

The harm of death and the transferability of the right to compensation: A comparative study

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Abstract

This study aims to determine how the right of compensation for death is transferable to the heirs. It is agreed that harming a human body should warrant compensation. Even if it does not result in financial losses, it is considered an attack on the human body. Nevertheless, the prevailing trend in positive law still hesitates to consider the harm of death in itself, a harm that requires compensation. On the contrary, we find that Islamic jurisprudence considers the matter in its natural and logical setting from a long time ago. It is decided to guarantee and compensate for bodily damages, whether they resulted from deadly or non-deadly injury, regardless of the financial losses and consequences or moral damages that result from this damage. By referring to the Jordanian civil law, it becomes clear that compensation for bodily harm is carried out according to the rules of blood money, whose provisions are derived from Islamic jurisprudence and the provisions of Western laws, especially those related to the inclusion of compensation for the actual damage in its moral and material aspects, and its elements of actual loss and lost profit, which some jurists believe. Contemporary Muslims have what supports it in the rules of compensation in Islamic jurisprudence, especially the rule that there is no harm and no foul. In this study, we address how compensation for the harm of death is transferable to heirs in legal jurisprudence and the judiciary system and how the right to compensation for the harm of death is transferable to the heirs in Islamic jurisprudence. The comparative approach between legal jurisprudence and Islamic jurisprudence has been applied, based on strengthening jurisprudential positions with judicial positions closely related to the subject. The study recommended that the Jordanian Court of Cassation amend its jurisprudence and reconsider the death damage guarantee as material compensation for independent material damage. This should be transferred to the

heirs through the inheritance and is claimed under the hereditary lawsuit, as it violated the provision of Article 274 of the Jordanian Civil Code, which authorized the death damage compensation. It also violated what was followed by Islamic civil jurisprudence and comparative judiciary.

Keywords: death damage, legal jurisprudence, Islamic jurisprudence, compensation transfer, heirs, blood money.

Introduction

If there is an attack on the human body, the resulting injury may be non-fatal, as the injured remains alive, and it may be fatal, leading to his death. In the first case, the injury causes the injured person material damages, represented in treatment costs and the inability to earn during the period necessary for recovery, maintenance, and alimony. As well as the loss of the realized financial opportunities that the injured could have obtained had it not been for the injury that disabled him. It also causes him moral damage represented in The psychological and physical pain he suffered from the injury to the time of recovery. When the injured recovers, these damages stop at the limit they reached at the time of full recovery, then all damages are estimated to be covered by the compensation. In the second case, if the injury from the harmful act is fatal, which leads to the death of the injured due to his injury, then the following question arises. Is not death in itself the result of the injury, and from the moment the injured person dies another distinct and independent damage from the injury? The damage that preceded it? Therefore, it must be added to the material and moral damages that preceded the death when estimating compensation.

Previous studies:

The previous studies, whether included in the literature or an independent study, dealt with the harm of death and the transfer of compensation from it without shedding light on Islamic jurisprudence concerning blood money, and these studies include:

Al-Nuaimat, M. (2019), in the first chapter, dealt with what is bodily harm, and in the second chapter the components of bodily harm, and in the third chapter, an assessment of the elements of damage following the provisions of the Jordanian Civil Code, and in the fourth chapter, the problems of estimating compensation for bodily harm. Al-Kasasbeh, F.(2018) dealt with the permissibility of combining blood money and compensation. Shehab, H. (2010), in the first chapter, dealt with the general provisions on the extent to which death damage is permissible. In the second chapter, he discussed the claim for death

damage insurance and how it is combined with other compensation. Abu Orabi, G. (2009) dealt with the nature of the harm of death; the second topic: was the extent to which the right to compensation for the harm of death can be transferred. The third topic is the position of Islamic jurisprudence on ensuring the harm of death and its transmission. Al-Jundi, M. (2002) dealt with the guarantee of bodily harm in Western jurisprudence and in the two laws, and the second topic: guaranteeing bodily harm in Islamic jurisprudence.

How the right to compensation for the damage of death can be transferred to the heirs in legal jurisprudence.

Until recently, the judiciary considered independent death harm a matter of contention and dispersal in jurisprudence and the judiciary, between those who rejected the right to compensation for the harm of death and its transmission to the heirs, and those who supported considering it as such. Each group has its arguments.

