

Impediments to Criminal Liability Arising from The Lack of Awareness in The Palestinian and Jordanian Legal Systems

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Abstract

This research, entitled "Impediments to Criminal Liability Arising from the Lack of Awareness in the Palestinian and Jordanian Legal Systems," deals with the legal regulation of impediments to punishment in cases where a person is unconscious and conscious, namely insanity and related mental illnesses such as epilepsy and hysteria, and the absence of reason resulting from drunkenness and drugs without consent, and young age. The main problem in this research was to clarify the legal regulation of everything related to the absence of criminal responsibility for factors or impediments that negate awareness, by clarifying the effect of these factors as mentioned in the Jordanian Penal Code and the draft Palestinian Penal Code, using the analytical descriptive approach by reviewing the legal texts regulating impediments to criminal responsibility arising from the absence of awareness and analyzing these texts. At the end of the research, the researcher reached the most important results, which are that the principle assumed by the law is the existence of a sound mental state at the time of committing the crime until proven otherwise, and that the insane person and the person with an absent mind as a result of drugs and drunkenness that he took against his will and the minor who is not discerning are persons from whom criminal responsibility is dropped and who are not punished for their actions that are committed at the time of their presence. These cases are within the legal conditions due to the absence of the moral element of the crime.

Keywords: Criminal Liability, Insanity, Epilepsy, Juvenile, Minor, Absence of Mind

INTRODUCTION

There is no doubt that the correct understanding and logical interpretation of the activities that a person performs and practices cannot be completed except by referring to the source of those actions, their nature and the essence that lies within them, since it is not possible to know what is and what are the circumstances and conditions that surrounded the act unless we reveal it and clarify all that is ambiguous about it. In this study, we raise issues related to the obstacles to criminal liability, which are represented by the lack of awareness of the perpetrator of the legal violation, which we see as representing the basic building block of the criminal legal system (Al-Saifi, 1995, p. 161). It is not limited to being just a passing legal idea, but it has been said about it, "It is the link between law and other social sciences." It is also considered the relationship through which different doctrines, whether philosophical or social, pass, arriving at criminal law. If we delve into the idea on which responsibility is based in its simplest forms and meanings, we can say that it is "bearing the consequences of an act," and if that indicates anything, it indicates that a person bears the consequences and results. His actions if they violate a rule. And a person's bearing of responsibility for his actions must be linked to the level of awareness and perception that accompanies this person because it is unfair to hold accountable someone who is unaware as much as he holds accountable someone who is conscious (Al-Majali, System, 2012, p. 236).

The problem of the research: The problem of this research lies in stating the legal organization of everything related to the absence of criminal responsibility for factors or obstacles that negate awareness, through stating the effect of these factors as mentioned in the Jordanian Penal Code and the draft Palestinian Penal Code.

The importance of the research: The importance of this research lies in stating the reasons that exempt its owner from criminal responsibility for committing a legal violation if the reasons negate awareness are found in it, which results in exempting its owner from criminal responsibility whenever they are found in it,

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without canceling the criminal nature of the act through what is stipulated in the Jordanian Penal Code in force in the Palestinian territories and the draft Palestinian Penal Code and the provisions regulating it.

Research Methodology: This study followed the descriptive analytical method by reviewing the legal texts regulating the obstacles to criminal liability arising from the lack of awareness, through which judicial rulings can be reached and relied upon, and analyzing these texts to clarify and know the cases in which liability is negated and its impact on judicial rulings.

Research Limitations: The scope of the research is determined by knowing everything related to the absence of criminal liability within the scope of criminal law, by identifying the factors that would negate liability and how its obstacles are established by the perpetrator of the crime, by referring to the legal texts regulating everything related to criminal liability, all of which is limited to the scope of the Jordanian Penal Code No. (16) of (1960) and the Palestinian Penal Code Draft of (2003), as well as the Decree-Law on the Protection of Juveniles No. (4) of (2016).

