

Definition of the Term "The Wound" in the Jordanian Penal Law

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Abstract—The aim of this article is to evaluate the definition of the term "The Wound- (Al-Jořh)" in the Jordanian Penal Law by finding out the linguistic meaning of the term and its idiomatic meaning in forensic medicine by taking into account the term definition within the Penal Law added for the term "The wound". Depending on the descriptive-analytical methodology, these definitions will be evaluated and presented and then compared with the definition contained in the Jordanian Penal Law. The analysis concluded: the omission of the definition "the wound" in the Jordanian Penal Law, to indicate the possibility that the wound is internal to the viscera and not external; and "the wound" may mean harm to honor and the feelings that may be exposed to by the tongue, for example, cursing.

Index Terms—legislative interpretation, Penal Law, Jordanian Law, Legal Parlance, linguistic connotation

I. INTRODUCTION

Based on the two reasons listed below, it is crystal clear that providing definitions of terms is not the task of the legislator:

1-The definition of the term contained in any legal text is one of the interpretive tasks of the judiciary and jurisprudence.

2-The definition process in law has special caveats, so that if the definition does not contain all the possible meanings of the defined term, it will be deemed incomplete and not meet its correct meaning.

However, the legislator may intervene to define some terms, and this may be exercised in two cases:

First Case: If the legislator desires to give the term a meaning that differs from its common meaning, for example, when the legislator intervened to define what is meant by the residential house, he defined it as "the place of the dwelling or any part of the building that the owner or the occupant considers to be a dwelling for him, his family, his guests and servants, or any of them, even if it was not occupied at the time of the offence, it also may include its annexes and ancillary buildings that are surrounded by one wall."

Second Case: To resolve a legal dispute about a specific term. An example of that is when the legislator intervened to define the term "night," where the dispute raged between those who defined it by its astronomical meaning, which is the period between sunset and sunrise (which is also a linguistic connotation), and those who defined it by its ordinary meaning, which is the period of darkness only, that starts from dusk to dawn, as dusk is the period when the twilight period passes, it's when the sun rays scatter after sunset, while dawn is the period when the light begins to appear before sunrise, and to resolve this controversy, the legislator intervened by adopting the astronomical connotation.

"The wound" is one of the terms defined by the Jordanian Penal Law, where it was defined as "each incision or cut that cleaves or slits a membrane of the outer body membranes, and for purposes of interpretation, a membrane is considered external if it can be touched without cutting or slitting any other membrane." The term "the wound" is mentioned in fourteen (14) texts of the Jordanian Penal Law as follows:

1-Article (187), under an aggravating circumstance in the crime of assaulting a public employee, Paragraph (4) of this Article stated the following: "If the acts of violence, wound, or disease require a more severe penalty than the penalties stipulated in the previous paragraphs, an additional period from one third to one half shall be added to the penalty to which the provisions of this law grant the offender."

2-Article (208), under an aggravating circumstance related to the crime of torture to extract a confession, Paragraph (3) of this Article proclaim that; "If this torture leads to illness or serious wound, the penalty shall be temporary hard labor."

3-As stated in Paragraph (2) of Article (277), concerning the crime of disturbing funeral ceremonies, where it stipulated that "Whoever disturbs the assembled individuals to hold a funeral ceremonies that offend the feelings (Ĵarh Al-Mashāeř) of any person or insult his religion, or knowing that his act would offend the feelings of any person or

lead to any religious insult, shall be punished by imprisonment for a period not exceeding six months, or by a fine not exceeding 100 dinars, or by both penalties."

4-Paragraph (1) of Article (330), attributed to the crime of beating that leads to death, as it states: "Whoever hits or wounds a person with an instrument that does not lead to his death or that gives him harmful substances and does not intend to kill him at all, if the victim dies from what happened to him, the offender shall be punished with hard labor for no less than seven years."

5- Article (333), which involves the crime of premeditation harm, as it states, "Anyone who intentionally beats, wounds, or harms a person with any act of violence and significant assault, resulting in illness or inability to work for more than twenty days, the offender shall be sentenced from three months to three years in prison".

6- Article (338) related to the offence of quarrel, as the text states: "If several people are involved in a quarrel that results in killing or disabling of one of the quarreling parties, or wounding or harming of a person, and that the offender cannot be personally identified, whoever participated in the executive procedure that led to death, disabling an organ, wounding, or harming, shall be punished with the penalty stipulated in the law for the committed crime after reducing it to half the period."