The trend rejects the right to compensation for the harm of Death and its transmission to the heirs.

Those with this tendency (Al-Hammadi, 1995) say that The Death that arises due to an assault on the injured is not considered independent damage, and therefore the injured. After him, his heirs are not entitled to compensation. They based this on several different arguments, including them.

Every soul will taste death sooner or later, so there is no justification for asking for compensation for Death in and of itself, especially the dead person does not feel anything or lose anything, and that his personality ends from the moment of his death and with it his ability to acquire rights and that the right to compensation for the harm of Death is established only at the moment that follows Death. The injured person has become nothing, and the dead person cannot be entitled to rights. The owners of this trend arranged actual results, which are that if the injury leads to the Death of the injured, he does not deserve compensation for his death because at that moment, he has passed away. He does not have a financial obligation to receive rights from him, including the right to compensation for Death. Even if his heirs in this capacity are not entitled to compensation for the death of their legato. The compensation they may obtain for the personal damage they have suffered, which was achieved for them following the Death of the injured, they are entitled to it in their capacity and not as his heirs. It is not imagined that a dead person will have a right, but before Death, he has no right to compensation except for his injury without his Death, which has not yet been achieved (Yahya, 1991).

The study has been proven (Yaqout, 1985; Murkus, 1988; Sharaf El-Din, 1982; Abdel Salam; 1990). A strong trend in jurisprudence and

comparative jurisprudence rejects the principle of compensation for death damage resulting from an assault on the human body. This trend is represented by many jurists and a large number of court decisions of different degrees. Where the judiciary has fabricated a closed circuit, it is imagined that it prevents the emergence of the right to compensation for the aggrieved person before his death, for his Death. On the other hand, predicting what fate has in store, and in order to close this circle, a trend in the judiciary has gone to the fact that the injured person, after his Death, loses his authority to receive rights due to the expiration of his legal personality. Thus the judiciary ends with the fact that the injured person did not suffer any damage personally. Therefore no right to compensation arises for him. His Death is until it passes to his heirs, as the judiciary revolves in a circle that prevents the transfer of the right to compensation upon the realization of Death (Sharaf El-Din, 1982).

Those who hold this view emphasize highlighting the moral value of the right to life and that compensation for moral damage resulting from Death - according to their belief - cannot be transferred to the heirs, except according to the terms and conditions in which the right to compensation for moral damage is transferred, which is the occurrence of an agreement between the injured The person responsible for the Death depends on the value of the compensation or the issuance of a court ruling specifying this value (Al-Jundi, 2002; Al-Rawashdah, 2000), they conclude by saying that the compensation for the Death cannot be transferred to the heirs because any of the previous assumptions were not fulfilled, especially in the case of immediate Death after injury, as mentioned above.

We note that the Jordanian Court of Cassation has taken this argument, as it ruled in one of its rulings that: "It is established in jurisprudence and jurisprudence that compensation for damage to relatives and spouses resulting from the harmful act is personal compensation, except in cases in which compensation is agreed upon between the offender and the victim." Then the latter dies or the case in which the injured file a compensation claim, then moves to the mercy of God; in this case, the compensation is considered a legacy to the heirs, and the heirs have the right to file a case to claim compensation, each according to his inherited share...

Moreover, in another ruling of the same court, it decided that: "1- If the distinguished ruling ordered the plaintiff to compensate for the material and moral damages that she incurred personally due to the Death of her child... and the evidence was presented against her following the provisions of Articles 266, 267, and civil, then this compensation is It is not an estate for the deceased until it is distributed among the heirs according to their legal shares. Instead, it

is judged for each of them according to the amount of material and moral damages incurred by him and the compensation for this damage. Nevertheless, to what extent can this trend be relied upon and be drawn behind those arguments put forward by its companions? Is it possible to find a loophole in this department, proving the emergence of the right to compensation for the injured person before his death? This is what the proponents of the trend expressed.

The trend favors the right to compensation for the harm of death and its transmission to the heirs.

