ACTA SCIENTIAE

ISSN: 2178-7727
DOI: 10.17648/acta.scientiae.6369

THE LEGAL STRUCTURE OF THE IMPACT OF RECIDIVISM PROBABILITY ON CRIMINAL PUNISHMENT

Ali Abd Mehdi Wasmi[1], Reza Nik Khah[2], Siamak Jafarzadeh[3]
[1,2,3]Department of Criminal Law and Criminology, Urmia University, Iran
Email: akeelshakir@gmail.com

Abstract:
The legal structure governing the severity of criminal punishments stems from the importance of understanding the relationship between crime and punishment within the legal system of any country. This structure is influenced by several factors, including national and international laws as well as the moral values of society. The significance of this issue encompasses several dimensions: achieving justice, prevention and deterrence, attaining the rehabilitation and reintegration of offenders, and strengthening the rule of law.Criminal punishment is one of the mechanisms aimed at imposing a negative response to criminal behavior, with the goal of achieving justice and discipline in society. The degree of criminal punishment is determined based on the probability of recidivism, which is influenced by various factors, including the type of crime, the circumstances surrounding it, and its impact on society. In summary, the legal structure of the impact of recidivism probability on criminal punishment is a crucial and necessary matter, as it ensures the realization of justice, the protection of society, and the attainment of rehabilitation and deterrence within the legal system.

Keywords: Legal structure, criminal punishment, recidivism probability, social protection, judicial competence.

Introduction

The legal structure governing the severity of criminal punishments is crucial due to the importance of understanding the relationship between crime and punishment within the legal system of any country. This issue is particularly relevant when determining appropriate punishments for committed crimes based on their severity and impact on society. The legal framework for punishments is influenced by various factors, including national and international laws, as well as the values and ethical principles of society.

The likelihood of recidivism plays a decisive role in determining the type and severity of punishment. The levels of recidivism probability can vary greatly, ranging from severe violent crimes to economic or environmental offenses. Precise legal regulations require the definition of specific criteria for classifying crimes based on their severity, which involves considering factors such as potential harm to victims, the impact on community safety, and the effect on the economic system.

Punishments vary significantly based on the probability of recidivism. High-risk crimes might warrant long-term imprisonment, while lower-risk offenses may require lighter penalties, such as fines or community corrections.

Furthermore, the legal structure of punishment severity must also take into account factors such as rehabilitation, as punishments can contribute to transforming potential offenders into productive members of society after serving their sentences.
The legal framework governing the severity of criminal punishment should be balanced and fair, taking into consideration the likelihood of recidivism while striving to achieve justice and public safety in society.

Research Significance:
The significance of "The Legal Structure of the Impact of Recidivism Probability on Criminal Punishment" can be examined from several perspectives:

1. Achieving Justice:** This legal structure helps in achieving justice by determining punishments that are proportionate to the severity of the committed crimes. When there is a balance between the crime and the severity of the punishment, the sense of justice among victims and society at large is enhanced.
2. Prevention and Deterrence:** By imposing punishments proportional to the severity of crimes, legal regulations can act as a mechanism for preventing crime and reducing its occurrence in the future. Harsh punishments can also serve as a deterrent, discouraging potential offenders from committing crimes.
3. Social Protection:** Legal regulations, by determining the necessary punishments for high-risk crimes, safeguard society and ensure its security, thereby protecting individuals, property, and social values.
4. Achieving Rehabilitation:** Criminal punishments can provide an opportunity for the rehabilitation of offenders and their reintegration into society as useful individuals. When punishments are administered based on the likelihood of recidivism and the needs of the offender, legal regulations can contribute to achieving this goal.
5. Strengthening the Authority of the Law:** Legal regulations help to reinforce the authority of the law and increase public trust in the judicial system, as the enforcement of appropriate punishments reflects the principles of justice and equality before the law.

In summary, the legal structure of the impact of recidivism probability on criminal punishment is essential for ensuring justice, protecting society, and achieving rehabilitation and deterrence within the legal system.