PREVIOUS STUDIES: There are many studies that have been organized to address what is related to criminal responsibility, and some of them can be mentioned as follows:

Al-Otaibi, 2002, The effect of ignorance on criminal responsibility in Islamic law and law by Professor Nahar bin Abdul Rahman bin Nahar Al-Otaibi, a thesis submitted for a master's degree in criminal justice, at Naif Arab University for Security Sciences, Riyadh. 2002.

Saqr, 2013, Criminal association and its effect on criminal responsibility in the Saudi system by Professor Talal Saqr, a thesis submitted for a master's degree in criminal justice, at Naif Arab University for Security Sciences, Riyadh .

Saeed, 2010, The effect of young age on criminal responsibility by Professor Musa bin Saeed, a thesis submitted for a doctorate degree, at the University of Hajj Lakhdar, Batna.

There are factors and reasons that, if present, would negate the person's awareness, which in turn would lead to the loss of one of the conditions of criminal responsibility that must be fully present in order to say that criminal responsibility exists against the perpetrator of the crime.

The first is represented by insanity and the inability to comprehend the actions. By referring to the Jordanian Penal Code and carefully examining the texts contained in Chapter Three of the law, we find that it has included texts that would clarify the effect of insanity on criminal responsibility. If we return to the text of Article (91) of the aforementioned law, we find that it states the following: "Every person is presumed to be of sound mind or to have been of sound mind at the time of committing the crime until proven otherwise." As for the draft Palestinian Penal Code, it followed the same approach by including the text of Article (48/1) as follows: "A person who was uncon-scious or incapable of choosing his actions at the time of committing the criminal act, either due to insanity or a mental defect..." What is taken from Jordanian law and the draft Palestinian Penal Code is that it did not provide a clear and specific definition to clarify what is meant by insanity in a way that negates ignorance. In this regard, we must state What is meant by insanity? It has been said that insanity is "the loss of a person's mental faculties in a way that results in his being stripped of consciousness and the ability to distinguish" (Sulaiman, 2003, p. 690). As for Islamic jurisprudence, insanity has been defined as: "The imbalance of the ability to distinguish between good and bad things, and the awareness of consequences, such that their effects do not appear and their actions are disrupted due to a deficiency that is inherent in his brain in the original creation, which is either extended or non-extended" (Banat, 2014, pp. 13-16). In view of what is stated in Article (92/1) of the Jordanian Penal Code, we find that it came as follows: "Anyone who commits an act or omission shall be exempted from punishment if, at the time of committing it, he was unable to comprehend the meaning of his actions or unable to know that he is prohibited from committing that act or omission due to a disturbance in his mind." From the text provided, it becomes clear to us that the Jordanian legislator considered insanity an obstacle to criminal liability, as it carries within it a loss of feeling, loss of perception, and inability to distinguish (Sulayman, p. 672), but the question that arises in this regard is: What is the insanity that is taken into account? What are the conditions