The proponents of this tendency go to say: the injured party must recognize the emergence of a right to compensation for his death and that this right is born in the custody of the injured before death occurs, even if the harmful act leads to immediate death on the basis that death is as long as the result of the harmful action, it must be The cause is the progress of the reason, and the emergence of the right to compensation is before the occurrence of death (Al-Sanhouri, 1964; Maree, 1944; Salama, 1975, Yaqout, 1985; Sharaf El-Din, 1982).

This group bases its arguments on several arguments, including a response to the statements of the first party and some that support its opinion.

Those arguments are summarized as follows:

1. If a death case is the inevitable fate of every living human being, it does not deserve compensation if it falls by fate. Then he deserves it to the same degree if it occurs by an active act because the assault is the one who hastened death and deprived him of life.
2. Human loses his life, then he loses everything. It is the source of human strength, mind, and financial and non-financial activities., which is the highest thing that a person is keen on, and depriving him of it means depriving a person of all pleasure. This destroys every element on which his heirs depend (Murkus, 1988).
5. To say that someone deprived of life does not feel something is unreasonable since removing the human soul from the body is accompanied by terrible emotional and sensory pains.
4. The right to compensation for death lapses with the death of the injured person, if the death occurred before the injured party expressed his desire to claim compensation, is an unpalatable statement, as the victim cannot find any opportunity to claim it. It cannot be assumed that he has waived it (Zaki, 1967).
5. The victim's right to be compensated for death, although it is impossible to imagine its emergence until after death, the source of this right was born under his responsibility. The harmful action arose

before death, and this act must precede death even by one moment as it precedes every cause Result (Murkus, 1988).

Moreover, the question arises - that the damage is required to be compensated for it to be verified - is the harm of death considered verified when the injured is still eligible to receive the rights he owes?

To answer, we say that the right to compensation for the harm of death arises before the injured person's death when this harm has been achieved. Therefore it has become confident that the assault will lead to the death of the injured even if death is only likely to occur; the right to compensation arises from the time when it becomes verified. It becomes like this before it occurs, even for one moment (Murkus, 1988). Even if we say that the damage sustained by the victim is contemporary with death, the right to compensate does not arise for a dead person, but rather a living person on his way to death (Al-Sanhouri, 1964).

6. What has befallen the victim due to the fatal assault is considered harmful in fact and law because it led to the cancellation of all the financial and non-financial benefits that the injured person had during his life and in law because this assault is considered a violation of the human right to the safety of his life.

According to the general rules, the injured person's right arises to compensate for this damage. There is no particular text stipulating that this right should not arise in the event of death; in Article (267) a Jordanian civilian and (222) an Egyptian civilian, the issue of the emergence of the right to compensation for death was not addressed. Therefore, the facts and the law support the emergence and establishment of the right of the injured to compensate for this death damage on the one hand. On the other hand, the justice and practical interest in determining this right outweigh the saying that the death damage is compensable.

Therefore, the failure to reach a convincing theoretical basis for establishing this right before the injured person's death should not prevent the person responsible for the death from being held accountable required by the legislative policy that should aim at prevention before punishment. Because saying otherwise would make the offender's position who inflicts a severe injury that leads to his immediate death better than others who inflict an injury that causes permanent disability or leads to his death after a relatively long time, which incites the offender to prepare his victim immediately. In this way, he prevents the emergence of his right to compensation or restricts it to the narrowest limits (Yaqout, 1985). Justice requires restoring the balance owed by the injured person who was killed as a result of the fatal assault, as establishing the right to compensate for

the damage of death would restore balance to the injured at a moment when he had the right to keep this balance in place, so he should ask those who cut this balance by returning it to what it was on it as possible (MAZEUD.1963). Saying that the injured party's right to compensation for his death is established, then, is consistent with reality, law, and justice. From their bequeather, they only do the same thing that the latter was entitled to do. There is nothing like this right that requires its expiration by the death of its owner before he initiates the lawsuit against him. If the heirs initiate this lawsuit in the name of the injured, they do so as they are an extension of the latter's person or his real representatives. MAZEUD.1963).

7. To say that the judiciary with this compensation for the real injured is considered enriching him without a legitimate reason at the expense of the official is an incorrect saying, because the right to this compensation is established in the responsibility of the real injured, and then passes on his death to his heirs by way of inheritance as they are his general successor in all his rights.

