

UDC: 343.96(569.5)

MENTAL INSANITY AS ONE OF BARRIERS OF CRIMINAL RESPONSIBILITY IN THE COMPARATIVE JORDANIAN PENAL LAW

Mohammed mousa AL - Sweilmeen, PhD

Morad mahmoud yousef Shnikat, PhD

Faculty of Planning and Management, AL - Balqa Applied University, Jordan

Abstract

It has been indisputable philologically and judiciary perspective that no to hold a person responsible for an act he committed, even though his action is considered to be a crime according to the law, in case of that person is not capable to recognize his action due to external factor inflicts him or as a reason involve his mental ability. However logic and fairness give society justifications – self – protection and defense – to take measures with which prevent the danger of such people according to article (92) of the Jordanian penal law. The matter of penal obligation's total obstruction is the soundness of awareness and freedom of choice. In case if one of them or both are missing thus, there will be a reason for its obstruction. As a result, it can be set that awareness loss, or choice is the reason for all penal obligation barriers. Thus, our research is about the criteria or conditions for penal obligation obstruction due to mental insanity. And the rules of mental Insanity in terms of proving it and its effect on legal adaptation involved with criminal act in regard to the mental Insanity relation in the penal contribution and civil liability.

Keywords: Mental Insanity, Jordanian penal law

Introduction

In order for a person to be held accountable for his criminal attitudes and be subjected to receive, his will to commit illegal act to lead to a criminal result or illegitimate act by itself, this will or determination must be present. This criminal will by which he should receive penalties, must have specific criteria in order for it to be legally eligible.

Logic and justice call for not hold a person be accountable for his action even though this action is considered to be a criminal act according to criminal law, if this person is incapable to recognize or chose his crime due to external factor affected him or his mental Insanity.

Despite the fact that logic and fairness justify society for taking self-defense and protective measures in order to prevent the danger of awareness and freedom of choice. Thus, if wrong doer loses one or both of these for any reason accountable by law, the penal responsibility should not be applied which is the case of a person suffers from mental Insanity which results for him to lose awareness and freedom of choice.

To examine mental Insanity and impact on penal responsibility require the determination of the mental Insanity, followed by criteria and rules, through the following chapters:

Chapter one: what is a mental insanity?

Chapter two: criteria for hindering responsibility due to mental insanity.

Chapter three: the rules of mental capability.

Mental Incapacity Definition

In order to examine mental insanity, its definition must be provided, and then examining the extent by which it is a barrier for penal responsibility, this can be achieved by diving this chapter into two parts.

First: mental insanity definition:

Arab penal low scholars have considered the term "Mental Insanity", is a synonym to insanity, thus, they start defining it as mental diseases or mental insanity or it is synonym to its meaning.

It is worth mentioning that, despite big effort which criminal law interprets exerted in defining insanity as they see it a disease which inflicts mind powers with disorder or as a synonym of mental illness. Thus most of those scholars avoid the efforts to define it or even pointing at it; while others declare that there is no specific definition for mental illness due to its being as medical term. Consequently it is a matter belongs to mental health physicians not to law people.(1)

Article 92/1 of the Jordanian penal Act no. 16 of 1960, which is amended by Act no.86 of 2001, states that, "1- shall be penalty exempt whomever commits as action or effect

and is not aware at the time of committing such act or unable to know of that he is forbidden to commit such act at the time of committing or affecting it due to defect in his mind". from this legal text it can be noticed that the Jordanian penal legislator has not adopt a definition for insanity, rather penal legislator emphasized the disability of a person towards recognizing a forbidden act by law, when he commits such act due to a mental disorder he has. Thus he is exempt from punishment. In addition, Jordanian penal legislator has not emphasize the broad meaning of insanity rather, emphasized the linguistic meanings, whereas it includes all types of sickness cases which may lead to the loss of conscious, awareness and freedom of choice, whether it was the insanity with its literally narrow meaning or sickness cases that influence mental capabilities of humans whether direct or indirectly(2) perhaps the most important definition which see in insanity as an illness of mental ones specially the one that indicates, "insanity is an illness deprives the patient from the ability to recognize the relationship between the real world and his own self-thought and his disability in recognizing and thinking clearly, thus he easily accepts unfamiliar thoughts and be subjected to hallucination and insanity symptoms appear in a form of hallucination or illusions or varied reactions or changes in the will, or it is a disorder in mental powers after its development.