7- In Paragraph (1) and (2) of Article (340) regarding the extenuating circumstances of the husband or wife they stipulate that: "1- Benefiting from the mitigating excuse, someone who was surprised by his wife, ascendants, descendants, or sisters committing an adultery crime or in an illegal bed, and he immediately killed her, or killed who committed adultery with her or killed both of them, or assaulted one or both of them, where the assault results in wounding, injury, permanent disability, or death."

"2- The same mitigating excuse, benefit the wife who surprises her husband committing adultery or was in an unlawful bed in the marital home, and she immediately killed him, or killed the one who committed adultery with her, or killed both of them, or assaulted on one or both of them, where the assault resulted in wounding, abuse, permanent disability, or death."

8- Articles (341) and (342) regarding legitimate defense, where Article (341) stipulates the following:

"The following acts are considered legitimate defense:

1- A person who kills others or wounds another person, or any effective act considered as self-defense or a defense for his honor, or defending others' life and their honor, provided that:

a- The defence is done when the assault occurs.

b- The assault was unjustified

c- The victim can get rid of this assault unless by killing, wounding, or influential action.

2- An act of someone who kills or wounds another or any other effective act in defending his money or others money that is in his custody, provided that:

a- Defense is done during looting and theft accompanying the violence. or

b- That the theft leads to serious harm that would prejudice the will of the stolen victim and spoil his choice, even if the theft was not accompanied by violence.

And that in the previously two mentioned cases, it is not possible to urge the thieves and looters and to recover the money without killing, wounding, or influential act.

While Article (342) stipulates the following: "It is considered a legitimate defense, each killing or wounding or committing any influential act in self-defense, or in defending the honor or the money from an assaulting person when entering or attempting to enter a dwelling, in day or night by climbing a fence or a paling or the walls of any of them, or being in its courtyard within the fence or the paling without justification, or breaking its entrances or doors by punching, breaking or take-off, or by using keys or special tools for this purpose."

9- Article (389/1/a) regarding the crime of beggary where it stipulates: (Either he begs or asks for alms from others under the pretext of his wounds or his disability, or by any other means, whether he is wandering or sitting in a public place, or if he is found exploiting a child under sixteen years of age for begging or asking for alms, or encourages him to do so).

10- Articles (401) and (402) of the articles an aggravating circumstance for the crime of theft, where Article (401), stated the following:

"1- Whoever commits theft, combining the following two cases, shall be punished with temporary imprisonment for at least five years:

a- Two or more people committed the offence.

b- All or one of the thieves threaten with weapons or the use any form of violence against persons, either to prepare for or facilitate the crime, or to secure the escape of the perpetrators, or seize the stolen property.

2- If the theft took place inside of a bank or if the violence caused cuts, bruises, or other physical harm, the punishment specified in the previous paragraph will be temporary hard labor for a minimum of ten years."

3- Will be punished with temporary labour work, if the theft is committed by one person as described in Clause (B) of paragraph (1) of this Article, and Temporary labor work shall be imposed for no less than five years if this theft occurs in a bank or the violence caused bruises or wounds as a result of violence, and."

While Article (402/3) stated the following: "Whoever commits the crime of robbery on a public road shall be punished as follows: "With permanent hard labor if the theft occurred as described in the second paragraph, and as a result of the violence bruises or wounds occurred."

11- Article (452/3) regarding the crime of assaulting animals as its text states: "Whoever intentionally unnecessarily strikes or wounds one of the animals mentioned in this article, in a manner that prevents him from working or causes serious harm to it, shall be punished by imprisonment for a period not exceeding one month or a fine not exceeding twenty dinars."

12- Article (472/3) which is the crime of employing an animal incapable of work, the text states: "A penalty up to one week in prison and a fine up to five dinars shall be imposed on whoever: 3- employ an animal incapable to work due to illness, old age, or due to being wounded or deformity. "

Proceeding from the idea that the difference in meaning leads to the change of legal provisions (Al-hendi, 2021), this research is devoted to assess the Jordanian legislator's definition of the term (the wound) from a linguistic and idiomatic point of view, as this definition raises several issues, the most important of which is: Is the mentioning of this definition necessary and a must? Was the legislator successful in this context?