Despite what has been said regarding the harm of death as independent harm or its denial, it is worth noting that some have analyzed this issue by saying: (Both directions did not distinguish between two main matters. Namely, the realization of death as harm, and the time when the right of the aggrieved to be compensated for it is established) (Jabr, 1998), and a summary of what he went to is that the injury is not considered fatal until after death has been achieved and that there is no room to talk about whether the injured person's financial liability at this moment is valid or invalid because the rights are attached to it. After all, that death is a direct result of an illegal act committed before it, regardless of the time interval between the occurrence of the two: This saying summarizes the matter because death directly results from an illegal act. There is no reason to search for the validity of the injured party's liability to the attachment of rights to it or not. Most French courts (Al-Hammadi, 1995) took the first opinion. As for the opinion held by a few French court rulings and a large number of commentators, it leads to affirming the right of the injured to be compensated for his death by having this right in his financial possession and by transferring it to his heirs. And in a decision of the French Council of State No. (195662) on March 29, 2000, he went on: "The right to compensation for damage of whatever nature is open from the date of its occurrence, and when it is the direct cause of death, then that right is transferred to the heirs" (Al-Hammadi, 1995). Furthermore, the Egyptian judiciary was following the guidance of the owners of the first trend of not considering independent death harm (Murkus, 1988).

However, the Egyptian courts started turning to the second opinion and recognizing the right of the deceased victim to be compensated for the damage of death and the transfer of this right to his heirs, as the preamble to it began with a ruling issued by the criminal circuit of the court, in which it recognized that whoever loses his life by an active act and is deprived of it because of that, there is no doubt It causes actual harm and that no matter how fast the unnatural death is, a moment must pass between it and the fatal assault. At that moment, the victim is still fit for the right to compensation attached to him for the wounds inflicted on his body and the deprivation of life that led To him. These wounds are considered one of their complications. Therefore the right to compensation for death does not arise for the dead but rather arises for the living on his way to death (Murkus, 1988).

However, in this ruling, the court considered this damage moral. The right to claim compensation for it does not transfer to a third party unless the injured party requests this right by court or agreement, following the text of Article 222/1 of the Egyptian Civil Code. However, the Egyptian Court of Cassation settled the matter. It got rid of the disadvantages of Article 222 in a ruling issued to it on February 17, 1966, in which it stated: "If the death of the victim was caused by a harmful act on the part of others, then this act must precede death even by one moment, no matter how short it was, as previously Every cause is a consequence, and at this moment the victim is still entitled to gain rights, including his right to be compensated for the damage he has incurred, and as this damage develops and aggravates, and until this right is proven to him before his death, his heirs receive it from him in his estate, and they are then judged to demand reparation from the official. The damage he caused to their gene, not only from the wounds he inflicted but also from the death that these wounds led to as one of their complications."

Moreover, the court ads by saying: "Although death is a right on every human being, however, accelerating it, if it occurs by an active act, causes the victim real material harm, as it results in him above the physical pain that accompanies the deprivation of the victim of life, and it is the most precious thing that a person possesses as a source of his energy." Moreover, his reasoning, and saying that the right to compensation for the victim who dies immediately after the injury is denied, and allowing this right to those who remain alive for a period after the injury leads to a result that reason and law reject, which is to make the offender who is cruel in his assault until he prepares his victim immediately in a position that prefers the offender who is less than him Cruelty and criminality, inflicting harm on the victim without dying, and this incites the perpetrators to prepare the victim so that they will be exempt from their compensation claim.``

The judiciary in Egypt has settled on this modern principle without deviating from it so far, whether from the trial courts of different levels or the Court of Cassation in its districts (Fouda, 1998; Youssef, 1988).