Research Limitations
The research issue of "The Legal Structure of the Impact of Recidivism Probability on Criminal Punishment" is a complex and central topic within the field of criminal law and policy. It involves examining how criminal punishments are determined in relation to the severity of committed crimes and the impact these punishments have on society and the offenders themselves.

This research problem includes several intricate and overlapping aspects, such as defining criminal risk and categorizing crimes accordingly, as well as establishing the principles that the legal system

should rely on when determining appropriate sanctions. Moreover, the research problem also encompasses evaluating the social, economic, and political impacts of these punishments, along with studying their effects on criminal behavior and the effectiveness of the legal system in crime prevention.

Section One: Types of Criminal Punishments

Criminal punishments are categorized into:

Primary Punishments:

Primary punishments have various definitions. There is no crime without a specified primary punishment, which is:

1. The main penalty for the crime, applied to the individual proven guilty, and is only enforced when the judge issues a verdict.
2. A penalty predetermined for the crime.
3. A punishment designated by the legislator as the main penalty for the crime.

From the definitions of primary punishment, it is evident that the terms used align with the reality that this penalty is legislatively determined as the essential punishment for the crime. Consequently, no crime is without a primary punishment.

Based on the provided definitions, we conclude the distinguishing criteria of this punishment from other sanctions, which are:

-This punishment is independent of other penalties and is the main penalty prescribed for the crime. Sometimes, this penalty alone suffices to deter the offender. The judge must explicitly state this penalty in the verdict, and it can only be executed if specified by the judge.

Secondary Punishments:

1. A penalty imposed on the offender based on the primary punishment ruling, requiring no separate ruling for the secondary punishment.
2. A secondary penalty aimed at reinforcing the primary punishment.
3. A penalty applied to the convicted individual in certain crimes, even if the judge does not mention it in the ruling.
4. A secondary penalty accompanying the primary punishment as a consequence of the ruling, without requiring explicit mention by the judge in the verdict.
5. Penalties automatically imposed on the offender upon the issuance of the primary punishment, without the need for a separate order from the judge.

Dr. Fahd bin Salma defines secondary punishment as:

Penalties imposed by law in certain crimes without the need for a separate ruling, based on the primary punishment issued by the court.

Supplementary Punishments

1. Punishments imposed on the offender based on the primary punishment ruling, provided the offender is also sentenced to supplementary punishment.

2. Punishments that are supplementary to the primary punishment and are applied only when the judge explicitly states them in the ruling.
3. Punishments that are never ruled independently but are determined by the judge alongside the primary punishment.

Secondary punishments do not require a separate ruling from the judge but are applied automatically following the primary punishment. However, the judge may occasionally reference them in the verdict. This does not change their classification. Based on the definitions provided, the criteria for distinguishing supplementary punishments from other penalties can be summarized as follows:

1. These are secondary punishments.
2. They are related to the crime.
3. Their application depends on the judge's ruling.

Section Two: The Impact of Recidivism Probability on Criminal Punishment

Criminal punishment is one of the mechanisms used to impose a negative response to criminal behavior, aiming to achieve justice and discipline in society. The severity of criminal punishment is determined based on the probability of recidivism, which is influenced by various factors, including the type of crime, its circumstances, and its impact on society.

In other words, criminal punishment, in addition to its primary goal of achieving justice and discipline, has broader effects that extend beyond the individual offender to society as a whole. Depending on the severity of crimes, criminal punishments may have social, economic, psychological, and even political effects.

Topic One: Classification of Criminals

Undoubtedly, the issue of recidivism probability, a result of the Italian positivist school, is closely related to the classification of criminals. This is because it involves determining criminal procedures for each group of offenders. The school studies offenders and classifies them into specific categories based on factors and conditions affecting their criminal behavior, with each group receiving appropriate criminal procedures and punishments.