All of these lead to patients to be different in their imagination and estimations from those who are mentally sound.(3)

In this context, it is possible to distinguish mental insanity as a disease which inflicts mental capabilities with disorders with insanity is a legal feature proves that a person suffers from a mental disease. Therefore law imposes on the insane is limited effects, that is, insane person would not be held responsible for a crime committed because the lack of awareness and will. Thus, this characteristic of a person of this type is called insane. Insanity appears in a person in different facet, namely, mental deviation which has a special set of legal rules to deal with.(4)

We find that most of penal legislations which mention the term "Insane" have given it a synonym of mental disability in way which allows different opinion in interpretation. It is possible to say that public opinion towards indicating to them in this way, two synonymous concepts', or to say that legislation reason for making insanity and mental incapability to be two synonymous terms, is that, not to limit responsibility on insanity alone rather to include every mental state in which an insane person is lacking awareness or the will, as it is mentioned in Article 1/92 of the Jordanian penal law.(5)

French legislator has done well when article 40 of the French penal laws bill which states, "There shall be no punishment to a person at the time of committing a crime is having a mental disorder that causes him to lose ability of distinguishing or controlling his action."

In the meantime article 12 of Check and Sylvia penal law is similar when states that; (person is not hold liable if- when committing a crime is not able recognize its danger on society or able to control it, because of his suffering from a mental disorder).

Insanity in its medical meaning is a disorder of mental capabilities after its development, which leads to deviation from its natural and familiar activities. Insanity has several types such as general madness which diminishes the distinguish and selection abilities together; and there is the periodical type or sporadic which comes in periodic attack and normal intervals. Person becomes mad during the attack and sane in other times. Mental illness includes psychopathic and nervous (neurological) diseases which weaken or embed the distinguishing or choosing abilities of the mad. The most important types are the hysteria, seizure, day dreaming and Neuostania. Hysteria is a disorder that occurs in the nervous system, a accompanied by disorders in patients emotions, desires and weakness in controlling his will over action he does Hysteria is a cause of many crimes such as murder and shop lifting, theft especially from large shops and false statements(6) insanity as a whole hindering to penal responsibility: criminal philology is contradicted in this context. This disagreement branches into two directions; first, the total hindering source to penal liability because of mental illness is the legal text which arranges this judgment, without this legal text it would be impossible to have the decision of irresponsibility. This logic is represented by an aspect of the Syrian penal law; whereas the Syrian law assures clearly that, madness as a responsibility hindering is stemmed from the law. Philology- based upon the Syrian law- has assured the notion of determining the responsibility hindering factors so as to enable the reading of its rules and legally presence through revealing each barrier in the law. This conflicts with criminal philology community; whereas it assured that responsibility barriers which are similar to the UN forbidden, therefore, it is possible to measure upon them and broadly interrupt them as long as they remain within the un forbidden frame work not in criminal scope and as long as it calls for crime rejection without creating it. Thus, because of them it is not restricted within specific legal texts.(7)

Seconddirection states that, the total hindering of penal responsibility, awareness soundness and good choice. It can find its roots not only in legal texts but also in penal rules, because to have a mental illness that leads to the loss of awareness or choosing results in the forbidding penal responsibility, legally, even if the law does not state this clearly. This logic

leads to all types of madness as long as the general rules have established the legal law foundation of the notion of penal responsibility awareness soundness and freedom of choice. While legal texts which determine the cases of inhabiting the responsibility to be mere clear application of general rules that state "prohibiting the accountability for a person lake of awareness and penal choice.(8)

Dr. Nejem Moh'd points out that," insanity or mental disorders are not eligible to be a responsibility barriers unless they cause feeling lose or freedom of choice in the action committed. In this case, responsibility diminishing is assured due to the lake of less responsibility component loss: freedom of choice and awareness". (9)

The rational for the penal accountability is awareness, soundness and freedom of choice. If one of them is missing or both, lake of accountability becomes valid.