Thus, the Egyptian Court of Cassation resolved a problem that disturbs the sense of justice. Its conclusions were correct, as the harm of death is material damage, as killing a person in the prime of life deprives him of life, which is the source of all his wealth, and deprives him of work in the future and deprives him of the integrity of the body and the continuity of life in it, is this not considered material damage. However, we cannot deny the statement that the harm suffered by the victim is partly moral. It ruled in one of its rulings that: "The basic principle in compensation for material damage resulting from death is that if the right to it is proven to the injured person, it will pass to his heirs, and the heir can claim the compensation that the bequeather would have claimed had he remained alive" (Al-Shula, 2003). On the contrary, the Jordanian Court of Cassation ruled in Judgment No. (1203/1997) that "the death compensation to which the air carrier is obligated under Article (222/1) of the amended (Warsaw) Convention is the effect of the effects of the contract of carriage, so it is dismissed by Article 206. , from the Jordanian Civil Code to the heirs, as they are the general success of the contracting party, and did not fall into the custody of the deceased during his life, so it is not considered an inheritance, but rather it is a direct and personal entitlement to the heirs, and therefore it is not permissible for one of them or some to claim it in addition to the rest of the heirs, but each heir must claim it in person"

8. This damage differs from the physical and psychological damages incurred by the deceased or his heirs and others due to his death "return damages." Since it is not possible for the person injured by death damage to claim compensation for him after his death, the right to claim it must be assigned to the heirs, which must also be claimed with an independent request from the rest of the material and moral damages incurred by the deceased, as well as the apostate damages caused to his heirs (Mansour, 2003).

9. We add to the previous arguments that the guarantee of harm to death is based on the text of Article (274) of the Jordanian Civil Code, which was definitive and explicit, as it states: "...everyone who commits an act harmful to oneself such as killing, wounding or harming is obligated to compensate for what is It caused harm to the victim, his legal heirs, or those who were dependent on them, and they were prevented from doing so because of the harmful act."

The extent to which the right to compensation for the harm of death can be transferred to the heirs in Islamic jurisprudence.

In this regard, one of the fundamental principles that is accepted in Islamic jurisprudence is a rule that no blood is wasted in Islam and that it is one of the most fundamental rights. Indeed the most important of them with care in Islam is the human right to protection. 191906; Al-Shafi'i, 1973; Al-Ramli, 1967; Ibn Qudamah, 1990; Odeh, 1984; Hassan, 1974). The source of this right found evidence for its protection from the Book and the Sunnah. In the book, God Almighty says: (And do not kill the soul that God has forbidden, except for the truth) (Surat Al-Isra, verse 33), and the truth by which souls perish... is what the Messenger interpreted in his saying about Ibn Masoud, may God be pleased with him: (It is not permissible to The blood of a Muslim man testifies that there is no god but God and that I am the Messenger of God, except with one of three things: the adulterer, the soul for the soul, and the one who abandons his religion and separates from the group) (Ismail, 1981).

The Sharia has made retribution as a punishment for premeditated killing and intentional wounding. The meaning of retribution is that the criminal is punished with the same act so that he is killed as he was killed and is wounded as he was wounded. The blood money was made an original punishment for killing and wounding in semi-intentional and wrongful ways. The source of the punishment for retribution is the Book and the Sunnah. God Almighty said:

“O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother [i.e., the killer] anything, then there should be a suitable follow-up and payment to him [i.e., the deceased's heir or legal representative] with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment” (Quran.1:178)

Furthermore, we will discuss the blood money to explain the position of Islamic Sharia regarding compensation for the harm resulting from self-damage or what is legally called harm to death.

The jurists differed in answering this question into two opinions:

The first saying (Al-Khafif, 1941): the fact that the blood money, whether it arose from premeditated murder or by mistake, is considered one of the dead's money. Then it is valid to pay his debts from it, implement his wills and spend from it all his needs, what he needs of equipment and shrouding, and what remains after that is for his heirs. In this sense, Ibn Abidin says (The blood money that is required by manslaughter, premeditated conciliation, or retribution

reversal, unless the parents are pardoned, is included in the estate, so the debts of the dead are paid from him and his wills are implemented) (Ibn Abidin, 1966). In the footnote to Al-Desouki on the great explanation, the following was stated: (There was a difference in the blood money for premeditated murder, so it was said: It is money from the wealth of the dead and wills are not included in it, and the wills are not entered because he did not know it in the event of death, and it was said: It is not money, but it is if you accept money that occurred On the heirs after death, and in the second opinion, this is due to its requirement that he does not pay a debt and is not like that. Instead, he pays his debt rightly is the first opinion) (Al-Desouki, 1910; Al-Hattab, 1978; Al-Shabramlsi, 1976).