1. Cesare Lombroso’s Classification

Lombroso’s theory of criminal classification is one of the most significant categorizations of criminals because he was the first to use an empirical method to study the character of offenders and identify factors that lead them to commit crimes. In his classification, Lombroso relied on numerous physical and psychological variables, influenced by external factors, to distinguish between the probability of recidivism among the five categories he proposed. He classified offenders into five categories as follows:

a) Born Criminal: This type of criminal is characterized by physical and biological traits that date back to the early stages of human evolution, distinguishing them from contemporary human characteristics. Lombroso identified these traits and believed that anyone exhibiting

five or six of them was a born criminal from birth. The key feature is that the commission of crimes stems from biological effects and does not require any external or environmental factors.

b) Insane Criminal: This group includes individuals whose mental deficiencies or weaknesses lead to psychological disorders, such as the loss of the ability to distinguish between good and evil, placing them at risk to the extent that they need to be hospitalized in a mental institution for treatment or, if treatment is not possible, removed from society. Lombroso categorized criminals with mental disorders into three types: epileptic criminals, psychopathic criminals, and insane criminals, based on public concern about the psychological effects of their insanity leading to crime.
c) Habitual Criminal:These criminals have mental deficiencies and behavioral weaknesses, and if they encounter unfavorable social conditions such as unemployment or alcohol addiction, they develop a habitual tendency towards crime. Due to their psychological nature, which is always prone to criminal behavior, they are a continuous source of crime. In law, it is generally agreed that these three previous categories present a high degree of criminal risk and require specific precautionary measures to prevent the spread of crime to others.
d) Accidental Criminal:** This individual commits a crime due to external influences that affect them without prior preparation. Due to behavioral weaknesses, they are more sensitive to these external factors compared to others. The motivation for and deterrent against crime are in a state of balance within them; in other words, they do not seek out crime but may fall into it due to sudden external influences and an inability to assess situations. This person requires specific measures for treatment and prevention from becoming a habitual criminal.
e) Emotional Criminal:** This type of criminal is distinguished by heightened sensitivity and intensity of emotional responses, leading them to react excessively to emotions. Their criminal behavior is driven by feelings such as excitement, jealousy, and zeal. Most crimes in this category involve attacks on individuals or political crimes.

2. Rafael Garofalo's Classification

Garofalo's theory addresses the relationship between criminal behavior, psychological traits, and punishment, and also considers the idea of mental or emotional disorder. However, he does not deny the impact of social factors on crime. He classified criminals into four categories: murderers, violent and aggressive criminals, thieves, and sexual offenders.

3. Di Tullio's Classification

Bengino Di Tullio, one of the prominent Italian criminologists, aimed to understand the criminal personality based on the idea that a criminal's personality is the primary source of criminal behavior. He believed that crime, being a personal, social, and biological behavior, can be controlled by individuals with a healthy mind, spirit, and body, who can avoid criminal temptations.

Di Tullio's Theory: is one of the most prominent classifications in contemporary criminology and is fundamentally based on three main categories of criminals: the accidental criminal, the inherent criminal, and the psychological criminal. Although he primarily focused on the first category due to the predominant role of environmental and social conditions.

4. Jean Pinatel's Classification**

The French scholar Pinatel divides criminals into two groups:

Group One: Includes specific examples of four types of criminals:

a) Criminals with a natural inclination towards crime who have a tendency towards violence and severe criminal danger even under normal circumstances.
b) Skilled criminals who commit crimes without the need for any internal or external motivational factors, referred to as inherently malicious, lacking any deterrent factors, whether moral or otherwise.
c) Criminals whose intellectual deficiencies are the cause of their criminal behavior.
d) Criminals addicted to drugs and alcohol, who are studied to determine their relationship with crime.

Group Two: Includes unspecified examples of two types of criminals:

1. Professional criminals
2. Non-professional criminals

Second Topic: The Impact of the Likelihood of Recidivism on Criminal Penalties

The Iraqi legislator, in the Penal Code, assigns a specific role to the likelihood of recidivism among deterrent factors for crimes. Article 103 of the Penal Code No. 111 of 1969 states: “A preventive and precautionary measure prescribed by law should not be applied to an individual unless the actual commission of the crime by them is proven and their situation is dangerous to the security of society. A criminal's situation is considered a threat to community security when there is a serious likelihood of another crime being committed by them based on their past and behavior as well as the conditions and factors of the crime.”