However, when these two elements are discussed with details it will be evident that loss of awareness or freedom of choice is not enough by each one itself to establish penal responsibility for instance; people lose their awareness and freedom of choice upon having drugs or alcohol consumption while they have no mental illness. In this case, accountability is valid because the law is a applicable to cases of mental illness or disorders only not for abusing drugs or the consumption of alcohol, which in both cases are not mental illness.(10)

The essence of penal accountability diminishing is not totally dependent on mental illness or disorder rather, it is the resulted action caused by madness or mental disorders which is the loss of awareness and choice as it is upheld by the Jordanian penal code, article 1/92 that states," every person who commits an action or effect is exempt from penal accountability if the involved.

In order for a person who suffer from mental illness to be exempt from punishment when commits a penal action, there must be two criteria available:

First: loss of awareness or freedom of choice due to mental disorder. As it has mentioned earlier as long as the loss of awareness or freedom of choice from one side, and to have a mental sickness in the other they are connection with the link of illness and the ill. (to the extent of law application), two integrated elements for one criteria. There is no value for each of them without the presence of the other. Thus, law care less, in the application of mental illness rules, with any type of awareness loss or freedom of choice if it does not caused by a mental illness(11), knowing that, it may be present the awareness loss or lack of freedom choice mean, to have the doer be deprived of knowledge or rules and be accountable when breaching them. It is not necessary to have insanity leads to the lack of awareness and choice because this situation is very rare, however, it is enough to have insufficient awareness

and choice which causes the insane to not know what is right and wrong, thus to apply the law it is logic to be applied on people who are aware of their violations and be held responsible for such actions.(12)

Since most of penal legislations and law philologists have expressed these criteria to have loss of awareness and choice because of mental illness nothing else, thus, it has been assured frankly, that for a person not to be held accountable for a penal offense, there must be a lack of awareness and choice because of a mental illness nothing else. Major determinant of this is the court of law which decides after it receives medical reports which are prepared by specialized medical committees. Consequently a court of law decides whether to accept such reports or not.(13)

Consequently the Jordanian court of cassation upheld that, “Insanity is a technical matter which physicians diagnose it, however, court of law is able to determine insanity behavior from its observation of the alleged insane (Cassation, law no. 31 / 58 – Lawyers Syndicate Journal 1958 p 427). Thus, the presence of one of the criteria: loss of awareness or choice caused by mental illness, leads to the application of accountability exemption due to mental illness is not valued without the other aforementioned criteria. As it is shown in the Egyptian legislation namely and Judiciary applications as the Egyptian court of cassation declares, “The mental sickness which is described as insanity which responsibility is diminished by it, is an illness where will and feelings are absent.(14)” The same court adds that, “Exhaustion and tuberculosis are not sickness mentioned in Egyptian penal law article 62 as long as they have no relation with insanity or mental sickness.

Second:Timing of loss of awareness and choice with criminal act. As it is mentioned earlier, there is no significance for the loss of awareness or choice by one of them to diminish the penal responsibility according to the rules of mental sickness.

Furthermore, there is no importance of the suffering from the mental illness by itself; also in judgment if they do not integrate together to become one integrated criteria. Therefore timing of one of the conditions can be considered without importance of one of these two conditions involved with crime committing because of the loss of awareness or choice at the time of the crime, although the law does not hold the criminal guilty, however, it does not diminish the penal accountability according to mental illness rules. Also, the doer suffers from mental illness which does not lead to loss of awareness and choice at the time of the crime whereas the law considers it values legally as long as it is not accompanied by the loss of awareness or choice or becomes so weak that the legal responsibility is absent in the first case while it is present in the second.(16)

Article 2/92 of the Jordanian penal law states:" any person whom given a amnesty or forgiveness according to the above mentioned article must be segregated in mental health hospital until it is proven by a medical penal his cure and he does not constitute a danger to public safety".

The Jordanian cassation court decision were in concordant with article 2/1/29 of penal law thus it has decided," Accountability shall not be void if intelligence level is low rather mental illness will exempt penal accountability if this mental illness leads the person to the loss of awareness for his actions otherwise it would be a crime ."22 the court decided also ,"if it is revealed that the accused when he committed the crime is in natural mental health, thus, he must be put under medical observation in order to be sure of his mental health soundness.(17)

However, suspect may become insane during investigation court proceeding, after court decision award, or before carrying out court judgment against him; thus, if suspect becomes insane during interrogation or court , therefore a postponing of procedures takes place especially procedures were not taken before becoming insane.