II. DISCUSSION

The Arabic language dictionaries agree that the word "the wound" implies two meanings that converge about inflicting material and moral harm of the injured, the first linguistic meaning of the word "the wound" generally refers to an incision in the body in general, or in the skin, for example, the author of the dictionary of (Mu'jam Maqāyīs Al-lughah) mentioned: (Jorhun) where as the "Al-Jim, Al-Ra'a, and Al-Ha " are originality : as the first meaning is "the earning", and the second meaning is "split the skin", so that the first meaning is as said "He will [Earn - Ējterāh] if he works and acquires", as The mighty God said {Or do those who commit evils think} - (Al-Jāthiyah -21), and it was called as (Ējterāha – Earning) because it function with the body limbs, which are the functional limbs, and (Al-jāwāreh) the predatory animals and ravenous birds, are the hunting animals, while the second meaning is as said " He wounded (Ĵārahoh) him by iron " and the noun is "the wound -Al-Jorh" (Ibn Fares, 1999), and this interpretation confirms what is stated in (Al-Mu'jam Al-Waseet): "He (wounded) (Jarhahoh) him a wound that has split an open in his body" (Qadir et al., 2008). The author of (Mukhtār Al-Şihāh) indicates that (Al-Jim, Al-Ra'a, and Al-Ha) "he wounded -(Ĵārahoh)) are under the section of splitting, and the noun (al-jorh - the wound) by using the vowel letter (O), and the plural (Juruh - Wounds)" (Al-Razi, 1999).

Accordingly, the term "wound" in its physical meaning as it appeared earlier denotes (incision and cut), while its linguistic meaning "al-jarh - abuse" using the vowel "a" denotes moral harm to a person or other, meaning that: "Curse the honour and what is similar in the tongue, which is what some linguists have mentioned: { The term (The Wound- (Al-Jorh) by using the vowel (O) is a split in the bodies by iron and what is similar, and "The Wound - Al- Jarh" with the vowel (a): is an offend with the tongue in the meanings of honour and what is similar (Al-Zubaidi, 1971).

The meaning of "The wound" linguistically: The noun "The wound - Al-Ĵārh" and the verb "to wound him, wounding him a wound - Ĵārahōh, Ya Ĵrāhahō Ĵōrhāñn", Defected him with a weapon; and offending (Ĵrāhahoh) him with his tongue: cursing him" (Ibn-Manzur, 1993).

Based on the linguistic definition of the term "the wound," medical scientists have formulated an overarching terminology which indicates that "the wound" is the separation in contact with any of the body tissue, as a result of the application of a mechanical force on it, and this applies to the outer surface of the skin, as well as to any inner tissue "(World Health Organization, 2010).

The idiomatic meaning of the word "wound" is not limited to the outer skin, however, it may refer to the inner parts such as bones and viscera: "The wound is the separation of histological contact, and the wound is externally, as in cases of the skin and the tissues under it, or internally, as in bone fractures or visceral injuries, and the is an external violence that occurred to the affected side, and the violence includes beating, punching, kicking, biting, stabbing, choking, falling, traffic accidents, explosives, and gunshots, while the definition excludes harms caused by heat and cold, and electric shocks" (Shahrour, 2010).

When considering the legal definition of the term "the wound" that is: (any cut or incision that cuts or incises one of the outer membranes of the body; and to fulfill the purpose of this interpretation, a membrane is considered external, if it can be touched without cutting or slitting any other membrane).

We can notice that, the legislator omitted an important aspect of the medical terminological definition of the wound, which is the possibility of the wound have occurred in the internal parts of the body, such as bone fractures or visceral wounds. While, the legal definition of a wound was satisfied with what affects the external parts such as a wound or incision. On the other hand, it is noted that the legal definition of the wound does not refer to the linguistic meaning, which believes that the term the wound may be psychological, represented by verbal abuse, insult, or offence, which is an important aspect, especially as some issued judgments refer to this meaning. However, the legal definition does not adopt this meaning. Therefore, the legislator had to carefully consider precisely into the medical terminological definition before formulating the definition, in addition to the necessity of taking into account the necessity of benefiting from the psycholinguistic meaning.

III. CONCLUSION

The study concluded that the Jordanian legislator was not successful in identifying the term "the wound". This is because it does not indicate that (the wound) may be in the form of an insult to honour and feelings that may be expressed by the tongue (Ĵārĥ Al-Mashāeĥr), or state some expressions or words that hurt the feelings and emotions. The legislator also neglected the possibility of (the wound) occurring in the internal parts of the victim's body. Consequently, the research recommends the amendment of the legal definition draft to rhyme with the linguistic and idiomatic definition of the wound to become as follows:

"(The Wound) is every incision or cut that affects one of the internal or external parts of the body, such as the skin, viscera, broken bones, etc., as a result of a personal or external influence. The wound also includes verbal abuse, insult, or any psychological harm to feelings and emotions that lead to a certain type of harm (Ĵārĥ Al-Mashāeĥr)." This suggestion provides a clearer and more precise sense for those who stand up to the enactment of legislative provisions.

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