Ibn Qudamah says: (The blood money of the murdered person is inherited from him, like all his money). Then he says (Imam Ahmad narrated with his chain of transmission on the authority of Amr bin Shuaib, on the authority of his father, on the authority of his grandfather, that the Prophet the woman inherits from her husband's money and intellect, and he inherits from her money and mind unless one of them kills his companion (Ibn Qudamah, 1990). Moreover, he says: "Abu Thawr said: She is on the inheritance and his debts are not paid from her, and his wills are not implemented from her, and on the authority of Ahmed about this, and Al-Kharqi mentioned about someone who bequeathed a third of his money to a man, and he was killed, and his blood money was taken. He bequeathed one-third of the blood money to him. The basis of this is that the blood money belongs to the deceased or the heirs from the beginning, and there are two narrations:

The first: It speaks to the property of the dead because it has replaced himself so that it will be for him the ransom for his severed limbs in life, and because if he dropped it from the killer after he injured him, it was valid and he does not have the right of the heirs to forfeit, and because it is inherited money, so it is similar to all his money.

The second: that it occurs on the king of the heirs from the beginning, because it is only due after death and by death, the property of the deceased is removed from him, and he is out of being worthy of the king, but the king is established for his heirs from the beginning, and we do not know a difference in that the dead is prepared from it if it was before his preparation because if it was not He has something because it must be provided by the one who owes it. If he is poor, then it is better that he must do so in his blood money" (Ibn Qadamah, 1990).

The companions of the first opinion cited the Sunnah and consensus, the effects of the Companions, and the reasonable one for what they took as evidence:

First: Their evidence from the Sunnah: As narrated by Imam Malik in Al-Muwatta: "Umar bin Al-Khattab (may God be pleased with him) sought the people in Mina: He who knew about the blood money should tell me, so Al-Dahhak Ibn Sufyan Al-Kalabi stood up and said: He wrote:

To the Messenger of God: If I inherit the wife of Ashim al-Dhabi from his husband Ashim, then Omar bin Al-Khattab said to him: Enter the tent until I come to you. (Alsoyooti 1979; Ibn Majah, 1984).

The significance of the hadith:

The Prophet had ordered the inheritance of Ashim Al-Dhabi's wife from his blood money, and as Ibn Shihab says, he was killed by mistake. His ruling, if it becomes obligatory for blood money, then the owner of the selector refutes that by saying: This ruling necessitates that this ruling relates to accidental killing, except for premeditated blood money, and that it is like all the wealth of the dead, from which the husband, wife, and brothers inherit from the mother and others, and this was narrated on the authority of Omar, Ali, Shureh, Al-Nakha'i and Al-Zuhri (Al-Baji, 1906).

Al-Shafi'i says: "There is no difference between one who inherits the blood money in willful and erroneously, whoever inherited what else of the dead's money because it is owned by the dead. Whoever dies from his heirs after his death will have his share of his blood money, as if a man committed a crime against him at the beginning of the day. He died, and his son died at the end of the day, so the blood-money of his father was taken in three years, so the inheritance of the son who lived after him an hour is based on his blood money, as is proven in his blood money if it were for his father, as well as his wife and others, who will inherit him if he dies" (Al-Shafi'i, 1973).

Second: Their evidence is from consensus

The jurists have unanimously agreed that the deceased's right to blood money is fixed in the case of an intentional felony as it is established in error. This consensus was reported by: the owner of the selector, who said: (The intentional blood money is carried by all the jurists of the countries on that) (Al-Baji, 1906). That is, on the wife's entitlement to her inheritance from her, as stated in the hadith: The woman of Ashim al-Dhabi, which indicates her confirmation of the inheritance from the beginning, as the consensus also narrated: al-Shafi'i in al-Umm: He said: "There is no difference between a person who inherits blood money deliberately, and the fault of the one who inherited something else." From the money of the dead) (Al-Shafi'i, 1973; Ibn Hazm, 1971).

Third: Their evidence from the effects of the Companions

What Al-Dar Qutni narrated in his Sunan that Ali bin Abi Talib, may God be pleased with him, said: The blood money is divided among the obligations of God Almighty, and every heir inherits from it (Qutni, 1967).