that must be met in order for it to be said that the perpetrator suffers from insanity? And at what time must insanity be present in order for it to be considered an impediment to liability? In view of the decisions of the Jordanian Court of Cassation regarding insanity, we find that it has issued rulings as follows: "If it becomes clear that the accused is not fit for trial and will not become fit for it, considering that the mental retardation he suffers from is not treatable, the court must decide to convict him and not hold him criminally responsible, rather than place him in the National Health Center, in accordance with the provisions of Article (233) of the Code of Criminal Procedure and Article (92) of the Penal Code (Court of Cassation, 1997, p. 96). Despite the multiplicity of standards and legislation on which insanity is based, we find that Jordanian law relied on the Macnaton standard, which is a standard taken from the Palestinian law of English origin, which was mentioned in Article (145). It is clear to us from the above that Jordanian law does not punish unlawful acts resulting from the actions of those suffering from insanity. The Jordanian judiciary has followed this approach, as stated in one of its rulings: "If the evidence heard by the police court leads to the conclusion it reached that the accused was suffering from a mental illness and lacked will when he committed the crime, Its ruling that there is no criminal liability for this act is consistent with the provisions of the law (Jordanian Court of Cassation, 1972, pp. 71/64). It is not enough to simply state that the law and the judiciary deny responsibility for the insane, but rather it is necessary to delve into everything related to insanity and to state when criminal responsibility is negated. First, proof of the existence of insanity must be issued by a medical committee that has the authority to issue the necessary medical certificates for these cases, and it must be shown through it that the perpetrator suffers from a mental illness that has caused him to lose awareness and the ability to distinguish between actions. Issuing a medical report may require placing the insane person under observation for a period of time to ensure his health status. Reporting the condition and status of the insane person is considered a technical matter that must be carried out by specialists in this field (Al-Salem, Ayyad, 1997, p. 407). After stating what is meant by insanity, we must state the conditions that must be met in order for it to be possible to say that the person suffers from a state of insanity that prevents him from realizing the essence of his actions. The conditions that must be met can be summarized as follows: There must be a mental disorder that would cause the loss of the ability to perceive, distinguish, and freedom of choice, provided that the loss is absolute. The purpose and lesson of this condition is not in the negation of criminal responsibility due to the existence of insanity, but rather the lesson lies in what insanity leads to. Loss of consciousness and perception, and therefore if the defect afflicting the perpetrator is partial and there is no room for saying that the perpetrator lacks will and discernment, it is not possible to say that criminal responsibility is absent, although it is possible to say that it is incomplete (Banat, p. 25). In this regard, it may come to mind that severe anger and a violent mood that causes loss of awareness and the ability to discern, does it negate criminal responsibility if its presence is proven? Referring to the decision of the Jordanian Court of Cassation, we find that it said: "The defendant's claim that he was in a psychological state when he committed the crime that made him lose consciousness, and that he is therefore not criminally responsible for his action, is not rejected, because in addition to the fact that he did not mention before the court of subject matter that his mental faculties were disturbed, what he said in this regard is that he is of a nervous temperament, and this state, assuming its validity, does not exempt him from criminal responsibility." Therefore, it becomes clear to us that a nervous state cannot negate criminal responsibility (Al-Salem, Ayyad, p. 409). Insanity must be present and proven at the same time as the criminal act is committed .

Insanity must be present and proven at the same time as the criminal act is committed. Accordingly, insanity cannot have the slightest effect on criminal liability unless it is present at the time of committing the criminal act. This is because the point of reference lies in what afflicts the person at the time of committing the act, not at other times. If a person commits a crime and does not suffer from any mental disorder, but the result is delayed, and the result appears at a time when he is suffering from insanity, then liability is established against him and it cannot be said that it is possible to deny it. In confirmation of this, whoever commits a crime while suffering from insanity and before the result of the criminal act appears, regains awareness and discrimination, so there is no room to say that he is legally questioned and criminal liability does not arise against him (Abdul Razzaq, Al-Zaghbi, 2010, p. 305). Accordingly, committing any act while the person is awake and aware cannot negate criminal liability. When we say the time of committing the crime, this naturally means the time of committing the material element that constitutes the crime (Abdul Razzaq, Al-