All the same time all appointments which the law requires such as appeal and cassation appointments or others. In regard to emergency insanity that occurs after judgment is awarded it shall lead to postponing the start of sentencing carry out, which must take some measures against the person himself, however, others which law allows to carry them out, the law shall allow its carrying out.(18)

The most important matter in this regard is the agreement over what the criminal judiciary requires in some rules of straight forward link between the parts of the criteria loss of awareness and choice due to insanity and the timing criteria of crime occurrence.(19)

As the court of cassation declares clearly: (the extent of accountability exempt and punishment forgiveness due to criminal loss of awareness and choice at the time of committing a crime, the cause of this situation is reflected by the statement of article 62 penal – for insanity and mental illness nothing else (Egyptian criminal cassation ,13/4/1964) this is in concordance with the Jordanian criminal judiciary represented by the Jordanian cassation court when states, "if the statement which the court heard lead to a result indicates that the accused when committed crime had a mental illness that caused him to lose his will, thus, the judgment that does not hold him responsible is in agreement with the rules of law.(20)

It is worth mentioning that the search for timing in continued or consecutive crimes cause difficulties because the nature of these crimes requires time to be carried out, which may be lengthy sometimes, if the matter involves a series of crimes which contains a series of

criminal activities converge in one criminal project which one coefficient links them together that is victims right and criminal purpose such as repeated assault (beating) or home invasion and theft which occurs on intervals, in this case responsibility of criminal is cancelled because when he committed these crimes he was influenced by mental illness, however, criminal activity he committed while enjoying a sound awareness or choice .

Each criminal act from the series of acts is considered to be a crime by itself. However, the continuous crimes which leaves material and physical effect for a long time, whereas its physical component is committed while the will of the doer is in control of directing such a criminal activity during the crime such as taking hostage or the crime of hiding items obtained criminally. Doer won't ask for this crime as long as his loss of awareness or choice due to mental illness continues, but if he regains awareness through a part of this duration, he is considered to be accountable for his crime. (21)

Mental Illness Rules

In order to state how the Algerian legislation deals with mental illness in terms of proving it, and its effect on the legal adjustment connected to criminal act. Thus, this chapter into two parts:

Part one: proving mental sickness

Originally, sane person with sound mind if commits a crime with awareness and will, however if he wants to be forgiven from penalty due to him being under the influence of insanity when he committed the crime, he must prove that, in this context article 91 penal law states that, "every human suppose to have a sound mind or was in sound mind when he committed a crime unless he proves otherwise. "court has the final say in this based on medical reports prepared by medical committee, court decides whether to accept the medical reports or not, is a matter of legal subjective issue, is no subjected to cassation court monitoring, however, court must provide reasons and rationales for its decision which shall be subjected to the cassation court monitoring in order to eliminate responsibility of these who prove that they were insane the time they committed crime, there should be two criteria :

A-the presence of mental sickness whether the continuous or periodical type

B- Insanity shall be on time of crime committee it is good what the Jordanian legislator has declared through article 223 of the Jordanian penal courts fundamentals as follow:

1- Attorney general in each case he believed that the accused suffers from a psychiatric disease or mental disorder, shall put him under needed medical observation in order to be sure that the accused is in good psychological and mental state and that do not hinder conducting interrogation with him.

2- If court discovers that the accused suffer from psychiatric illness or mental disorder, it shall issue a decision to put him under the observation by three public physicians who are specialists in psychiatric and mental disorder for a period the court sees it needed in order to provide the court with a medical report about the patient status.

3- If court is assured by the medical observation that it conducted that accused (suspect) suffers from psychiatric disorder, he shall remain under medical supervision until he become eligible to be persecuted - understands court and court proceeding, thus, court starts prosecuting him, however, if the suspect is hopeless for cure, court decides to send him to a mental health hospital.

4- If the court discovers that suspect had committed the crime while suffering from mental disorder that resulted in the loss of awareness and choice at the time of committing the crime, this suspect will be exempt from penal accountability according to article (92) of penal law.