From the text of the law, it is understood that preventive measures require certain conditions, including the previous crime and the risk of recidivism. The Iraqi legislator has given the judge extensive powers to assess these risks, such that the judge must analyze the criminal's situation, behavior, the circumstances of the crime committed, and the motivations prompting the crime. This indicates that the legislator relies on the judge's assessment to determine the risk and likelihood of reoffending, and the judge is responsible for ensuring, through scientific examination and consultation with experts, that the criminal will not reoffend.

The definition of criminal risk by the Iraqi legislator, as stated in Article 103 of the Penal Code, refers to a situation that leads to the belief in the likelihood of recidivism by the criminal. Therefore, this definition is based on the examination of personal status, behavior, criminal past, and the conditions of the crimes.

However, the Iraqi legislator has not only limited this concept but has introduced the concept of criminal risk in several sections of Iraqi law, highlighting its importance in evaluating and implementing penalties. Among these sections is the principle of personalizing punishment, aimed at aligning penalties with the defendant's biological, psychological, and social conditions, as well as considering the details and damage caused by the crime.

It is clear that the principle of personalizing punishment involves legal, judicial, and executive aspects. The legal aspect includes drafting laws and regulations that determine and align penalties with the status of criminals and crimes. Among the important mechanisms mentioned in Iraqi law for this principle are exemptions, reductions, and increases in penalties based on conditions.

Thus, the role of criminal risk in determining and implementing penalties in crimes becomes apparent, where the personality and surrounding conditions of the criminal are examined to specify the risk of committing further crimes and consequently determine an appropriate punishment.

Article 128 of the Iraqi Penal Code defines excuses as follows: "Excuses can lead to exemption or reduction of the penalty, and no excuse exists except in conditions specified by law..." Undoubtedly, the creation of a system of mitigating and exempting excuses is the result of several factors, including the absence or minimal risk of recidivism in the individual. For example, a person might commit a crime due to benevolent motives or intense provocation by the victim without any justifiable reason for committing the crime.

The legislator has provided stringent legal conditions to address the risk of concealed recidivism in the criminal, such as increasing penalties in cases where the crime is likely to be more dangerous or impactful on society. By setting these conditions and implementing severe penalties, the legislator aims to create deterrence and reduce high-risk crimes.

The principle of personalizing punishment may be applied at the judicial level, allowing the judge who is responsible for implementing the penalty to consider the individual and special conditions of the criminal. In other words, determining the penalty in a manner that aligns with the crime's conditions and the defendant's personal background.

Some important tools for personalizing judicial penalties are:

1. Quantitative Gradation:** This involves setting minimum and maximum penalties, allowing the judge to choose a penalty within this range based on what they deem appropriate for the case's circumstances.
2. Qualitative Discrimination:** This allows the judge to apply different penalties or a combination of two or more penalties based on what is deemed appropriate for the crime and the criminal's situation.
3. Reduction or Increase of Penalties:** This enables the judge to reduce the penalty below the minimum or increase it above the maximum based on what is deemed appropriate for the case's circumstances.
4. Suspension of Penalty Execution:** This allows the judge to delay or temporarily suspend the execution of the penalty based on the specific conditions of the criminal and the case.

Using these tools, the judge can impose penalties that better match the criminal's status and the crime's circumstances, thus reinforcing the principles of justice and fairness in the judicial system. Consequently, the judge, through the evidence presented with each criminal and by reviewing the case, including the criminal's personality, conditions, and the circumstances of the crime, can determine whether the criminal poses a high risk of recidivism and thus decide to impose a more severe penalty. Conversely, if the judge finds that the risk of recidivism is low or nonexistent, they may reduce the penalty to the minimum.

Through qualitative discrimination, the judge can determine two or more penalties based on the crime's conditions and the criminal's risk. For instance, if the risk of the crime is high, the judge can choose a harsher penalty from the available options, whereas, if the risk is low, they might select a lighter penalty.

One form of this qualitative discrimination involves selective and alternative penalties. In selective penalties, the judge has the freedom to choose between two different penalties or apply both, as stated in Article 401 of the Iraqi Penal Code.