Zaghbi, p. 306). But what if insanity appears before or after committing the crime, does it have an effect? On criminal responsibility? We would like to point out that any state of insanity that occurs before committing the crime, but at the time of committing it the perpetrator was aware of his actions and possessed all rational powers, this cannot affect criminal responsibility and remains in the face of the perpetrator of the crime. As for the state of insanity that may afflict the accused after committing the crime and during the trial procedures, which reaches a degree that prevents the court from completing the trial procedures, here the court can issue a decision to arrest the accused and place him in a mental health facility to monitor his health condition (Al-Saeed, 2002, pp. 605-608). It should be noted that intermittent insanity cannot negate criminal responsibility if the crime was committed at the time of recovery, since recovery is evidence that the perpetrator possessed feeling and choice at the time of committing the crime. To know the images and mental illnesses that can cause a person to lose consciousness and awareness and take the ruling of insanity, including epilepsy, which means that some people may be exposed to external seizures accompanied by convulsions that cause them to lose their sanity and awareness and become unable to perceive the essence of their actions, which naturally leads to the inability to distinguish the nature of the actions that they commit, whether they are lawful or unlawful, which naturally leads to the absence of criminal responsibility in their face (Al-Saeed, p. 618). Sleep wakefulness is a dream in which the afflicted person carries out the images that come to his mind without being aware of the movements and actions he is doing (Boutaleb, 2015, pp. 14-21). Hysteria is a disorder in the nervous system, and it is accompanied by a disturbance in the desires and emotions that haunt the person, which leads to the inability to control the will, and the condition can intensify in the afflicted person to the point of becoming hysterical madness, and this disease is naturally considered an obstacle to criminal responsibility, and another disease called "normositania" takes the ruling of hysteria, which weakens the nervous system, leading to the loss of control over the body's organs, followed by the loss of control over the will, and it takes the ruling of hysteria and denies criminal responsibility. (Al-Saeed, p. 414). We find that some have attributed hypnosis to mental illness and mental disorder "madness", but we see that this opinion is incorrect since a person does not lose consciousness and awareness due to a disease or mental disorder but rather due to another person, and we can attribute this act to coercion and not illness, if we consider that hypnosis is likely to make a person lose all of his will and freedom of choice, and in any case, the abstention from responsibility for the insane does not exempt from imposing precautionary measures since he may pose a danger to society that must be mitigated, and this is clearly evident in the second paragraph of Article (92), which states: "Anyone who is exempted from punishment pursuant to the previous paragraph shall be detained in a mental hospital until a medical committee report proves his recovery and that he is no longer a danger to public safety." In this regard, we have a ruling on mental illnesses. Can they be considered to be devoid of will and if a person has them, he does not have the ability to perceive and distinguish? There are many mental illnesses, such as the schizophrenic personality, which is considered a psychologically abnormal personality and cannot be To agree with social life, (Boutaleb, pp. 19-23) but what distinguishes the person afflicted with this disease is that he does not lose his discrimination, but rather is aware of the tone of his actions, except that what afflicts this personality is a defect in instincts and emotions, since discrimination is available, it cannot be said that this personality loses its mind, and therefore it cannot be said that any act committed by the person afflicted with these diseases negates responsibility before him (Lafi, 2009, pp. 18-22), as for the intensity of excitement and the revolution of emotions, it is agreed that they cannot be mental illnesses and do not have the slightest effect on the mental powers, and therefore they do not prevent the establishment of criminal responsibility (Abdul Razzaq, Al-Zaghbi, p. 300). The second of these cases that negate awareness is young age, as we have previously shown that responsibility is based on two basic building blocks, namely awareness and will, and of course a person cannot be born with them, as they are proven with time and the more a person grows older and matures, so in childhood it cannot be said that they are available at all, but with growth and advancement in age awareness and will can be available but incomplete, except that reaching the age of discrimination and real-izing the nature of actions is likely to make a person criminally responsible and bear the consequences of his actions. (Sulaiman, p. 668). By carefully examining Article (5) of Decree-Law No. (4) of (2016) regarding the protection of juveniles, it becomes clear to us that it is as follows: "A person who has not reached the age of twelve at the time of committing a criminal act or when he is in one of the cases of

exposure to deviance shall not be criminally responsible About (12) years if he committed an incident that constitutes a felony or misdemeanor, and he is referred to the Child Protection Guide to follow up on him" .