5- If it has been revealed to the court from medical observation that the court conducted over the suspect, that he suffers from mental illness (mental retardation) and proved that he committed the crime and was convicted, however the court shall exempt him from penal liability rather the court shall place him under probation from one to five years in the condition that court is able to place him before that in national center for mental health or any other shelter or institution for treatment from his dangerous behaviour, due to his retardation, on public security.

According to the a formational Jordanian cassation court states that, "Appeal court shall apply the rules of article 233 of penal courts fundamentals law because such courts are included in this article, thus, it provides suspect to submit evidence to prove that, when he committed crime that he is accused of, he was suffering from mental illness which caused him the loss of awareness (23)". The burden of proof lies on the persecutor; however, suspect is using the insanity motive he committed the crime, he has the right to hold on to his claim thought the court stages with all legal prove methods. However, court shall not accredit the medical report without the testimony of those who prepared it (24) .

The court of law which has jurisdiction over the case, is the one which decides and determines the proof of insanity or mental illness while cassation court shall not have control over that (25).

In article 338 of Egyptian penal law, Egyptian criminal legislator revealed his stand regarding the role of experience in proving mental illness-as every other experience in various domains – that the court which has jurisdiction over the case to decide the acceptance of experience report if it deems necessary. This logic earned law scholars in Egypt consent that court of law has the discretion to accept experience report in technical matters; also the court can reject or disagrees with the report of people which the court assigned them for this purpose, taking into consideration that judges authority extends beyond the determination of insanity proof and experience report, thus the court of law decides that solely without the court of cassation supervision (26).

In the same context the Egyptian cassation states that, "the court has complete authority in the investigation of the availability of criteria for mental illness and extent causing the loss of awareness and freedom of choice and its link with timing (penal cassation decision issued on 26/3/1963 Ben ham P 1082).

It added also, "the determination of the mental illness status of the suspect belongs to the court of law, which acts in this regard independently, the court of law has the full freedom for considering the medical experience report, and the determination of the expert ability and competency which give it the right for not be argued in this regard by the defines (27).

In regard to Egyptian criminal Judiciary from the obligation to have technical experience reports in tiny matters, indicates their disagreement over the subject in contrast to the Jordanian Judiciary stand. Egyptian judiciary obligates to have technical experienced person specialized in pure technical matters while, at the same time judge may decide not to have expert in mental matters- while without doubt mental matters are considered to be pure technical ones- even if defines requested that, as long as the judge sees evidence and case condition very clearly which enable the judge to give his judgement without noticing any insanity evidence, rather the defines is using this claim to hinder the case progress(28).

In this context the Jordanian cassation court declares that, "Insanity is a technical matter, physicians are specialized in its diagnosis, matters of mental illnesses are technical matters which physicians are specialized in its diagnosis, thus, the court is unable – without technical evidence do decide on its own whether suspect is having mental disorders or not through its observation only(29).

The same logic is considered by the Egyptian Judiciary which indicates," The assigned expert to diagnose the mentally ill suspect has no right to decide whether the suspect is responsible for his criminal act or not, rather the expert task is restricted on discovering what the suspect suffers from mental illness or disorders and their effect on his awareness and choice soundness. Judge can derive from the report the legal value of the suspects will (30).

Thus letters from court requesting the mental status of shall include the following:

1- Reveal whether suspect suffers from mental illness or psychiatric disorder, in case of a positive report; the degree of its affection the suspect awareness and choice during committing the crime.

2- Reveal in whether the mentioned illness hinders the ability of the suspect for defending himself at the time of diagnosis of the time of potential court.(31)

Based upon the fact that exemption from penal accountability due to mental illness is a dangerous motive, thus, court must respond to it and give a rational for rejecting it. I prefer the Jordanian cassation court requirement to have the advice of matters such this from expert in the field and in a way that is proper with Justice Logic and scientific specialization.