In alternative penalties, the judge has the authority to apply a specific type of penalty instead of another type to better match the criminal's personality and the crime's circumstances, as prescribed in Article 446 of the Iraqi Penal Code.

Regarding the reduction or increase of penalties below the minimum or above the maximum, this pertains to mitigating and aggravating circumstances of the crime. This allows the judge to determine the penalty amount based on specific conditions of the crime and the criminal, offering more flexibility and fairness in criminal justice and aiding in the execution of justice. Mitigating circumstances are reasons that reduce the penalty, allowing for a reduction within the limits set by Articles 132 and 133 of the Iraqi Penal Code.

Article 132 of the Iraqi Penal Code states:

“If the court, in a crime, observes that due to the circumstances of the crime or the criminal, there is a need for clemency, it may change the penalty for the crime as follows:

1. Change the death penalty to life imprisonment or a term of at least fifteen years.
2. Change life imprisonment to a fixed term of imprisonment.
3. .Change a fixed term of imprisonment to a term of at least six months.”

Article 133 states that if there are circumstances in a crime that require clemency towards the accused, the court is authorized to apply the provisions of Article 133.

Third Topic: The Role of the Court of Cassation in Determining Criminal Penalties in Iraq

The Court of Cassation plays a significant role in overseeing the judge's discretion in determining criminal penalties. This is an important topic for research and examination, as the court must ensure that the judgments issued by lower courts are consistent with laws and legal principles.

Sometimes, legal scholars view this matter as dependent on the legislator's planning in distributing powers and duties among various judicial authorities. The Court of Cassation may have the right to review whether judgments from lower courts align with laws and legal principles and, if not, can annul or amend judgments according to legal principles.

Moreover, jurisprudential interpretation may play a role in determining the scope of the Court of Cassation's powers and its execution, as it is based on legal and jurisprudential principles.

Overall, understanding this area requires examining the legal and jurisprudential system of the country and how judicial powers are distributed and interact in light of the accepted legal and jurisprudential principles of the country. From explicit legal texts and the spirit of the law, it is clear that the legislator considers the likelihood of reoffending as a significant factor in determining criminal penalties. This reasoning is derived from various legal provisions, and the legislator grants the court the authority to create laws for determining criminal penalties based on the special conditions of each case and the public interest.

In fact, it appears that the legislator's goal in granting the power to legislate criminal penalties to the court is to achieve public interest and ensure justice. At the same time, some laws consider the gravity of the crime and its associated risks in determining penalties, both in terms of the severity of the risk and its deterrent effect on society.

Thus, it becomes clear that when determining an appropriate penalty for crimes, the law takes into account the balance between the risk of recidivism and the realization of criminal justice while preserving public interests.

Some laws that determine criminal penalties serve as serious guarantees for this determination and to prevent deviation from the goals set by the law, such as Article 132-1 of the Italian Penal Code of 1930, Article 26 of the Belgian Social Defense Law of 1930, and Article 79-4 of the Greek Penal Code of 1950. Based on these, the Italian Court of Cassation ruled that the usefulness of the law is to issue judgments based on the standards set by the law, and this court does not exercise its legislative authority in overseeing the court's executive matters unless it has judicially undertaken such matters.

Similarly, the Belgian Court of Cassation ruled that failure to take preventive measures constitutes grounds for nullifying any judgment that includes preventive measures and penalties, as both are considered as one truth.

The German Court of Cassation granted the power to oversee legislative authority in choosing penalties to the judge of the case.

In contrast, the Greek Court of Cassation concluded that the legislative principles set for guiding judges in choosing penalties are limited to their simple justifications and therefore do not require oversight of the judge's penalty choice. Meanwhile, the Egyptian Court of Cassation determined that setting penalties is the responsibility of the trial court without needing to provide reasons for its judgment. Furthermore, the Egyptian Court of Cassation noted that if the trial court recognizes an error in reducing the penalty for defendants, according to Article 17 of the Penal Code, this error does not deprive the defendants of the right to request a reduction in their penalties, as long as it is within the scope of correct application of the law and the grounds for issuing the judgment show that the court was not compelled to make that decision and acted freely in issuing what it deemed appropriate.