From the aforementioned text, it becomes clear to us that the Palestinian law was wrong in raising the age ceiling for the juvenile, as it made it 12 years, and it did not divide the stages that the child goes through, contrary to what was stated in the Jordanian Penal Code in its Article (94), which states the following: "Taking into account what is stated in the Juvenile Reform Law, no one who has not completed nine years of age shall be criminally prosecuted, and no one who has not completed twelve years of age shall be exempted from criminal responsibility, unless it is proven that he was able to know when he committed the act that he was not permitted to do that act. By examining the draft Palestinian Penal Code, we find that it followed the approach of the Jordanian legislator, as it stated in its Article (46/1) the following: "No one who has not completed nine years of age at the time of committing the crime shall be criminally responsible." As for the position of the Jordanian legislator on young age as an obstacle to responsibility Criminal, we find that he divided the age periods that a person goes through from childhood until reaching the age of dis-crimination into three stages, in which he explained the penalties that can be imposed on the per-petrator of the crime, and he distinguished the first stage to talk about the "childhood stage", which begins from the birth of the child until reaching the age of seven, and what distinguishes this stage is the child's loss of perception, discrimination and awareness, and accordingly, criminal responsibility is negated, and where the child here cannot be asked or punished, whatever the punishment, and he cannot be prosecuted criminally, as for the second stage, it is the "children's stage", which is a stage that is unique to everyone who reaches the age of seven and has not reached the age of twelve, here and by referring to what was stated in the Jordanian Juvenile Law No. (24) of (1968) in its Article (21), as well as the amended Juvenile Law No. (32) of (2014), that punishment cannot be imposed on the child, but precautionary measures can be imposed by the court regarding him, such as handing him over to his relatives, or to a family member, or to someone other than his relatives, or placing him in a place designated for juveniles for a specific period of Time for supervision (Ayad, 1993, p. 422), and as for the "adolescence stage", it refers to anyone who has reached the age of twelve and has not reached the age of fifteen, and since Article (2 and 19) of the Juvenile Law stipulated the penalties that can be imposed on the juvenile, and Law No. (32) of (2014) also stipulated the penalties in Article (26) thereof, and finally the last stage that a person goes through is the "young person stage", and it refers to anyone who has reached the age of fifteen and has not reached the age of eighteen, and what is unique about this stage is that criminal responsibility is proven against the young man, but it is incomplete, and accordingly, penalties can be imposed on him, provided that they are less severe than the penalties that are imposed on those with full responsibility, and after the completion of the age of eighteen, it cannot be said that responsibility is diminished, but rather it is proven in full as long as the accused has not been afflicted with any condition that prevents the proof of responsibility against him (Bin Saeed, 2010, pp. 13-20). As for the proof of the age of the perpetrator, we find that the draft Palestinian Penal Code has organized this issue in The second paragraph of the aforementioned article states: "The age shall be proven by an official document. If this is not possible, the investigating or trial authority shall appoint a specialist doctor to estimate it using technical means." The third case of preventing liability resulting from the loss of consciousness is mental coma. Some legislations have considered that coma resulting from taking intoxicants or narcotics, without consent and choice, is an obstacle to criminal liability. This is what the Jordanian legislator has adopted in accordance with the provisions of Article (93), which states the following: "No punishment shall be imposed on anyone who is unconscious or unconscious in his work at the time of committing the act due to a coma resulting from alcohol or narcotic drugs of any kind if he took them without his consent or without his knowledge of them." Through this text, it becomes clear to us that the Jordanian legislator followed the approach of the Egyptian legislator, who included in Article (62) of the Penal Code what is consistent with the text contained in Jordanian law. We can say that forced coma results from taking narcotic or intoxicating substances, but it is required that it be without the knowledge of the person taking them or with his knowledge but without his will. From the above, we can draw a conclusion that any intoxicants, alcohol or drugs taken with knowledge and will and without Coercion cannot exempt the

offender from criminal liability, unlike coercive use, which negates criminal liability. This becomes clear to us by referring to the ruling of the Jordanian Court of Cassation, which stated: "The appellant's claim that he was drunk when he drew the weapon does not exempt him from punishment, because Article (93) of the Penal Code stipulates that for exemption from punishment, the loss of consciousness or choice must have arisen due to the consumption of alcohol or narcotic drugs without the consent of the person who was unconscious or without his knowledge" (Jordanian Court of Cassation, 1980, p. 73). In order for it to become clear to us how criminal liability is negated for someone who was under the influence of alcohol or drugs, we must stand on the most important conditions that must be met in order to say that criminal liability is negated against the accused, which can be summarized as the condition for the offender being given the intoxicant or narcotic substance without his consent, or without his knowledge of the nature of the substance given to him, or he was forced to take it. Naturally, the result of taking this substance must be that the perpetrator enters a coma, causing him to lose the ability to distinguish and perceive what is around him and the nature of the acts he is committing (Ayad, p. 418).