Part Two: The effect of mental illness on the legal adaptation linked to criminal act

In order to comprehend the aforementioned, in "better way which is by discussing the relationship of mental illness with its criminal contribution, then the discussion of its relation with civil accountability of victim from harm he/she sustained as a result of a criminal action he was subjected to, as follow:

First: relationship between mental illness with criminal contribution among things which assures the lack of legal adaptation mental illness of physical elements of event which are illegal and the suspect had committed and relevant to the criminal act itself is that the suspect is sole winner from penal exemption due to mental sickness while his partner or collaborators in the crime shall be held responsible for the crime. Thus, the mental status of the suspect which causes him the loss of awareness and choice at the time of the crime makes him ineligible to stand court, however, the crime collaborates who had awareness and choice shall stand court and be sentenced accordingly. (32)

Second: The relationship between mental illness with civil responsibility: if mental illness is one of the barriers for not receiving penal responsibility and having influence over personal elements of illegal event but not subjective elements of the event, thus the most important result from this – in addition to the diminishing of responsibility rules of the

criminal contribution – is that, its effects will not reach the civil responsibility of the criminal that is caused by his criminal action of harm which deserves compensation, a matter that is in need for logic and justices together. If penal responsibility is based traditionally on the notion of mistake and guilt, and it is impossible to adhere mistake to suspect due to his ineligibly because of his mental illness; thus civil responsibility assumes the presence of harm caused by its doer which necessities compensation regardless of him enjoying legal eligibility or not. This because, if the penal responsibility assumes holding a person accountable for his criminal act even if there is no criminal results thus civil responsibility assumes holding him accountable for compensation due to his behavior that caused harm to others regardless of holding him criminally accountable or not.

Originally, it must put the eligibility condition and commit mistake that causes penal responsibility without the civil one which needs only to the harm caused by criminal act. (33)

Thus, article 256 of the Jordanian civil states that: "all harm caused to others, oblige its doer even if he is privileged to secure harm", in addition, article 278 states, "if a lad distinguished or not destroys others property, has to pay victim from his (boy's) money.

Results

Through our study of the mental illness impact on penal responsibility, we have found that mental disorder (illness) is a certain legal nature and a distinguished legal concept which has two features: it stops penal responsibility of the criminal totally especially when it proves that mental illness causes loss of awareness and freedom of choice at the time of committing a crime second: forbids the criminal partially where it can be a cause to apply reduced sentence rules it its effect stops at reducing the degree of awareness and choice.

In summary, insanity and mental deviation are just features of mental illness, along with discussion especially the Jordanian legislation and how it deals with the problem.

The term insanity was introduced here to express the responsibility eliminating as long as insanity is a feature of a mental illness and not the mental illness itself.

Definition of mental sickness is defined as metal or psychological or organic disorder caused by an illness which leads to the loss of awareness and freedom of choice or reduction of both or one of them. In addition criteria of mental disorder, and its new legal extent and relevant issues are discussed such as held the collaborators in the crime responsible for the crime but not the insane person who committed the crime.

Finally, we can add some recommendations which we hope that penal criminal and Judicial Jordanian legislator to adopt:

- 1- We suggest that, Jordanian judiciary takes practical measurement to prove the mental illness.
- 2- We suggest that Jordanian Judiciary to cause the decision which call for the application of mental illness rules, legally and completely by which cassation Judges monitor decision not to object them.
- 3- We hope that Jordanian legislator takes into consideration the criminal philology because of example "insanity" is considered to be a feature of mental illness and not the illness itself.

References:

Sorour, Ahmed Fathi, the origins of the Penal Code, General Section, Dar Al-Nahda El-Arabia, Cairo, 1972, E2.

Saleh, Nael Abdel Rahman, the lectures in the Penal Code, General Section, House thought of printing, publishing and distribution, Amman, 1995, E1.

Mustafa, Mahmoud Mahmoud, explanation of the Penal Code, General Section, Cairo University Press, 1974, E 9.

Behnam, Ramses, the general theory of criminal law, facility knowledge Alexandria, 1971, E 3.

Star, Mohamed Sobhi, the Penal Code - General - the general theory of crime, Library House of Culture for Publishing and Distribution, Amman, 2000, E 1.

Hosni, Mahmoud Najib, explain the Penal Code, General Section, Dar Al-Nahda El-Arabia, Cairo, 1973,E 3.

Hosni, Mahmoud Naguib, criminals, homosexuals, Dar Al-Arab renaissance, Cairo, 1974, E 2.

The provisions of the Jordanian Court of Cassation.

The provisions of the Egyptian Court of Cassation.