Fourth: Their evidence is reasonable:

The owners of the first opinion cited the reasonableness of what they went to and said: The blood money is due for the deceased because he has replaced himself and his soul for him, so he replaced it in the event of his death, and for this reason, his debts are paid from them, and he is prepared from them, and only disappears from his property what he dispensed with, as for what his need is attached to, it is not. And because it is permissible for a property to be renewed for him after death, such as someone who set up a net and fell into it after his death, then he owns it so that his debts are paid from him, and so is his blood money, because the implementation of his will is one of his needs, so it is similar to spending his debt (Ibn Qudamah, 1990).

The second saying (Al-Khafif, 1941).

He goes to the fact that the blood money is proven to the heirs from the beginning, and it does not belong to the deceased, and therefore his debts are not paid off, and his wills are not implemented. Abu Muhammad Ali bin Ahmed bin Hazm says: "There is no dispute between anyone from the whole nation regarding the fact that the blood money is inherited according to the inheritance of the one who is obligated to him." (Ibn Hazm, 1971; Al-Suyuti, 1979).

The proponents of the second opinion inferred what they believed to be reasonable from two aspects:

The first: is that the blood money is money for the parents that happened to them after the death of their bequeather, and they never inherited it on his behalf, as nothing of it was obligatory for him during his lifetime.

Second: The victim loses his fixed property with his death, so how can a king be determined for him in the event of the demise of the king from him, that in this a combination of two opposites is not correct, where the demise and identification of the king do not combine at the same time (Ibn Qadamah, 1990). By examining each statement's evidence and the discussions in it, we have the most likely view of the first viewers who decide that the blood money is money owed by the deceased, from which his debts are paid. His wills are implemented and then transferred to the heirs due to the strength and integrity of his evidence from the receipt of objections that reduce the reassurance to her.

Thus, the blood money, and the reason for it being obligatory during the life of the victim, which is the fatal assault that preceded the death, is considered fixed for him from the beginning, that is, on the rule of his possession if the death occurred as a result of the assault (Alkhafif, 1941).

Suppose the victim dies after the duration of the injury and because of it. In that case, the right to insurance arises before death, and the basis for that is that although the loss of life was not realized immediately, the reason for its obligation is the wound that leads to the loss of life, and the cause that leads to something takes the place of that thing (Al-Kasani, 1982).

At this time, the victim was qualified to acquire rights (Al-Sanhouri, 1964), and this leads to the fact that although the origin is that the obligation expires with death, the deceased is considered the owner of what started the cause of his possession during his life, so the king is assigned to the time when the right to the thing was established and at this time Still Alive (Al-Khafif, 1941). Thus, blood money is considered inherited money (Al-Sarakhsi, 1906).

Conclusion

It has become clear to us that the harm of death (loss of life) is nothing more than bodily harm of the utmost degree of gravity because it includes deprivation of all physical and mental abilities in the missing years, as well as deprivation of the fruits of these abilities in an unspecified number of years of life. Then The existence of this harm should be recognized based on the law's recognition of the right of every human being to complete the years of his life following the expected duration of the human life of his likes, regardless and independently of the results of the missing years. In addition to that, death, although it is the end of every human being, hastening it if it occurs by an active act is considered actual harm that requires compensation. Jurisprudence and the judiciary differed in recognizing this right to the injured or his heirs until he finally submitted to his recognition of it, after proving the invalidity of the arguments put forward by the holders of the opinion that death is not considered to harm that requires compensation, and after he was convinced that losing his life means losing everything because life is a source All rights. Moreover, if the prevailing trend in positive law is still reluctant to consider the loss of life in and of itself harm that requires compensation, then Islamic jurisprudence, centuries ago, has put the issue in its natural and logical just right, necessitating a guarantee of bodily damages, especially when the damage results in the death of the victim. This is regardless of the financial consequences or moral

damages that result from this damage. Islamic jurisprudence has preceded all legal systems in what it went to hundreds of years ago in deciding the right of blood money to the injured as a penalty for losing his soul due to the crime of self. Islamic jurisprudence does not differentiate between material harm and moral harm in the event of the death of the injured. Instead, the guarantee or compensation called the blood money specified in Shariah is paid for all damages that result from the death.

The Jordanian legislator has adopted this correct view of Islamic jurisprudence. Article (273) requires blood money as a guarantee in a crime against oneself, and blood money has been prescribed in Islam as compensation for the loss of life.

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