combine retribution and revenge together; either one is to be chosen.

If retribution is dropped by pardon or reconciliation, for instance, the wergild becomes due. Replacing the penalty with retribution does not mean that it is an alternative penalty for it; retribution is a punishment for the act, and the wergild is reparation for the damage caused by the act. By the extinction of retribution, the established discretionary punishment becomes present to preserve the rights of society in addition to the individual's right to wergild in light of the serious impact of the act on society[16].

If the same act results in several damages and all these damages occur in one person while still alive, multiple wergilds are due for multiple damages, and if the injured person dies, only a single wergild is due since the wergilds of all benefits are subsidiary to the wergild of life. This is unlike the penalty, which is a penalty for the illegal act, and it is multiplied by the multiplicity of the act, not by the multiplicity of the damage resulting from it[17].

Based on the aforementioned considerations, we conclude that "wergild" is not a punishment; rather, it is a fixed legal compensation as stipulated by law. Although the amount of money is determined by the authority of justice, it should not exceed the harm caused or the value of the dignity of the victim. Despite emphasizing the compensatory nature of "wergild," it is not a complete and comprehensive compensation for all the damages resulting from an assault on a person or anything below that. It does not serve as compensation for all the bodily and material harm caused by the crime. Instead, it serves as a compensation only for the life or organs that were damaged by the crime, regardless of the financial loss incurred by the victim [18].

Therefore, the provision for "wergild" as partial legal compensation is stipulated in Article (273) of the Jordanian Civil Law. Additionally, Article (274) stipulates complementary compensation for "wergild," covering both material and moral damages resulting from damage to a person's being or the organs below it, including impairment of their functions. As such, it is possible to combine "wergild" and compensation, taking into account the differences in nature and scope of each.

Section II

Combining between "wergild" and compensation

The First Quest

"wergild" is a legal substitute for the damage caused to life and what is below it

"Wergild" is a specialized legal compensation with a fixed nature. It does not vary based on the personal circumstances of the parties or the severity of the act that triggers the

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"wergild" for the injured person. The purpose of "wergild" is to remedy the harm caused to the right to life and bodily safety, rights that are equal for all individuals. Therefore, "wergild" is a specific and fixed amount that cannot be increased. It is obligatory for the harm inflicted on the person's own life, such as intentional or unintentional killing, where the loss of an organ that has no equivalent in the body is considered homicide [19].

A decision by the Jordanian Court of Cassation stated: "The loss of the sense of smell falls under the category of material harm eligible for compensation." [20]. The compensation is a fixed and specified amount that cannot be increased, and it is obligatory for harm inflicted on what is below human life, such as fractures and injuries. In cases where the Sharia does not specify a particular amount for certain fractures or injuries, these are determined by experts through a process known as (the Government of Justice).

The court does not rule on "wergild" for injuries below the level of life until exoneration (absolution) or stabilization of the condition is established. Exoneration or stabilization is proven through a report from a specialized medical professional[21].

"Wergild" is an objective compensation that is obligatory solely due to the violation of the right to life and bodily safety, without the need to prove any other harm. A decision by the Jordanian Court of Cassation states: "Compensation is deserved upon death as long as it is established that the accused driver was convicted by a criminal judgment as the cause of the death of the plaintiffs' deceased'' [22].

The full "Wergild" is obligatory for the victim during their lifetime, as in the case of intentional killing, which is ruled as equivalent to the loss of an organ that has no equivalent in the body. Both "Arsh" (a separate fixed amount) and "Hukumat Al-Adl" (compensation determined by experts) are also obligatory for the victim. The "wergild" for intentional killing becomes part of the inheritance left for the legitimate heirs of the victim. It is distributed among them according to the provisions of the Personal Status Law upon the request of any of them and divided among them based on their share of the inheritance[23]. Compensation in this case is a direct right for the heirs to receive from the inheritance left by the deceased.

The "wergild" for unintentional killing is divided into three equal installments over three years, whereas it is paid in a lump sum for intentional killing. For cases other than homicide, "wergild" is paid in installments over different periods[24]. The "wergild" is obligatory for the perpetrator alone in the case of intentional killing, while his guardianship is liable for it in the case of unintentional killing

The Second Quest

Full compensation for damages resulting from the destruction of life and what is below it.

This is the compensation rightfully due under Article (273) of the Jordanian Civil Law. It encompasses all the original material and moral damages directly inflicted on the injured

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person. It also covers material and moral damages that affect their legitimate heirs and those who were dependent on them, even if they are not among their legal heirs:

Firstly, the original material and moral damages that affect the injured person include, according to Article (256) of the Jordanian Civil Law[25], any harm that occurs to the injured person as a result of the loss of a bodily organ or impairment of its function. This encompasses medical expenses and financial losses resulting from the inability to work during the period of treatment[26]. Judicial jurisprudence has established that for a court to award compensation for material damage, the injured person must prove this damage[27].