The reality is that determining criminal penalties or preventive measures is not merely a matter of discretion left to the trial judge unless the law defines it to achieve a specific goal for controlling

this discretion. Therefore, without serious oversight to achieve and enforce this goal, the judgment would be pointless. As specified in Article 259((4-3 /أ)of the Iraqi Code of Criminal Procedure: "The Court of Cassation, after a thorough review of the petition documents, must issue its judgment in one of the following cases: (3) Confirming the conviction with a reduction of the penalty; (4) Confirming the conviction with remanding the documents for another review of the penalty to consider increasing it." Based on this article, the Court of Cassation decides to "allow the panel of judges of the Court of Cassation to increase the convict's penalty without referring the petition to the trial court." The Court of Cassation conducts its oversight based on what is specified in the contested petitions; thus, if the case is unclear, it cannot review the matter concretely as it is outside its authority. Therefore, the legislator should compel the judge to provide reasons for their criminal penalty decisions, and if they fail to provide these reasons, their judgment will be incomplete. Undoubtedly, the oversight of the Court of Cassation over the appropriate choice of criminal penalties provides two types of inferences for determining criteria for these penalties and prevents potential discrepancies in the selection of penalties and preventive measures.

Some individuals in Egypt have objected, stating that the Court of Cassation is not authorized to oversee the choice of criminal penalties, as this duty falls within the jurisdiction of the trial judge and not others, and the Court of Cassation is not authorized to intervene in specific issues and cases. However, this view is apparently flawed and incomplete, as the intended oversight does not interfere with the trial court's authority but rather pertains to the application of the law or its spirit. It seems quite clear that if what the legislator has targeted with criminal penalties is considered a condition for the validity of the criminal judgment, adhering to this legislative goal is indeed achieving the condition for the judgment's validity and falls within the scope of legislative authority.

Conclusion:

1. From Article 103 of the Iraqi Penal Code, it can be concluded that the risk and likelihood of recidivism are conditions for applying preventive measures on criminals. This likelihood is determined based on the criminal's personality and behavior, the circumstances of the crime, and its factors. The Iraqi legislator grants the judge broad authority to assess the level of risk and likelihood of recidivism based on each case's circumstances, conducting this assessment through scientific examination and the use of experts.
2. From Article 103, we infer the legal definition of the risk of recidivism as a "situation that leads to the belief in the likelihood of committing another crime by someone who has already committed a crime," with this situation being based on the criminal's personality, behavior, and the conditions and factors of the crime.
3. The risk of recidivism plays a crucial role in the Iraqi penal system, as personalizing penalties requires taking into account the criminal's personality and the circumstances and factors of the crime when determining the penalty. Thus, the judge can apply different penalties based on the conditions of each case.

Recommendations:

1. Judges should carefully assess the risk and likelihood of recidivism for each criminal based on their circumstances, past behavior, and the conditions and factors of the committed crime.
2. The court should have the authority to reduce or increase penalties considering mitigating and aggravating factors and based on the risk and likelihood of recidivism by the offender.
3. .Judges need to apply exemptions or reductions in penalties based on their evaluation of the defendant's circumstances and character while upholding principles of justice and equality.
4. .Penalties should be determined based on a classification between minimum and maximum limits, and the judge should have the discretion to choose penalties that align with the conditions and likelihood of recidivism and the committed crime.
5. Judges should rely on legal evidence and adhere to principles of justice and transparency in their decision-making.
6. The court should strive for justice and equality in penalties without discrimination based on race, religion, or social class.

Sources:

The Holy Quran, Surah An-Nahl: 126.

.1Ibn Salamah: Fahd bin Abdulaziz, *Penal Sanctions in Islamic Jurisprudence*, Thesis submitted for a Doctorate degree at the Islamic University of Madinah, 1409 AH, p. 63.