It is required that the crime be committed by the perpetrator while he was losing consciousness and awareness, as every act he performs after regaining consciousness cannot negate responsibility in his face. Thus, if all the conditions are met, it can be said that coma produces its effect in being considered an obstacle to criminal responsibility. (Sulayman, p. 682) But what about proving the state of drunkenness or coma, who does it fall upon and how can it be proven? Firstly, the assessment of the accused's condition is up to the competent authorities, as they conduct clinical medical examinations, in order to determine the percentage of the narcotic substance or alcohol in the body, and to show the extent of its ability to affect the mental faculties, awareness and discrimination of the accused. Perhaps the referral to the aforementioned authorities is often by the Public Prosecution, which works to complete the investigation procedures into the committed crime. The issue of proving drunkenness and forced coma is considered to be of an objective nature and is subject to the court's discretion without the supervision of higher courts. As for raising the issue of lack of awareness and discrimination when committing the act, given that the accused was given the narcotic substance without his consent or was not aware of it, it must be raised by the accused, otherwise he is considered criminally responsible, and this is proven by the rulings of the Jordanian Court of Cassation. (Jordanian Court of Cassation, 1977, p. 77) As a result, we can summarize the cases of drunkenness or drug abuse that would negate criminal liability, and we find that they are limited to the accused taking these substances by force or due to the presence of force majeure and he was not aware of the nature of those substances or was forced to take them despite knowing that they affect the mind. As for the cases in which the use of intoxicants, drugs or alcohol cannot negate criminal liability, they can be summarized in two cases. The first case is the commission of the crime by the perpetrator while he is under the influence of intoxicants but as a result of a mistake by the perpetrator, such as someone who takes a large amount of narcotic or intoxicating substances while he is aware of their nature and effect and that he can commit crimes and perform acts beyond his control if he takes them. The second case can be imagined in someone who causes this condition to arise with his expectation that crimes can be committed during the emergence of that condition, as well as someone who takes narcotic substances in order to commit crimes, so liability cannot be negated in any way against him (Al-Saeed, 613). At the end of the discussion of these obstacles to criminal liability arising from the lack of awareness, we must talk about the effect of the existence of these obstacles and the consequences of their existence if they are present. The existence of obstacles to criminal liability has several effects represented by dropping the criminal liability of the perpetrator, as he is considered not criminally responsible for his action and is not punished for it because the perpetrator's will is absent and not legally considered. This leads to the impossibility of the presence of criminal intent or unintended error, which means the absence of the moral element of the crime. (Al-Halabi, Al-Salem, p. 388). Civil liability remains incumbent upon the perpetrator, who bears it from his own money as compensation for the harm he caused to the victim (Houmed, 1975, p. 259). The impediments to punishment have no effect on the legal classification of the committed act, as the act remains illegal even if its perpetrator is not responsible for it, as the legal element remains available despite the presence of one of the impediments to punishment. The impediments to punishment affect the moral element only, while the reasons for justification and permissibility affect the legal element of the crime, and this is what distinguishes between the impediments to

punishment and the reasons for justification and permissibility (Ayad, p. 389). If a case of the impediments to punishment is found in the perpetrator, he remains within the scope of moral responsibility, but the considerations specified by the law exempt him from punishment, and the court has the right to take special measures against the perpetrator to prevent his evil from people within the limits of the law (Houmed, p. 259).

RESEARCH RESULTS: At the end of this research, the researcher reached many conclusions, which are represented in the Jordanian law and the Palestinian law, which basically assumes that a person is sane at the time of committing a crime until proven otherwise within the conditions stipulated by law. The researcher concluded that anyone who committed an act while insane, or in a state of absence of mind as a result of taking drugs or alcohol without consent and without knowledge, or in the case of young age, is exempted from punishment if, at the time of committing the crime, any of the previously mentioned cases of lack of consciousness apply to him. It is worth noting that it is not enough for a person to be insane to deny responsibility for him, but rather this insanity must be proven by a specialized medical committee that is approved by the court within the conditions stipulated in the law. In addition, there are other forms of mental illnesses that take the ruling of insanity legally, such as epilepsy and hysteria. The existence of these cases that negate awareness and perception result in dropping the criminal responsibility of the perpetrator and he is not punished by law, as the moral element of the crime is absent here, without which the most important elements of the crime are absent, represented by the material, moral and legal elements .

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