The compensation is not limited to material damage; it also includes moral damage. Moral damage encompasses any infringement on the injured person's freedom, dignity, honor, reputation, social status, or financial standing[28]. Permanent disability resulting from the loss of a bodily organ or impairment of its function, such as paralysis of limbs, is considered a form of moral damage due to its negative impact on the social status of the injured person. Society's perception of a disabled person differs from that of a healthy person[29]. Additionally, the deprivation of beauty for the injured person constitutes moral damage deserving of compensation. For instance, if the injured person suffers permanent disfigurement on their face or limbs due to wounds or burns, they are entitled to compensation[30]. However, psychological and physical suffering is not included in the concept of moral damage as long as the individual has fully recovered from their injuries without any lasting impairment affecting their social status[31].

The guarantee for moral damage does not pass on to the heirs of the injured person unless its value is specified by agreement or a final court judgment[32].

Secondly, the consequential material and moral damages that affect the legitimate heirs of the injured person and those who were dependent on them:

These are personal damages that affect both the legitimate heirs and those who were dependent on the injured person. They have a direct right to individually claim full compensation for the material and moral harm resulting from the harmful act. This is a personal compensation that must be proven with evidence, unlike damages that affect the person's own life or what is below it. The damages in this case are not presumed; the mere death or injury of the victim does not suffice to establish personal harm for their heirs or those they supported. Proof must be presented to demonstrate the specific material harm incurred by each party. The judgment regarding this is dependent on the request of the injured person[33].

Material harm includes any actual harm affecting the heirs or others resulting from the death of their benefactor. This encompasses burial expenses, setting up a mourning tent, and loss of earnings during the mourning period (missed income [34] It also includes the cutting off of support for those who were being financially supported through acts of kindness or charity[35]. Compensation may also be awarded to spouses and close relatives of the family for the moral harm they suffer due to the death of the victim[36].

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Compensation can be provided in cash, and it is also valid for it to be distributed in installments according to the provisions of Article (269)[37]. The compensation is not distributed among the heirs based on their shares of inheritance, as it was not part of the deceased's estate before their death. Instead, the compensation that each of them deserves is individually determined separately from the others, according to the provisions of Article (266) of the Jordanian Civil Law. Therefore, it is personal compensation that varies from one person to another[38].

CONCLUSION

- The study has reached the following conclusions:

  1) There is a divergence in jurisprudential interpretation regarding the legal adaptation of "wergild," and this divergence can be attributed to their attempts to reconcile "wergild" with legal concepts that deviate from its original Islamic foundation.

  2) "Diya" has been incorporated into Article (273) of the Jordanian Civil Law as an objective legal monetary compensation for harm to human life and what is below it. This is in addition to personal compensation outlined in Article (274), which aims to remedy damages related to harm to life and what is below it. The combination of "wergild" as objective legal compensation and personal compensation creates a possible framework due to the distinct nature and scope of each.

- The study recommends the following:

Article (105/2) of the Jordanian Constitution and Article (2/11) of the Law of Sharia Court Procedures No. (31) of 1959 and its amendments have assigned jurisdiction to the Sharia courts to adjudicate cases related to "wergild." Furthermore, the Jordanian Draft Diya Law of 2021 was issued. In contrast, "wergild" is regulated by a single provision in the Jordanian Civil Law.

Given this legislative duality in regulating "wergild" and considering its significance and associated concepts like "Arsh" (blood money) and (governance of justice), there is an urgent need to address and comprehensively regulate "wergild" within the Jordanian Civil Law in a more comprehensive and detailed manner.

Footnotes

1) Blood money and sprinklers are the money estimated in advance for assault and subsistence; the just judgment is the money that those with experience value for subhuman assault and has no predetermined amount.

2) Retribution is a complete punishment, such as the execution of the murderer, and extortion is a corporal punishment that is rarely financial.

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19) See article 7 (a/2) of the Jordanian Wergilds Bill, 2021.
20) Cass. civ., n.2325/1997
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22) Cass. civ., n.473/2002
23) Article 13 (a) of the Jordanian Wergilds Bill, 2021.
24) Article (16) of the Jordanian Wergilds Bill, 2021.
25) It states: “All damage to another requires the perpetrator, even without distinction, to ensure the damage”
26) Cass. civ., n.802/2001.
27) Cass. civ., n.2958/2001.
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30) Cass. civ., n.2312/2000.
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32) Article 267/3 of the Jordanian Civil Code.
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