.2Ibn Abdul-Salam, Sheikh Islam Izz al-Din Abdul Aziz, *The Major Rules Known as the Rules of Judgment in Reforming the People*, [Editor: Nazih Kamal Hamad and Dr. Othman Jumaa Dumeiri] (Damascus: Dar al-Qalam, 2001), Vol. 1.

.3Ibn Faris, Abu al-Husayn Ahmad, *Maqayis al-Lughah* [Editor: Abdul Salam Muhammad Haroun]. (Dar al-Fikr), Vol. 4.

.4Ibn Manzur, Abu al-Fadl Jamal al-Din Muhammad, *Lisan al-Arab* (Beirut: Dar Sader, 1986), Vol. 1.

.5Abu Amer Muhammad Zaki, *General Part of Criminal Law*, Dar al-Matbou'at al-Jami'iya, 1st ed., 1986, p. 496.

.6Ahmad Fathy Sorour, *The Theory of Nullity in Criminal Procedure Law*, Cairo, 1959.

.7Ahmad Fathy Sorour, *The Theory of Criminal Danger*, *Journal of Law and Economics*, Issue 2, Vol. 34, June 1964.

.8Akram Nashat Ibrahim, *General Principles in Comparative Penal Law*, 1st ed., Fityan Press, 1998.

.9Al-Jundi: Dr. Hosni, *The Concept of Derivative and Complementary Penalties in Islamic Law*.

.10Hafiz, Abu al-Ma'ati, *The Islamic Penal System*, Egypt Press, 1976.

.11Hosni, Mahmoud Najeeb, *Commentary on the Penal Code; General Part* (Cairo: Dar al-Nahda al-Arabiya, 1982, 5th ed.).
.12Khidr, Abdul Fattah, *The Criminal System (Its General Foundations in Contemporary Trends and Islamic Jurisprudence)*, Public Administration Institute Publications, Riyadh, 1982.
.13Khalaf, Ali Hussein; Al-Shaawi, Sultan Abdul Qader, *General Principles in Criminal Law, The Concept of Punishment* (Egypt: Dar al-Shams, 2016).
.14Sir Anwar Ali, *The General Theory of Measures and Criminal Danger*, *Journal of Legal and Economic Sciences*, Issue 1, Vol. 13, Ain Shams Press, 1971.
.15Al-Siwasi, Imam Kamal al-Din, Muhammad bin Abdul Wahid, *Commentary on Fath al-Qadeer* (Beirut: Dar al-Fikr, 2003), Vol. 5, p. 212.
.16Al-Sayfi, Abdul Fattah, *General Rules of the Penal System*, (Riyadh: King Saud University Publications, 1995).
.17Abdul Malik, Jundi, *The Criminal Encyclopedia between Sharia and Law*, Dar al-Nahda al-Arabiya.
.18Fakhri Abdul-Razzaq al-Hadithi, *Commentary on the Penal Code – General Part*, Baghdad, 1992.
.19Al-Mawardi, Imam Abu al-Hasan, Ali bin Muhammad, *The Sultanate Rules* (Cairo: Dar al-Hadith, 1988).
.20Muhammad Shallal Habib, *Criminal Danger – A Comparative Study*, 1st ed., Dar al-Risalah, Baghdad, 1979, p. 15.
.21Mahmoud Mustafa, *Commentary on the Penal Code; General Part* (Cairo: Dar al-Nahda al-Arabiya, 1983).
.22Missis Behnam, *The General Theory of Criminal Law*, Manshat al-Ma'arif, Alexandria, 1971, 3rd ed., p. 1055.
.23Wahba, Tawfiq Ali, *Crimes and Penalties in Islamic Law*, Okaaz Publishing and Distribution, 2nd ed., 1403 AH - 1983 AD.

Laws:

-Iraqi Code of Criminal Procedure No. 23 of 1971, as amended
-Iraqi Penal Code No. 111 of 1969

1. Clara CHassel Cooper K Acomporitive study of Deliqunts and NoN Deliqunts , London , p 107
2. Garofalo , La Criminology , Paris 1982, p. 329
3. H.j Eysenck , Crime and Persenality , London 1964, p . 127

Translations:

- Wahba, Tawfiq Ali, *Crimes and Penalties in Islamic Law*, Okaaz Publishing and Distribution, 2nd ed., 1983, p. 58.
- Auda, Abdul Qader, *Islamic Criminal Legislation*, Vol. 1, p. 632.
- Banhasi, Ahmad Fathy, *Punishment in Islamic Jurisprudence*, p. 123.
- Auda, Abdul Qader, *Islamic Criminal Legislation*, Vol. 1, p. 632.

- Al-Jundi: Dr. Hosni, *The Concept of Derivative and Complementary Penalties in Islamic Law*, p. 17.
- Khidr, Abdul Fattah, *The Criminal System (Its General Foundations in Contemporary Trends and Islamic Jurisprudence)*, Public Administration Institute Publications, Riyadh, 1982, Vol. 1, p. 127.
- Abdul Malik, Jundi, *The Criminal Encyclopedia Between Sharia and Law*, Dar al-Nahda al-Arabiya, p. 347.
- Hafiz, Abu al-Ma'ati, *The Islamic Penal System*, Egypt Press, 1976, p. 78.
- Ibn Salamah: Fahd bin Abdulaziz, *Derivative Penalties in Islamic Jurisprudence*, Thesis submitted for a Doctorate degree at the Islamic University of Madinah, 1409 AH, p. 63.
- Auda, Abdul Qader, *Islamic Criminal Legislation*, Vol. 1, p. 632.
- Banhasi, Ahmad Fathy, *Punishment in Islamic Jurisprudence*, p. 174.
- Abu Amer Muhammad Zaki, *General Part of Criminal Law*, Dar al-Matbou'at al-Jami'iya, 1st ed., 1986, p. 496.
- Ahmed Diaauddin Muhammad Khalil, *Previous Reference*, p. 266.
- Ramadan Said al-Alfi, *Previous Reference*, p. 179.
- Jalal Tharwat, and Dr. Muhammad Zaki Abu Amer, *Previous Reference*, p.
- Ramadan Said al-Alfi, *Previous Reference*, p. 180.
- Yasir Anwar Ali and Amal Abdel Rahim Othman, *Criminology and Punishment Science*, 1970, p. 20.
- Raouf Obaid, *Previous Reference*, p. 313-314.
- Ramadan Said al-Alfi, *Previous Reference*, p. 182.
- Yasir Anwar Ali and Dr. Amal Abdel Rahim Othman, *Previous Reference*, p. 283 and following.
- Fakhri Abdul-Razzaq al-Hadithi, *Previous Reference*, p. 468.
- Akram Nashat Ibrahim, *General Principles in Criminal Law*, *Previous Reference*, p. 355.
- Refer to Articles (295/1), (361), (390), (441) of the Iraqi Penal Code.
- Fakhri Abdul-Razzaq al-Hadithi, *Previous Reference*, p. 462.
- Article (131) specifies the rules to be followed when a mitigating circumstance exists in a misdemeanor. If the penalty has a minimum limit, the court is not bound by it in determining the penalty. If the penalty is imprisonment and a fine, the court may impose only one of the penalties.
- Ahmad Fathy Sorour, *Previous Reference*, p. 566.
- *Collection of Legal Rules over 25 Years*, Part III, p. 489 – Cassation October 1961, Collection of Cassation Judgments, Twelfth Year, No. 168, p. 849.
- *Previous Reference*, Cassation May 25, 1945, p. 1136.
- Judicial Bulletin, Decision No. 82 dated 16/2/1976, Issue 2, Seventh Year 1977, p. 345.
- The Iraqi Code of Criminal Procedure stipulates in Article (224/1) that the judgment or decision must include "... the reasons on which the court based its judgment or decision, and the reasons for mitigating or aggravating the penalty ...".
- Dr. Ahmad Fathy Sorour, *Theory of Nullity in Criminal Procedure Law*, Cairo, 1959, p. 325.

- Dr. Ahmad Fathy Sorour, *Theory of Nullity in Criminal Procedure Law*, *Previous Reference*, p. 326.